United States Department of Agriculture

Marketing and Regulatory Programs

Agricultural Marketing Service

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Compilation of Statutes Relating to the Agricultural Marketing Service and Closely Related Activities

As of October 1, 1997

Compiled Under the Direction of the General Counsel

PREFATORY NOTE

This is a compilation of legislation administered by the Agricultural Marketing Service and related legislation. The language of the legislation appearing in this compilation is as it appears in the U.S. Statutes at Large, but, for the convenience of the reader, citations are made at the end of sections and subsections to the United States Code, 1994 edition, and supplements thereto. The subject headings used herein are generally those as enacted; some of them, however, have been changed and other headings have also been added by the editors of this compilation for explanatory purposes.

The statutes contained in this compilation are subject to the provisions of Reorganization Plan No. 2 of 1953 (18 F.R. 3219, 67 Stat. 633) prepared by the President and transmitted to the Senate and House of Representatives on March 25, 1953, pursuant to the provisions of the Reorganization Act of 1949 (5 U.S.C. 901-9913 (Supp. II. 1965-66)). The plan transfers to the Secretary of Agriculture all functions not then vested in the Secretary of all other officers and of all agencies and employees of the Department of Agriculture, except functions vested by the Administrative Procedure Act in hearing examiners employed by the Department and functions of the corporations of the Department, the Boards of Directors and officers of such corporations, the Advisory Board of the Commodity Credit Corporation, and the Farm Credit Administration.

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Part I

GENERAL AUTHORITIES AND ADMINISTRATIVE PROVISIONS

Page

The Organic Act of the Department of Agriculture 1
(7 U.S.C. 2201)

Established the Department of Agriculture to acquire and diffuse useful information on subjects connected with agriculture.

Department of Agriculture Organic Act of 1944 1
(7 U.S.C. 396, 415e, 2259, 2256)

Authorizes the inspection and examination of livestock, hides, skins, meat, or other products at places other than the headquarters of inspector upon request of the owner and charges for the expenses of travel and subsistence (7 U.S.C. 396).

Authorizes sale of samples, illustrations, practical forms or sets of grades under rules and regulations to be prescribed (7 U.S.C.415e).

Directs that authorized market inspection certificates be received in U.S. courts as prima facie evidence of statements therein contained (7 U.S.C. 2259).

Authorizes other agencies of the Government requiring inspections, analyses, and tests to be made for them to transfer funds to this Department for direct expenditure (7 U.S.C. 2256).

Department of Agriculture Organic Act of 1956)Section 12 2
(7 U.S.C. 2229)

Authorizes use of funds for payment of transportation expenses and per diem of persons appointed for temporary or seasonal services in inspection, etc., of agricultural commodities.

Cooperation 2
(7 U.S.C. 450, 450b, 2220, 2249)

Provides for the Secretary of Agriculture to cooperate with State agencies in the administration and enforcement of Federal laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests. This statute is commonly referred to as the "Talmadge-Aiken" authority (7 U.S.C. 450).

Requires that moneys contributed from outside sources involved in cooperative activities, except in the case of the Forest Service, shall be paid only through the Secretary or through State, county, or municipal agencies, or local farm bureaus or like organizations, cooperating for the purpose with the Secretary (7 U.S.C. 450b).

Exempts officials and employees of the Department engaged in co-operative activities from criminal provisions prohibiting payment or receipt of salaries of Government employees from any source other than the

Government (18 U.S.C. 1914) under certain circumstances (7 U.S.C. 2220).

Authorizes the Secretary to prescribe the measure and character of cooperation on the part of the Government unless otherwise provided by law (7 U.S.C. 2249).

Fees and Charges for Government Services and Things of Value 4
(31 U.S.C. 9701)

Authorizes heads of agencies of Government to prescribe fees, charges or prices for work, service, publication, etc. rendered to or for any person or other legal entity.

User Fees for Reports, Publications, and Software 5
(7 U.S.C. 2242a)

Authorizes the Secretary, on requests, to furnish copies of software programs, pamphlets, reports, or other publications, regardless of their form, including electronic publications, prepared by the Department.

Authorizes investment of fees collected.

Authorizes fees to be collected for such materials and publications as the Secretary determines to be reasonable. All moneys received therefor may be credited to appropriations or funds that incur such costs and may be used until expended to pay directly the costs of such work.

Debt Collection Act 6
(31 U.S.C. 3701, 3711, 3716-3718)

Authorizes heads of agencies to compromise claims that do not exceed $100,000.

Provides that collection action may be terminated or suspended where the individual has no prospective financial ability to pay a significant amount or where the cost of collection is likely to exceed the amount recovered.

Prompt Payment 25
(31 U.S.C. 3901-3906)

Requires Federal agencies to pay bills for purchases or rental within 30 days after the acceptance of the goods, unless a different time is specified in the contract. Requires payment for meat, meat food products (including poultry, eggs, and the fresh products thereof), and fresh or frozen fish within 7 days of delivery and payment for produce within 10 days after delivery.

Oaths, Witnesses, and Records; Affirmations and Affidavits 36
(7 U.S.C. 420, 2217-2218, 5 U.S.C. 2905)

Authorizes certain employees in performance of duties to administer oaths, examine witnesses and call for the production of books and papers (7 U.S.C. 420).

Empowers employees of the Department designated by the secretary for that purpose to administer and take oaths, affirmations, and affidavits for use in cases arising under statutes administered by the Department, and provides that when such oaths, affirmations, or affidavits are certified and authenticated by the seal of the Department, they may be used in any U.S.

court without further proof of the identity or authority of the employee (7 U.S.C. 2217).

Prohibits any officer, agent, or employee of the Department from accepting a fee for administering an oath, affirmation, or affidavit (7 U.S.C. 2218).

Provides that employees of the Department shall not be required to renew their oaths as long as their services are continuous (5 U.S.C. 2905).

Employment of Temporary Personnel 37
(7 U.S.C. 2225)

Authorizes the Department of Agriculture to employ persons or organizations on a temporary basis by contract or otherwise without regard to the Classification Act of 1949, provided that a provision has been included in the applicable appropriation for expenditures for such temporary employment, and that such expenditures do not exceed limitations prescribed therein (7 U.S.C. 2225).

Employment of Experts and Consultants; Temporary or Intermittent 38
(5 U.S.C. 3109)

Authorizes the head of an agency to procure by contract the temporary or intermittent services of experts or consultants or organizations when authorized by an appropriation or other statute, including stenographic reporting services.

Cost of Classing or Grading 38
(7 U.S.C. 440, 414a)

Provides for transfer of funds by the Commodity Credit Corporation to cover the costs of classing commodities free of charge to producers, such transfers to be repaid out of subsequent appropriations.

Overtime Rates; Full-time, Part-time, Intermittent 39
(5 U.S.C. 5542)

Provides rate of overtime compensation for full-time, part-time, and intermittent employees for work officially ordered or approved in excess of 40 hours in an administrative workweek, or in excess of 8 hours a day.

Administrative Procedure Act (Availability of Information to the Public) 42
(5 U.S.C. 552)

Requires agencies to publish in the Federal Register certain information, such as descriptions of organization and substantive rules and regulations.

Requires agencies to make available for public inspection and copying final opinions and orders in adjudicative cases, statements of policy and interpretations which have been adopted and are not required to be published in the Federal Register, and administrative staff manuals and instructions to staff that affect any member of the public.

Requires agencies, in making any record available, to provide the record in any form or format requested if the record is readily reproducible in that form or format.

Requires agencies to apply public information requirements to information maintained in an electronic format.

Provides for reasonable access regulations and fees for record searches.

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Exempts specified categories of records from public disclosure.

Empowers Federal district courts to order agencies to produce improperly withheld documents and to examine in private chambers the contested documents.

Establishes time limits for agency responses to requests.

Provides disciplinary action for employees found by the courts to be guilty of withholding information.

Requires agencies to make annual report to Attorney General. Requires Attorney General to make annual report to Congress.

Privacy Act of 1974 54
(5 U.S.C. 552a note)

Allows an individual access to personal information contained in Federal agency files and to correct or amend such information.

Prevents an agency maintaining a file on an individual from using it or making it available to another agency for a second purpose without obtaining consent of the individual.

Requires Federal agencies to maintain records that are necessary and lawful as well as accurate and current and to disclose the existence of all data banks and files they maintain that contain information on individuals.

Precludes agencies from maintaining records that describe an individual's exercise of First Amendment rights unless the records are authorized by statute or approved by the individual or are within the scope of an official law enforcement activity.

Permits an individual to seek injunctive relief to correct or amend a record maintained by an agency and permits the individual to recover actual damages when an agency acted in a negligent manner that was "willful or intentional."

Provides for a fine, not to exceed $5,000, for an officer or employee of an agency who willfully violates the provisions of this act.

Exempts from the disclosure provisions: records maintained by the Central Intelligence Agency; records maintained by law enforcement agencies; Secret Service records; statistical information; names of persons providing material used for determining the qualification of an individual for Federal Government service; Federal testing material and National Archives historical records.

Prohibits an agency from selling or renting an individual's name or address for mailing list use.

Requires agencies to submit any plans for the establishment or alteration of any system of records to Congress and OMB.

Requires the President to submit to Congress by June 30 each year a report on the number of records exempted by each Federal agency and the reasons for the exemptions.

Establishes a seven-member privacy protection study commission to provide Congress and the President information about problems related to privacy in the private and public sectors.

Makes it illegal for any Federal, State, or local agency to deny an individual any benefit provided by law because the individual refused to

disclose his/her Social Security account number to the agency. (It does not apply to disclosure required by Federal statute or to Government agencies requiring disclosure of the number before January 1, 1975.)

Government in the Sunshine Act (Open Meetings) 78
(5 U.S.C. 552b)

Provides, with ten specific exemptions, that every portion of every meeting of an agency subject to the Act shall be open to public observation. This requirement applies to an agency headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the Senate, and any subdivision thereof authorized to act on behalf of the agency. Such an agency is required to announce publicly at least one week in advance of a meeting, the date, place, and subject matter of the meeting; whether the meeting is to be open or closed to the public; and other details.

Administrative Procedure Act) Miscellaneous 84
(5 U.S.C. 553-559)

Prescribes procedures in Federal rule making, adjudications, ancillary matters, hearings, decisions, sanctions; application of licenses, suspension, revocation, and expiration of licenses.

Prohibits ex parte communications in formal hearings; adjudicatory processes conducted in accordance with the Administrative Procedure Act, in which a decision is based upon evidence from a public hearing record; and some rulemaking hearings, including those for marketing agreements and orders and for research and promotion programs. The prohibition against ex parte communications commences at the time a hearing is announced and continues until a final decision is issued.

Regulatory Flexibility Act 93
(5 U.S.C. 601-612)

Requires Federal agencies to assess the effects of a proposed regulation on small businesses, small governmental jurisdictions, and small not-for-profit organizations. As a result of the assessment, Federal agencies must either (1) certify that the rule will not have a "significant economic impact on a substantial number of small entities" or (2) prepare an initial regulatory flexibility analysis (IRFA). Requires that the certification or the IRFA or a summary of the IRFA be published with the proposed rule in the *Federal Register*.

Requires Federal agencies to prepare a final regulatory flexibility analysis of a final rule if an IRFA was prepared.

Permits a small business to seek judicial review of a Federal agency's compliance with the Act.

Provides for agencies to review all major regulations at least once every 10 years.

Requires agencies to publish a regulatory agenda each October and April.

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Small Business Regulatory Enforcement Fairness Act of 1996 105
(5 U.S.C. 601 note.)

Provides the congressional findings and purpose of the Act. Provides a means to help small businesses to comply with Federal agency regulations.

(1) Regulatory Compliance Simplification (Subtitle A) 106
(5 U.S.C. 601 note)

Provides that for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities (businesses) in complying. Designates such publications as small entity compliance guides.

Requires such guides to be provided through comprehensive sources of information.

Limits judicial review with respect to the designation of such guides.

Provides that, whenever appropriate, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with statutes and regulations. Requires each agency regulating the activities of small entities to establish a program for responding to such inquiries within one year after enactment of this Act.

Requires agencies to report to Congress on the scope and achievements of such program.

Authorizes agencies to develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest impact small entities.

(2) Regulatory Enforcement Reforms (Subtitle B) 108
(5 U.S.C. 601 note; 15 U.S.C. 657)

Requires the Small Business Administration (SBA) to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman to: (1) ensure that small businesses that receive an audit, inspection, or other enforcement action are given a confidential means to comment on such enforcement activity; (2) establish means to receive comments from small businesses regarding enforcement actions; (3) report annually to the Congress on such comments; and (4) provide the affected agency with an opportunity to comment.

Directs the SBA to establish a Small Business Regulatory Fairness Board (Board) in each SBA regional office. Requires each Board to: (1) meet at least annually and report to the Ombudsman on instances of excessive enforcement actions taken against small businesses; and (2) consist of owners, operators, or officers of small entities.

Requires each agency regulating the activities of small entities to establish, within one year of enactment of the Act, a policy or program to provide for the reduction and possible waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity.

Requires each such agency to report to specified congressional committees concerning the implementation of its program or policy.

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(3) Congressional Review (Subtitle E) 112
(5 U.S.C. 801-808)

Provides that before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of Congress and the Comptroller General a report containing: (1) a copy of the rule; (2) a concise general statement of the rule; and (3) its proposed effective date.

Requires such agency to submit to the Comptroller General and make available to each House of Congress certain other relevant information, including a cost-benefit analysis of the rule.

Directs the Comptroller General to report on each significant rule to the committees of jurisdiction of each House of Congress.

Makes a major rule effective as a final rule on the latter of the date 60 days after: (1) the Congress receives the report on such rule; or (2) the rule is published in the Federal Register.

Prohibits: (1) a rule from taking effect if the Congress passes a joint resolution of disapproval under procedures prescribed in this Act; or (2) a rejected rule from being reissued in substantially the same form.

Authorizes the President to waive such a resolution if the President determines, and notifies the Congress in writing, that the waiver is necessary: (1) because of an imminent threat to health or safety or other emergency; (2) for the enforcement of criminal laws; (3) for national security; or
(4) pursuant to any statute implementing an international trade agreement.
Outlines the procedure for the congressional treatment of rules issued 60 days or earlier before the Congress adjourns a session.

Provides congressional rule disapproval procedures.

Defines "major rule" for purposes of congressional review as a rule having an annual economic effect of $100 million or more, resulting in a major increase in costs or prices, or having a significant adverse effect on competition, employment, investment, productivity or the ability of U.S. companies to compete with foreign companies.

Provides that, in the case of any deadline for or relating to any rule which does not take effect because of the enactment of a congressional joint resolution, such deadline is extended until 12 months after the enactment date of such resolution.

Prohibits judicial review of determinations made under this subtitle.

Department of Agriculture Advisory Committees 119
(7 U.S.C. 2281-2286)

Prohibits any person who is not a USDA employee from simultaneously serving on more than one advisory committee. Prohibits more than one person from the same organization from serving on the same advisory committee. Limits the term of any member to six consecutive years.

Prohibits advisory committees from expending funds in excess of 10 percent of its estimated annual operating costs, or $500, whichever is greater, until the committee explains the need for the additional expenditures to the Secretary.

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Provides for termination of advisory committees that (1) expend funds in excess of their estimated annual operating costs by more than 10 percent, or $500, whichever is greater, without prior approval of the Secretary; (2) fail to file all required reports; (3) fail to meet two consecutive years; (4) responsible for functions that would or should be performed by Federal employees; and (5) do not serve or have ceased to serve an essential function.

Federal Advisory Committee Act 121
(5 U.S.C. App.)

Provides guidelines for the creation of advisory committees and provides for the Administrator of General Services to oversee the operations of these committees which are created to advise officers and agencies of the Federal Government. Advisory committees include such committees, boards, commissions, councils, conferences, panels, task forces, or other similar groups.

Requires each agency head which has an advisory committee to designate an Advisory Committee Management Officer who shall (1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established and (2) assemble and maintain the reports, records and other papers of any such committee during its existence.

Federal Tort Claims Act 131
(28 U.S.C. 2671-2680)

Authorizes the Attorney General to certify that an employee of the United States, named as a defendant in a civil action in a State or Federal court, was acting within the scope of his/her office of employment. Upon such certification, the United States shall be substituted as the defendant in place of such employee, and such proceeding shall be removed to a Federal court, if originally filed in State court.

In the event that the Attorney General refuses to so certify, an employee may petition the court to so find and certify. Upon such certification by the court, the action shall be deemed to be against the United States. In defending such actions, the United States is authorized to assert any defenses based upon judicial or legislative immunity that otherwise would have been available to be asserted by the employee, as well as any defenses to which the United States is entitled.

Part II

MARKETING AND REGULATORY PROGRAMS

Subpart A. General

Agricultural Marketing Act of 1946 139
(7 U.S.C. 1621-1627)

This Act provides for: (1) Continuous research to improve the marketing, handling, storage, processing, transportation, and

distribution of agricultural products; (2) cooperation among Federal and State agencies (including the Virgin Islands and Guam), producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution processes; (3) an integrated administration of all laws to aid the distribution of agricultural products research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced, and the price spread between the producer and consumer may be narrowed; and (4) matching funds with cooperating State agricultural experiment stations, State extension services, and State departments of agriculture.

The Act also (1) authorizes grading, inspection, and certification of all agricultural products; (2) makes certifications prima facie evidence; (3) prohibits misrepresentation with respect to such services.

Cosmetic Appearance 148
(7 U.S.C. 1622 note)

Requires the Secretary to examine the effects of grade standards and regulations governing cosmetic appearance to determine to what extent they affect pesticide use in the production of perishable commodities.

Requires the Secretary to implement a minimum of three, 2-year market research projects in at least three States to demonstrate and evaluate the feasibility of consumer education and information programs.

Requires the Secretary to disseminate the results of valid research already conducted in these areas to reduce duplications of efforts.

Establishes a 12-member advisory committee to review and recommend policies to carry out these activities.

Requires the Secretary to report to Congress on the research conducted.

Agricultural Marketing Agreement Act of 1937 151
(7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671-674)

NOTE: This legislation enacted June 3, 1937, in the form of an amendment of the Agricultural Adjustment Act of 1933, as amended, reenacted certain provisions of the old legislation without change and amended and reenacted others as amended.

(a) Provides for forfeiture equal to three times the current market value of the excess when any person willfully exceeds any quota or allotment fixed under this legislation.

(b) Authorizes (i) marketing agreements with processors, producers, associations of producers and others engaged in the handling of a designated agricultural commodity, (ii) orders regulating handling of designated agricultural commodities or products in interstate commerce and (iii) fixing minimum prices to be paid to producers or associations of producers for milk or its products.

(c) Prohibits importation of certain enumerated commodities when they are covered by a marketing order regulating grade, size, quality or maturity unless they comply with these provisions of the order.

Agricultural Fair Practices Act 190
(7 U.S.C. 2301-2306)

Makes it unlawful for handlers to knowingly: coerce a producer in the exercise of the producer's right to join and belong to a cooperative; refuse to deal with a producer because of his/her membership in a cooperative; discriminate against a producer because of a membership in a cooperative; induce a producer to refuse or cease to belong to a cooperative; make false reports about cooperatives; conspire to do any of the foregoing.

Capper-Volstead Act 194
(7 U.S.C. 291, 292)

Authorizes persons engaged in the production of agricultural products to act together as associations in collectively processing, preparing for market and marketing, and make the necessary contracts and agreements to effect such purposes.

Prohibits monopolies and restraints of trade and provides an administrative procedure to establish the facts and an order directing the association to cease and desist.

Farmer-to-Consumer Direct Marketing Act of 1976 196
(7 U.S.C. 3001-3006)

Defines "direct marketing from farmers to consumers" to mean the marketing of agricultural commodities at any marketplace established for the purpose of enabling farmers to sell their agricultural commodities directly to individual consumers in a manner calculated to lower the cost and increase the quality while providing increased financial returns for farmers.

Requires the Secretary to carry out a program to facilitate the direct marketing of food commodities from farmers to consumers, for their mutual benefit, under which there would be (1) a nationwide survey of existing direct marketing operations; (2) an allocation of funds to the State departments of agriculture and/or the State cooperative extension services to provide assistance for direct marketing within the respective States; and (3) an annual report by the Secretary on activities carried out under the act to further direct marketing.

Commodity Promotion and Evaluation 199
(7 U.S.C. 7401)

Requires an independent evaluation of the effectiveness of each industry-funded generic commodity research and promotion program not less than every 5 years.

Requires an annual report on administrative expenses to the House and Senate Agriculture Committees of commodity boards that conduct generic promotion programs.

Commodity Promotion, Research, and Information Act of 1996 (Generic) 202
(7 U.S.C. 7411-7425)

Authorizes the Secretary to establish a generic commodity promotion, research, and information program for those interested industries that wish to petition the Department of Agriculture for the establishment of a national commodity generic promotion program.

Provides a menu of options for industry groups seeking authority to engage in a program of generic research and promotion. Permissive terms: A refund provision; de minimis exemptions; different payment and reporting requirements recognizing industry marketing practices; projects for promotion in foreign markets; provision to reserve funds when yield from assessments may be reduced; provision to provide credits of assessments for those individuals contributing to other similar programs at the State, regional, or local level, including "branded" advertisement efforts conducted by farmer cooperatives; authority to take any other action that is incidental to exercising the duties of the board not inconsistent with this Act and necessary to administer the order; and an initial (up-front) referendum if the industry so desires. Required terms: A delayed referendum not later than 36 months after the assessments begin under the order (this requirement is waived if the order contains an initial (up-front) referendum); a continuance referendum no later than 3 years after assessments begin under the order; referendum approval by either a majority vote, or a majority of the volume represented in the referendum, or a majority vote represented by a majority of the volume; and full reimbursement to the Secretary for the implementation, administration and supervision of the program, including costs associated with the conduct of referenda.

Research and Promotion Programs)Miscellaneous Provisions

(1) Producer Research and Promotion Board Accountability 221
(104 Stat. 3927)

Expresses the sense of Congress that the boards or councils that participate in the administration of federally-authorized checkoff programs are accountable to USDA, Congress, and the industry contributing funds for the checkoff programs.

(2) Consistency with International Obligations of the United States 222
(7 U.S.C. 2278)

Requires the Secretary, prior to implementing or amending any promotion, research, and consumer order, to consult with the U.S. Trade Representative to ensure that the orders are consistent with U.S. international obligations.

Requires implementation and enforcement of any order with regard to imports to be nondiscriminatory.

Subpart B. Cotton

Agricultural Marketing Act (of 1929) 223
(12 U.S.C. 1141j(d))

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Prohibits inclusion in any Government report, bulletin, or other such publication of any prediction with respect to cotton prices.

Cotton Futures Provisions of Internal Revenue Code of 1954 224
(26 U.S.C. 6001, 6804, and 7701)

Requires persons liable for any tax imposed under this title to keep records, statements, and make returns as prescribed by the Secretary.

Require stamps be attached or canceled as prescribed by the Secretary.

U.S. Cotton Futures Act 226
(7 U.S.C. 15b)

(a) Provides for a cotton classing service by the Department of Agriculture for tenderers and receivers of cotton on futures.

(b) Provides for establishment, preparation, and distribution of official cotton standards.

(c) Provides for designation of bona fide spot cotton markets by the Secretary of Agriculture and the use of cotton quotations in certain of these markets in settlement of future contracts.

(d) Provides for proceeds from cotton samples be credited to the account that incurs the cost.

Cotton Research and Promotion Act 233
(7 U.S.C. 2101-2118)

Enables cotton growers to improve the competitive position and expand markets for cotton through a program of self assessments.

Requires action by the Secretary of Agriculture to hold public hearings, a referendum of cotton producers, and to establish a Cotton Board to administer a program of research and promotion which would be funded by assessments on producers and importers, when imports are subject to an order.

Cotton Statistics and Estimates Act of 1927 248
(7 U.S.C. 471-476)

Provides for (1) a report on estimates of the grades and staple lengths in the carryover of cotton stocks as of August 1 each year, and (2) periodic reports each year on estimates of the grades and staple lengths of the cotton crop.

(a) Smith-Doxey Amendment.
(7 U.S.C. 473a-c)

Provides free market news service to groups of farmers organized to promote the improvement of cotton.

Authorizes the Secretary to collect fees from cotton producers for classification services.

(b) Cotton Service Testing Amendment.
(7 U.S.C. 473d)

Provides that the Secretary may make cotton fiber tests and small scale spinning tests for breeders, merchants, consumers, and others to promote objective measures of cotton quality, orderly marketing, and better varieties of cotton.

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United States Cotton Standards Act 255
(7 U.S.C. 51-65)

(a) Provides for establishment, preparation, distribution, and use of official cotton standards.

(b) Authorizes contracts with cooperatives for classing cotton and payment for services.

(c) Provides for a cotton classing service by the Department of Agriculture for the public on a fee basis.

(d) Provides for the licensing of cotton classers.

(e) Provides for agreements between the Secretary of Agriculture and cotton organizations in foreign countries for adoption, use, and observance of universal standards of cotton classification; the arbitration and settlement of disputes with respect thereto; and the preparation, distribution inspection, and protection of practical forms (boxes) of such universal standards.

Subpart C. Dairy

Consolidation and Reform of Federal Milk Marketing Orders 261
(7 U.S.C. 7253)

Requires the Secretary to consolidate the number of Federal milk marketing orders issued pursuant to section 8c of the Agricultural Marketing Agreement Act to not less than 10 and not more than 14 orders.

Provides the Secretary with authority and discretion to consider multiple basing points and utilization rates in pricing fluid milk, and to use uniform multiple component pricing when developing a new basic formula price(s) for manufacturing milk.

Prohibits the Secretary from considering, or basing any decision on, the Class I differentials mandated by the 1985 Farm Bill

Requires the Secretary to propose consolidation and pricing reform of milk marketing orders within 2 years and to implement consolidation and pricing reform within 3 years of enactment.

Provides that if the process is not complete by the end of 3 years, the USDA will lose the authority to assess producers and handlers for market order services and administration. Makes provisions for an extension of the three year limit should the Department be subject to an injunction regarding the consolidation.

Authorizes the Secretary to use informal rulemaking to address order consolidation and pricing reform, and any issues peripheral to the consolidation process.

Requires the Secretary to designate the State of California as a separate Federal milk order, upon petition and approval of California dairy producers. The California order shall have the right to reblend and distribute order receipts to recognize quota value.

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Requires the Secretary no later than April 1, 1997, to submit a report to Congress on the Federal milk marketing order system in light of the required reforms.

Northeast Interstate Dairy Compact 263
(7 U.S.C. 7256)

Allows the Secretary of Agriculture, upon the finding of a compelling public interest in the area, to grant the New England region--Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont--the authority to enter into a Dairy Compact. Delaware, New Jersey, New York, Pennsylvania, Maryland, and Virginia may join the Compact, individually or otherwise. The Compact would terminate with the completion of price and order reform authorized in the agreement.

The Compact precludes the use of compensatory payments as a barrier to the entry of milk into the Compact region or for any other purpose. It also precludes the regulation of Class II, Class III, or Class III-A milk used for manufacturing purposes, or any other milk, other than Class I (fluid) milk. Before the end of each fiscal year, the Compact Commission must reimburse the Commodity Credit Corporation (CCC) for any purchases CCC must make due to the projected rate of increase in milk production within the Compact region in excess of the projected national average rate of increase in milk production as determined by the Secretary.

Dairy Production Stabilization Act of 1983

(1) Dairy Promotion Program (Subtitle B) 265
(7 U.S.C. 4501-4513)

Authorizes a national dairy products promotion, research, and nutrition education program. The program is financed by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States. Provides for a credit of up to 10 cents per hundredweight to farmers who participate in qualified State or regional dairy promotion or nutrition education programs.

Establishes a National Dairy Promotion and Research Board composed of 36 dairy farmers appointed by the Secretary from nominations representing 13 geographic regions to administer the program and oversee the expenditure of funds to promote the use of milk and dairy products, for research, and for nutrition education.

Requires the Secretary to conduct a referendum after September 30, 1985, among dairy producers to determine the continuation of the dairy promotion program. To continue, the program must be approved by a majority of the producers voting in the referendum.

Requires the Board to reimburse the Secretary from assessments collected for all expenses incurred by the Department for the administration of the program.

(2) Dairy Research Program (Subtitle C) 275
(7 U.S.C. 4531-4538)

Authorizes the Secretary to establish within USDA a National Dairy Research Endowment Institute to aid the dairy industry in implementing a dairy products research order. The institute would establish permanent funding of scientific research to expand U.S. markets for milk and dairy products. The research goals would be to increase the knowledge of human nutritional needs and the relationship of milk and dairy products to those needs; to improve dairy processing technologies, particularly those appropriate to small- and medium-sized family farms; to develop new dairy products; and to appraise the effects of this information on the marketing of dairy products. The institute would be headed by a board of trustees, composed of members of the National Dairy Promotion and Research Board. If the institute is established, a Dairy Research Trust Fund of $100 million would be established in the U.S. Treasury. The money would be invested by the Treasury Secretary in various interest- bearing obligations, accounts, or certificates. The interest, dividends, and other payments that accrue would be available to the institute for authorized activities.

Fluid Milk Promotion Act of 1990 281
(7 U.S.C. 6401-6417)

Authorizes fluid milk processors to develop, finance, and carry out a nationally coordinated program of advertising designed to strengthen the position of the dairy industry and to maintain and expand markets and uses for fluid milk products produced in the United States. The program is to be financed by an assessment rate not to exceed 20 cents per hundredweight of fluid milk products marketed. Provides that a processor funded milk promotion order will be issued by the Secretary if fluid milk processors who market 30 percent or more of all fluid milk products propose such an order.

Requires a referendum to be conducted within 60 days of the effective date of the order. Approval of the order would require a simple majority of fluid milk processors voting, if these processors represent 60 percent or more of the volume of the fluid milk products marketed by fluid milk processors voting in the referendum.

Requires the Secretary to establish a National Processor Advertising Promotion Board to administer the program. The Board will consist of 12 to 15 fluid milk processors representing geographic regions and five additional at-large members, of which three will be processors and at least one public representative.

Dairy Inspection for Export 297
(21 U.S.C. 693)

The Act of June 30, 1901, provides on a permissive basis, for the inspection and certification as to purity and quality of dairy products intended for export and the marking, stamping, and labeling of such products as to secure their identity.

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Subpart D. Eggs and Egg Products

Egg Products Inspection Act 298
(21 U.S.C. 1031-1056)

Provides for mandatory continuous inspection of egg products processing plants and regulates the distribution of certain qualities of shell eggs in interstate, foreign, and intrastate commerce. It provides for the use of nationwide standards, grades, and weight classes for eggs in interstate or foreign commerce and prohibits origin labeling of shell eggs except for noncontiguous areas of the United States.

States may require the name, address, and license number of the person processing or packaging eggs. It provides for certain exemptions, recordkeeping, detention, penalties for violations, and treats imported eggs and egg products as domestic products. Authorization is provided for the Federal Government to cooperate with the States for the costs incurred by them. This Act also amends the Small Business Act to provide financial assistance for alterations required for inspection under this Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act of 1967, and requires an annual report be made to Congress by March 1 of each year.

Egg Research and Consumer Information Act 320
(7 U.S.C. 2701-2718)

Provides for the Secretary to issue an order providing for the establishment of an Egg Board of not more than 20 members composed of egg producers or representatives of egg producers appointed by the Secretary, with such representation reflecting the proportion of eggs produced in each geographic area of the United States. The Board is responsible for developing and submitting for the Secretary's approval a program to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. Effectuation of the order requires approval by not less than two-thirds of the producers voting or by a majority of the producers voting if such majority produced not less than two-thirds of eggs produced during a representative period.

Provision is also included for termination of the order. Certain small egg producers are exempt. The program is self-financing. The rate of assessment paid by producers shall not exceed 20 cents per 30-dozen case of commercial eggs. Provides that USDA administrative costs be defrayed by assessment, including cost for conduct of the referendum.

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Subpart E. Fruits; Vegetables; and Specialty Crops

Export Apple and Pear Act 337
(7 U.S.C. 581-590)

Prohibits shipment or transportation of apples or pears to any foreign destination in packages which are not accompanied by a certificate issued under authority of the Secretary. After notice and opportunity for interested persons to examine and make recommendations with respect to proposed standards or regulations, the Secretary is authorized to prescribe by regulations the requirements, other than those of grade, which fruit must meet before certificates are issued.

Export Grape and Plum Act 340
(7 U.S.C. 591-599)

Prohibits shipment or transportation of specified fruits to any foreign destination in packages which are not accompanied by a certificate issued under authority of the Secretary. After notice and opportunity for interested persons to examine and make recommendations with respect to proposed standards or regulations, the Secretary is authorized to prescribe by regulations the requirements, other than those of grade, which fruit must meet before certificates are issued.

Peanut Statistics 343
(7 U.S.C. 951-957)

The Act of June 24, 1936, as amended, authorized the collection and publication of statistics of raw peanuts and peanut oil.

Fruits, Vegetables, and Wine

(1) Fruit and Vegetable Study; Grown in the U.S. Program; Country of Origin Labeling Program 345
(7 U.S.C. 499a note)

Provides that the production of fruits and vegetables is an integral part of U.S. farm policy.

Requires the Secretary to conduct a study to determine the state of the domestic fruit and vegetable industry, and to report the results and recommendations of the study to Congress.

Authorizes the Secretary to implement a program defining the conditions under which nonperishable agricultural products may be designated "grown in the U.S."

Requires the Secretary to implement a nationwide 2-year pilot program during which time perishable agricultural products (fresh fruits and vegetables) are labeled or marked as to their country of origin. After completion of the pilot program, the Secretary is required to conduct a study to determine the effect of the program and to submit the results to Congress. The program must apply to both imported and domestic perishable agricultural products (including fresh fruits and vegetables).

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(2) Wine and Winegrape Industry Study 348
(104 Stat. 3568)

Requires the Secretary to conduct a study to determine how the USDA might best work with and support the U.S. wine and winegrape industry.

Requires the Secretary to submit a report to Congress on the determinations and recommendations of the study.

Perishable Agricultural Commodities Act, 1930 349
(7 U.S.C. 499a-499s)

(a) Prohibits unfair conduct by commission merchants, dealers, and brokers.

(b) Requires that persons engaged in these businesses have a valid and effective license issued by the Secretary of Agriculture.

(c) Creates additional liability in damages to persons injured by the unfair conduct of a commission merchant, dealer, or broker.

(d) Provides for administrative action to establish the injury and its extent as well as a sanction in the form of suspension of license for failure to obey Secretary's order for the payment of money.

(e) Provides for appeal of separation orders to district courts.

(f) Authorizes investigations by Secretary including inspection and certification of commodities as to class, quality, and condition.

(g) Provides for suspension and revocation of license for flagrant or repeated violation of the Act.

(h) Provides for criminal, civil, and monetary penalties for certain violations of the Act.

Produce Agency Act 375
(7 U.S.C. 491, 493-497)

Prohibits destruction or dumping by commission merchants.

Floral Research and Consumer Information Act 377
(7 U.S.C. 4301-4319)

Provides for a nationally coordinated research, consumer and producer education, and promotion program for cut flowers, potted plants, and foliage plants. To become effective the program must be approved by two-thirds of the affected growers and importers voting in referendum, or by a majority of producers and importers voting if such majority produced and imported not less than two-thirds of the total value of flowers and plants produced and imported by those producers and importers voting in such referendum during a representative period defined by the Secretary.

Provides for the program, including USDA administrative and referendum costs, to be financed by assessments paid by producers and importers. Producers or importers assessed under the program would be entitled to a refund upon request. Any producer or importer whose total sales of flowers and plants do not exceed $100,000 annually will be exempt from assessments.

Authorizes the Secretary to deal directly with violations of the Act by assessing civil penalties and issuing cease and desist orders.

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Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 390
(7 U.S.C. 6801-6814)

Authorizes the establishment of a national promotion and information program to strengthen the position of these products in the marketplace. The program to be funded initially by an assessment of 0.5 percent of the gross sales price of fresh cut flowers and greens sold by handlers whose annual sales are $750,000 or more. The assessment would apply to both domestic and imported products, but not to exports.

Provides for the establishment of a 25-member Promoflor Council appointed by the Secretary from industry nominations. The Council to be comprised of 14 handlers, three producer-handlers, three importer-handlers, two domestic producers, and three domestic retailers.

Requires a referendum within 3 years after the program becomes effective to determine if the program will continue. If industry votes to continue the program, the assessment rate may be increased or decreased by 0.25 percent annually by informal rulemaking, provided that the assessment rate may not exceed 1 percent of the gross sales price.

Honey Research, Promotion, and Consumer Information Act 416
(7 U.S.C. 4601-4612)

Authorizes producers and handlers of honey and honey products to finance a nationally coordinated research, promotion, and consumer information program designed to expand the markets for honey and honey products. To become effective, the program must be approved by twothirds of the producers and importers voting in a referendum or by a majority of producers and importers voting if such majority produced and imported not less than two-thirds of the honey produced and imported during the representative period determined by the Secretary.

Provides for the program to be financed through assessments paid by persons who produce or import at least 6,000 pounds of honey annually. Honey consumed at home by the producer or importer and honey donated are exempt from assessments. If the proposal to eliminate refunds is defeated in a referendum, producers or importers would be entitled to a refund of assessments upon request except that, in any year, importers as a group could not get more refunds than domestic producers as a group.

Provides for the establishment of a Honey Board comprised of 13 members appointed by the Secretary from nominations submitted by the National Honey Nominations Committee to administer the program. Requires the Secretary to conduct a referendum 5 years from the date of issuance of the order, and every 5 years thereafter, to determine if honey producers favor the continuation, termination, or suspension of the order.

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Requires the Honey Board to reimburse USDA approximately $40,000 annually for administrative costs incurred.

Authorizes the Secretary to deal directly with violators of the Act by assessing civil penalties and issuing cease and desist orders.

Lime Research, Promotion, and Consumer Information Act of 1990 430
(7 U.S.C. 6201-6212)

Enables domestic producers, producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally coordinated program for lime promotion, research, and consumer information. The program is to be administered by a 7-member Lime Board composed of three producers, three importers, and one public representative. The program will be financed by an assessment rate of not to exceed 1 cent per pound of fresh limes.

Requires a referendum to be conducted no later than 30 months after collection of assessments begin under the order. Approval of the order would require a simple majority of those producers, producer-handlers, and importers voting. Producers or importers of less than 200,000 pounds of limes per year will be exempt from the assessment and other provisions of the Act.

Funds equal to 10 percent of the total assessments collected during the period between issuance of the order and conduct of the referendum will be placed in an escrow account for pro rata payment of refunds if the program is not approved. If the referendum is approved, all funds in the escrow account will be used for the purposes of the order.

Mushroom Promotion, Research, and Consumer Information Act of 1990 445
(7 U.S.C. 6101-6112)

Enables domestic producers and importers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for mushroom promotion, research, and consumer information. The program is to be administered by a Mushroom Council consisting of at least four and not more than nine members, as determined by the levels of U.S. production and imports. The program will be funded based on a maximum assessment rate of 1 cent per pound. Producers or importers of less than 500,000 pounds per year would be exempt from the assessment and other provisions of the Act.

Provides that the Secretary no later than 60 days prior to the effective date of the order must conduct a referendum among producers and importers of mushrooms.

Approval of the order is by a majority of those eligible and voting in the referendum representing a majority of mushrooms annually produced and imported. The Secretary may conduct a referendum no sooner than 3 years following the effective date of an order if requested by 30 percent of those subject to the order.

National Kiwifruit Research, Promotion, and Consumer Information Act 458
(7 U.S.C. 7461-7473)

Authorizes domestic producers, importers and foreign exporters of fresh kiwifruit to develop, finance, and carry out a nationally coordinated program of research, promotion, and consumer information.

Provides for the program to be administered by a 11-member National Kiwifruit Board composed of six producers (or their representatives) who are not exempt from assessments, four importers (or their representatives) who are not exempt from assessment or foreign exporters (or their representatives), and one member appointed from the general public.

Provides for the program to be funded by assessments not to exceed $0.10 per 7-pound tray of kiwifruit or equivalent. Requires the assessment rate to be recommended by a two-thirds vote of the Board and approved by the Secretary. Producers who produce less than 500 pounds of kiwifruit per year, importers who import less than 10,000 pounds of kiwifruit per year, sales of kiwifruit made directly from the producer to a consumer for a purpose other than resale, and the production or importation of kiwifruit for processing are exempt from the assessment.

Requires an up-front referendum be held during the 60-day period preceding the proposed effective date of the order. Requires the Secretary to conduct continuance referenda every 6 years. To pass, a referendum must be favored by not less than a majority of the producers and importers voting in the referendum representing more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

The Department would be reimbursed for costs incurred in implementing and administering the order, including any expenses incurred by the Secretary in conducting referenda.

Pecan Promotion and Research Act of 1990 471
(7 U.S.C. 6001-6013)

Authorizes the Secretary to publish an order to enable domestic growers, handlers, shellers, and importers of pecans to develop, finance, and carry out a nationally coordinated pecan research and promotion program.

Provides for the program to be administered by a 15-member Pecan Marketing Board composed of eight growers, four shellers, one handler, one importer, one public representative, and at the option of the Board, one non-voting consultant or advisor representing a country other than the United States.

Funding for the program is based on a maximum assessment rate of 2 cents per pound of inshell pecans or the equivalent. Additionally, an optional one-quarter cent special State assessment is authorized to be remitted to the Board for the purpose of utilizing such funds by the State Board for research projects to promote pecans conducted pursuant to State law.

Requires a referendum to be conducted no later than 2 years after the effective date of the Act. Approval of the program will require a majority of growers, grower-shellers, and importers voting in the referendum representing 50 percent of the domestic production and imports. Requires funds equal to 10 percent of the total assessments collected during the period between issuance of the order and conduct of the referendum to be placed in an escrow account for pro rata payment of refunds if the program is not approved. If the referendum is approved, all funds in the escrow account will be returned to the Pecan Board and no refunds paid.

Popcorn Promotion, Research, and Consumer Information Act 490
(7 U.S.C. 7481-7491)

Authorizes domestic processors of popcorn to develop, finance, and carry out a nationally coordinated program for popcorn promotion, research, consumer information, and industry information.

Provides for the program to be administered by a four to nine-member Popcorn Board composed of processors appointed by the Secretary from nominations submitted by processors that represent a geographical distribution of popcorn production throughout the United States.

Funding for the program is based on assessments not to exceed $.08 per hundredweight of popcorn. Provides that the Board, with the approval of the Secretary, may raise or lower the rate of assessment annually up to the maximum of $.08 per hundredweight of popcorn.

Processors who process and distribute less than 4,000,000 pounds of popcorn in the market per year are exempt from the assessment.

Requires an up-front referendum be held within the 60-day period immediately preceding the effective date of the order. To pass, a referendum must be favored by not less than a majority of the processors voting if the majority processed more than 50 percent of the popcorn certified.

Authorizes the Secretary to conduct a continuance referendum no earlier than 3 years after the effective date of an order, on the request of the Board, or at the request of 40 percent or more of processors.

Requires the Department to be reimbursed for costs incurred in administering the order, not to exceed 15 percent of the projected annual revenues of the Board; implementation; legal; and referenda.

Potato Research and Promotion Act 501
(7 U.S.C. 2611-2627)

Provides authority to establish a "Plan" to collect assessments on potatoes produced in the United States and on imported table-stock, frozen, processed, or seed potatoes. Funds would be used to administer the Plan and to finance a program of research development, advertising, and promotion of potatoes and potato products. A public hearing would be required to consider any Plan, and such Plan, to be adopted, would have to be favored by a majority of producers or a majority of producers and importers, if importers are subject to a Plan,

voting in a referendum. Provides for the establishment of a National Potato Promotion Board to be selected by the Secretary from nominations made by producers and importers. Handlers and importers of potatoes are responsible for paying assessments to the Board but handlers are permitted to deduct such amounts from payments to producers. Producers and importers who do not go along with the plan can apply for and receive a refund on their assessments. However, refunds would be eliminated if approved in a referendum.

Watermelon Research and Promotion Act 514
(7 U.S.C. 4901-4916)

Authorizes the establishment of the National Watermelon Promotion Board, comprised of equal number of handlers and producers, at least one importer, and one representative of the public, appointed by the Secretary from nominations submitted in such manner as prescribed by the Secretary for the purpose of carrying out a coordinated program of research, development, advertising, and promotion designed to strengthen the competitive position of the watermelon industry in both domestic and foreign markets. The program would be funded by assessments paid by producers growing 10 or more acres, handlers, and importers of 150,000 pounds or more per year.

Provides for reimbursement of any referendum and administrative costs incurred by the Department. Provides direct enforcement authority to the Secretary of Agriculture for violations through the assessment of civil penalties of $500 to $5,000 per violation, or authority to issue a cease and desist order.

Subpart F. Livestock; Seed; Wheat; Wool

Federal Seed Act 528
(7 U.S.C. 1551-1611)

(a) Prohibits transportation or delivery for transportation in interstate commerce of agricultural or vegetable seeds unless each container bears a label giving information prescribed by regulations.

(b) Establishes that only those seeds properly certified by the seed certifying agency (as defined in the Act) shall bear label or advertising to that effect.

(c) Requires all persons except carriers transporting or delivering for transportation agricultural seeds in interstate commerce to keep a complete record of origin, treatment, germination and purity of such seed for a period of 3 years.

(d) Authorizes inspection of such records by the Secretary or his/her agents.

(e) Makes unlawful advertising by way of the U.S. mails, or in interstate commerce by any means.

(f) Prohibits transportation of certain described seeds and prescribes procedures relating to importations.

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(g) Authorizes promulgation of rules and regulations by the Secretary and by the Secretary of the Treasury jointly or severally after notice and public hearing.

(h) Prohibits alteration, defacement, or destruction of labels and authorizes seizure and disposition by the U.S. Courts of seed in interstate or foreign commerce in violation of the provisions of the Act.

(i) Provides criminal and civil penalties for violation of the Act but requires that notice and an opportunity to present his/her views be afforded a person against whom institution of a criminal or civil proceeding is contemplated before a violation is reported to a U.S. attorney.

(j) Provides for issuance of a cease-and-desist order against a violator after written complaint served upon him/her and opportunity to be heard upon specific charges.

(k) Makes unlawful in the U.S. or in interstate or foreign commerce the sale of uncertified seed of protected variety under the Plant Variety Protection Act.

Beef Research and Information Act 551
(7 U.S.C. 2901-2911)

Provides for the establishment of the Cattlemen's Beef Promotion and Research Board composed of producers and importers with representation based on units of cattle (500,000 head per unit). States with less than 500,000 head shall be grouped into geographically contiguous units. The Board would be responsible for carrying out a research and promotion program which would be funded by $1 per head assessments, or in the case of imported beef and beef products, the equivalent thereof as determined by the Secretary. Up to 50 cents credit per head is provided for producers participating in a program of a qualified State beef council.

Provides for the establishment of a Beef Promotion Operating Committee composed of 10 members elected by the Board, and 10 producer members who are directors of qualified State beef councils.

Requires a referendum not later than 22 months after issuance of the order to determine the continuation of the program. To continue the program must be approved by a majority of producers and importers voting in the referendum. The Department would be reimbursed for expenses incurred in conduct of the referendum, except for government salaries.

Provides for a one-time refund prior to approval in referendum, with provision included for establishment of an escrow account not to exceed 15 percent of total assessments for purposes of paying such refunds. If refunds exceed the amount contained in the escrow account, refunds shall be made on a pro rata basis.

Canola and Rapeseed Research, Promotion, and Consumer Information Act 562
(7 U.S.C. 7441-7452)

Provides for the establishment of a national promotion, research, and information program for canola and rapeseed to strengthen the position in the domestic and foreign markets.

Provides for the program would be administered by a 15-member National Canola and Rapeseed Board composed of eleven producers (one member from each of six geographic regions comprising States where canola or rapeseed is produced and five members from the geographic regions allocated according to the production in each region with the requirement that there shall be no more than four producer members of the Board from any State), and four industry members (including at least one member who represents manufacturers of canola or rapeseed end products and one member who represents persons who commercially buy or sell canola or rapeseed).

Funding for the program to be based on a two-tier structure of assessments of 4 cents per hundredweight of canola or rapeseed produced and marketed in non-qualified States, and 2 cents per hundredweight assessment in States that have qualified State canola and rapeseed board. 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 in which there is a qualified State canola and rapeseed board the assessment maximum is 8 cents per hundredweight of canola or rapeseed produced and marketed.) The assessment can be increased above 10 cents per hundredweight only if the increase is approved in a referendum by a majority vote.

Requires a referendum not later than 30 months after issuance of the order to determine the continuation of the program. To continue, the program must be approved by a majority of the producers voting in the referendum.

Provides for the Department to be reimbursed for implementation, administrative, and referendum expenses incurred.

Pork Promotion, Research, and Consumer Information Act of 1985 580
(7 U.S.C. 4801-4819)

Authorizes a new program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and to maintain, develop and expand markets for pork and pork products. Funding of the program to come from assessments at the rate of .25 percent of the market value of the porcine animals, pork, or pork products sold or imported. Provides for refunds prior to the initial referendum.

Provides for the establishment of a National Pork Producers Delegate Body consisting of producers and importers and prescribes the manner in which the initial Delegate Body shall be elected. The Delegate Body is required to submit nominations to the Secretary for appointment to the National Pork Board, to recommend the rate of assessment prescribed by the initial order and any subsequent increases

in that rate, and to determine the percentage of the aggregate amount of assessments collected in a State that each State association shall receive.

Provides for the establishment of a 15-member National Pork Board, consisting of producers and representing at least 12 States and importers appointed by the Secretary from nominations submitted by the Delegate Body, to administer the program.

Requires a referendum of the producers and importers to be held 24 to 30 months after the issuance of the initial order to determine continuation of the program. A majority of those voting in the affirmative is required for continuance of the program. Requires the Secretary to be reimbursed for expenses incurred in conduct of referendum and for administrative costs to carry out the program.

Authorizes the Secretary to assess civil penalties and to issue cease and desist orders for violations of the Act.

Sheep Promotion, Research, and Information Act of 1994 599
(7 U.S.C. 7101-7111)

Authorizes the establishment of a national promotion, research, and information program for sheep and sheep products.

Provides for the program to be financed through assessments on domestic sheep producers, feeders and exporters of 1-cent per pound, not to exceed 2.5 cents per pound, on live sheep sold and 2-cents per pound, not to exceed 4 cents, on greasy wool sold. Importers would be assessed 1-cent per pound on live sheep and the equivalent of 1-cent per pound of live sheep for sheep products. Importers would also pay 2-cents per pound on degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt.

Requires a referendum to be conducted and approved by a majority of the producers, feeders, and importers voting in the referendum or at least two-thirds of the production represented by those voting in the referendum before the program goes into effect.

Provides for the program to be administered by a 120-member National Sheep Promotion, Research, and Information Board appointed by the Secretary from nominations submitted by qualified organizations. The Board would be comprised of 85 producers with prescribed representation from each of the 50 States, 10 feeders, and 25 importers

Soybean Promotion, Research and Consumer Information Act 618
(7 U.S.C. 6301-6311)

Authorizes the soybean industry to initiate a soybean promotion, research and consumer information program. The program, to be run by a United Soybean Board composed of producers, will be funded by an assessment on producers of one-half of 1 percent of the net market value of soybeans sold. A portion of such will be credited back to qualified State soybean boards, and a portion will be used for domestic

and export promotion of soybean products, including foreign market development and production research.

Requires a referendum to be conducted not earlier than 18 months nor later than 36 months after issuance of the order. Approval of the order in the referendum would require a simple majority of those voting.

Provides for refunds prior to the initial referendum; and, subsequent thereto, a second referendum may be conducted to determine if refunds are to be continued if 20 percent of producers polled approve conduct of such referendum.

Requires the Department to be reimbursed for the costs it incurs in the administration and supervision of the program, including a portion of the costs associated with the conduct of referenda.

Prohibits lobbying by the United Soybean Board and provides subpoena power authority to the Secretary, as well as suspension and termination authority, and authorizes the Secretary to assess civil penalties for violation of the Act.

Wheat and Wheat Foods Research and Nutrition Education Act 646
(7 U.S.C. 3401-3417)

Authorizes the Secretary to hold hearings and conduct a referendum among eligible end-product manufacturers prior to the adoption of an order to establish a program of research and nutrition education for wheat and wheat foods among wheat producers, processors, end-product manufacturers and consumers. Authorizes the nutrition education portion to be carried out both within the United States and in international markets.

Provides for the program to be administered by a Wheat Industry Council comprised of no more than 20 members equally represented from eligible producer, processor, end-product manufacturer, and consumer organizations. Funding of the program to come from assessments, not to exceed 5 cents per hundredweight of processed wheat purchased or transferred, from eligible end-product manufacturers.

Provides for a refund procedure for those eligible end-product manufacturers who do not wish to participate in the program. Authorizes the council to invest funds that are collected and pending disbursement. Provides for the reimbursement from assessment funds of Department expenses incurred in carrying out the responsibilities under the Act, including the cost of the referendum.

Wool Standards Act 658
(7 U.S.C. 415b-415d)

Authorizes the use of certain funds for wool standardization and grading work.

Subpart G. Tobacco; Naval Stores

The Tobacco Inspection Act 659

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(7 U.S.C. 511-511q)

(a) Authorizes (i) the promulgation and establishment of Official U.S. Standard Grades, (ii) the designation of auction markets for mandatory inspection after approval by growers in a referendum, (iii) permissive inspection upon request of owners or other financially interested persons, (iv) the fixing and collection of fees for inspection and related services, and (v) employing and licensing of persons as samplers to take official samples of tobacco or as weighers to weigh and certify the weight of tobacco or as inspectors to inspect tobacco.

(b) Directs warehousemen to provide space on tickets, tags, or labels to show certified grades.

(c) Prohibits many practices designed to result in improper certification of tobacco.

Tobacco Adjustment Act of 1983 667

(7 U.S.C. 511r)

Requires all tobacco, except cigar tobacco and oriental tobacco, that is imported into the United States to be inspected, insofar as practicable, for grade and quality. Importers of cigar tobacco and oriental tobacco must provide a certification of the kind and type of such tobacco and for cigar tobacco must certify that such tobacco will be used solely for making cigars.

Requires flue-cured and burley tobacco imported into the United States to be certified by the importer that such tobacco does not contain residues from any pesticide banned in U.S.-grown tobacco. If the tobacco to be imported is not accompanied by appropriate certification, it will be inspected by the Secretary at the point of entry to determine whether it meets the pesticide residue requirements. The Secretary will make periodic tests of both domestic and imported tobacco offered for sale or importation to determine whether such tobacco meets the pesticide residue requirements. If not, the domestic tobacco would be destroyed and the imported tobacco would be refused entry into the United States.

Requires importers to pay a fee for inspection services comparable to fees charged for domestic tobacco services.

Requires importers of flue-cured and burley tobacco to identify any and all end users of such tobacco, if known to the importer. In cases in which all end users of imported flue-cured or burley tobacco have not been identified, USDA is required to take all steps available to identify such end users. Also requires the Secretary to submit an annual report to Congress on the implementation.

Tobacco Statistics 670

(7 U.S.C. 501-508)

The Act of January 14, 1929, provides for the collection of statistics on stocks of leaf tobacco held by dealers and manufacturers and publication of these and other statistics for tobacco.

The Naval Stores Act 673

(7 U.S.C. 91-99)

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Provides for defining and establishing standards, establishing methods for analysis, inspection, sampling, and grading of naval stores products; fixing and collecting fees for such services; and regulating the labeling, advertising, and packing of such products for sale in commerce.

Turpentine and Rosin Statistics 677
(7 U.S.C. 2248)

The Act of August 15, 1935, provides for compilation and publication of statistics and essential information relating to spirits of turpentine and rosin.

Subpart H. Plant Variety; Pesticide Data and Records; Laboratory Accreditation

Plant Variety Protection Act 678
(7 U.S.C. 2321-2331, 2351-2357, 2371-2372, 2401-2404, 2421-2427, 2441-2443, 2461-2463, 2481-2486, 2501-2504, 2531-2532, 2541-2545, 2561-2570, 2581-2583)

Provides for the issuance of "certificates of plant variety protection" assuring the developers of novel varieties of sexually reproduced plants exclusive rights to sell, reproduce, import or export such varieties, or use them in the production of hybrids or different varieties, for a period of 20 years, and 25 years for a tree or vine.

Authorizes the establishment of a Plant Variety Protection Office in the Department of Agriculture to administer the Act. The Act authorizes the Secretary to prescribe, charge and collect fees and to retain such fees collected for services performed under the Act.

Pesticide Recordkeeping 710
(7 U.S.C. 136i-1)

Requires certified applicators of restricted use pesticides to maintain records comparable to records maintained by commercial applicators of pesticides in each State.

Pesticide Data Program 712
(21 U.S.C. 346a note)

Requires the Secretary to ensure that the residue data collection activities conducted by USDA in cooperation with the Environmental Protection Agency and the Department of Health and Human Services, provide for the improved data collection of pesticide residues, including guidelines for the use of comparable analytical and standardized reporting methods, and the increased sampling of foods most likely consumed by infants and children.

National Laboratory Accreditation Program 713
(7 U.S.C. 138-138i)

Requires the Secretary to establish a program to certify private laboratories that conduct residue testing of agricultural products, or that make claims to the public or buyers of agricultural products concerning residue levels. Requires that such laboratories meet certain minimum

quality standards. Requires the Secretary to consult with the Environmental Protection Agency and the Food and Drug Administration in establishing the standards.

Subpart I. Transportation; Organic

International Carriage of Perishable Foodstuffs Act 718
(7 U.S.C. 4401-4406)

Authorizes the Secretary to implement the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage. The objective of the Agreement is to establish uniform inspection requirements for transportation equipment which moves perishable foodstuffs across national borders. The Agreement does not apply to shipments between the United States and Mexico or the United States and Canada, or equipment used in sea voyages of more than 150 kilometers.

Requires that equipment, including railway cars, trucks, trailers, and intermodal freight containers, involved in international carriage of perishable foodstuffs be inspected, tested, and certified in accordance with the Agreement.

Authorizes the Secretary to (1) designate appropriate organizations to inspect and test equipment, (2) issue certificates of compliance, (3) prescribe such regulations as necessary to implement the Agreement and administer the Act, (4) make periodic on site inspections of facilities and procedures used by those seeking certification and by organizations designated to test and inspect equipment, and (5) require reports and maintenance of records by those seeking certification and by organizations designated to test and inspect equipment.

Authorizes the Secretary to collect fees to cover USDA costs in issuing certificates of compliance.

Authorizes organizations designated by the Secretary to test or inspect equipment to charge fees for such services.

Transportation Provisions of Agricultural Adjustment Act of 1938 722
(7 U.S.C. 1291)

Authorizes complaints and prosecution of complaints before the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products.

Requires the Commission to make the Secretary a party to the proceeding.

Provides for cooperation between the Department and the Commission and the Department and cooperative associations of farmers.

Rural Development Act of 1972 723
(7 U.S.C. 2204(b)(c))

Requires the Secretary to prepare a comprehensive rural development strategy which takes into account the need to improve the transportation network in rural areas.

Provides authority to serve as the focal point for all Department transportation issues and to recommend revisions of current procedures.

Note: Somewhat broader authority in connection with transportation is found in the Agricultural Marketing Act of 1946 (see Subpart A of this Part).

Organic Foods Production Act of 1990 725
(7 U.S.C. 6501-6522)

Authorizes a national organic production program establishing national standards for the production and certification of organically produced foods.

Requires the Secretary to establish national minimum organic standards for producers and handlers of agricultural products. Each State, with the approval of the Secretary, could establish an organic certification program using the Federal standards as a basis. Each State, however, could enact different, more restrictive standards, provided there is no discrimination toward agricultural products from another State which are certified as meeting the national minimum standard. The Secretary will be responsible for ensuring that imported organic food meets at least equivalent requirements.

Requires the Secretary to establish a National Organic Standards Board to provide recommendations on implementation of the Act as well as to develop a national list of allowable and prohibited substances. The Secretary cannot include any exemptions for the use of synthetic substances unless proposed by the Board. The Board is to convene technical advisory panels to provide scientific evaluation and may seek input from the Environmental Protection Agency and other appropriate sources.

Authorizes the Secretary to develop organic standards for meat, poultry, and non-plant products through public hearings and notice and comment procedures.

Part III

COMMODITY PURCHASES AND DONATIONS

Subpart A. Section 32 and Related Statutes

Section 32 745
(7 U.S.C. 612c)

Appropriates funds each fiscal year in an amount equal to 30 percent of the gross receipts from duties collected under the customs laws during the preceding calendar year. These funds may be used for the following purposes:

(a) To encourage the exportation of agricultural commodities and products by payment of benefits or indemnities in connection with exportation, or by payments to producers in connection with that part of the production required for domestic consumption;

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(b) To encourage domestic consumption of agricultural commodities and products by payment of benefits or indemnities for diversion from the normal channels of trade or increasing utilization among persons in low-income groups;

(c) To reestablish farmers' purchasing power by payments in connection with the normal production for domestic consumption.

Commodity Distribution Reform Act)Section 3(c) 747
(7 U.S.C. 612c note)

Prohibits USDA from refusing an offer from a contractor for the purchase of entitlement commodities (provided in standard order sizes) solely on the basis that such offer is less than requested. Standard order sizes are construed to mean not less than truckload quantities.

Requires USDA to take into account, prior to entering into a contract for the purchase of entitlement commodities, the previous history and current patterns of the bidding party with respect to compliance with other appropriate standards relating to the wholesomeness of food for human consumption.

Seafood Safety 747
(110 Stat. 1321-312)

Provides that any fish or fish product produced in compliance with food safety standards or procedures accepted by the Food and Drug Administration are considered having met any inspection requirements of the Department of Agriculture or other Federal agency for any Federal commodity purchase program, including Section 32 purchases.

Authorizes lot inspections to assure that the product meets Federal specifications.

Act of August 11, 1939 (Fishery Products) 748
(15 U.S.C. 713c-2, 713c-3)

Authorizes use of section 32 funds for the following purposes:

(a) Transfer to the Secretary of the Commerce for use by the Secretary to (i) conduct a fishery educational service and fishery technological, biological, and related research programs and (ii) acquire, operate, and maintain facilities for research directed to promotion of the free flow of domestically produced products in commerce;

(b) Retransfer to the Secretary of Agriculture by the Secretary of the Commerce of not in excess of $1,500,000 to be used for the purchase and distribution through Federal, State, and private relief channels of fishery products produced in the United States.

Agricultural Act of 1949)Section 404 752
(7 U.S.C. 1424)

Authorizes the Secretary to utilize the services and facilities of the Commodity Credit Corporation in carrying out section 32 programs and programs under section 6 of the National School Lunch Act.

Agricultural Act of 1956)Section 205 753
(7 U.S.C. 1855)

Authorizes the yearly appropriation of $500,000,000 to enable the Secretary to further carry out the provisions of section 32 subject to a limitation that not more than 50 percent of that amount may be used for any one agricultural commodity or the products thereof.

Administrative Expenses 753
(7 U.S.C. 1392b)

Limits the sums to be paid for Federal and State administrative expenses (excluding county and local committees) under the Agricultural Adjustment Act of 1938 and the Soil Conservation and Domestic Allotment Act to 3 percent of the total sum appropriated, and to 4 percent of the total sum appropriated under section 32 and the Agricultural Marketing Agreement Act of 1937, as amended; and requires that the salaries paid to local and county committees be publicly displayed.

Appropriation and Apportionment of Funds 754
(31 U.S.C. 1341(a), 1343, 1351, 1511-1519)

Prohibits the expenditures of funds or creation of obligations in excess of appropriations or apportionments, unless authorized by law, required by emergencies, or necessary for welfare of individuals, and exempting price support, surplus removal, and section 32 funds from the requirements of apportionment.

Subpart B. Donations

Agricultural Act of 1949)Section 416 761
(7 U.S.C. 1431)

Authorizes use of food commodities, in private stocks or acquired through price support operations of the Commodity Credit Corporation and which might otherwise be wasted, for donation to State, Federal, or private agencies for use in school lunch and charitable outlets.

Agricultural Act of 1954)Section 204(c) 768
(7 U.S.C. 1446c)

Directs the Secretary of Agriculture to undertake domestic disposal programs as authorized by law to prevent accumulation of excessive inventories of dairy products.

Foods and Agriculture Act of 1965)Section 709 768
(7 U.S.C. 1446a-1)

Authorizes the Secretary of Agriculture to use Commodity Credit Corporation funds to purchase dairy products to meet the requirements of any food donation, community action or other program when CCC's stocks of dairy products are insufficient for these purposes.

Agriculture and Consumer Protection Act of 1973)Section 4 768
(7 U.S.C. 612c note)

Authorizes the Secretary of Agriculture to use appropriated funds for purchase and distribution of agricultural commodities for food assistance programs.

Agricultural Act of 1949)Section 202 769

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(7 U.S.C. 1446a)
Provides for the transfer of dairy products acquired by the Commodity Credit Corporation under price-support programs to the military and veterans hospitals without charge.
Act of September 13, 1960, as amended 771
(7 U.S.C. 1431 note)
Authorizes the use by schools of donated foods in home economics courses.
Act of August 19, 1958, as amended 771
(7 U.S.C. 1431 note)
Authorizes the Commodity Credit Corporation whenever it has grain available for donation pursuant to certain statutes to purchase processed food products and to donate such products and sell the grain.
Agricultural Act of 1956)Section 210 772
(7 U.S.C. 1859)
Authorizes the Commodity Credit Corporation to donate food commodities acquired through price support operations to penal and correctional institutions.
Agricultural Act of 1958)Section 505 772
(7 U.S.C. 1431a)
Authorizes the Commodity Credit Corporation to donate cotton acquired through its price support operations to educational institutions.

Act of September 21, 1959)Section 201 772
(7 U.S.C. 1431c)
Provides that cornmeal, grits, rice, and white flour made available for distribution under section 416 of the Agricultural Act of 1949 or for distribution to schools under any act shall be enriched so as to meet the standards promulgated under the Federal Food, Drug, and Cosmetic Act, and shall be packaged in sanitary containers.
Act of September 6, 1958)Section 9 773
(7 U.S.C. 1431b)
Authorizes distribution of surplus commodities available under section 32 or section 416 of the Agricultural Act of 1949 to areas under the jurisdiction of the United States on the same basis as domestic distribution.

Part IV

MISCELLANEOUS

Civil Rights Act of 1964 (Title VI) 774
(42 U.S.C. 2000d-2000d-4)
Title VI relates to nondiscrimination in federally assisted programs. It provides that no person in the United States shall be excluded from participation in or otherwise discriminated against because of race, color, or national origin under any program or activity receiving Federal

financial assistance. Specifically, the title enables Federal agencies administering programs to terminate or to refuse to grant or to continue assistance under a program in which there has been an express finding of noncompliance by discrimination, but agencies may take such action only after they have attempted to bring about compliance by voluntary means, and only after a hearing. Agency actions to cut off funds may not take effect until 30 days after a report is filed with Congress, and agency actions are subject to judicial review. Any agency rules or regulations issued under this title must be approved by the President.

Organized Crime Control Act) General Immunity 776
(18 U.S.C. 6001-6005)

Unifies and expands existing Federal law dealing with the granting of immunity from self-incrimination in legislative, administrative, and court proceedings. Provides that all previous legislation is repealed and affords immunity from use of testimony rather than from prosecution itself. Provides that the granting of immunity in court and legislative proceedings is subject to court review, while notice must be given to the Attorney General prior to its granting in administrative proceedings.

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PART I

GENERAL AUTHORITIES AND ADMINISTRATIVE PROVISIONS

THE ORGANIC ACT OF THE DEPARTMENT OF AGRICULTURE

(Revised Statutes § 520 as amended)

There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition, in the most general and comprehensive sense of those terms, and to procure, propagate, and distribute among the people new and valuable seeds and plants. [1] (7 U.S.C. 2201.)

DEPARTMENT OF AGRICULTURE ORGANIC ACT OF 1944 [2]

Inspection of livestock, hides, animal products, etc.; place; charges; disposition of funds.

The Secretary of Agriculture upon application of any exporter, importer, packer, or owner of, or the agent thereof, or dealer in, livestock, hides, skins, meat, or other animal products may, in his discretion, cause to be made inspections and examinations at places other than the headquarters of inspectors for the convenience of said applicants, who may be charged for the expenses of travel and subsistence incurred for such inspections and examinations, the funds derived from such charges to be deposited in the Treasury of the United States to the credit of the appropriation from which the expenses are paid. [3] (7 U.S.C. 396.)

Farm or food products; sale of samples, practical forms, etc.

The Secretary of Agriculture is authorized to sell samples, illustrations, practical forms, or sets of the grades recommended or promulgated by him for farm or food products, under such rules and regulations as he may pre-

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[1] Formerly 5 U.S.C. 511. Amended by Pub. L. 92-419, 86 Stat. 675, Aug. 30, 1972; and Pub. L. 95-113, 91 Stat. 1021, Sept. 29, 1977.

[2] Approved Sept. 21, 1944, 58 Stat. 734.

[3] Sec. 101(c), 58 Stat. 734.

scribe, and the receipts therefrom shall be deposited in the Treasury to the credit of miscellaneous receipts. [4] (7 U.S.C. 415e.)

Market-inspection certificates as prima facie evidence.

Market-inspection certificates issued by authorized agents of the Department of Agriculture shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained. (7 U.S.C. 2259.) [5]

Inspections, analyses, and tests for other Government departments and agencies; reimbursement.

The head of any department or independent establishment of the Government requiring inspections, analyses, and tests of food and other products, within the scope of the functions of the Department of Agriculture and which that Department is unable to perform within the limits of its appropriations, may, with the approval of the Secretary, transfer to the Department for direct expenditure such sums as may be necessary for the performance of such work. (7 U.S.C. 2256.) [6]

DEPARTMENT OF AGRICULTURE ORGANIC ACT OF 1956 [7]

Travel and Per Diem Expenses of Temporary or Seasonal Employees.

Sec. 12. Under such regulations as may be prescribed by the Secretary of Agriculture, funds available to the Department of Agriculture may be used for the payment of transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel between places of recruitment and duty, and while at places of duty, of persons appointed for temporary or seasonal services in inspection, classing or grading agriculture commodities. (7 U.S.C. 2229.) [8]

COOPERATION)GENERAL

To provide further for cooperation with States in administration and

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[4] Sec. 401(a) 58 Stat. 738.
[5] Sec. 401(c), 58 Stat. 738. Formerly codified at 5 U.S.C. 575.
[6] Sec 702(a), 58 Stat. 741. Formerly codified at 5 U.S.C. 571.
[7] Approved August 3, 1956, Sec. 12, 70 Stat. 1034.
[8] Formerly 5 U.S.C. 541e. "Subchapter I of chapter 57 of title 5" was substituted for "the Travel Expense Act of 1949" on authority of Pub. L. 89-544, Sec. 7(b), 80 Stat. 631, Sept. 6, 1966.

enforcement of certain Federal laws.

[9]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is hereby authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.

Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restrictions of law upon such cooperation. (7 U.S.C. 450.)

COOPERATION WITH STATE AND OTHER AGENCIES; EXPENDITURES

That hereafter in carrying on the activities of the Department of Agriculture involving cooperation with State, county, and municipal agencies, associations of farmers, individual farmers, universities, colleges, boards of trade, chambers of commerce, or other local associations of business men, business organizations, and individuals within the State, Territory, district or insular possession in which such activities are to be carried on, moneys contributed from such outside sources, except in the case of the authorized activities of the Forest Service, shall be paid only through the Secretary of Agriculture or through State, county or municipal agencies, or local farm

[9] Pub. L. 87-718, 76 Stat. 663, Sept. 28, 1962. Commonly referred to as the "Talmadge-Aiken" Act.

bureaus or like organizations, cooperating for the purpose with the Secretary of Agriculture. (7 U.S.C. 450b.) [10]

COOPERATION WITH STATE AND OTHER AGENCIES; SALARIES OF EMPLOYEES OF DEPARTMENT

The officials and the employees of the Department of Agriculture engaged in the activities described in the preceding paragraph [7 U.S.C. 450b] and paid in whole or in part out of funds contributed as provided therein, and the persons, corporations, or associations making contributions as therein provided, shall not be subject to the provisions of section 209 of Title 18, United States Code; nor shall any official or employee engaged in the cooperative activities of the Forest Service, or the persons, corporations, or associations contributing to such activities be subject to such section. (7 U.S.C. 2220.) [11]

AMOUNT AND CHARACTER OF COOPERATION

Unless otherwise provided herein [by the Department of Agriculture Organic Act of 1944] or by other statute, the measure and character of cooperation authorized herein [by said Act] on the part of the Federal Government and on the part of the cooperator shall be such as may be prescribed by the Secretary, unless otherwise provided for in the applicable appropriation. (7 U.S.C. 2249.) [12]

FEES AND CHARGES FOR GOVERNMENT SERVICES AND THINGS OF VALUE

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency(except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the

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[10] Act of July 24, 1919, 41 Stat. 270. Formerly codified at 5 U.S.C. 563.

[11] Act of July 24, 1919, 41 Stat. 270, as amended by Act of September 3, 1954, 68 Stat. 1227. Formerly codified at 5 U.S.C. 564. "Section 209" was substituted for "section 1914" on authority of Pub. L. 87-849, 76 Stat. 1126, Oct. 23, 1962.

[12] Department of Agriculture Organic Act of 1944, sec. 711, 58 Stat. 743. Formerly codified at 5 U.S.C. 564a.

heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be)

(1) fair; and

(2) based on)

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States--

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases. (31 U.S.C. 9701.) [13]

USER FEES FOR REPORTS, PUBLICATIONS, AND SOFTWARE [14]

Sec. 1121. (a) The Secretary of Agriculture may--

(1) furnish, on request, copies of software programs, pamphlets, reports, or other publications, regardless of their form, including electronic publications, prepared in the Department of Agriculture in carrying out any of its missions or programs; and

(2) charge such fees therefor as the Secretary determines are reasonable.

(b) The imposition of such charges shall be consistent with section 9701 of title 31, United States Code.

(c) All moneys received in payment for work or services performed, or for software programs, pamphlets, reports, or other publications provided, under this section)

(1) shall be available until expended to pay directly the costs of such work, services, software programs, pamphlets, reports, or publications; and

(2) may be credited to appropriations or funds that incur such costs.

(d) INVESTMENT.)Any fees collected, late payment penalties, and interest earned shall be credited to the account referred to in this section and may be invested by the Secretary of Agriculture in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary of Agricul-

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[13] Codified by Pub. L. 97-258, 96 Stat. 1051, Sept. 13, 1982. Formerly 31 U.S.C. 483a.

[14] Pub. L. 97-98, Sec. 1121, 95 Stat. 1273, Dec. 22, 1981; as amended by Pub. L. 99-198, 99 Stat. 1656, Dec. 23, 1985. New subsection (d) added by Pub. L. 101-624, 104 Stat. 4073, Nov. 28, 1990.

ture, by the Secretary of the Treasury in United States Government debt instruments. Fees and charges, including late payment penalties and interest earned from the investment of such funds shall be credited to such account. (7 U.S.C. 2242a.)

DEBT COLLECTION ACT OF 1982 [15]

(31 U.S.C. 3701, 3711, 3716-3718)

Sec. 3701. Definitions and application [16]

(a) In this chapter)

(1) "administrative offset" means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(2) "calendar quarter" means a 3-month period beginning on January 1, April 1, July 1, or October 1.

(3) "consumer reporting agency" means)

(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a-(f)); or

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[15] Codified by Pub. L. 97-258, 96 Stat. 970, Sept. 13, 1982; and Pub. L. 97-452, 96 Stat. 2469, Jan 12, 1983. Formerly 31 U.S.C. 951-954 (Federal Claims Collection Act of 1966.) Amended by Sec. 31001 (Debt Collection Improvement Act of 1996) of Pub. L. 104-134, 110 Stat. 1321-358, Apr. 26, 1996. Sec. 31001(b) of Pub. L. 104-134, 110 Stat. 1321-358 reads:

"(b) The purposes of this section [Sec. 31001] are the following:

"(1) To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools.

"(2) To minimize the costs of debt collection by consolidating related functions and activities and utilizing interagency teams.

"(3) To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies.

"(4) To ensure that the public is fully informed of the Federal Government's debt collection policies and that debtors are cognizant of their financial obligations to repay amounts owed to the Federal Government.

"(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

"(6) To encourage agencies, when appropriate, to sell delinquent debt, particularly debts with underlying collateral.

"(7) To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies." (31 U.S.C. 3701 note.)

[16] As amended by Pub. L. 99-514, 100 Stat. 2095, Oct. 22, 1986; Pub. L. 103-387, 108 Stat. 4077, Oct. 22, 1994; Pub. L. 104-134, 110 Stat. 1321-359, 1321-361, 1321-378, 1321-379, Apr. 26, 1996; and Pub. L. 104-316, Sec. 115(g)(2)(A), 110 Stat. 3835, Oct. 19, 1996.

(B) a person that, for money or on a cooperative basis, regularly)

(i) gets information on consumers to give the information to a consumer reporting agency; or

(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(4) "executive, judicial, or legislative agency" means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Government, including governmental corporations.

(5) "military department" means the Departments of the Army, Navy, and Air Force.

(6) "system of records" has the same meaning given that term in section 552a(a)(5) of title 5.

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

(8) "nontax" means, with respect to any debt or claim, any debt or claim other than a debt or claim under the Internal Revenue Code of 1986.

(b)(1) In subchapter II of this chapter and subsection (a)(8) of this section, the term "claim" or "debt" means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. A claim includes, without limitation)

(A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,

(B) expenditures of nonappropriated funds,

(C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,

(D) any amount the United States is authorized by statute to collect for the benefit of any person,

(E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,

(F) any fines or penalties assessed by an agency; and

(G) other amounts of money or property owed to the Government.

(2) For purposes of section 3716 of this title, each of the terms "claim" and "debt" includes an amount of funds or property owed by a person to a State (including any past-due support being enforced by the State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(c) In sections 3716 and 3717 of this title, "person" does not include an agency of the United States Government.

(d) Sections 3711(e) and 3716-3719 of this title do not apply to a claim or debt under, or to an amount payable under)

(1) the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.),

(2) the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under section 204(f) of such Act and section 3716(c) of this title, or

(3) the tariff laws of the United States.

(e) In section 3716 of this title)

(1) "creditor agency" means any agency owed a claim that seeks to collect that claim through administrative offset; and

(2) "payment certifying agency" means any agency that has transmitted a voucher to a disbursing official for disbursement.

(f) In section 3711 of this title, "private collection contractor" means private debt collectors under contract with an agency to collect a nontax debt or claim owed the United States. The term includes private debt collectors, collection agencies, and commercial attorneys. (31 U.S.C. 3701.)

Sec. 3711. Collection and compromise [17]

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[17] As amended by Pub. L. 98-216, 98 Stat. 4, Feb. 14, 1984; Pub. L. 99-514, 100 Stat. 2095, Oct. 22, 1986; Pub. L. 101-552, 104 Stat. 2746, Nov. 15, 1990; Pub. L. 102-365, 106 Stat. 973, Sept. 3, 1992; Pub. L. 103-272, 108 Stat. 1375, July 5, 1994; Pub. L. 104-134, 110 Stat. 1321-359, 1321-363, 1321-365, 1321-366 through 1321-368, 1321-371 through 1321-372, Apr. 26, 1996; and Pub. L. 104-316, Sec. 115(g)(1), 110 Stat. 3834, Oct. 19, 1996.

Sec. 31001(n) of Pub. L. 104-134, 110 Stat. 1321-369 States: "Effective October 1, 1995, section 11 of the Administrative Dispute Resolution Act (Public Law 101-552, 5 U.S.C. 571 note) shall not apply to the amendment made by section 8(b) of such Act." (31 U.S.C. 3711 note.)

Sec. 31001(aa)(1) of Pub. L. 104-134, 110 Stat. 1321-379, Apr. 26, 1996 reads: "Guidelines.)The Secretary of the Treasury, in consultation with concerned Federal agencies, may establish guidelines, including information on outstanding debt, to assist agencies in the performance and monitoring of debt collection activities. (31 U.S.C. 3711 note.)

Sec. 31001(bb) of Pub. L. 104-134, 110 Stat. 380, Apr. 26, 1996, reads:

"The Director of the Office of Management and Budget shall)

"(1) review the standards and policies of each Federal agency for compromising, writing-down, forgiving, or discharging indebtedness arising from programs of the agency;

"(2) determine whether those standards and policies are consistent and protect the interests of the United States;

(continued...)

(a) The head of an executive, judicial, or legislative agency—

(1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;

(2) may compromise a claim of the Government of not more than $100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive, judicial, or legislative agency for further collection action, except that only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official; and

(3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.

(b)(1) The head of an executive, judicial, or legislative agency may not act under subsection (a)(2) or (3) of this section on a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.

(2) The Secretary of Transportation may not compromise for less than $500 a penalty under section 21302 of title 49 for a violation of chapter 203, 205, or 207 of title 49 or a regulation or requirement prescribed or order issued under any of those chapters.

(c) A compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact. An accountable official is not liable for an amount paid or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this section.

(d) The head of an executive, judicial, or legislative agency acts under—

(1) regulations prescribed by the head of the agency; and

(2) standards that the Attorney General,[18] the Secretary of the Treasury, may prescribe.

(...continued)

"(3) in the case of any Federal agency standard or policy that the Director determines is not consistent or does not protect the interests of the United States, direct the head of the agency to make appropriate modifications to the standard or policy; and

"(4) report annually to the Congress on—

"(A) deficiencies in the standards and policies of Federal agencies for compromising, writing-down, forgiving, or discharging indebtedness; and

"(B) progress made in improving those standards and policies." (31 U.S.C. 3711 note.)

[18] So in original.

(e)(1) When trying to collect a claim of the Government under a law except the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), the head of an executive, judicial, or legislative agency shall disclose to a consumer reporting agency information from a system of records that a person is responsible for a claim if)

(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency;

(B) the head of the agency has reviewed the claim and decided that the claim is valid and overdue;

(C) the head of the agency has notified the person in writing)

(i) that payment of the claim is overdue;

(ii) that, within not less than 60 days after sending the notice, the head of the agency intends to disclose to a consumer reporting agency that the person is responsible for the claim;

(iii) of the specific information to be disclosed to the consumer reporting agency; and

(iv) of the rights the person has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim;

(D) the person has not)

(i) repaid or agreed to repay the claim under a written repayment plan that the person has signed and the head of the agency has agreed to; or

(ii) filed for review of the claim under paragraph (2) of this subsection;

(E) the head of the agency has established procedures to)

(i) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(ii) verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed; and

(iii) get satisfactory assurances from each consumer reporting agency that the agency is complying with all laws of the United States related to providing consumer credit information; and

(F) the information disclosed to the consumer reporting agency is limited to)

(i) information necessary to establish the identity of the person, including name, address, and taxpayer identification number;

(ii) the amount, status, and history of the claim; and

(iii) the agency or program under which the claim arose.

(2) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection and at other times allowed by law, the head of an executive, judicial, or legislative agency shall provide, on request of a person alleged by the agency to be responsible for the claim, for a review of the obligation of the person, including an opportunity for reconsideration of the initial decision on the claim.

(3) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection, the head of an executive, judicial, or legislative agency shall take reasonable action to locate a person for whom the head of the agency does not have a current address to send the notice under paragraph (1)(C).

(4) The head of each executive agency shall require, as a condition for insuring or guaranteeing any loan, financing, or other extension of credit under any law to a person, that the lender provide information relating to the extension of credit to consumer reporting agencies or commercial reporting agencies, as appropriate.

(5) The head of each executive agency may provide to a consumer reporting agency or commercial reporting agency information from a system of records that a person is responsible for a claim which is current, if notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency or commercial reporting agency, respectively.

(f)(1) The Secretary of Defense may suspend or terminate an action by the Secretary or by the Secretary of a military department under subsection (a) to collect a claim against the estate of a person who dies while serving on active duty as a member of the Army, Navy, Air Force, or Marine Corps if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so.

(2) In this subsection, the term "active duty" has the meaning given that term in section 101 of title 10.

(g)[19](1) If a nontax debt or claim owed to the United States has been delinquent for a period of 180 days)

(A) the head of the executive, judicial, or legislative agency that administers the program that gave rise to the debt or claim shall transfer the debt or claim to the Secretary of the Treasury; and

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[19] Subsection (g) was added by Sec. 31001(m)(1) of Pub. L. 104-134, 110 Stat. 1321-366, Apr. 26, 1996. Sec. 31001(aa)(2) of Pub. L. 104-134, 110 Stat. 1321-379, Apr. 26, 1996, reads: "Report.)Not later than 3 years after the date of enactment of this Act [Pub. L. 104-134], the Secretary of the Treasury shall report to the Congress on collection services provided by Federal agencies or entities collecting debt on behalf of other Federal agencies under the authorities contained in section 3711(g) of title 31, United States Code, as added by subsection (m) of this section." (31 U.S.C. 3711 note.)

(B) upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim.

(2) Paragraph (1) shall not apply)

(A) to any debt or claim that)

(i) is in litigation or foreclosure;

(ii) will be disposed of under an asset sales program within 1 year after becoming eligible for sale, or later than 1 year if consistent with an asset sales program and a schedule established by the agency and approved by the Director of the Office of Management and Budget;

(iii) has been referred to a private collection contractor for collection for a period of time determined by the Secretary of the Treasury;

(iv) has been referred by, or with the consent of, the Secretary of the Treasury to a debt collection center for a period of time determined by the Secretary of the Treasury; or

(v) will be collected under internal offset, if such offset is sufficient to collect the claim within 3 years after the date the debt or claim is first delinquent; and

(B) to any other specific class of debt or claim, as determined by the Secretary of the Treasury at the request of the head of an executive, judicial, or legislative agency or otherwise.

(3) For purposes of this section, the Secretary of the Treasury may designate, and withdraw such designation of debt collection centers operated by other Federal agencies. The Secretary of the Treasury shall designate such centers on the basis of their performance in collecting delinquent claims owed to the Government.

(4) At the discretion of the Secretary of the Treasury, referral of a nontax claim may be made to)

(A) any executive department or agency operating a debt collection center for servicing, collection, compromise, or suspension or termination of collection action;

(B) a private collection contractor operating under a contract for servicing or collection action; or

(C) the Department of Justice for litigation.

(5) Nontax claims referred or transferred under this section shall be serviced, collected, or compromised, or collection action thereon suspended or terminated, in accordance with otherwise applicable statutory requirements and authorities. Executive departments and agencies operating debt collection centers may enter into agreements with the Secretary of the Treasury to carry out the purposes of this subsection. The Secretary of the Treasury shall)

(A) maintain competition in carrying out this subsection;

(B) maximize collections of delinquent debts by placing delinquent debts quickly;

(C) maintain a schedule of private collection contractors and debt collection centers eligible for referral of claims; and

(D) refer delinquent debts to the person most appropriate to collect the type or amount of claim involved.

(6) Any agency operating a debt collection center to which nontax claims are referred or transferred under this subsection may charge a fee sufficient to cover the full cost of implementing this subsection. The agency transferring or referring the nontax claim shall be charged the fee, and the agency charging the fee shall collect such fee by retaining the amount of the fee from amounts collected pursuant to this subsection. Agencies may agree to pay through a different method, or to fund an activity from another account or from revenue received from the procedure described under section 3720C of this title. Amounts charged under this subsection concerning delinquent claims may be considered as costs pursuant to section 3717(e) of this title.

(7) Notwithstanding any other law concerning the depositing and collection of Federal payments, including section 3302(b) of this title, agencies collecting fees may retain the fees from amounts collected. Any fee charged pursuant to this subsection shall be deposited into an account to be determined by the executive department or agency operating the debt collection center charging the fee (in this subsection referred to in this section as the "Account"). Amounts deposited in the Account shall be available until expended to cover costs associated with the implementation and operation of Governmentwide debt collection activities. Costs properly chargeable to the Account include)

(A) the costs of computer hardware and software, word processing and telecommunications equipment, and other equipment, supplies, and furniture;

(B) personnel training and travel costs;

(C) other personnel and administrative costs;

(D) the costs of any contract for identification, billing, or collection services; and

(E) reasonable costs incurred by the Secretary of the Treasury, including services and utilities provided by the Secretary, and administration of the Account.

(8) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of unobligated balances remaining in the Account at the close of business on September 30 of the preceding year, minus any part of such balance that the executive department or agency operating the debt collection center determines is necessary to cover or defray the costs under this subsection for the fiscal year in which the deposit is made.

(9) Before discharging any delinquent debt owed to any executive, judicial, or legislative agency, the head of such agency shall take all appropriate steps to collect such debt, including (as applicable)

(A) administrative offset,

(B) tax refund offset,

(C) Federal salary offset,

(D) referral to private collection contractors,

(E) referral to agencies operating a debt collection center,

(F) reporting delinquencies to credit reporting bureaus,

(G) garnishing the wages of delinquent debtors, and

(H) litigation or foreclosure.

(10) To carry out the purposes of this subsection, the Secretary of the Treasury may prescribe such rules, regulations, and procedures as the Secretary considers necessary and transfer such funds from funds appropriated to the Department of the Treasury as may be necessary to meet existing liabilities and obligations incurred prior to the receipt of revenues that result from debt collections.

(h)(1) The head of an executive, judicial, or legislative agency acting under subsection (a)(1), (2), or (3) of this section to collect a claim, compromise a claim, or terminate collection action on a claim may obtain a consumer report (as that term is defined in section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a)) or comparable credit information on any person who is liable for the claim.

(2) The obtaining of a consumer report under this subsection is deemed to be a circumstance or purpose authorized or listed under section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b).

(i)(1) The head of an executive, judicial, or legislative agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any nontax debt owed to the United States that is delinquent for more than 90 days. Appropriate fees charged by a contractor to assist in the conduct of a sale under this subsection may be payable from the proceeds of the sale.

(2) After terminating collection action, the head of an executive, judicial, or legislative agency shall sell, using competitive procedures, any nontax debt or class of nontax debts owed to the United States, if the Secretary of the Treasury determines the sale is in the best interests of the United States.

(3) Sales of nontax debt under this subsection

(A) shall be for

(i) cash, or

(ii) cash and a residuary equity or profit participation, if the head of the agency reasonably determines that the proceeds will be greater than sale solely for cash,

(B) shall be without recourse, but may include the use of guarantees if otherwise authorized, and

(C) shall transfer to the purchaser all rights of the Government to demand payment of the nontax debt, other than with respect to a residuary equity or profit participation under subparagraph (A)(ii).

(4)(A) Within one year after the date of enactment of the Debt Collection Improvement Act of 1996, each executive agency with current and delinquent collateralized nontax debts shall report to the Congress on the valuation of its existing portfolio of loans, notes and guarantees, and other collateralized debts based on standards developed by the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury.

(B) The Director of the Office of Management and Budget shall determine what information is required to be reported to comply with subparagraph (A). At a minimum, for each financing account and for each liquidating account (as those terms are defined in sections 502(7) and 502(8), respectively, of the Federal Credit Reform Act of 1990) the following information shall be reported:

(i) The cumulative balance of current debts outstanding, the estimated net present value of such debts, the annual administrative expenses of those debts (including the portion of salaries and expenses that are directly related thereto), and the estimated net proceeds that would be received by the Government if such debts were sold.

(ii) The cumulative balance of delinquent debts, debts outstanding, the estimated net present value of such debts, the annual administrative expenses of those debts (including the portion of salaries and expenses that are directly related thereto), and the estimated net proceeds that would be received by the Government if such debts were sold.

(iii) The cumulative balance of guaranteed loans outstanding, the estimated net present value of such guarantees, the annual administrative expenses of such guarantees (including the portion of salaries and expenses that are directly related to such guaranteed loans), and the estimated net proceeds that would be received by the Government if such loan guarantees were sold.

(iv) The cumulative balance of defaulted loans that were previously guaranteed and have resulted in loans receivables, the estimated net present value of such loan assets, the annual administrative expenses of such loan assets (including the portion of salaries and expenses that are directly related to such loan assets), and the estimated net proceeds that would be received by the Government if such loan assets were sold.

(v) The marketability of all debts.

(5) This subsection is not intended to limit existing statutory authority of agencies to sell loans, debts, or other assets. (31 U.S.C. 3711.)

Sec. 3716. Administrative offset [20]

(a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor)

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

(b) Before collecting a claim by administrative offset, the head of an executive, judicial, or legislative agency must either)

(1) adopt, without change, regulations on collecting by administrative offset promulgated by the Department of Justice, the General Accounting Office, or the Department of the Treasury; or

(2) prescribe regulations on collecting by administrative offset consistent with the regulations referred to in paragraph (1).

(c)(1)(A) Except as otherwise provided in this subsection, a disbursing official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any disbursing official of the United States designated by the Secretary of the Treasury, shall offset at least annually the amount of a payment which a payment certifying agency has certified to the disbursing official for disbursement, by an amount equal to the amount of a claim which a creditor agency has certified to the Secretary of the Treasury pursuant to this subsection.

(B) An agency that designates disbursing officials pursuant to section 3321(c) of this title is not required to certify claims arising out of its operations to the Secretary of the Treasury before such agency's disbursing officials offset such claims.

(C) Payments certified by the Department of Education under a program administered by the Secretary of Education under title IV of the Higher Education Act of 1965 shall not be subject to administrative offset under this subsection.

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[20] As amended by Sec. 31001 of Pub. L. 104-134, 110 Stat. 1321-359 through 1321-361, 1321-362, Apr. 25, 1996.

(2) Neither the disbursing official nor the payment certifying agency shall be liable—

(A) for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied; or

(B) for failure to provide timely notice under paragraph (8).

(3)[21](A)(i) Notwithstanding any other provision of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)), section 413(b) of Public Law 91-173 (30 U.S.C. 923(b)), and section 14 of the Act of August 29, 1935 (45 U.S.C. 231m)), except as provided in clause (ii), all payments due to an individual under—

(I) the Social Security Act,

(II) part B of the Black Lung Benefits Act, or

(III) any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits), shall be subject to offset under this section.

(ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection. In applying the $9,000 exemption, the disbursing official shall—

(I) reduce the $9,000 exemption amount for the 12-month period by the amount of all Federal benefit payments made during such 12-month period which are not subject to offset under this subsection; and

(II) apply a prorated amount of the exemption to each periodic benefit payment to be made to the debtor during the applicable 12-month period.

For purposes of the preceding sentence, the amount of a periodic benefit payment shall be the amount after any reduction or deduction required under the laws authorizing the program under which such payment is authorized to be made (including any reduction or deduction to recover any overpayment under such program).

(B) The Secretary of the Treasury shall exempt from administrative offset under this subsection payments under means-tested programs when requested by the head of the respective agency. The Secretary may exempt other payments from administrative offset under this subsection upon the written request of the head of a payment certifying agency. A written request for exemption of other payments must provide justification for the

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[21] Sec. 31001(a)(2)(B) of Pub. L. 104-134, 110 Stat. 1321-258, Apr. 26, 1966, reads: "Offsets From Social Security Payments, Etc.—Subparagraph (A) of section 3716(c)(3) of title 31, United States Code (as added by subsection (d)(2) of this section), shall apply only to payments made after the date which is 4 months after the date of the enactment of this Act." (31 U.S.C. 3716 note.)

exemption under standards prescribed by the Secretary. Such standards shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment certifying agency's program. The Secretary shall report to the Congress annually on exemptions granted under this section.

(C) The provisions of sections 205(b)(1) and 1631(c)(1) of the Social Security Act shall not apply to any administrative offset executed pursuant to this section against benefits authorized by either title II or title XVI of the Social Security Act, respectively.

(4) The Secretary of the Treasury may charge a fee sufficient to cover the full cost of implementing this subsection. The fee may be collected either by the retention of a portion of amounts collected pursuant to this subsection, or by billing the agency referring or transferring a claim for those amounts. Fees charged to the agencies shall be based on actual administrative offsets completed. Amounts received by the United States as fees under this subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of this title, and shall be collected and accounted for in accordance with the provisions of that section.

(5) The Secretary of the Treasury in consultation with the Commissioner of Social Security and the Director of the Office of Management and Budget, may prescribe such rules, regulations, and procedures as the Secretary of the Treasury considers necessary to carry out this subsection. The Secretary shall consult with the heads of affected agencies in the development of such rules, regulations, and procedures.

(6) Any Federal agency that is owed by a person a past due, legally enforceable nontax debt that is over 180 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, shall notify the Secretary of the Treasury of all such nontax debts for purposes of administrative offset under this subsection.

(7)(A) The disbursing official conducting an administrative offset with respect to a payment to a payee shall notify the payee in writing of)

(i) the occurrence of the administrative offset to satisfy a past due legally enforceable debt, including a description of the type and amount of the payment otherwise payable to the payee against which the offset was executed;

(ii) the identity of the creditor agency requesting the offset; and

(iii) a contact point within the creditor agency that will handle concerns regarding the offset.

(B) If the payment to be offset is a periodic benefit payment, the disbursing official shall take reasonable steps, as determined by the Secretary of the Treasury, to provide the notice to the payee not later than the date on which the payee is otherwise scheduled to receive the payment, or as soon as practical thereafter, but no later than the date of the administrative offset. Notwithstanding the preceding sentence, the failure of

the debtor to receive such notice shall not impair the legality of such administrative offset.

(8) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over requests for administrative offset pursuant to other laws.

(d) Nothing in this section is intended to prohibit the use of any other administrative offset authority existing under statute or common law.

(e) This section does not apply)

(1) to a claim under this subchapter that has been outstanding for more than 10 years; or

(2) when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved.

(f) The Secretary may waive the requirements of sections 552a(o) and (p) of title 5 for administrative offset or claims collection upon written certification by the head of a State or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of this section have been met.

(g) The Data Integrity Board of the Department of the Treasury established under 552a(u) of title 5 shall review and include in reports under paragraph (3)(D) of that section a description of any matching activities conducted under this section. If the Secretary has granted a waiver under subsection (f) of this section, no other Data Integrity Board is required to take any action under section 552a(u) of title 5.

(h)(1) The Secretary may, in the discretion of the Secretary, apply subsection (a) with respect to any past-due, legally-enforceable debt owed to a State if)

(A) the appropriate State disbursing official requests that an offset be performed; and

(B) a reciprocal agreement with the State is in effect which contains, at a minimum)

(i) requirements substantially equivalent to subsection (b) of this section; and

(ii) any other requirements which the Secretary considers appropriate to facilitate the offset and prevent duplicative efforts.

(2) This subsection does not apply to)

(A) the collection of a debt or claim on which the administrative costs associated with the collection of the debt or claim exceed the amount of the debt or claim;

(B) any collection of any other type, class, or amount of claim, as the Secretary considers necessary to protect the interest of the United States; or

(C) the disbursement of any class or type of payment exempted by the Secretary of the Treasury at the request of a Federal agency.

(3) In applying this section with respect to any debt owed to a State, subsection (c)(3)(A) shall not apply. (31 U.S.C. 3716.)

Sec. 3717. Interest and penalty on claims [22]

(a)(1) The head of an executive, judicial, or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

(2) The Secretary may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points.

(b) Interest under subsection (a) of this section accrues from the date)

(1) on which notice is mailed after October 25, 1982, if notice was first mailed before October 25, 1982; or

(2) notice of the amount due is first mailed to the debtor at the most current address of the debtor available to the head of the executive or legislative agency, if notice is first mailed after October 24, 1982.

(c) The rate of interest charged under subsection (a) of this section)

(1) is the rate in effect on the date from which interest begins to accrue under subsection (b) of this section; and

(2) remains fixed at that rate for the duration of the indebtedness.

(d) Interest under subsection (a) of this section may not be charged if the amount due on the claim is paid within 30 days after the date from which interest accrues under subsection (b) of this section. The head of an executive, judicial, or legislative agency may extend the 30-day period.

(e) The head of an executive, judicial, or legislative agency shall assess on a claim owed by a person)

(1) a charge to cover the cost of processing and handling a delinquent claim; and

(2) a penalty charge of not more than 6 percent a year for failure to pay a part of a debt more than 90 days past due.

(f) Interest under subsection (a) of this section does not accrue on a charge assessed under subsection (e) of this section.

(g) This section does not apply)

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[22] As amended by Sec. 31001 of Pub. L. 104-134, 110 Stat. 1321-359, 1321-363, 1321-372, Apr. 26, 1996.

(1) if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges; and

(2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

(h) In conformity with standards prescribed jointly by the Attorney General, the Secretary of the Treasury, and the Comptroller General, the head of an executive, judicial, or legislative agency may prescribe regulations identifying circumstances appropriate to waiving collection of interest and charges under subsections (a) and (e) of this section. A waiver under the regulations is deemed to be compliance with this section.

(i)(1) The head of an executive, judicial, or legislative agency may increase an administrative claim by the cost of living adjustment in lieu of charging interest and penalties under this section. Adjustments under this subsection will be computed annually.

(2) For the purpose of this subsection)

(A) the term "cost of living adjustment" means the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the claim was determined or last adjusted; and

(B) the term "administrative claim" includes all debt that is not based on an extension of Government credit through direct loans, loan guarantees, or insurance, including fines, penalties, and overpayments. (31 U.S.C. 3717.)

Sec. 3718. Contracts for collection services [23]

(a) Under conditions the head of an executive, judicial, or legislative agency considers appropriate, the head of the agency may enter into a contract with a person for collection service to recover indebtedness owed, or to locate or recover assets of, the United States Government. The head of an agency may not enter into a contract under the preceding sentence to locate or recover assets of the United States held by a State government or financial institution unless that agency has established procedures approved by the Secretary of the Treasury to identify and recover such assets. The contract shall provide that)

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[23] As amended by Pub. L. 98-167, 97 Stat. 1104, Nov. 29, 1983; Pub. L. 99-514, 100 Stat. 2095, Oct. 22, 1986; Sec. 1 of Pub. L. 99-578, 100 Stat. 3305, Oct. 28, 1986; Sec. 6 of Pub. L. 102-589, 106 Stat. Nov. 10,. 1992; Sec. 4(f)(1)(M) of Pub. L. 103-272, 108 Stat. 1362, July 5, 1994; and Sec. 31001 of Pub. L. 104-134, 110 Stat. 1321-366, 1321-380, Apr. 26, 1996.

Sections 2 through 6 of Pub. L. 99-578, 100 Stat. 3307-3308, Oct. 28, 1986; as amended by Pub. L. 102-589, 106 Stat. 5134, Nov. 1992, read:

"SEC. 2. REPORT BY ATTORNEY GENERAL.

"Not later than 180 days after the date of the enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by section 1 of this Act).

"SEC. 3. PILOT PROGRAM.

"The Attorney General shall carry out subsections (b) and (c) of section 3718 of title 31, United States Code (as added by section 1 of this Act), through a pilot program in each of at least 5 and not more than 15 judicial districts selected by the Attorney General. [Sec. 3 was repealed by Sec. 31001(cc)(2) of Pub. L. 104-134, 110 Stat. 1321-380, Apr. 26, 1996. Sec. 101 (Title I, Sec. 120) of Pub. L. 104-134, 110 Stat. 1321-22, Apr. 26, 1996, provided: "SEC. 120. The pilot debt collection project authorized by Public Law 99-578, as amended, is extended through September 30, 1997."

"SEC. 4. REGULATIONS.

"The Attorney General shall issue regulations to carry out this Act and the amendments made by section 1 of this Act. The Attorney General shall submit the regulations to the Congress at least 60 days before they become effective.

"SEC. 5. TERMINATION.

"This Act and the amendments made by section 1 of this Act shall be in effect until September 30, 1996. [Sec. 5 was repealed by Sec. 31001(cc)(2) of Pub. L. 104-134, 110 Stat. 1321-380, Apr. 26, 1996.]

"SEC. 6 AUDIT BY COMPTROLLER GENERAL.

"(a) Contents of Audit.)The Comptroller General of the United States shall, at the end of the 3-year period referred to in section 5 conduct an audit of the actions of the Attorney General under subsection (b) of section 3718 of title 31, United States Code (as added by section 1 of this Act), under the pilot program referred to in section 3. The Comptroller General shall determine the extent of the competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain private counsel in accordance with the provisions of such subsection, and the results of the debt collection efforts of private counsel retained under such contracts.

"(b) Report to Congress.)After completing the audit under subsection (a), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit." (31 U.S.C. 3718 note.)

(1) the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to)

(A) section 552a of title 5, to the extent provided in section 552a(m); and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(b)[24](1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following).

(B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and

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[24] Sec. 4(d) of Pub. L. 102-589, 106 Stat. 5135, Nov. 10, 1992, reads: "(d) CONTRACT EXTENSION.)The Attorney General may extend or modify any or all of the contracts entered into with private counsel prior to October 1, 1992, for such time as is necessary to conduct a full and open competition in accordance with section 3718(b) of title 31, United States Code." Sec. 5 of Pub. L. 102-589, 106 Stat. 5135, Nov. 10, 1992, reads:

"(a) CONTENTS OF AUDIT.)The Comptroller General of the United States shall, at the end of the 3-year period referred to in section 5 [set out above], conduct an audit of the actions of the Attorney General under subsection (b) of section 3718 of title 31, United States Code (as added by section 1 of this Act), under the pilot program referred to in section 3 [set out above]. The Comptroller General shall determine the extent of the competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain private counsel in accordance with the provisions of such subsection, and the results of the debt collection efforts of private counsel retained under such contracts.

"(b) REPORT TO CONGRESS.)After completing the audit under subsection (a), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit." (31 U.S.C. 3718 note.)

economically disadvantaged individuals, so as to enable each agency to comply with paragraph (3).

(2) The head of an executive, judicial, or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals. For purposes of this paragraph)

(A) the term "law firm owned and controlled by socially and economically disadvantaged individuals" means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)(i) and (ii)) and regulations issued under those clauses;

(B) "socially and economically disadvantaged individuals" shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act.

(4) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

(5) A contract made with a private counsel under paragraph (1) of this subsection shall include)

(A) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government;

(B) a provision stating that the head of the executive or legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

(C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

(6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1)

of this subsection shall be considered to be a debt collector for the purposes of such Act.

(7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought.

(c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of)

(1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report;

(2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and

(3) the total number and amount of those claims referred for legal services to private counsel under subsection (b))

(A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report;

(B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred.

(d) Notwithstanding section 3302(b) of this title, a contract under subsection (a) or (b) of this section may provide that a fee a person charges to recover indebtedness owed, or to locate or recover assets of, the United States Government is payable from the amount recovered.

(e) A contract under subsection (a) or (b) of this section is effective only to the extent and in the amount provided in an appropriation law. This limitation does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsection (d) of this section.

(f) This section does not apply to the collection of debts under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(g) In order to assist Congress in determining whether use of private counsel is a cost-effective method of collecting Government debts, the Attorney General shall, following consultation with the General Accounting

Office, maintain and make available to the Inspector General of the Department of Justice, statistical data relating to the comparative costs of debt collection by participating United States Attorneys' Offices and by private counsel. (31 U.S.C. 3718.)

PROMPT PAYMENT [25]

(31 U.S.C. 3901-3907)

Sec. 3901. Definitions and application

(a) In this chapter)

(1) "agency" has the same meaning given that term in section 551(1) of title 5 and includes an entity being operated, and the head of the agency identifies the entity as being operated, only as an instrumentality of the agency to carryout a program of the agency.

(2) "business concern" means)

(A) a person carrying on a trade or business; and

(B) a nonprofit entity operating as a contractor.

(3) "proper invoice" is an invoice containing or accompanied by substantiating documentation the Director of the Office of Management and Budget may require by regulation and the head of the appropriate agency may require by regulation or contract.

(4) for the purposes of determining a payment due date and the date upon which any late payment interest penalty shall begin to accrue, the head of the agency is deemed to receive an invoice)

(A) on the later of)

(i) the date on which the place or person designated by the agency to first receive such invoice actually receives a proper invoice; or

(ii) on the 7th day after the date on which, in accordance with the terms and conditions of the contract, the property is actually delivered or performance of the services is actually completed, as the case may be, unless)

(I) the agency has actually accepted such property or services before such 7th day; or

(II) the contract (except in the case of a contract for the procurement of a brand-name commercial item for authorized resale) specifies a longer acceptance period, as determined by the contracting officer to be required to afford the agency a

[25] Codified by Pub. L. 97-452, 96 Stat. 2474, Jan 12, 1983. Amended by Pub. L. 98-216, 98 Stat.4, Feb. 14, 1984; and Pub. L. 100-496, 102 Stat. 2455, Oct. 17, 1988. Formerly 31 U.S.C. 1801-1806.

practicable opportunity to inspect and test the property furnished or evaluate the services performed; or

(B) on the date of the invoice, if the agency has failed to annotate the invoice with the date of receipt at the time of actual receipt by the place or person designated by the agency to first receive such invoice.

(5) a payment is deemed to be made on the date a check for payment is dated or an electronic fund transfer is made.

(6) a contract to rent property is deemed to be a contract to acquire the property.

(b) This chapter applies to the Tennessee Valley Authority. However, regulations prescribed under this chapter do not apply to the Authority, and the Authority alone is responsible for carrying out this chapter as it applies to contracts of the Authority.

(c) This chapter, except section 3906 of this title, applies to the United States Postal Service. However, the Postmaster General shall be responsible for issuing the implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service. (31 U.S.C. 3901.)

Sec. 3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.

(b) Except as provided in section 3906 of this title, the interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(c)(1) A business concern shall be entitled to an interest penalty of $1.00 or more which is owed such business concern under this section, and such penalty shall be paid without regard to whether the business concern has requested payment of such penalty.

(2) Each payment subject to this chapter for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in such payment and the rate by which, and period for which, such penalty was computed.

(3) If a business concern)

(A) is owed an interest penalty by an agency;

(B) is not paid the interest penalty in a payment made to the business concern by the agency on or after the date on which the interest penalty becomes due;

(C) is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

(D) makes a written demand, not later than 40 days after the date on which such payment is made, that the agency pay such a penalty,

such business concern shall be entitled to an amount equal to the sum of the late payment interest penalty to which the contractor is entitled and an additional penalty equal to a percentage of such late payment interest penalty specified by regulation by the Director of the Office of Management and Budget, subject to such maximum as may be specified in such regulations.

(d) The temporary unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties under this section.

(e) An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount.

(f) This section does not authorize the appropriation of additional amounts to pay an interest penalty. The head of an agency shall pay a penalty under this section out of amounts made available to carry out the program for which the penalty is incurred.

(g) A recipient of a grant from the head of an agency may provide in a contract for the acquisition of property or service from a business concern that, consistent with the usual business practices of the recipient and applicable State and local law, the recipient will pay an interest penalty on amounts overdue under the contract under conditions agreed to by the recipient and the concern. The recipient may not pay the penalty from amounts received from an agency. Amounts expended for the penalty may not be counted toward a matching requirement applicable to the grant. An obligation to pay the penalty is not an obligation of the United States Government.

(h)(1) This section shall apply to contracts for the procurement of property or services entered into pursuant to section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)).

(2)(A) In the case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), an interest penalty shall be paid to the producers if the payment has not been made by the required payment or loan closing date. The interest penalty shall be paid)

(i) on the amount of payment or loan due; and

(ii) for the period beginning on the first day beginning after the required payment or loan closing date and ending on the date the amount is paid or loaned.

(B) As used in this subsection, the `required payment or loan closing date' means)

(i) for a purchase agreement, the 30th day after delivery of the warehouse receipt for the commodity subject to the purchase agreement;

(ii) for a loan agreement, the 30th day beginning after the date of receipt of an application with all requisite documentation and signatures, unless the applicant requests that the disbursement be deferred;

(iii) for refund of amounts received greater than the amount required to repay a commodity loan, the first business day after the Commodity Credit Corporation receives payment for such loan;

(iv) for land diversion payments (other than advance payments), the 30th day beginning after the date of completion of the production adjustment contract by the producer;

(v) for an advance land diversion payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer;

(vi) for a deficiency payment (other than advance payments) based upon a 12-month or 5-month period, 91 days after the end of such period; or

(vii) for an advance deficiency payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer.

(3) Payment of the interest penalty under this subsection shall be made out of funds available under section 8 of the Act of June 29, 1948 (15 U.S.C. 714f).

(4) Section 3907 of this title shall not apply to interest penalty payments made under this subsection. (31 U.S.C. 3902.)

Sec. 3903. Regulations

(a) The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title. The regulations shall)

(1) provide that the required payment date is)

(A) the date payment is due under the contract for the item of property or service provided; or

(B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract;

(2)[26] for the acquisition of meat or a meat food product (as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3)), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, or of fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), provide a required payment date of not later than 7 days after the meat, meat food product, or fish is delivered; and

(3) for the acquisition of a perishable agricultural commodity (as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4)), provide a required payment date consistent with that Act;

(4) for the acquisition of dairy products (as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), the acquisition of edible fats or oils, and the acquisition of food products prepared from edible fats or oils, provide a required payment date of not later than 10 days after the date on which a proper invoice for the amount due has been received by the agency acquiring such dairy products, fats, oils, or food products;

(5) require periodic payments, in the case of a property or service contract which does not prohibit periodic payments for partial deliveries or other contract performance during the contract period, upon)

(A) submission of an invoice for property delivered or services performed during the contract period, if an invoice is required by the contract; and

(B) either)

(i) acceptance of the property or services by an employee of an agency authorized to accept the property or services; or

(ii) the making of a determination by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract;

(6) in the case of a construction contract, provide for the payment of interest on)

(A) a progress payment (including a monthly percentage-of-completion progress payment or milestone payments

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[26] Sec. 2002 of Pub. L. 98-181, 97 Stat. 1297, Nov. 30, 1983, states: "Notwithstanding any other provision of law, the terms `meat' and `meat food products' as used in the Prompt Payment Act (Public Law 97-177; 96 Stat. 85) in section 2(a)(2)(B)(i) thereof shall include also edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products." Sec. 13(b) of Pub. L. 100-496, 102 Stat. 2465, Oct. 17, 1988, struck provision of Pub. L. 98-181, Sec. 2002. The provision was added to (a)(2) by Pub. L. 100-496, Sec. 13(a). Sec. 842 of Pub. L. 102-190, 105 Stat. 1449, Dec. 5, 1991, added provisions relating to fresh or frozen fish.

for completed phases, increments, or segments of any project) that is approved as payable by the agency pursuant to subsection (b) of this section and remains unpaid for)

(i) a period of more than 14 days after receipt of the payment request by the place or person designated by the agency to first receive such requests; or

(ii) a longer period, specified in the solicitation, if required to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract; and

(B) any amounts which the agency has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a contractor and that are approved for release to the contractor, if such retained amounts are not paid to the contractor by a date specified in the contract or, in the absence of such a specified date, by the 30th day after final acceptance;

(7) require that)

(A) each invoice be reviewed as soon as practicable after receipt for the purpose of determining that such an invoice is a proper invoice within the meaning of section 3901(a)(3) of this title;

(B) any invoice determined not to be such a proper invoice suitable for payment shall be returned as soon as practicable, but not later than 7 days, after receipt, specifying the reasons that the invoice is not a proper invoice; and

(C) the number of days available to an agency to make a timely payment of an invoice without incurring an interest penalty shall be reduced by the number of days by which an agency exceeds the requirements of subparagraph (B) of this paragraph;

(8) permit an agency to make payment up to 7 days prior to the required payment date, or earlier as determined by the agency to be necessary on a case-by-case basis; and

(9) prescribe the methods for computing interest under section 3903(c) of this title.

(b)(1) A payment request may not be approved under subsection (a)(6)(A) of this section unless the application for such payment includes)

(A) substantiation of the amounts requested; and

(B) a certification by the prime contractor, to the best of the contractor's knowledge and belief, that)

(i) the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(ii) payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered

by the certification, in accordance with their subcontract agreements and the requirements of this chapter; and

(iii) the application does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(2) The agency shall return any such payment request which is defective to the contractor within 7 days after receipt, with a statement identifying the defect.

(c)(1) The contracting officer shall)

(A) compute the interest which a contractor shall be obligated to pay under sections 3905(a)(2) and 3905(e)(6) of this title on the basis of the average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the contractor received the unearned amount; and

(B) deduct the interest amount determined under subparagraph (A) of this paragraph from the next available payment to the contractor.

(2) Amounts deducted from payments to contractors under paragraph (1)(B) shall revert to the Treasury. (31 U.S.C. 3903.)

Sec. 3904. Limitations on discount payments

The head of an agency offered a discount by a business concern from an amount due under a contract for property or service in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. For the purpose of the preceding sentence, the specified time shall be determined from the date of the invoice. The head of the agency shall pay an interest penalty on an amount remaining unpaid in violation of this section. The penalty accrues as provided under sections 3902 and 3903 of this title, except that the required payment date for the unpaid amount is the last day specified in the contract that the discounted amount may be paid. (31 U.S.C. 3904.)

Sec. 3905. Payment provisions relating to construction contracts

(a) In the event that a contractor, after making a certified payment request to an agency pursuant to section 3903(b) of this title, discovers that a portion or all of such payment request constitutes a payment for performance by such contractor that fails to conform to the specifications, terms, and conditions of its contract (hereafter in this subsection referred to as the "unearned amount"), then the contractor shall)

(1) notify the agency of such performance deficiency; and

(2) be obligated to pay the Government an amount equal to interest on the unearned amount (computed in the manner provided in section

3903(c) of this title), from the date of the contractor's receipt of such unearned amount until)

(A) the date the contractor notifies the agency that the performance deficiency has been corrected; or

(B) the date the contractor reduces the amount of any subsequent certified application for payment to such agency by an amount equal to the unearned amount.

(b) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include in each subcontract for property or services entered into by the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract)

(1) a payment clause which obligates the prime contractor to pay the subcontractor for satisfactory performance under its subcontract within 7 days out of such amounts as are paid to the prime contractor by the agency under such contract; and

(2) an interest penalty clause which obligates the prime contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (1) of this subsection)

(A) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) computed at the rate specified by section 3902(a) of this title.

(c) The construction contract awarded by the agency shall further require the prime contractor to include in each of its subcontracts (for the purpose of performance of such construction contract) a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (b) of this section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by subsections (b) and (c) of this section shall not be construed to impair the right of a prime contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which)

(1) permit the prime contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) permit such withholding without incurring any obligation to pay a late payment penalty if)

(A) a notice conforming to the standards of subsection (g) of this section has been previously furnished to the subcontractor; and

(B) a copy of any notice issued by a prime contractor pursuant to subparagraph (A) of this paragraph has been furnished to the Government.

(e) If a prime contractor, after making application to an agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the prime contractor shall)

(1) furnish to the subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) furnish to the Government, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (1) of this subsection;

(3) reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (1) of this subsection;

(4) pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and)

(A) make such payment within)

(i) 7 days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (5)(A)); or

(ii) 7 days after the contractor recovers such funds from the Government; or

(B) incur an obligation to pay a late payment interest penalty computed at the rate specified by section 3902(a) of this title;

(5) notify the Government, upon)

(A) reduction of the amount of any subsequent certified application for payment; or

(B) payment to the subcontractor of any withheld amounts of a progress payment, specifying)

(i) the amounts of the progress payments withheld under paragraph (1) of this subsection; and

(ii) the dates that such withholding began and ended; and

(6) be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in section 3903(c) of this title), from the 8th day after receipt of the withheld amounts from the Government until)

(A) the day the identified subcontractor performance deficiency is corrected; or

(B) the date that any subsequent payment is reduced under paragraph (5)(A).

(f)(1) If a prime contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the prime contractor may be ultimately liable, and the prime contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the prime contractor may, without incurring an obligation to pay an interest penalty under subsection (e)(6) of this section)

(A) furnish to the first-tier subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon making such determination; and

(B) withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the prime contractor shall pay the amount withheld under paragraph (1)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to first-tier subcontractor computed at the rate specified by section 3902(a) of this title.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Government of any such notice issued by a prime contractor), specifying)

(1) the amount to be withheld;

(2) the specific causes for the withholding under the terms of the subcontract; and

(3) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) A prime contractor may not request payment from the agency of any amount withheld or retained in accordance with subsection (d) of this

section until such time as the prime contractor has determined and certified to the agency that the subcontractor is entitled to the payment of such amount.

(i) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (b) or (c) of this section does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in subsection (i) of this section, this section shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) A contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under subsection (b) or (c) of this section may not be construed to be an obligation of the United States for such interest penalty. A contract modification may not be made for the purpose of providing reimbursement of such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty. (31 U.S.C. 3905.)

Sec. 3906. Reports

(a)(1) By the 60th day after the end of this fiscal year, the head of each agency shall submit to the Director of the Office of Management and Budget a report on the agency's payment practices during that fiscal year, including a description of the extent to which those practices satisfy the requirements of this chapter.

(2) In addition to such other information as may be required by the Director, the report required by paragraph (1) shall include)

(A) the number, dollar value, and percentage of invoices for which interest or other late payment penalties were paid, the amount of such late payment interest and other penalties, and the reasons the interest penalties were not avoided by prompt payment; and

(B) the number, dollar value, and percentage of invoices paid after the required payment date without payment of an interest penalty or other late payment penalty, and the reasons no obligation to pay such penalties was incurred with respect to such invoices or no amount for such penalties were included in the payments of such invoices.

(b) By the 120th day after the end of each fiscal year, the Director shall submit to the Committees on Governmental Affairs, Appropriations, and Small Business of the Senate and the Committees on Government Operations, Appropriations, and Small Business of the House of

Representatives a report on agency compliance with this chapter. The report shall include a summary of the report of each agency submitted under subsection (a) of this section and an analysis of progress made in reducing interest penalty payments by that agency from prior years. (31 U.S.C. 3906.)

Sec. 3907. Relationship to other laws.

(a) A claim for an interest penalty not paid under this chapter may be filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

(b)(1) An interest penalty under this chapter does not continue to accrue)

(A) after a claim for a penalty is filed under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.); or

(B) for more than one year.

(2) Paragraph (1) of this subsection does not prevent an interest penalty from accruing under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) after a penalty stops accruing under this chapter. A penalty accruing under section 12 may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

(c) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). (31 U.S.C. 3907.)

OATHS, WITNESSES, AND RECORDS; AFFIRMATIONS AND AFFIDAVITS

(Act of July 24, 1919) [27]

That hereafter, in the performance of the duties required of the Bureau of Agricultural Economics[28] in the administration or enforcement of provisions of Acts (United States Cotton Futures Act, Thirty-ninth Statutes at Large, page 476; United States Grain Standards Act, Thirty-ninth Statutes at Large, page 482; United States Warehouse Act, Thirty-ninth Statutes at Large, page 486; Standard Container Act, Thirty-ninth Statutes at Large, page 673; and the Acts making annual appropriations for the Department of

[27] Extract from the Department of Agriculture Appropriation Act, 1920, approved July 24, 1919, 41 Stat. 267; as amended by the Act of May 11, 1922, 42 Stat. 532.

[28] Functions of Bureau of Agricultural Economics transferred to Secretary of Agriculture by Reorganization Plan No. 2 of 1953, 67 Stat. 633.

Agriculture)[29] relating to the Department of Agriculture, the Secretary of Agriculture, or any representative specifically authorized in writing by him for the purpose, shall have power to administer oaths, examine witnesses, and call for the production of books and papers. (7 U.S.C. 420.)

(Act of January 31, 1925) [30]

AN ACT To empower certain officers, agents, or employees of the Department of Agriculture to administer and take oaths, affirmations, and affidavits in certain cases and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such officers, agents, or employees of the Department of Agriculture of the United States as are designated by the Secretary of Agriculture for the purpose are hereby authorized and empowered to administer to or take from any person an oath, affirmation or affidavit whenever such oath, affirmation, or affidavit is for use in any prosecution or proceeding under or in the enforcement of any law committed to or which may hereafter be committed to the Secretary of Agriculture or the Department of Agriculture or any bureau or subdivision thereof for administration. Any such oath, affirmation, or affidavit administered or taken by or before such officer, agent, or employee when certified under his hand and authenticated by the seal of the Department of Agriculture may be offered or used in any court of the United States and shall have like force and effect as if administered or taken before a clerk of

[29] Section 110 of Secretary's Order dated November 27, 1964, 29 F.R. 16210, assigned responsibilities for administering the Acts contained in this provision to the Agricultural Marketing Service. Secretary's Order dated February 17, 1965, 30 F.R. 2160, changed name from Agricultural Marketing Service to Consumer and Marketing Service. Secretary's Order dated March 28, 1972, 37 F.R. 6327, changed name back to the Agricultural Marketing Service. United States Grain Standards Act, as amended, is now administered by the Federal Grain Inspection Service (FGIS) established November 20, 1976, pursuant to authority of the U.S. Grain Standards Act of 1976. Secretary's Memorandum 1010-1, dated Oct. 20, 1994, changed name from FGIS to the Grain Inspection, Packers and Stockyards Administration. Standard Container Act was repealed by Pub. L. 90-628, approved October 22, 1968, 82 Stat. 1320. The United States Warehouse Act (7 U.S.C. 241 et. seq.) is now administered by the Agricultural Stabilization and Conservation Service (ASCS) pursuant to Secretary's Memorandum 1020-15, dated May 11, 1984. Secretary's Memorandum 1010-1, dated Oct. 20, 1994, changed name from ASCS to the Farm Service Agency. Provisions of U.S. Cotton Futures Act formerly in Internal Revenue Code of 1954 (26 U.S.C. 4851-54, 4861-65, 4871-73, 4875-77, 7233, 7263, 7492-7493) were recodified by Pub. L. 94-455 at 7 U.S.C. 15b.

[30] 43 Stat. 803.

such court without further proof of the identity or authority of such officer, agent, or employee. (7 U.S.C. 2217.) [31]

Sec. 2. That no officer, agent, or employee of the Department of Agriculture shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or affidavit under the authority conferred by this Act. (7 U.S.C. 2218.) [32]

Sec. 3. An employee of an Executive agency or an individual employed by the government of the District of Columbia who, on original appointment, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath because of a change in status so long as his service is continuous in the agency in which he is employed, unless, in the opinion of the head of the Executive agency, the Secretary of a military department with respect to an employee of his department, or the Commissioners of the District of Columbia, the public interest so requires. (5 U.S.C. 2905.) [33]

EMPLOYMENT OF TEMPORARY PERSONNEL

The Department of Agriculture may employ persons or organizations on a temporary basis, by contract or otherwise: Provided that no expenditures for such temporary employment shall be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2225.) [34]

EMPLOYMENT OF EXPERTS AND CONSULTANTS; TEMPORARY OR INTERMITTENT

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting service. Services procured under this section are without regard to)

(1) The provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

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[31] Formerly 5 U.S.C. 521.

[32] Formerly 5 U.s.C. 522.

[33] Pub. L. 89-554, 80 Stat. 412., Sept. 6, 1966. Formerly 5 U.S.C. 17b.

[34] Act of Sept. 21, 1944, 58 Stat. 742; Ex. Ord. No. 9577, June 29, 1945, 10 F.R. 4253. (The exception from "the Classification Act of 1923, as amended" was omitted as obsolete. The Classification Act of 1949 (63 Stat. 972) repealed the 1923 Act. Pub. L. 89-544, 80 Stat. 632, Sept. 6, 1966, repealed the Classification Act of 1949. Applicability provisions of the 1949 Act are now contained in 5 U.S.C. 5102.)

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include)

(1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;

(2) criteria for setting the pay of experts and consultants under this section; and

(3) provisions to ensure compliance with such regulations.

(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to)

(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

(2) the total amount paid by the agency to each expert and consultant for such work during the period. (5 U.S.C. 310.9) [35]

COST OF CLASSING OR GRADING

Department of Agriculture Appropriation Act, 1950)* * * That hereafter appropriations available for classing or grading any agricultural commodity without charge to the producers thereof may be reimbursed from nonadministrative funds of the Commodity Credit Corporation for the cost of classing or grading any such commodity for producers who obtain Commodity Credit Corporation price support. (June 29, 1949, 63 Stat. 324, 344, 7 U.S.C. 440.)

Department of Agriculture Appropriation Act, 1952)* * * That hereafter there may be transferred to appropriations available for classing or grading any agricultural commodity without charge to the producers thereof such sums from nonadministrative funds of the Commodity Credit Corporation as

[35] Pub. L. 89-544, 80 Stat. 416, Sept. 6, 1966. Pub. L. 95-454, 92 Stat. 1160, Oct. 13, 1978, added subsection (c) which was amended by Sec. 2(b) of Pub. L. 100-325, 102 Stat. 581, May 30, 1988. Sec. 2(8) of Pub. L. 102-378, 106 Stat. 1347, Oct. 2, 1992, added new subsection (d) and (e).

may be necessary in addition to other funds available for these purposes, such transfers to be reimbursed from subsequent appropriations therefore. (Aug. 31, 1951, 65 Stat. 225, 239; 7 U.S.C. 414a.)

OVERTIME RATES FOR FULL-TIME, PART-TIME, AND INTERMITTENT EMPLOYEES [36]

(5 U.S.C. 5542)

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5304 or similar provision of law and any applicable special rate of pay under section

[36] Pub. L. 89-554, 80 Stat. 485, Sept. 6, 1966; Pub. L. 90-83, Sec. 1(24), 81 Stat. 200, Sept. 11, 1967; Pub. L. 90-206, title II, Sec. 222(a), 81 Stat. 641, Dec. 16, 1967; Pub. L. 90-556, Sec. 1, 82 Stat. 969, Oct. 10, 1968; Pub. L. 92-194, 85 Stat. 648, Dec. 15, 1971; and Pub. L. 98-473, Sec. 322, 98 Stat. 1874, Oct. 12, 1984; Pub. L. 101-509, 104 Stat. 1439, 1460, and 1468, Nov. 5, 1990; Pub. L. 102-378, 106 Stat. 1352, Oct. 2, 1972; and Pub. L. 103-329, 108 Stat. 2427, Sept. 30, 1994.

5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS-14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work; the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of)

(A) one and one-half times the minimum hourly rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(b) For the purpose of this subchapter)

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless)

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(c) Subsection (a) shall not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair labor[37] Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(d) In applying subsection (a) of this section with respect to any criminal investigator who is paid availability pay under section 5545a)

(1) such investigator shall be compensated under such subsection (a), at the rates there provided, for overtime work which is scheduled in advance of the administrative workweek)

(A) in excess of 10 hours on a day during such investigator's basic 40 hour workweek; or

(B) on a day outside such investigator's basic 40 hour workweek; and

(2) such investigator shall be compensated for all other overtime work under section 5545a.

[37] So in original. Probably should be capitalized.

ADMINISTRATIVE PROCEDURE ACT
AVAILABILITY OF INFORMATION TO THE PUBLIC

5 U.S.C. 552.[38] Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public)

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[38] Codified by Pub. L. 90-23, June 5, 1967, 81 Stat. 54. Known as the Freedom of Information Act. Amended by Pub. L. 93-502, Nov. 21, 1974, 88 Stat. 1561-1565; Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225; and the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, 110 Stat. 3048, Oct. 2, 1996. *See* Exec. Order No. 12291, 46 F.R. 13193 (Feb. 17, 1981), for minimizing Federal paperwork and improving Federal regulations.

Sec. 2 of Pub. L. 104-231, 110 Stat. 3048, Oct. 2, 1996, provides:

"SEC. 2. FINDINGS AND PURPOSES.

"(a) Findings.)The Congress finds that)

"(1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

"(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

"(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

"(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

"(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

"(6) Government agencies should use new technology to enhance public access to agency records and information.

"(b) Purposes.)The purposes of this Act are to)

"(1) foster democracy by ensuring public access to agency records and information;

"(2) improve public access to agency records and information;

"(3) ensure agency compliance with statutory time limits; and

"(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.". (5 U.S.C. 552 note.)

Sec. 12 of Pub. L. 104-231, 110 Stat. 3054, Oct. 2, 1996, reads:

"SEC. 12. EFFECTIVE DATE.

"(a) In General.)Except as provided in subsection (b), this Act [Electronic Freedom of Information Act Amendments of 1996] shall take effect 180 days after the date of the enactment of this Act.

"(b) Provisions Effective on Enactment.)Sections 7 and 8 shall take effect one year after the date of the enactment of this Act." (5 U.S.C. 552 note.)

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2)[39] Each agency, in accordance with published rules, shall make available for public inspection and copying)

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by

[39] As amended by Sec. 4 of Pub. L. 104-231, 110 Stat. 3049, Oct. 2, 1996.

computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if)

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)[40](A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or

[40] As amended by Sec. 5 of Pub. L. 104-231, 110 Stat. 3050, Oct. 2, 1996.

format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(4)(A)[41] (i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that)

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if

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[41] As amended by Pub. L. 99-570, Sec 1803, 100 Stat. 3207-49, Oct 27, 1986. Section 1804(b) of Pub. L. 99-570, provided that:

"(b)(1) The amendments made by section 1803 shall be effective 180 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 180th day.

"(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations." (5 U.S.C. 552 note.)

disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section)

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B)[42] On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court

[42] Sec. 6 of Pub. L. 104-231, 110 Stat. 3050, Oct. 2, 1996, added the last sentence in subparagraph (B).

shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Repealed.[43]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall)

[43] Pub. L. 98-620, 98 Stat. 3357, Nov. 8, 1984, repealed subsection (a)(4)(D), which provided that, except as to cases the court considers of greater importance, proceedings before the district court, and appeals therefrom, hold precedence on the docket over all cases and were assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(i)[44] determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)[45](i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests)

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

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[44] Sec. 8(b) of Pub. L. 104-231, 110 Stat. 3052, Oct. 2, 1996, substituted "20 days" for "ten days". *See* footnote 38, third paragraph.

[45] As amended by Sec. 7(b) of Pub. L. 104-231, 110 Stat. 3050, Oct. 2, 1996. *See* footnote 38, third paragraph.

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)[46](i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

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[46] Sec. 7(c) of Pub. L. 104-231, 110 Stat. 3051, Oct. 2, 1996, inserted "(i)" after "(C)" and added clauses (ii) and (iii). *See* footnote 38, third paragraph.

(D)[47](i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)[48](i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records)

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure)

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means)

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[47] Subparagraph (D) added by Sec. 7(a) of Pub. L. 104-231, 110 Stat. 3050, Oct. 2, 1996. *See* footnote 38, third paragraph.

[48] Subparagraph (E) added by Sec. 8(a) of Pub. L. 104-231, 110 Stat. 3051, Oct. 2, 1996. *See* footnote 38, third paragraph.

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F)[49] In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made. (5 U.S.C. 552(a).)

(b) This section does not apply to matters that are)

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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[49] Subparagraph (F) added by Sec. 8(c) of Pub. L. 104-231, 110 Stat. 3052, Oct. 2, 1996. *See* footnote 38, third paragraph.

(7)[50] records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.[51] (5 U.S.C. 552(b).)

(c)[52] (1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and)

(A) the investigation or proceeding involves a possible violation of criminal law; and

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[50] As amended by Pub. L. 99-570, Sec. 1802, 100 Stat. 3207-48, Oct. 27, 1986. Sec. 1804(a) of Pub. L. 99-570 provided that:

"(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date." (5 U.S.C. 552 note.)

[51] Last sentence added by Sec. 9 of Pub. L. 104-231, 100 Stat. 3052, Oct. 2, 1996.

[52] Pub.L. 97-570, 100 Stat. 3207-49, Oct. 27, 1986, redesignated former subsections (c) through (e) as (d) through (f), respectively, and added a new subsection (c).

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section. (5 U.S.C. 552(c)).

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress. (5 U.S.C. 552(d).)

(e)[53](1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include)

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

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[53] As amended by Sec. 10 of Pub. L. 104-231, 110 Stat. 3053, Oct. 2, 1996.

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such report as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section. (5 U.S.C. 552(e).)

(f)[54] For purposes of this section, the term)

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

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[54] As amended by Sec. 3 of Pub. L. 104-231, 110 Stat. 3049, Oct. 2, 1996.

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format. (5 U.S.C. 552(f).)

(g)[55] The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including)

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section. (5 U.S.C. 552(g).)

PRIVACY ACT OF 1974 [56]

(5 U.S.C. 552a note)

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

Sec. 2. (a) The Congress finds that)

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

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[55] Subsection (g) added by Sec. 11 of Pub. L. 104-231, 110 Stat. 3054, Oct. 2, 1996.

[56] Approved December 31, 1974, as Pub. L. 93-579, 88 Stat. 1896-1910. Amended by Pub. L. 94-183, 89 Stat. 1057, Dec 31, 1975; Pub. L. 94-394, 90 Stat. 1198, Sept. 3, 1976; Pub. L. 95-38, 91 Stat. 179, June 1, 1977; Pub. L. 97-365, 96 Stat. 1749, Oct. 25, 1982; Pub. L. 97-375, 96 Stat. 1821, Dec. 21, 1982, Pub. L. 97-452, 96 Stat. 2478, Jan. 12, 1983; Pub. L. 98-477, 98 Stat. 2211, Oct. 15, 1984; Pub. L. 98-497, 98 Stat. 2292, Oct. 19, 1984; Pub. L. 100-503, 102 Stat. 2507, Oct. 18, 1988; and Pub. L. 104-316, Sec. 115(g)(B), 110 Stat. 3835, Oct. 19, 1996. Functions of Director of Office of Management and Budget were delegated to the Administrator for the Office of Information and Regulatory Affairs by section 3 of Pub. L. 96-511, 94 Stat. 2825, Dec. 11, 1980.

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to)

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

§ 552a. Records about individuals

(a) DEFINITIONS.)For purposes of this section)

(1) the term “agency” means agency as defined in section 552(e) of this title;

(2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term “maintain” includes maintain, collect, use, or disseminate;

(4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term “matching program”)

(A) means any computerized comparison of)

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of)

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payment or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include)

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make

decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches)

(I) using records predominantly relating to Federal personnel that are performed for routing administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii)[57] matches performed pursuant to section 6103(1)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act.

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in

[57] Section 13581(c) of Pub. L. 103-66, 107 Stat. 611, Aug. 10, 1993, added clause (vii).

a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE.)No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be)

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a

written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.)Each agency, with respect to each system of records under its control, shall)

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of)

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.)Each agency that maintains a system of records shall)

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing

discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and)

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either)

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.)Each agency that maintains a system of records shall)

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency

required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual)

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include)

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.)In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall)

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.)Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of)

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the cost of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.)For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES.)Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the

disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) GENERAL EXEMPTIONS.)The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is)

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.)The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is)

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section:

Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protection services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identify of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) ARCHIVAL RECORDS.)Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which

maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS.)When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection(i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS.)An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) MATCHING AGREEMENTS.)(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying)

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that

will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided be the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is

appropriate in light of the purposes, and length of time necessary for the conduct of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if)

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p)[58] VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.)(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until)

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that)

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of)

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

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[58] As amended by Sec. 7201(b) of Pub. L. 101-508, 104 Stat. 1388-334, Nov. 5, 1990.

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS.)(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless)

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.)Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.)The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report)

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.)No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall reply on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.)(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board)

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including)

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that)

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector

general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v)[59] OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.) The Director of the Office of Management and Budget shall)

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section be agencies.

SEC. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

SEC. 5. (a)(1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas)civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government)are well qualified for service on the Commission.

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[59] Sec. 6(b) of Pub. L. 100-503, 102 Stat. 2513, Oct. 18, 1988, states:

"(b) IMPLEMENTATION GUIDANCE FOR AMENDMENTS.)The Director shall, pursuant to section 552(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by the Act not later than 8 months after the date of enactment of this Act.".

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall)

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative

recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c)(1) In the course of conducting the study required under subsection (b)(1) of this section, and in its reports thereon, the Commission may research, examine, and analyze)

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2)(A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of)

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transfering individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a(g)(1)(C) or (D) of title 5, United States Code; and

(iv) whether and how the standards for security and confidentiality of records required under section 552a(c)(10) of such title should be applied when a record is disclosed to a person other than an agency.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this

Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall)

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may)

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e)(1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the

Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2)(A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a(o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to)

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized)

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

(f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist on September 30, 1977.

(h)(1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

SEC. 6. Repealed. [60]

SEC. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

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[60] Pub. L. 100-503, 102 Stat. 2513, Oct. 18, 1988, repealed Section 6 which provided that the Office of Management and Budget would develop guidelines and regulations for maintenance of privacy and protection of records of individuals.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to)

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

SEC. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

SEC. 9. There is authorized to be appropriated, without fiscal year limitation only to such extent or in such amounts as are provided in appropriation Acts, the sum of $2,000,000 to carry out the provisions of section 5 of this Act for the period beginning July 1, 1975, and ending on September 30, 1977.

GOVERNMENT IN THE SUNSHINE ACT [61]

(5 U.S.C. 552b)

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act". (5 U.S.C. 552b note)

DECLARATION OF POLICY

Sec. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

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[61] Pub. L. 94-409, approved Sept. 13, 1976, 90 Stat. 1241-1246.

OPEN MEETINGS

Sec. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

§ 552b. Open meetings

(a) For purposes of this section)

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to)

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would)

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such

announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the

agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems

appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

(5 U.S.C. 553-559) [62]

Rule making adjudications; ancillary matters hearings; decisions; sanctions; application of licenses, suspension, revocation, and expiration of licenses

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved)

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include)

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply)

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

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[62] Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383-388. See Exec. Order No. 12291, 46 F.R. 13193 (Feb. 17, 1981).

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except)

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction:

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved)

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[63] administrative law judge[64] appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of) (1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for)

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

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[63] So in original.

[64] Pub. L. 95-251, 92 Stat. 183, dated Mar. 27, 1978, substituted “administrative law judge” for “hearing examiner”.

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such as employee may not)

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply)

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection

does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence)

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges[65] appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify

[65] See footnote 64.

himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c)[66] Subject to published rules of the agency and within its powers, employees presiding at hearings may)

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.[67] A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a

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[66] As amended by Sec. 4(a) of Pub. L. 101-552, 104 Stat. 2737, Nov. 15, 1990, amending paragraph (6), redesignating paragraph (7) through (9) as paragraphs (9) through (11), respectively, and adding new paragraphs (7) and (8).

[67] Sentence added by Pub. L. 94-409, approved Sept. 13, 1976, 90 Stat. 1247.

full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses)

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions)

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of)

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)[68](1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law)

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

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[68] Section added by Pub. L. 94-409, 90 Stat. 1246-1247, Sept. 13, 1976.

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given)

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

§ 559.[69] Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional

[69] Pub. L. 89-544, 80 Stat. 388, Sept. 6, 1966; as amended by Pub. L. 90-623, 82 Stat. 1312, Oct. 22, 1968; Pub. L. 95-251, 92 Stat. 183, Mar. 27, 1978; and Pub. L. 95-454, 92 Stat. 1221, Oct. 13, 1978.

requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

REGULATORY FLEXIBILITY ACT [70]

(5 U.S.C. 601-612)

To amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act". (5 U.S.C. 601 note.)

FINDINGS AND PURPOSES

Sec. 2. (a) The Congress finds and declares that)

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

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[70] Pub. L. 96-354, 94 Stat. 1164, Sept. 19, 1980. As amended by Subtitle D, Title II, of Pub. L. 104-121, 110 Stat. 864, Mar. 29, 1996. Sec. 245 of Pub. L. 104-121, 110 Stat. 868, Mar. 29. 1996, states:

"**SEC. 245. EFFECTIVE DATE**.

"This subtitle [Subtitle D, Title II of Pub. L. 104-121, amending Sections 601, 603, 604, 605, 609, and 611] shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment." (5 U.S.C. 601 note.)

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. (5 U.S.C. 601 note.)

ANALYSIS OF REGULATORY FUNCTIONS

Sec. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

"CHAPTER 6)THE ANALYSIS OF REGULATORY FUNCTIONS

"Sec. 601. Definitions.
"Sec. 602. Regulatory agenda.
"Sec. 603. Initial regulatory flexibility analysis.
"Sec. 604. Final regulatory flexibility analysis.
"Sec. 605. Avoidance of duplicative or unnecessary analyses.
"Sec. 606. Effect on other law.
"Sec. 607. Preparation of analyses.
"Sec. 608. Procedure for waiver or delay of completion.
"Sec. 609. Procedures for gathering comments.

“Sec. 610. Periodic review of rules.
“Sec. 611. Judicial review.
“Sec. 612. Reports and intervention rights.”

§ 601. Definitions [71]

For purposes of this chapter)

(1) the term “agency” means an agency as defined in section 551(1) of this title;

(2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term `rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term “small business” has the same meaning as the term `small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population

[71] Sec. 241(a)(2) of Pub. L. 104-121, 110 Stat. 864, Mar. 29, 1996, added new paragraphs (7) and (8).

of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term "small entity" shall have the same meaning as the terms "small business","small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information")

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either)

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) RECORDKEEPING REQUIREMENT.)The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records. (5 U.S.C. 601.)

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain)

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained

by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda. (5 U.S.C. 602.)

§ 603. Initial regulatory flexibility analysis [72]

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain)

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

[72] As amended by Sec. 241(a)(1) of Pub. L. 104-121, 110 Stat. 864, Mar. 29, 1996, which expanded the coverage of the Regulatory Flexibility Act to include Internal Revenue Service interpretative rules.

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as)

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities. (5 U.S.C. 603.)

§ 604. Final regulatory flexibility analysis [73]

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain)

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes

[73] As amended by Sec. 241(b) of Pub. L. 104-121, 110 Stat. 864, Mar. 29, 1996, by including Internal Revenue interpretative rules, adding "significant" before "summary of the" in paragraph (2), revising paragraph (3), and adding new paragraphs (4) and (5) in subsection (a), and substituting "such analysis or a summary thereof" for "at the time of publication of the final rule under section 553 of this tile a statement describing how the public may obtain such copies" in subsection (b).

of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof. (5 U.S.C. 604.)

§ 605. Avoidance of duplicative or unnecessary analyses [74]

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title. (5 U.S.C. 605.)

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action. (5 U.S.C. 606.)

§ 607. Preparation of analyses

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[74] Sec. 243(a) of Pub. L. 104-121, 110 Stat. 866, Mar. 29, 1996, amended subsection (b) to require agencies to publish factual reasons for certifying that a rule will not impose a significant economic impact on a substantial number of small entities.

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. (5 U.S.C. 607.)

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency. (5 U.S.C. 608.)

§ 609. Procedures for gathering comments [75]

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory

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[75] Sec. 244(a) of Pub. L. 104-121, 110 Stat. 867, Mar. 29, 1996, added "the reasonable use of" before "techniques" in the introductory test of subsection (a), as redesignated, added "including soliciting and receiving comments over computer networks" after "entities" in paragraph (a)(4), designated former text as subsection (a), and added new subsections (b) through (e). Sec. 244(b) of Pub. L. 104-121, 110 Stat. 868, Mar. 29, 1996, states:

"(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.)Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section." (7 U.S.C. 609 note.)

responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as)

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter)

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term `covered agency' means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities. (5 U.S.C. 609.)

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion

of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors) (1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule. (5 U.S.C. 610.)

§ 611. Judicial review [76]

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604. (3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an

[76] As amended by Sec. 242 of Pub. L. 104-121, 110 Stat. 865, Mar. 29, 1996, which removed the prohibition on judicial review of agency compliance with the Regulatory Flexibility Act and allow adversely affected small entities to seek review in court.

action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than)

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to)

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section. (d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law. (5 U.S.C. 611.)

§ 612. Reports and intervention rights [77]

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

[77] As amended by Sec. 243(b) of Pub. L. 104-121, 110 Stat. 866, Mar. 29, 1996.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b). (5 U.S.C. 612.)

EFFECTIVE DATE [78]

Sec. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981. (5 U.S.C. 601 note.)

[78] Sec. 245 of Pub. L. 104-121, 110 Stat. 868, Mar. 29. 1996, states:
"**SEC. 245. EFFECTIVE DATE**.

"This subtitle [Subtitle D, Title II of Pub. L. 104-121] shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment." (5 U.S.C. 601 note.)

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996 [79]

(5 U.S.C. 601 note)

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996". (5 U.S.C. 601 note.)

SEC. 202. FINDINGS.

Congress finds that)

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code. (5 U.S.C. 601 note.)

SEC. 203. PURPOSES.

The purposes of this title are)

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

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[79] Title II of Pub. L. 104-121, 110 Stat. 857, Mar. 29, 1996.

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities. (5 U.S.C. 601 note.)

Subtitle A)Regulatory Compliance Simplification [80]

SEC. 211. DEFINITIONS.

For purposes of this subtitle)

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency. (5 U.S.C. 601 note.)

SEC. 212. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.)For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare

[80] Title II, Subtitle A, of Pub. L. 104-121, 110 Stat. 858, Mar. 29, 1996.

separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.)Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.)An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages. (5 U.S.C. 601 note.)

SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.)Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.)Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) REPORTING.)Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations. (5 U.S.C. 601 note.)

SEC. 214. AMENDMENT TO THE SMALL BUSINESS ACT

(15 U.S.C.648.) [81]

SEC. 215. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies. (5 U.S.C. 601 note.)

SEC. 216. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle. (5 U.S.C. 601 note.)

Subtitle B)Regulatory Enforcement Reforms [82]

SEC. 221. DEFINITIONS.

For purposes of this subtitle)

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency. (5 U.S.C. 601 note.)

SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended)

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"**SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT**.

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[81] This section amends the Small Business Act by adding a new subparagraph to Sec. 648(c)(3) to provide permissive authority for Small Business Development Centers to provide information to small entities regarding compliance with regulatory requirements.

[82] Title II, Subtitle B, of Pub. L. 104-121, 110 Stat. 860, Mar. 29,. 1996.

"(a) DEFINITIONS.)For purposes of this section, the term)

"(1) `Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) `Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.)

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall)

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and

include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.)

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall)

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.". (15 U.S.C. 657.)

SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.)Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.)Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to)

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.)Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 224. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle E--Congressional Review [83]

(5 U.S.C. 801 - 808)

SEC. 251. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8--CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules."

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing)

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress)

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

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[83] Title II, Subtitle E, of Pub. L. 104-121, 110 Stat. 868, Mar. 29, 1996.

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of)

(A) the later of the date occurring 60 days after the date on which)

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date)

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless

the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is)

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring)

(A) in the case of the Senate, 60 session days, or

(B) in the case of the House of Representatives, 60 legislative days, before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though)

(i) such rule were published in the Federal Register (as a rule that shall take effect) on)

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though)

(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

§ 802. Congressional disapproval procedure

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term "submission or publication date" means the later of the date on which)

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a

petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule)

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution)

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(g) This section is enacted by Congress)

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

§ 803. Special rule on statutory, regulatory, and judicial deadlines

(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

(b) The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

§ 804. Definitions

For purposes of this chapter)

(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in)

(A) an annual effect on the economy of $100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

(3) The term "rule" has the meaning given such term in section 551, except that such term does not include)

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

§ 805. Judicial review

No determination, finding, action, or omission under this chapter shall be subject to judicial review.

§ 806. Applicability; severability

(a) This chapter shall apply notwithstanding any other provision of law.

(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

§ 807. Exemption for monetary policy

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

§ 808. Effective date of certain rules

Notwithstanding section 801)

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

SEC. 252. EFFECTIVE DATE.

The amendment made by section 351[84] shall take effect on the date of enactment of this Act.

SEC. 253. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following: "8. Congressional Review of Agency Rulemaking.....801".

DEPARTMENT OF AGRICULTURE ADVISORY COMMITTEES [85]

(7 U.S.C. 2281-2286)

PURPOSES

Sec. 1801. The purposes of this title are to)

(1) require strict financial and program accounting by advisory committees of the Department of Agriculture;

(2) assure balance and objectivity in the membership of such advisory committees; and

(3) prevent the formation or continuation of unnecessary advisory committees by the Department of Agriculture. (7 U.S.C. 2281.)

DEFINITIONS

Sec. 1802. When used in this title)

(1) the term "Secretary" means the Secretary of Agriculture of the United States;

(2) the term "Department of Agriculture" means the United States Department of Agriculture; and

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[84] So in original. Should read section 251.

[85] Pub. L. 95-113, Sec. 1801-1806, 91 Stat. 1041, Sept. 29, 1977; as reenacted by Pub. L. 97-98, Sec. 1116(a), 95 Stat. 1270, Dec. 22, 1981.

(3) the term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof that is established or used by the Department of Agriculture in the interest of obtaining advice or recommendations for the President or the Department of Agriculture, except that such term excludes any committee which (A) is composed wholly of full-time officers or employees of the Federal Government, (B) is established by statute or reorganization plan, or (C) is established by the President. (7 U.S.C. 2282.)

MEMBERSHIP ON ADVISORY COMMITTEES

Sec. 1803. (a) No person other than an officer or employee of the Department of Agriculture may serve simultaneously on more than one advisory committee, unless authorized by the Secretary.

(b) Not more than one officer or employee of any corporation or other non-Federal entity, including all subsidiaries and affiliates thereof, may serve on the same advisory committee at any one time, unless authorized by the Secretary. (c) No person other than an officer or employee of the Department of Agriculture may serve for more than six consecutive years on an advisory committee, unless authorized by the Secretary. (7 U.S.C. 2283.)

ANNUAL REPORT

Sec. 1804. The Secretary shall annually transmit to the appropriate committees of Congress having legislative jurisdiction or oversight with respect to the agency within the Department of Agriculture that provides support services to an advisory committee, and to the Library of Congress)

(1) A copy of the report concerning that advisory committee prepared in compliance with section 6(c) of the Federal Advisory Committee Act (5 U.S.C. App.);

(2) a list of the members of that advisory committee which shall specify the principal place of residence, persons or companies by whom they are employed, and other major sources of income, as defined by the Secretary, of each member; and

(3) a statement of the amount of expenses incurred in connection with advisory committee meetings by any member of an advisory committee for which reimbursement was received from any source other than the United States or the member's employer. (7 U.S.C. 2284.)

BUDGET PROHIBITIONS

Sec. 1805. No advisory committee may expend funds in excess of its estimated annual operating costs by more than 10 per centum or $500, whichever is greater, until it provides the Secretary with an explanation of the need for the additional expenditure and the Secretary approves such additional expenditure. (7 U.S.C. 2285.)

TERMINATION OF ADVISORY COMMITTEES

Sec. 1806. The Secretary shall terminate any advisory committee upon a finding that any such advisory committee)

(1) has expended funds in excess of its estimated annual operating costs by more than 10 per centum or $500, whichever is greater, without the prior approval of the Secretary pursuant to the provisions of section 1805 of this title;

(2) has failed to file all reports required under the provisions of the Federal Advisory Committee Act or this title;

(3) has failed to meet for two consecutive years;

(4) is responsible for functions that otherwise would be or should be performed by Federal employees; or

(5) does not serve or has ceased to serve an essential public function. (7 U.S.C. 2286.)

FEDERAL ADVISORY COMMITTEE ACT [86]

(5 U.S.C. App.)

To authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Advisory Committee Act".

FINDINGS AND PURPOSES

Sec. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the

[86] Pub. L. 92-463, 86 Stat. 770, Oct. 6, 1972.

Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that:

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

Sec. 3. For the purpose of this Act:

(1)[87] The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is:

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

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[87] Reorg. Plan No. 1 of 1977, Section 5F, 42 F.R. 56101, 91 Stat. 1634, transferred advisory committee functions from the Director of the Office of Management and Budget to the Administrator of General Services.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

Sec. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by)

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

Sec. 5. (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall)

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

Sec. 6. (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c)[88] The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by the statute, a list of those advisory committees which the President recommends be abolished together with his reasons

[88] As amended by Pub. L. 97-375, Title II, Sec. 201(c), Dec. 21, 1982, 96 Stat. 1822.

therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES [89]

Sec. 7. (a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine)

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management,[90] shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives

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[89] *See* footnote 87.

[90] "Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, Section 102, 43 F.R. 36037, 92 Stat. 3783, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management.

appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that)

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C)[91] such members)

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent)

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

Sec. 8. (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic

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[91] Sec. 2 of Pub. L. 96-523, 94 Stat. 3040, Dec. 12, 1980, added subparagraph (C), and pursuant to Sec. 3 of Pub. L. 96-523 shall take effect sixty days after date of enactment.

information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall)

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

Sec. 9. (a) No advisory committee shall be established unless such establishment is)

(1) specifically authorized by statue or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

Sec. 10. (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d)[92] Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such

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[92] As amended by Sec. 5(c) of Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1247. Amendment effective 180 days after enactment pursuant to Sec. 6(a) of Pub. L. 94-409.

portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meeting except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

Sec.11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551 (12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

Sec. 12. (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential

advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

Sec. 13. Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

Sec. 14. (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless)

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless)

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer

prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

Sec. 15. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

FEDERAL TORT CLAIMS ACT [93]

(28 U.S.C. 2671-2680)

§ 2671.[94] Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employees of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States,

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[93] Codified by the Act of June 25, 1948, Ch. 646, 62 Stat. 982. Formerly Act of Aug. 2, 1946, Ch. 753, 60 Stat. 842.

[94] As amended by Act of May 24, 1949, 63 Stat. 106; Pub. L. 89-506, 80 Stat. 307, July 18, 1966; Pub. L. 97-124. 95 Stat. 1666, Dec. 29, 1981; and Pub. L. 100-694, 102 Stat. 4564, Nov. 18, 1988. Section 2 of Pub. L. 100-694 provided that:

"(a) FINDINGS.)The Congress finds and declares the following:

"(1) For more than 40 years the Federal Tort Claims Act has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

"(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

"(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

"(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in Westfall v. Erwin, have seriously eroded the common law tort immunity previously available to Federal employees.

"(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

"(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

"(7) In its opinion in Westfall v. Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

"(b) PURPOSE.)It is the purpose of this Act [the Federal Employees Liability and Tort Compensation Act of 1988] to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States." (28 U.S.C. 2671 note.)

members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

§ 2672.[95] Administrative adjustment of claims

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise or settlement in an amount of $2,500 or less made pursuant to this section shall be paid by the head of the Federal agency

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[95] As amended by Act of Apr. 25, 1949, 63 Stat. 62; Act of May 24, 1949, 63 Stat. 106; Act of Sept. 23, 1950, 64 Stat. 987; Pub. L. 86-238, 73 Stat. 471, Sept. 8, 1959; and Pub. L. 89-506, 80 Stat. 306, 308, July 18, 1966; and Pub. L. 101-552, 104 Stat. 2746, Nov. 15, 1990.

concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 2673.[96] Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

§ 2674.[97] Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise

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[96] Section (1) of Pub. L. 89-348, 79 Stat. 1310, Nov. 8, 1965, repealed the requirement for an annual report to Congress.

[97] Pub. L. 100-694, 102 Stat. 4564; 4567, Nov. 18, 1988, added the last two paragraphs.

would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

§ 2675.[98] Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

§ 2676. Judgment as bar

The judgment in an action under section 1346 (b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

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[98] As amended by Act of May 24, 1949, 63 Stat. 107; and Pub. L. 89-506, 80 Stat. 306, July 18, 1966.

§ 2677.[99] Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

§ 2678.[100] Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

§ 2679.[101] Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on

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[99] As amended by Pub. L. 89-506, 80 Stat. 307, July 18, 1966.

[100] *Ibid.*

[101] As amended by Pub. L. 87-258, 75 Stat. 539, Sept. 21, 1961; Pub. L. 89-506, 80 Stat. 307; and Pub. L. 100-694, 102 Stat. 4564. Section 8 of Pub. L. 100-694, 102 Stat. 4565, provided that:

"(a) GENERAL RULE.)This Act and the amendments made by this Act [amending Sections 2671, 2674, and 2679 and enacting provisions set out as 2671 note] shall take effect on the date of the enactment of this Act.

"(b) APPLICABILITY TO PROCEEDINGS.)The amendments made by this Act shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

"(c) PENDING STATE PROCEEDINGS.)With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

"(d) CLAIMS ACCRUING BEFORE ENACTMENT.)With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of the Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act."

claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government)

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place

in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if)

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

§ 2680. [102] **Exceptions**

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[102] As amended by Act of July 16, 1949, 63 Stat. 444; Act of Sept. 26, 1950, 64 Stat. 1038, (continued...)

The provisions of this chapter and section 1346 (b) of this title shall not apply to)

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, `investigative or law enforcement officer' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(...continued)
1043; Pub. L. 86-168, 73 Stat. 389, Aug. 18, 1959; and Pub. L. 93-253, 88 Stat. 50, Mar. 16, 1974.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Railroad Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

PART II

MARKETING AND REGULATORY PROGRAMS

Subpart A. General

AGRICULTURAL MARKETING ACT OF 1946 [1]

(7 U.S.C. 1621-1627)

TITLE II

This title may be cited as the "Agricultural Marketing Act of 1946."

SEC. 202.[2] The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation. It is further declared to be the policy of Congress to promote through research, study, experimentation, and through cooperation among Federal and State agencies, farm organizations, and private industry a scientific approach to the problems of marketing, transportation, and distribution of agricultural products similar to the scientific methods which have been utilized so successfully during the past eighty-four years in connection with the production of agricultural products so that such products capable of being produced in abundance may be marketed in an orderly manner and efficiently distributed. In order to attain these objectives, it is the intent of Congress to provide for (1) continuous research to improve the marketing, handling, storage, processing, transportation, and distribution of agricultural products; (2) cooperation among Federal and State agencies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution processes; (3) an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and

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[1] Title II of the Act of Aug. 14, 1946, 60 Stat. 1087, as amended.

[2] By Joint Resolution of July 3, 1964, 78 Stat. 269, as mended May 15, 1965, 79 Stat. 111, a bipartisan National Commission on Food Marketing was established. The commission is to be composed of five members of the Senate, five members of the House of Representatives and five members appointed by the President. Its duties are to study and to appraise the marketing structure of the food industry and to make reports on their findings to the President and to Congress by July 1, 1966. The Commission ceased to exist ninety days after submission of its final report.

facilities may be improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner. In effectuating the purposes of this title, maximum use shall be made of existing research facilities owned or controlled by the Federal Government or by State agricultural experiment stations and of the facilities of the Federal and State extension services. To the maximum extent practicable marketing research work done hereunder in cooperation with the States shall be done in cooperation with the State agricultural experiment stations; marketing educational and demonstrational work done hereunder in cooperation with the States shall be done in cooperation with the State agricultural extension service; market information, inspection, regulatory work and other marketing service done hereunder in cooperation with the State agencies shall be done in cooperation with the State departments of agriculture, and State bureaus and departments of markets. (7 U.S.C. 1621.)

SEC. 203. The Secretary of Agriculture is directed and authorized)

(a) To conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products: *Provided*, That the results of such research shall be made available to the public for the purpose of expanding the use of American agricultural products in such manner as the Secretary of Agriculture may determine.

(b) To determine costs of marketing agricultural products in their various forms and through the various channels and to foster and assist in the development and establishment of more efficient marketing methods (including analyses of methods and proposed methods), practices, and facilities, for the purpose of bringing about more efficient and orderly marketing, and reducing the price spread between the producer and the consumer.

(c)[3] To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. Within thirty days after the enactment of the Food and Agriculture Act of 1977, the Secretary shall by regulation

[3] Wool standards were previously issued under the provisions of the Wool Standards Act of May 17, 1928, 45 Stat. 593 (7 U.S.C. 415-415d). Authority for ice cream standards was added by Pub. L. 95-113, 91 Stat. 920, Sept. 29, 1977. For provisions pertaining to the cosmetic appearance of fruits and vegetables, see 7 U.S.C. 1622 note.

adopt a standard of quality for ice cream which shall provide that ice cream shall contain at least 1.6 pounds of total solids to the gallon, weigh not less than 4.5 pounds to the gallon and contain not less than 20 percent total milk solids, constituted of not less than 10 percent milkfat. In no case shall the content of milk solids not fat be less than 6 percent. Whey shall not, by weight, be more than 25 percent of the milk solids not fat. Only those products which meet the standard issued by the Secretary may bear a symbol thereon indicating that they meet the Department of Agriculture standard for "ice cream".

(d) To conduct, assist, foster, and direct studies and informational programs designed to eliminate artificial barriers to the free movement of agricultural products.

(e) To foster and assist in the development of new or expanded markets (domestic and foreign) and new and expanded uses and in the moving of larger quantities of agricultural products through the private marketing system to consumers in the United States and abroad.

(f) To conduct and cooperate in consumer education for the more effective utilization and greater consumption of agricultural products: *Provided*, That no money appropriated under the authority of this Act shall be used to pay for newspaper or periodical advertising space or radio time in carrying out the purposes of this section and section 203 (e).

(g)[4] To collect and disseminate marketing information, including

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[4] Sec. 124 of Pub. L. 102-237, 105 Stat. 1844, Dec. 13, 1991, states:

"**SEC. 124. LAMB PRICE AND SUPPLY REPORTING SERVICES REPORT AND SYSTEM.**

"(a) REPORT.)Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on measure that are necessary to improve the lamb price and supply reporting services of the Department of Agriculture, including recommendations to establish a complete information gathering system that reflects the
market structure of the national lamb industry. In preparing the report the Secretary shall examine measure to improve information on)

"(1) price reporting series of wholesale, retail, box, carcass, pelt, offal, and live lamb sales in the United States, including markets in)

"(A) California (including San Francisco);
"(B) the East Coast region (including Washington, D.C.);
"(C) the Midwest region (including Chicago, Illinois);
"(D) Texas;
"(E) the Rocky Mountain region; and
"(F) Florida;

"(2) sheep and lamb inventories, including on-feed reports;
"(3) the price and supply relationships between retailers and breakers;
"(4) the viability of voluntary or mandatory reporting for sheep prices; and
"(5) information on the import and export of sheep, analyzed by cut, carcass, box, breeder stock, and sex.

"(b) PRICE DISCOVERY AND REPORTING SYSTEM.)

"(1) SYSTEM REQUIRED.)Based on the report required under subsection (a), the Secretary shall)

"(A) develop a price discovery system formula for the lamb market, such as carcass equivalent pricing; and

"(B) establish a price discovery and reporting system for the lamb market to assist lamb producers to better allocate their resources and make informed production and marketing decisions.

"(2) IMPLEMENTATION.)The price discovery and reporting system for the lamb market shall be implemented by the Secretary not later than 180 days after the date of the submission of the report.

"(3) AUTHORIZATION OF APPROPRIATIONS.)There are authorized to be appropriated such sums as may be necessary to develop and establish the system required under this subsection.

"(c) CONSULTATION.)In preparing the report required under subsection (a) and establishing the price discovery and reporting system required under subsection (b), the Secretary shall consult with lamb producers and other persons in the national lamb industry." (7 U.S.C. 1622 note.)

Section 1001 of Pub. L. 105-18, 111 Stat. 172, June 12, 1997, reads:

"SEC. 1001. COLLECTION AND DISSEMINATION OF INFORMATION ON PRICES RECEIVED FOR BULK CHEESE.

"(a) IN GENERAL.)Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall collect and disseminate, on a weekly basis, statistically reliable information, obtained from cheese manufacturing areas in the United States on prices received and terms of trade involving bulk cheese, including information on the national average price for bulk cheese sold through spot and forward contract transactions. To the maximum extent practicable, the Secretary shall report the prices and terms of trade for spot and forward contract transactions separately.

"(b) CONFIDENTIALITY.)All information provided to, or acquired by, the Secretary under

(continued...)

adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

(...continued)

subsection (a) shall be kept confidential by each officer and employee of the Department of Agriculture except that general weekly statements may be issued that are based on the information and that do not identify the information provided by any person.

"(c) REPORT.)Not later than 150 days after the date of enactment of this Act, the Secretary shall report to the Committee on Agriculture, and the Committee on Appropriations, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Appropriations, of the Senate, on the rate of reporting compliance by cheese manufacturers with respect to the information collected under subsection (a). At the time of the report, the Secretary may submit legislative recommendations to improve the rate of reporting compliance.

"(d) TERMINATION OF EFFECTIVENESS.)The authority provided by subsection (a) terminates effective April 5, 1999." (7 U.S.C. 1622 note.)

(h)[5] To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products[6] when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection. Any fees collected under this subsection, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the trust fund account that incurs the cost of the services provided under this subsection and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services. Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any official certificate issued under the authority of this subsection shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained. Whoever knowingly shall falsely make, issue, alter, forge, or counterfeit any official certificate, memorandum, mark, or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized under this section or knowingly cause or procure, or aid, assist in, or be a party to, such false making, issuing, altering, forging, or counterfeiting, or whoever knowingly shall possess without promptly notifying the Secretary of Agriculture or his representative, utter, publish, or use as true, or cause to be uttered, published, or used as true, any such falsely made, altered, forged, or counterfeited official certificate, memorandum, mark, identification, or device, or whoever knowingly represents that an agricultural product has been officially inspected or graded (by an

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[5] Subsection as amended by 69 Stat. 553, which added a sentence to provide penalties for forgery or alteration of inspection certificates, unauthorized use of official grade marks or designations, and false or deceptive reference to United States grade standards or services. Pub. L. 98-403, Section 2, 98 Stat. 1480, Aug. 28, 1984, authorized the Secretary to invest the funds contained in the trust fund account in interest-bearing accounts or U.S. Government debt instruments and to apply without fiscal year limitation, any interest earned on such funds against the cost of providing such services.

[6] Inspection of fish, shellfish and the products thereof transferred to the Department of Commerce. *See* 16 U.S.C. 742(e) and Reorganization Plan 4 (23 F.R. 2304, 35 F.R. 15627), 1970.

authorized inspector or grader) under the authority of this section when such commodity has in fact not been so graded or inspected shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(i) To determine the needs and develop or assist in the development of plans for efficient facilities and methods of operating such facilities for the proper assembly, processing, transportation, storage, distribution, and handling of agricultural products.

(j) To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body or the Secretary of Transportation[7] respect to rates, charges, tariffs, practices and services, or by working directly with individual carriers or groups of carriers.

(k) To collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

(l) To develop and promulgate, for the use and at the request of any Federal agency or State, procurement standards and specifications for agricultural products, and submit such standards and specifications to such agency or State for use or adoption for procurement purposes.

(m) To conduct, assist, encourage, and promote research, investigation, and experimentation to determine the most efficient and practical means, methods, and processes for the handling, storing, preserving, protecting, processing, and distributing of agricultural commodities to the end that such commodities may be marketed in an orderly manner and to the best interest of the producers thereof.

(n) To conduct such other research and services and to perform such other activities as will facilitate the marketing, distribution, processing, and utilization of agricultural products through commercial channels. (7 U.S.C. 1622.)

SEC. 204 (a) In order to conduct research and service work in connection with the preparation for market, processing, packaging, handling, storing, transporting, distributing, and marketing of agricultural products as

[7] Pub. L. 97-31, Sec. 12, 95 Stat. 153, Aug. 6, 1981, added reference to Secretary of Transportation.

authorized by this title, there is hereby authorized to be appropriated the following sums:

(1) $2,500,000 for the fiscal year ending June 30, 1947, and each subsequent fiscal year.

(2) An additional $2,500,000 for the fiscal year ending June 30, 1948, and each subsequent fiscal year.

(3) An additional $5,000,000 for the fiscal year ending June 30, 1949, and each subsequent fiscal year.

(4) An additional $5,000,000 for the fiscal year ending June 30, 1950, and each subsequent fiscal year.

(5) An additional $5,000,000 for the fiscal year ending June 30, 1951, and each subsequent fiscal year.

(6) In addition to the foregoing, such additional funds beginning with the fiscal year ending June 30, 1952, and thereafter, as all Congress may deem necessary.

Such sums appropriated in pursuance of this title shall be in addition to, and not in substitution for, sums appropriated or otherwise made available to the Department of Agriculture.

(b) The Secretary of Agriculture is authorized to make available from such funds such sums as he may deem appropriate for allotment to State departments of agriculture, State bureaus and departments of markets, State agricultural experiment stations, and other appropriate State agencies for cooperative projects in marketing service and in marketing research to effectuate the purposes of title II of this Act: *Provided*, That no such allotment and no payment under any such allotment shall be made for any fiscal year to any State agency in excess of the amount which such State agency makes available out of its own funds for such research. The funds which State agencies are required to make available in order to qualify for such an allotment shall be in addition to any funds now available to such agencies for marketing services and for marketing research. The allotments authorized under this section shall be made to the agency or agencies best equipped and qualified to conduct the specific project to be undertaken. Such allotments shall be covered by cooperative agreements between the Secretary of Agriculture and the cooperating agency and shall include appropriate provisions for preventing duplication or overlapping of work within the State or States cooperating. Should duplication or overlapping occur subsequent to approval of a cooperative project or allotment of funds, the Secretary of Agriculture is authorized and directed to withhold unexpended balances on such projects notwithstanding the prior approval thereof. (7 U.S.C. 1623.)

SEC. 205. (a)[8] In carrying out the provisions of title II of this Act, the Secretary of Agriculture may cooperate with other branches of the Government, State agencies, private research organizations, purchasing and consuming organizations, boards of trade, chambers of commerce, other associations of business or trade organizations, transportation and storage agencies and organizations, or other persons or corporations engaged in the production, transportation, storing, processing, marketing, and distribution of agricultural products whether operating in one or more jurisdictions. The Secretary of Agriculture shall have authority to enter into contracts and agreements under the terms of regulations promulgated by him with States and agencies of States, private firms, institutions, and individuals for the purpose of conducting research and service work, making and compiling reports and surveys, and carrying out other functions relating thereto when in his judgment the services or functions to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department of Agriculture. Contracts hereunder may be made for work to be performed within a period not more than four years from the date of any such contract, and advance, progress, or other payments may be made. The provisions of section 3324(a) and (b) of title 31 and section 3709 (41 U.S.C., sec. 5) of the Revised Statutes shall not be applicable to contracts or agreements made under the authority of this section. Any unexpended balances of appropriations obligated by contracts as authorized by this section may, notwithstanding the provisions of section 5 of the Act of June 20, 1874, as amended (31 U.S.C., sec. 713), remain upon the books of the Treasury for not more than five fiscal years before being carried to the surplus fund and covered into the Treasury. Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.

(b)[9] The Secretary of Agriculture shall promulgate such orders, rules, and regulations as he deems necessary to carry out the provisions of this title. (7 U.S.C. 1624.)

SEC. 206. In order to facilitate administration and to increase the effectiveness of the marketing research, service, and regulatory work of the Department of Agriculture to the fullest extent practicable, the Secretary of Agriculture is authorized, notwithstanding any other provisions of law, to transfer, group, coordinate, and consolidate the functions, powers, duties,

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[8] Section 713 of Title 31, referred to in subsection (a), was repealed by the Act of July 6, 1949, 63 Stat. 407. "Section 3324(a) and (b) of title 31" was substituted for "section 3648 (31 U.S.C., sec. 529)" on authority of Pub. L. 97-258, Sec. 4(b), 96 Stat. 1067, Sept. 13, 1982.

[9] A sentence in subsection (b) requiring the Secretary of Agriculture to include in his annual report to Congress a complete statement of research work being performed under contracts or cooperative agreements under this Act was repealed by the Act of Aug. 30, 1954, 68 Stat. 966.

and authorities of each and every agency, division, bureau, service, section, or other administrative unit in the Department of Agriculture primarily concerned with research, service, or regulatory activities in connection with the marketing, transportation, storage, processing, distribution of, or service or regulatory activities in connection with, the utilization of, agricultural products, into a single administrative agency. In making such changes as may be necessary to carry out effectively the purposes of this title, the records, property, personnel, and funds of such agencies, divisions, bureaus, services, section, or other administrative units in the Department of Agriculture affected thereby are authorized to be transferred to and used by such administrative agency to which the transfer may be made, but such unexpected balances of appropriations so transferred shall be used only for the purposes for which such appropriations were made. (7 U.S.C. 1625.)

SEC. 207. When used in this title, the term "agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof, and the term "State" when used in this chapter shall include the Virgin Islands and Guam.[10] (7 U.S.C. 1626.)

SEC. 208. The Secretary of Agriculture shall have the power to appoint, remove, and fix, in accordance with existing law, the compensation of such officers and employees, and to make such expenditures as he deems necessary, including expenditures for rent outside the District of Columbia, travel, supplies, books, equipment, and such other expenditures as may be necessary to the administration of this title: *Provided*, That the Secretary of Agriculture may appoint and fix the compensation of any technically qualified person, firm or organization by contract or otherwise on a temporary basis and for a term not to exceed six months in any fiscal year to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws or the Classification Act of 1923, as amended.[11] (7 U.S.C. 1627.)

[10] Pub. L. 92-318, 86 Stat. 351, June 23, 1972, included Guam and the Virgin Islands within meaning of State.

[11] The Classification Act of 1923, as amended, now cited as 5 U.S.C. chapter 51 and subsection III of chapter 53.

COSMETIC APPEARANCE [1]

(7 U.S.C. 1622 note)

SEC. 1351. Definition.

As used in this subtitle, the term "cosmetic appearance" means the exterior appearance of an agricultural commodity, including changes to that appearance resulting from superficial damage or other alteration that do not significantly affect yield, taste, or nutritional value.

SEC. 1352. Research.

(a) REQUIREMENT.)The Secretary of Agriculture shall conduct research to examine the effects, to the extent listed in subsection (b), of grade standards and other regulations, as developed and promulgated pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), and other statutes governing cosmetic appearance.

(b) SCOPE OF RESEARCH.)The primary goal of this research is to investigate the extent to which grade standards and other regulations governing cosmetic appearance affect pesticide use in the production of perishable commodities. The research shall also)

(1) determine pesticide application levels for United States perishable commodity production and assess trends, and factors influencing those trends, of pesticide application levels since 1975;

(2) determine the extent to which Federal grade standards and other regulations affect pesticide use in agriculture for cosmetic appearance;

(3) determine the effect of reducing emphasis on cosmetic appearance in grade standards and other regulations on)

(A) the application and availability of pesticides in agriculture;

(B) the adoption of agricultural practices that result in reduced pesticide use;

(C) production and marketing costs;

(D) domestic and international markets and trade for perishable commodities;

(4) determine the extent to which grade standards and other regulations reflect consumer preferences;

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[1] Pub. L. 101-624, Title XIII, Subtitle C, 104 Stat. 3566, Nov. 28, 1990; as amended by Sec. 114(a)(3) of Pub. L. 102-237, 105 Stat. 1838, Dec. 13, 1991.

(5) develop options for implementation of food marketing policies and practices that will remove obstacles that may exist to pesticide use reduction, based on the findings of research conducted under this section.

(c) FIELD RESEARCH.)

(1) LENGTH OF PROJECTS.)The Secretary of Agriculture shall implement, not later than 12 months after the date of enactment of this Act, a minimum of three, 2-year market research projects, in at least three States, to demonstrate and evaluate the feasibility of consumer education and information programs.

(2) SCOPE OF FIELD RESEARCH.)Research under paragraph (1) shall be conducted to evaluate programs designed to)

(A) offer consumers choices among perishable commodities produced with different production practices;

(B) provide consumers with information about agricultural practices used in the production of perishable commodities; or

(C) educate the public about the relationship, as determined in the research conducted under this subtitle, between the cosmetic appearance of perishable commodities and pesticide use.

(d) DISSEMINATION OF RESULTS.)The Secretary of Agriculture shall disseminate to concerned parties the results obtained from prior scientifically valid research concerning Federal marketing policies and practices described in this section to avoid any duplication of effort and to ensure that current knowledge concerning such policies and practices is enhanced.

(e) ADVISORY COMMITTEE.)

(1) ESTABLISHMENT.)The Secretary of Agriculture shall establish an advisory committee for the purpose of providing ongoing review of the implementation of the requirements in this section and providing the Secretary of Agriculture with recommendations regarding the implementation of those requirements.

(2) MEMBERSHIP.)The Advisory Committee shall consist of 12 members comprised of three representatives from not-for-profit consumer organizations, three representatives from not-for-profit environmental organizations, three representatives from production agriculture and the perishable commodity grower and shipper community, and three representatives from the food retailing sector, each with experience in the policy issues discussed in this section.

(f) REPORT.)The Secretary of Agriculture shall report to Congress on the research conducted under this section no later than September 30, 1992. The Secretary shall report on the research conducted under subsection (c) no later than September 30, 1993.

SEC. 1353. Changes in Procedural Regulations.

With regard to Federal grade standards developed and promulgated pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), the Secretary of Agriculture shall:

(1) Take into account the impact of those standards on the ability of perishable commodity growers to reduce the use of pesticides.

(2) Provide for citizens outside of the perishable commodity industry fair and reasonable opportunity to formally petition a change in grade standards.

(3) Provide for a comment period after a formal petition to change grade standards has been made to enable all interested parties to submit information. The Secretary of Agriculture shall evaluate the information and consider it in the revision process.

(4) Provide interested parties with annual status reports during the period 1992 through 1994, updated upon request, on all pending grade standard changes the Department of Agriculture is considering.

SEC. 1354. Authorization of Appropriations.

There are authorized to be appropriated to carry out the activities required under this subtitle, $4,000,000 for each fiscal year.

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937, [1]

REENACTING, AMENDING, AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

(7 U.S.C. 601, 602, 608a)608e, 610, 612, 614, 624, 671)674)

AN ACT To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that Act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

DECLARATION

[It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce. (7 U.S.C. 601.)][2]

(b) Section 2 (relating to declaration of policy);

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[1] Approved June 3, 1937, 50 Stat. 246. Section 1 of this Act reenacted the following sections of Title 1 of the Agricultural Adjustment Act of 1933, as amended: 1; 2; 8a(5), (6), (7), (8), (9); 8b; 8c; 8e; 10(a), (b)(2), (c), (f), (g), (h), (i); 12(a), (c); 14; 22. The language of the provisions which were reenacted (with all amendments up to date of printing) are set forth in brackets after the appropriate subsections.

[2] The Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1361, (7 U.S.C. 601 note), as reenacted and amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86, 87 Stat. 224, Pub. L. 95-113, 91 Stat. 919, Sept. 29, 1977; Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981; Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985; and Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990
specifies "The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 shall be the same after the amendments made by this title take effect as it was before the effective date of the amendments."

DECLARATION OF POLICY

[SEC. 2. It is hereby declared to be the policy of Congress)

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 301 (a)(1) of the Agricultural Adjustment Act of 1938.[3]

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such production research, marketing research, and development projects provided in section 8c(6)(I),[4] such container and pack requirements provided in section 8(c)(6)(H)[5] such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 8c(2), other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.[6]

(4) Through the exercise of the power conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 8c(2) as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.[7]

(5) Through the exercise of the power conferred upon the Secretary of Agriculture under this title, to continue for the remainder of any marketing season or marketing year, such regulation pursuant to any order as will tend to avoid a disruption of the orderly marketing of any commodity and be in the

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[3] Amended by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1247) to refer to parity prices as defined in the Agricultural Adjustment Act of 1938.

[4] Authority for production research under marketing agreements and orders was added by Pub. L. 91-292, 84 Stat. 333, June 25, 1970.

[5] The words "such container and pack requirements provided in section 8(c)(6) (H)" were added by Pub. L. 89-330, 79 Stat. 1270, Nov. 8, 1965.

[6] Subsection (3) added by Act of Aug. 1, 1947, 61 Stat. 707.

[7] Subsection (4) added by section 401 of the Agricultural Act of 1954, 68 Stat. 906.

public interest, if the regulation of such commodity under such order has been initiated during such marketing season or marketing year on the basis of its need to effectuate the policy of this title.[8] (7 U.S.C. 602.)]

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement);

VIOLATIONS AND ENFORCEMENT

[SEC. 8a. (5) Any person exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture and any other person knowingly participating or aiding in the exceeding of such quota or allotment shall forfeit to the United States a sum equal to the value of such excess at the current market price for such commodity at the time of violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.[9]

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several United States attorneys, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.
(7 U.S.C. 608a.)]

(d) Section 8b (relating to marketing agreements);

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[8] Subsection (5) added by section 141 of the Agricultural Act of 1961 (Aug. 8, 1961, 75 Stat. 303).

[9] Amended by section 141 of the Agricultural Act of 1961 (Aug. 8, 1961, 75 Stat. 304).

[SEC. 8b.[10] (a) In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this Act.

(b)(1) If an agreement with the Secretary is in effect with respect to peanuts pursuant to this section)

(A) all peanuts handled by persons who have not entered into such an agreement with the Secretary shall be subject to inspection to the same extent and manner as is required by such agreement;

(B) no such peanuts shall be sold or otherwise disposed of for human consumption if such peanuts fail to meet the quality requirements of such agreement; and

(C)[11] any assessment (except with respect to any assessment for the indemnification of losses on rejected peanuts) imposed under the agreement shall)

(i) apply to peanut handlers (as defined by the Secretary) who have not entered into such an agreement with the Secretary in addition to those handlers who have entered into the agreement; and

(ii) be paid to the Secretary.

(2)[12] Violation of this subsection by a person who has not entered into such an agreement shall result in the assessment by the Secretary of a penalty equal to 140 percent of the support price for quota peanuts multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B), as determined under section 108B of the Agricultural Act of 1949 (7 U.S.C.

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[10] Pub. L. 101-220, 103 Stat. 1878, Dec. 12, 1989, designated existing provisions as subsection (a) and added subsection (b), to require peanut handlers who have not signed the marketing agreement to meet the same quality requirements as specified in the peanut marketing agreement. Sec. 4(c) of Pub. L. 101-220, 103 Stat. 1878, Dec. 12, 1989, provided that: "The amendment made by this section shall be effective with respect to 1990 and subsequent crops of peanuts.".

[11] Sec. 1109(b) of Pub. L. 103-66, 107 Stat. 326, Aug. 10, 1993, added subparagraph (C), requiring non-signers of the peanut agreement to pay the same assessments as the signers.

[12] Sec. 115(1) of Pub. L. 102-237, 105 Stat. 1840, Dec. 13, 1991, struck "7 U.S.C. 1445c-2" and inserted "1445c-3".

1445c)3), for the marketing year for the crop with respect to which such violation occurs. (7 U.S.C. 608b)]

(e) Section 8c (relating to orders)

ORDERS

[SEC.1 8c. (1)[13] The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time, amend orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen pears, grapefruit, cherries, apples, or cranberries,[14] the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds,[15] pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio[16] and not including fruits for

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[13] Pub. L. 102-553, 106 Stat. 4141, Oct. 28, 1992, added the last two sentences, requiring USDA to expedite rulemaking for Federal marketing orders.

[14] "Pears," added by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972, . The words "cherries, apples, or cranberries," were added by section 141 of the Agricultural Act of 1961, 75 Stat. 304, August 8, 1961.

[15] The words "filberts, almonds," were added by the Act of June 29, 1949, 63 Stat. 282.

[16] Authority to provide for marketing orders for apples produced in Colorado, Utah, New

(continued...)

canning or freezing other than pears, olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho),[17] tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing and not including potatoes for canning, freezing, or other processing[18]), hops, honeybees, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this Act, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs), fruits and vegetables for canning or freezing, including potatoes for canning, freezing, or other processing,[19] and apples), or any regional or market classification thereof, not subject to orders under (A) of this paragraph, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced

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(...continued)

Mexico, Illinois, and Ohio was added by Pub. L. 91-341, July 18, 1970, 84 Stat. 438.

[17] The language referring to the States, other than Idaho, was added by section 141 of the Agricultural Act of 1961. "Pears," added by Pub. L. 92-466, Oct, 6, 1972, 86 Stat. 780.

[18] The words "and not including potatoes for canning, freezing, or other processing" were added by Pub. L. 91-196, 84 Stat. 14.

[19] Pub. L. 98-180, 97 Stat. 1151, Nov. 29, 1983, authorized eggs and poultry which produce commercial eggs for marketing orders. The words "including potatoes for canning, freezing, or other processing," were added by Pub. L. 91-196, 84 Stat. 14. Pub. L. 91-196 is effective only from date of enactment (Feb. 20, 1970) to two years afterward (Feb. 20, 1972). Pub. L. 92-233, Feb. 15, 1972, 86 Stat. 39, made permanent the amendment to the Act.

in more than one of the following production areas: the Virginia-Carolina production area, the Southwest production area, and the Southwest production area. If the Secretary determines that the declared policy of the title will be better achieved thereby (i) the commodities of the same general class used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of section 8c (6) and (7) of this title.

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by the section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS)MILK AND ITS PRODUCTS

(5)[20] In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

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[20] Sec. 107 of Pub. L. 97-98, 95 Stat. 1220 states: "Not later than Dec. 31, 1982, the Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry a report describing the strengths and weaknesses of existing Federal programs, and the consequences of possible new programs, for controlling or minimizing surpluses of fluid milk and the products thereof. The report shall include, but need not be limited to, an assessment, on a region by region basis, of the effect of existing and proposed pricing mechanisms on supply and demand conditions, including the impact on farm income and consumer costs. The report shall also describe the social costs and benefits associated with such programs."

Sections 103 and 104 of Pub. L. 101-624, 104 Stat. 3379, Nov. 28, 1990 state:

"Sec. 103. Minnesota-Wisconsin Price Series Reform.

"(a) IN GENERAL.)Within 60 days of the date of enactment of this Act, the Secretary of Agriculture shall commence to accept alternative pricing formula recommendations, as they may relate to the Minnesota-Wisconsin price series used to determine the minimum prices paid under milk marketing orders, in order to amend such milk marketing orders authorized under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937. Among the alternative pricing formulas to be considered by the Secretary shall be a price series based on prices paid by milk processors for Grade A milk and
manufacturing grade milk that is used in the manufacture of dairy products.

"(b) AVAILABILITY OF DATA.)The Secretary shall compile and make available to the public the historical and current data used to compare the alternative pricing formulas submitted and recommended as provided in subsection (a) with the existing Minnesota-Wisconsin price series.

"(c) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.)

"(1) ANNOUNCEMENT OF HEARING.)Not later than Oct. 1, 1991, the Secretary shall)

"(A) announce a national hearing to consider the proposed replacement of the Minnesota-Wisconsin price series in Federal milk marketing orders; and

"(B) invite industry and consumer proposals on the specific provisions to be considered for each order.

"(2) REPORT TO CONGRESS.)On issuance of the final decision on the hearing proposals, the Secretary shall report the decision to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(3) OPPORTUNITY FOR PUBLIC COMMENT.)The opportunity for public comment on the recommended decision shall not be less than 30 legislative days. For purposes of this paragraph, the term `legislative day' means a day on which either House of Congress is in session.

"Sec. 104. Hearings on Federal Milk Marketing Orders.

"The Secretary of Agriculture shall)

"(1) conclude the national hearings announced by the Secretary on Mar. 29, 1990, regarding possible changes in the pricing provisions of Federal milk marketing orders; and

"(2) to the maximum extent practicable consistent with applicable laws, effect any resulting system-wide changes in the Federal orders setting minimum prices that milk processors must pay for Grade A milk received from producers by Jan. 1, 1992." (7 U.S.C. 608c note.)

(A)[21] Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers. Throughout the 2-year period beginning on the effective date of this sentence (and subsequent to such 2-year period unless modified by amendment to the order involved), the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices for milk of the highest use classification under orders that are in effect under this section on the date of the enactment of the Food Security Act of 1985 shall be as follows:

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
New England	$3.24
New York-New Jersey	3.14
Middle Atlantic	3.03
Georgia	3.08
Alabama-West Florida	3.08
Upper Florida	3.58
Tampa Bay	3.88
Southeastern Florida	4.18
Michigan Upper Peninsula	1.35
Southern Michigan	1.75
Eastern Ohio-Western Pennsylvania	1.95
Ohio Valley	2.04
Indiana	2.00
Chicago Regional	1.40
Central Illinois	1.61

[21] Pub. L. 99-198, 99 Stat. 1372, Dec. 23, 1985, amended subparagraph (A) to require adjustment to the Class I prices for fluid milk under marketing orders as specified for a two-year period, and subsequently unless modified by amendments, and are to be effective the first day of the first month that occurs more than 120 days after enactment (May 1, 1986).

Southern Illinois	1.92
Louisville-Lexington-Evansville	2.11
Upper Midwest	1.20
Eastern South Dakota	1.50
Black Hills, South Dakota	2.05
Iowa	1.55
Nebraska-Western Iowa	1.75
Greater Kansas City	1.92
Tennessee Valley	2.77
Nashville, Tennessee	2.52
Paducah, Kentucky	2.39
Memphis, Tennessee	2.77
Central Arkansas	2.77
Fort Smith, Arkansas	2.77
Southwest Plains	2.77
Texas Panhandle	2.49
Lubbock-Plainview, Texas	2.49
Texas	3.28
Greater Louisiana	3.28
New Orleans-Mississippi	3.85

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
Eastern Colorado	$2.73
Western Colorado	2.00
Southwestern Idaho-Eastern Oregon	1.50
Great Basin	1.90
Lake Mead	1.60
Central Arizona	2.52
Rio Grande Valley	2.35
Puget Sound-Inland	1.85
Oregon-Washington	1.95

Effective at the beginning of such two-year period, the minimum prices for milk of the highest use classification shall be adjusted for the locations at which delivery of such milk is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provisions is approved or favored

by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, (d)[22] a further adjustment to encourage

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[22] The Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, Nov. 3, 1965, amended clause (d) and added the remainder of subparagraph B, but was not effective after Dec. 31, 1960. This date was changed to Dec. 31, 1970, by Pub. L. 90-559, 82 Stat. 996, Oct. 11, 1968. The
Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1359, Nov. 30, 1970, subsequently amended subparagraph (B) of subsection 8c(5) by deleting everything following the comma at the end of clause (c) and inserting new clauses (d), (e), and (f). Sec. 101(a)(1) of Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981 deleted clause (f), which provided authority for Class I Base Plans. Sec. 101(b) of Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981, provided that "The provisions of subsection (a) [of Pub. L. 97-98] shall become effective Jan. 1, 1982 and shall terminate Dec. 31, 1985.". *See* footnote 47. Sec. 132 of Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985, extended the date to Dec. 31, 1990. Sec. 108 of Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990, extended the date to Dec. 31, 1995. Sec. 1105(b) of Pub. L. 103-66, 107 Stat. 317, Aug. 10, 1993, extended the date to Dec. 31, 1996. Sec. 116 of Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990, states:

"Sec. 116. Multiple Component Pricing Study.

"(a) IN GENERAL.)Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall initiate a study to determine whether, and to what extent, milkfat is being produced in the United States in excess of commercial market needs as a result of any provision of law, regulation, or order that affects the manner in which producers receive payment for milk on the basis of the milk components contained in their marketings of milk under any Federal or State milk pricing program.

"(b) STUDY.)In conducting the study, the Secretary shall assess the potential impact on achieving balance in the production, marketing, and domestic commercial use of milkfat through adoption of multiple component pricing programs under Federal and State milk pricing programs.

"(c) REPORT.)Not Later than 180 days after the date of enactment of this Act, the Secretary shall)

"(1) report the results of the study conducted under subsection (a), together with associated recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(continued...)

seasonal adjustments in the production of milk through equitable apportionment of the total value of the milk purchased by any handler, or by all handlers, among producers on the basis of their marketings of milk during a representative period of time, which need not be limited to one year, (e)[23] a provision providing for the accumulation and disbursement of a fund to encourage seasonal adjustments in the production of milk may be included in an order, and (f)[24] a further adjustment, equitably to apportion the total value of milk purchased by any handler or by all handlers among producers on the basis of the milk components contained in their marketings of milk.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of the two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii)

(...continued)

"(2) publish the results of the study.

"(d) IMPLEMENTATION IN FEDERAL MARKETING ORDERS.)On completion and publication of the study described in this section, the Secretary shall)

"(1) announce a national hearing to consider the adoption of multiple component pricing provisions in individual Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

"(2) invite industry and consumer proposals on the specific provisions to be considered for each order." (7 U.S.C. 608c note.)

[23] Clause (e) as amended by Sec. 115(2) of Pub. L. 102-237, 105 Stat. 1840, Dec. 13, 1991.

[24] Clause (f) added by Sec. 112 of Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990.

for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(H)[25] Marketing orders applicable to milk and its products may be limited in application to milk used for manufacturing.

(I)[26] Establishing or providing for the establishment of research and development projects, and advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products, to be financed by producers in a manner and at a rate specified in the order, on all producer milk under the order. Producer contributions under this subparagraph may be deducted from funds due producers in computing total pool value or otherwise computing total funds due producers and such deductions shall be in addition to the adjustments authorized by subparagraph (B) of subsection 8c(5). Provision may be made in the order to exempt, or allow suitable adjustments or credits in connection with, milk on which a mandatory

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[25] New subsection (H) added by Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, Nov. 3, 1965, with a provision that it would not be effective after Dec. 31, 1969. This date was changed to Dec. 31, 1970, by Pub. L. 90-559, 82 Stat. 996, and then subsequently amended to extend the date to Dec. 31, 1973, by Pub. L. 91-524, 84 Stat. 1361, Nov. 30, 1970. The Food and Agriculture Act of 1965, Pub. L. 89-321, 79 Stat. 1187, as amended by Pub. L. 95-113, 91 Stat. 919, Sept. 29, 1977; Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981, Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985, and Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990 provides: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et. seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title take effect as it was before the effective date of such amendments."

[26] New subsection (I) added by Pub. L. 91-670, 84 Stat. 2040, Jan. 11, 1971.

checkoff for advertising or marketing research is required under the authority of any State law. Such funds shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as shall be specified in the order. Such agency may expend such funds for any of the purposes authorized by this subparagraph and may designate, employ, and allocate funds to persons and organizations engaged in such programs which meet the standards and qualifications specified in the order. All funds collected under this subparagraph shall be separately accounted for and shall be used only for the purposes for which they were collected. Programs authorized by this subparagraph may be either local or national in scope, or both, as provided in this order, but shall not be international. Order provisions under this subparagraph shall not become effective in any marketing order unless such provisions are approved by producers separately from other order provisions, in the same manner provided for the approval of marketing orders, and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection 8c(16)(B). Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order. Notwithstanding any other provision of this Act, as amended, any producer against whose marketings any assessment is withheld or collected under the authority of this subparagraph, and who is not in favor of supporting the research and promotion programs, as provided for herein, shall have the right to demand and receive a refund of such assessment pursuant to the terms and conditions specified in the order.

(J)[27] Providing for the payment, from the total sums payable by all handlers for milk (irrespective of the use classification of such milk) and before computing uniform prices under paragraph (A) and making adjustments in payments under paragraph (C), to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made

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[27] New subsection (J) added by Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985. Section 9 of Pub. L. 99-260, 100 Stat. 51, Mar. 20, 1986, provided:

"(a) HEARING.)Not later than 90 days after receipt of a proposal to amend a milk marketing order in accordance with section 8c(5)(J) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(5)(J)) (as added by section 133 of the Food Security Act of 1985), the Secretary of Agriculture shall conduct a hearing on the proposal.

"(b) IMPLEMENTATION.)Not later than 120 days after a hearing is conducted under subsection (a), the Secretary shall implement, in accordance with the Agricultural Adjustment Act, a marketwide service payment program under section 8c(5)(J) of such Act that meets the requirements of such Act." (7 U.S.C. 608c note.)

under paragraph (C), for services of marketwide benefit, including but not limited to)

(i) providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;

(ii) handling on specific days quantities of milk that exceed the quantities needed by handlers; and

(iii) transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

(K)(i) Notwithstanding any other provision of law, milk produced by dairies)

(I) owned or controlled by foreign persons; and

(II) financed by or with the use of bonds the interest on which is exempt from Federal income tax under section 103 of the Internal Revenue Code of 1986;

shall be treated as other-source milk, and shall be allocated as milk received from producer-handlers for the purposes of classifying producer milk, under the milk marketing program established under this Act. For the purposes of this subparagraph, the term "foreign person" has the meaning given such term under section 9(3) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3508(3)).

(ii) The Secretary of Agriculture shall prescribe regulations to carry out this subparagraph.

(iii) This subparagraph shall not apply with respect to any dairy that began operation before May 6, 1986.

(L) Providing that adjustments in payments by handlers under paragraph (A) need not be the same as adjustments to producers under paragraph (B) with regard to adjustments authorized by subparagraphs (2) and (3) of paragraph (A) and clauses (b), (c), and (d) of paragraph (B)(ii).[28]

TERMS)OTHER COMMODITIES

(6) In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) orders issued

[28] New subsection (K) added by Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988. New subsection (L) added by Pub. L. 101-624, 104 Stat. 3381, Nov. 28, 1990.

pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) no others.[29]

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such

[29] The provisions of this paragraph were substituted for the previous provisions by section 401 of the Agricultural Act of 1954, Aug. 28, 1954

surplus elimination or control among the producers and handlers thereof.

(E) Establishing or providing for the establishment of reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

(G) In the case of hops and their products, in addition to, or in lieu of, the foregoing terms and conditions, orders may contain one or more of the following:

(i) Limiting, or providing methods for the limitations of, the total quantity thereof, or of any grade, type, or variety thereof, produced during any specified period or periods, which all handlers may handle in the current of or so as directly to burden, obstruct, or affect interstate or foreign commerce in hops or any product thereof.

(ii) Apportioning, or providing methods for apportioning, the total quantity of hops of the production of the then current calendar year permitted to be handled equitably among all producers in the production area to which the order applies upon the basis of one or more or a combination of the following: The total quantity of hops available or estimated will become available for market by each producer from his production during such periods; the normal production of the acreage of hops operated by each producer during such period upon the basis of the number of acres of hops in production, and the average yield of the acreage during such period as the Secretary determines to be representative, with adjustments determined by the Secretary to be proper for age of plantings or abnormal conditions affecting yield; such normal production or historical record of any such acreage for which data as to yield of hops are not available or which had no yield during such period shall be determined by the Secretary on the basis of the yields of other acreage of hops of similar characteristics as to productivity, subject to adjustment as just provided for.

(iii) Allotting, or providing methods for allotting, the quantity of hops which any handler may handle so that the allotment fixed for that handler shall be limited to the quantity of hops apportioned under preceding section (ii) to each respective producer of hops; such allotment shall constitute an allotment

fixed for that handler within the meaning of subsection (5) of section 8a of this title (U.S.C., 1940 edition, title 7, sec. 608a).

(H)[30] Providing a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts.

(I)[31] Establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided*, That with respect to orders applicable to almonds, filberts (otherwise known as hazelnuts), California-grown peaches, cherries,[32] papayas,[33] carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, eggs, avocados,[34] apples, raisins, walnuts, tomatoes or Florida-grown strawberries[35] such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds, filberts (otherwise known as hazelnuts), raisins, walnuts, olives, and Florida Indian River grapefruit may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order[36] and when the handling of any commodity for canning or

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[30] Subsection added by section 401 of Act of Aug. 28, 1954, 68 Stat. 907.

[31] Ibid. The words "production research" and "or efficient production" were added by Pub. L. 91-292, 84 Stat. 333, June 25, 1970.

[32] Pub. L. 87-703, 76 Stat. 632, Sept. 27, 1962, added proviso and cherry marketing order provisions for advertising. The words "filberts (otherwise known as hazelnuts)" were added by Pub. L. 98-171, 97 Stat. 1117, Nov. 29, 1983.

[33] The word "papayas" was added by Pub. L. 91-384, 84 Stat. 827, Aug. 18, 1970. The word "almonds" was added by Pub. L. 91-522, 84 Stat. 1357, Nov. 25, 1970. The words "California-grown peaches" were added by Pub. L. 92-120, 85 Stat. 340, Aug. 13, 1971.

[34] Pub. L. 89-330, 79 Stat. 1270, Nov. 8, 1965, inserted "carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, avocados" in the proviso. The word "fresh" preceding "pears" was deleted by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972. The word "eggs" was added by Pub.L. 98-180, 97 Stat. 1152, Nov. 29, 1983.

[35] The word "apples" was added by Pub. L. 91-363, 84 Stat. 687, July 31, 1970. The word "raisins" was added by Pub. L. 95-279, 92 Stat. 242, May 15, 1978. The word "walnuts" was added by Pub. L. 96-494, 94 Stat. 2570, Dec. 3, 1980. The word "tomatoes" was added by Pub. L. 91-670, 84 Stat. 2041, Jan. 11, 1971. The words "Florida-grown strawberries" were added by Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988.

[36] The words "and with respect to almonds . . . including paid advertising as may be authorized by the order" were added by Pub. L. 91-522, 84 Stat. 1357, Nov. 25, 1970. The words "walnuts, olives" were added by Pub. L. 96-494, 94 Stat. 2570, Dec. 3, 1980. The word

(continued...)

freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form[37]: *Provided further*, That the inclusion in a Federal marketing order of provisions for research and market development, including paid advertising, shall not be deemed to preclude, preempt or supersede any such provisions in any State program covering the same commodity.[38]

(J)[39] In the case of pears for canning or freezing, any order for a production area encompassing territory within two or more States or portions thereof shall provide that the grade, size, quality, maturity, and inspection regulation under the order applicable to pears grown within any such State or portion thereof may be recommended to the Secretary by the agency established to administer the order only if a majority of the representatives from that State on such agency concur in the recommendation each year.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(...continued)
"raisins" was added by Pub. L. 95-279, 92 Stat. 242, May 15, 1978, "Florida Indian River Grapefruit" added by Pub. L. 93-230, 87 Stat. 945, Dec. 29, 1973. The words "filberts (otherwise known as hazelnuts)" were added by Pub. L. 98-171, 97 Stat. 1117.

[37] The words "and when the handling of any commodity for canning . . . or its products in canned or frozen form" were added by Pub. L. 92-466, 86 Stat. 780, Oct. 6, 1972. Section 401(b) of Pub. L. 95-279, 92 Stat. 243, provides for the following report:

"(b) Within a period of sixty days following the second anniversary of the implementation of this section, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that shall describe in detail how this section has been implemented including, but not limited to, information as to the issuance or amendment of any affected order, the annual amount of assessments collected, in the aggregate and by size and class of handler, the manner in which such assessments were collected, the amount of direct expenditures credited against the pro rata expense assessment obligations of each handler, and the purpose to which such assessments and such direct expenditures of each such handler were devoted."

[38] Second proviso added by Pub. L. 91-292, 84 Stat. 333, and was amended by Pub. L. 91-522, 84 Stat. 1357.

[39] Subsection (J) was added by Pub. L. 92-466, 84 Stat. 780, approved Oct. 6, 1972.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of any agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10(g) of this title, unless such person receives compensation for his personal services from funds of the United States. There shall be included in the membership of any agency selected to administer a marketing order applicable to grapefruit or pears for canning or freezing one or more representatives of processors of the commodity specified in such order: Provided, That in a marketing order applicable to pears for canning or freezing the representation of processors and producers on such agency shall be equal.[40]

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6) and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80

[40] "Pears" added by Pub. L. 92-466, dated Oct. 6, 1972, 86 Stat. 780. Proviso added by same statute.

per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 percent of the volume of the commodity or product thereof (except that as to citrus fruits produced in any areas producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President,[41] determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by

[41] 1947 Reorganization Plan No. 1 abolished this function of the President.

such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary have been engaged within the production area specified in such marketing agreement or order in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such market agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during

such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor
shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11)(A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, or any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited to their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering

services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13)(A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14)[42] (A) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order shall on conviction, be fined not less than $50 or more than $5,000, for each such violation, and each day during which such violation continues shall be deemed a separate violation. If the court finds that petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not exceeding $1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary,

[42] Pub. L. 99-198, 99 Stat. 1630, Dec. 23, 1985, increased the maximum penalty from $500 to $5,000 for marketing order violations. Pub. L. 100-203, 101 Stat. 1330-27, Dec. 22, 1987, designated former provision as paragraph (A) and added a new paragraph (B), giving the Secretary authority to assess civil penalties for marketing order violations. Pub. L. 101-624, 104 Stat. 3561, Nov. 28, 1990, authorized civil fines and penalties for marketing order assessment violations.

and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

PETITION BY HANDLER AND REVIEW

(15)(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States[43] in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such rulings as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a(6) of this title. Any proceedings brought pursuant to section 8a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

[43] The reference to the district court of the United States for the District of Columbia has been deleted as superfluous. See 28 U.S.C. 88, 132a.

(16)[44] (A)(i) Except as provided in clause (ii), the Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(ii) The Secretary may not terminate any order issued under this section for a commodity for which there is no Federal program established to support the price of such commodity unless the Secretary gives notice of, and a statement of the reasons relied upon by the Secretary for, the proposed termination of such order to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 60 days before the date such order will be terminated.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order. *Provided*, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination or

[44] Sec. 1662(a) of Pub. L. 99-198, 99 Stat. 1631, Dec. 23, 1985, added subparagraph(A)(ii). Sec. 1662(b) of Pub. L. 99-198, 99 Stat. 1631, states: "The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986."

suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section and section 8d, applicable to orders shall be applicable to amendments to orders: *Provided*, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof: *Provided further*, That if one-third or more of the producers as defined in a milk order apply in writing for a hearing on a proposed amendment of such order, the Secretary shall call such a hearing if the proposed amendment is one that may legally be made to such order. Subsection (12) of this section shall not be construed to permit any cooperative to act for its members in an application for a hearing under the foregoing proviso and nothing in such proviso shall be construed to preclude the Secretary from calling an amendment hearing as provided in subsection (3) of this section. The Secretary shall not be required to call a hearing on any proposed amendment to an order in response to an application for a hearing on such proposed amendment if the application requesting the hearing is received by the Secretary within ninety days after the date on which the Secretary has announced the decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same.[45]

MILK PRICES

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 2 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing

[45] Second proviso added by Pub. L. 93)86, 87 Stat. 222, Aug. 10, 1973. Identical proviso added by Pub. L. 97)98, 95 Stat. 1219, Dec. 22, 1981, to terminate Dec. 31, 1985. Termination date changed to Dec. 31, 1990, by Pub. L. 99)198, 99 Stat. 1373, Dec. 23, 1985. Termination date changed to Dec. 31, 1995, by Pub. L. 101)624, 104 Stat. 3380, Nov. 28, 1990. Sec. 1105(b) of Pub. L. 103-66, 107 Stat. 317, Aug. 10, 1993, changed the termination date of Dec. 31, 1996.

agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs[46] and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing make adjustments in such prices.[47]

PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers or processors, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers or processors and in the case of an order other than an amendatory order shall do so. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers or processors, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. The terms and conditions of the proposed order shall be described by the Secretary in the ballot used in the conduct of the referendum. The nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12) of this section.[48] For the purpose

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[46] The phrase "to meet current needs ... to meet anticipated future needs" was added by Pub. L. 93-86, 87 Stat. 222, Aug. 10, 1973, and continued until Dec. 31, 1985, by Pub. L. 97-98, 95 Stat. 1219, Dec. 22, 1981. Pub. L. 99-198, 99 Stat. 1373, Dec. 23, 1985, extended the date to Dec. 31, 1990. Pub. L. 101-624, 104 Stat. 3380, extended the date to Dec. 31, 1995. Pub. L. 103-66, 107 Stat. 317, Aug. 10, 1993, extended the date to Dec. 31, 1996.

[47] The provisions by this section were substituted for the previous provisions by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1247).

[48] The provisions of this section were substituted for the previous provisions by section 141 of the Agricultural Act of 1961 (August 8, 1961, 75 Stat. 345). The Agricultural Act of 1970, Pub. L. 91-524, 84 Stat. 1361, (7 U.S.C. 608c note) as amended by Pub. L. 93-86, 87 Stat. 222 and as further amended by Pub. L. 95-113, 91 Stat. 919, September 29, 1977, states:

"(c) Nothing in subsection (a) of this section 201 shall be construed as invalidating any class I base plan provisions of any marketing order previously issued by the Secretary of Agriculture

(continued...)

of ascertaining whether the issuance of an order applicable to pears for canning or freezing is approved or favored by producers as required under the applicable provisions of this title, the Secretary shall conduct a referendum among producers in each in which pears for canning or freezing are proposed to be included within the provisions of such marketing order and the requirements of approval or favor under any such provisions applicable to pears for canning or freezing shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of 66 2/3 per centum except that in the event that pear producers in any State fail to approve or favor the issuance of any such marketing order, it shall not be made effective in such State.[49] (7 U.S.C. 608c.)]

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

[SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the

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(...continued)

pursuant to authority contained in the Food and Agriculture Act of 1965 (79 Stat. 1187), but such provisions are expressly ratified, legalized, and confirmed and may be extended through and including December 31, 1971.

"(d) It is not intended that existing law be in any way altered, rescinded, or amended with respect to section 8c(5)(G) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and such section 8c(5)(G) is fully reaffirmed.

"(e) The provisions of this section shall not be effective after December 31, 1981 except with respect to orders providing for Class I base plans issued prior to such date, but in no event shall any order so issued extend or be effective beyond December 31, 1984."

[49] Amendment added by Pub. L. 92-466, Oct. 6, 1972, 86 Stat. 780.

control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2)[50] Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information exempt under section 552(b)(4) of title 5 of the United States Code from disclosure under section 552 of such title, shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Notwithstanding the preceding sentence, any such information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains. The Secretary shall notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and shall include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. (7 U.S.C. 608d.)]

(g) Section 8e; (relating to determination of base period)[51]

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[50] As amended by Pub. L. 99)198, 99 Stat. 1631, Dec. 23, 1985.

[51] The original provisions of this section were repealed by section 302 of the Agricultural Act of 1948 (July 3, 1948, 62 Stat. 1258). The language shown below in brackets was substituted for the previous provisions by section 141 of the Agriculture Act of 1961 (August 8, 1961, 75

(continued...)

RESTRICTIONS ON IMPORTED COMMODITIES

[SEC. 8e.[52] (a) Subject to the provisions of subsections (c) and (d) and notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of this Act contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, or apples produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this prohibition shall not apply to such commodities when shipped into continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this Act has force and effect: *Provided further*, That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall

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(...continued)
Stat. 345).

[52] *See* footnote 47. The words "raisins., olives (other than Spanish-style green olives), prunes" were added by Pub. L. 91-670, 84 Stat. 2047, January 11, 1971. The word "filberts" was added by Pub. L. 95-113, 91 Stat. 951, September 29, 1977. The words "table grapes" were added by Pub. L. 97-312, 96 Stat. 1461, Oct. 14, 1982. Pub. L. 100-418, 102 Stat. 1407, Aug. 23, 1988, designated former section as subsection (a) and added subsection (b). Pub. L. 101-624, 104 Stat. 3561, Nov. 28, 1990, added kiwifruit, nectarines, plums, pistachios, or apples; and added subsections (c) and (d), requiring advice and concurrence by the USTR prior to any import regulation being made effective.

establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision of this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 8a(5) or, upon conviction, a penalty in the amount prescribed in section 8c(14) of the Act, or to both such forfeiture and penalty.

(b)(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary)

(A) to effectuate the purposes of this Act; and

(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider)

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary):

(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

(3) An additional period established by the Secretary in accordance with this subsection shall be)

(A) announced not later than 30 days before the date such additional period is to be in effect; and

(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the

additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.

(c) Prior to any import prohibition or regulation under this section being made effective with respect to any commodity)

(1) the Secretary of Agriculture shall notify the United States Trade Representative of such import prohibition or regulation; and

(2) the United States Trade Representative shall advise the Secretary of Agriculture, within 60 days of the notification under paragraph (1), to ensure that the application of the grade, size, quality, and maturity provisions of the relevant marketing order, or comparable restrictions, to imports is not inconsistent with United States international obligations under any trade agreement, including the General Agreement on Tariffs and Trade.

(d) The Secretary may proceed with the proposed prohibition or regulation if the Secretary receives the advice and concurrence of the United States Trade Representative within 60 days of the notification under subsection (c)(1). (7 U.S.C. 608e)1.)]

(h) Section 10(a), (b)(1) (b)(2), (c), (f), (g), (h), (i) and (j) miscellaneous provisions);

MISCELLANEOUS

[SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923,[53] as amended and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; (and the Secretary may make such appointments without regard to the civil service laws or regulations: *Provided*, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title):[54] *And provided further*, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of

[53] Classification Act of 1923, as amended, now cited as 5 U.S.C. chapter 51 and subchapter III of chapter 53.

[54] Parentheses supplied. The material therein is obsolete but was not repealed. See note after 7 U.S.C. 610.

appropriations on account of reductions in compensation, shall not operate to require such impoundments under appropriations contained in this Act.

(b)(1) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 8. The Secretary, in the administration of this title shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2)(i) Each order relating to milk and its products issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of milk or products thereof received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of milk or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers.

(ii) Each order relating to any other commodity or product issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find are reasonable and are likely to be incurred by such authority or agency, during any period specified by him, for such purposes as the Secretary may, pursuant to such order, determine to be appropriate, and for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. The payment of assessments for the maintenance and functioning of such authority or agency, as provided for herein, may be

required under a marketing agreement or marketing order throughout the period the marketing agreement or order is in effect and irrespective of whether particular provisions thereof are suspended or become inoperative.

(iii) Any authority or agency established under an order may maintain in its own name, or in the name of its member, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as maybe necessary to carry out the powers vested in him by this title. Any violation of any regulations shall be subject to such penalty, not in excess of $100, as may be provided therein.

* * * * * * *

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugarbeets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, the duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided*, That information furnished to the Secretary of Agriculture pursuant to section 8d(1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d(2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in no wise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.[55] (7 U.S.C. 610.)]

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[55] Paragraph (j) added by section 2(i) of the Agricultural Act of 1937 (June 3, 1937, 50 Stat.

(continued...)

(i) Section 12(a) and (c) relating to appropriation and expense);

APPROPRIATION

[SEC. 12 (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000; *Provided*, That not more than 60 per centum of such amount shall be used for either of such industries.

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(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title. (7 U.S.C. 612.)]

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

[SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby. (7 U.S.C. 614.)]

(k) Section 22 (relating to imports);

(...continued)
248).

Agricultural Adjustment Act of 1933)SEC. 22[56] (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify. (7 U.S.C. 624(a).)

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: *Provided*, That no proclamation

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[56] See also section 202(a) of the Agricultural Act of 1956, 70 Stat. 199. Section 22 was added by the Act of August 24, 1935 (49 Stat. 773). As originally enacted, action under this section could be taken only with respect to articles the importation of which was found to be adversely affecting
programs or operations under the Agricultural Adjustment Act of 1933. Section 22 has been amended several times and was revised in its entirety by section 3 of the Agricultural Act of 1948 (62 Stat. 1247) and again by section 3 of the Act of June 28, 1950 (64 Stat. 261). Regulations governing investigations under this section are set forth in Executive Order 7233, dated November 23, 1935, and in 19 CFR 201, 204. Pub. L. 93-618, 88 Stat. 2009, Jan. 3, 1975, substituted "United States International Trade Commission" for "United States Tariff Commission".

under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President: *And provided further*, That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the Tariff Commission, such action to continue in effect pending the report and recommendations of the Tariff Commission and action thereon by the President.[57] (7 U.S.C. 624(b).)

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32 of Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States. (7 U.S.C. 624(c).)

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section. (7 U.S.C. 624(d).)

(e) Any decision of the President as to facts under this section shall be final. (7 U.S.C. 624(e).)

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[57] Paragraph added by section 104 of the Trade Agreement Extension Act of 1953, 67 Stat. 472.

(f)[58] No quantitative limitation or fee shall be imposed under this section with respect to any article that is the product of a WTO member (as defined in section 2(10) of the Uruguay Round Agreements Act). (7 U.S.C. 624(f).)

AMENDMENTS TO AGRICULTURAL ADJUSTMENT ACT

SEC. 2. The following provisions, reenacted in section 1 of this Act, are amended as follows:

[Subsecs. (a) to (j) inclusive, of sec. 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text.]

ARBITRATION OF DISPUTES CONCERNING MILK

SEC. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this Act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or

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[58] The provisions of subsection (f) were substituted for earlier provisions by section 8(b) of the Trade Agreements Extension Act of 1951, June 16, 1951, 65 Stat. 72, 75. Pub. L. 100-449, 102 Stat. 1868, Sept. 28, 1988, added the exemption for products of Canada. Sec. 301(a) of Pub. L. 100-449, 102 Stat. 1865, would allow temporary duty on any Canadian fresh fruit and vegetable entering the U.S. if the Secretary of Agriculture determines (1) for each of five consecutive workdays the import price of the Canadian fresh fruit or vegetable is below 90 percent of corresponding five-year average monthly import price for such fruit or vegetable, and (2) the U.S. planted acreage for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding five years, excluding years with highest and lowest acreage. (Any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of Oct. 4, 1987, is excluded.)

Section was generally amended by Sec. 401(a)(1) of Pub. L. 103-456, 108 Stat. 4957, Dec. 8, 1994. Prior to that Subsection (f) read as follows: "No trade agreement or other international agreement
heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section, except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.".

Sec. 401(a)(2) of Pub. L. 103-465, 108 Stat. 4957, Dec. 8, 1994, provided that: "The amendment made by paragraph (1) shall take effect on the date of entry into force of the WTO Agreement with respect to the United States, except that with respect to wheat, the amendment shall take effect on the later of such date or September 12, 1995.".

handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States. (7 U.S.C. 671).

AGREEMENTS ETC., UNAFFECTED

SEC. 4.[59] (a) Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

(b) Any program in effect under the Agricultural Adjustment Act, as reenacted and amended by this Act, on the effective date of section 302 of the Agricultural Act of 1948 shall continue in effect without the necessity for any amendatory action relative to such program, but any such program shall be continued in operation by the Secretary of Agriculture only to establish and maintain such orderly marketing conditions as will tend to effectuate the declared purpose set out in section 2 or 8c (18) of the Agricultural Adjustment Act, as reenacted and amended by this Act. (7. U.S.C. 672).

TAXES UNDER AGRICULTURAL ADJUSTMENT ACT; PROVISIONS UNAFFECTED

SEC. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as

[59] Section 302 of the Agricultural Act of 1948 (62 Stat. 1247) inserted the subsection designation (a) and added subsection (b).

provided in the preceding sentence, nothing in this Act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this Act) to the provisions of the Agricultural Adjustment Act, this Act, and other provisions of law to which they have been heretofore made applicable. (7 U.S.C. 673.)

SHORT TITLE

SEC. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937." (7 U.S.C. 674.)

AGRICULTURAL FAIR PRACTICES ACT [1]

(7 U.S.C. 2301)2306)

To prohibit unfair trade practices affecting producers of agricultural products, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the Agricultural Fair Practices Act of 1967.

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form move in large part in the channels of interstate and foreign commerce, and such products which do not move in these channels directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation. Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

It is, therefore, declared to be the policy of Congress and the purpose of this Act to establish standards of fair practices required of handlers in their dealings in agricultural products. (7 U.S.C. 2301.)

DEFINITIONS

SEC. 3. When used in this Act)

(a) The term "handler" means any person engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale; or (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations of producers; or (3) contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural

[1] Approved April 16, 1968, P.L. 90-288, 82 Stat. 93-95.

product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in clause (1), (2), or (3) of this paragraph.

(b) The term "producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, dairyman, fruit, vegetable, or nut grower.

(c) The term "association of producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 114j(a)), or in section 1 of the Act entitled "An Act to authorize association of producers of agricultural products", approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(d) The term "person" includes individuals, partnerships, corporations, and associations.

(e) The term "agricultural products" shall not include cotton or tobacco or their products. (7 U.S.C. 2302.)

PROHIBITED PRACTICES

SEC. 4. It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(a) To coerce any producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association of producers, or to refuse to deal with any producer because of the exercise of his right to join and belong to such an association; or

(b) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or contract with an association of producers; or

(c) To coerce or intimidate any producer to enter into, maintain breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler; or

(d) To pay or loan money, give any thing of value, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

(e) To make false reports about the finances, management, or activities of associations of producers or handlers; or

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act. (7 U.S.C. 2303.)

DISCLAIMER OF INTENTION TO PROHIBIT NORMAL DEALING

SEC. 5. Nothing in this Act shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers. (7 U.S.C. 2304.)

ENFORCEMENT

SEC. 6. (a) Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited by section 4, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. The court may provide that no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever the Secretary of Agriculture has reasonable cause to believe that any handler, or group of handlers, has engaged in any act or practice prohibited by section 4, he may request the Attorney General to bring civil action in his behalf in the appropriate district court of the United States by filing with it a complaint (1) setting forth facts pertaining to such act or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the handler, or handlers, responsible for such acts or practices. Upon receipt of such request, the Attorney General is authorized to file such complaint.

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any provision of section 4 of this Act may sue therefor in the appropriate district court of the United States without respect to the amount in controversy, and shall recover damages sustained. In any action commenced pursuant to this subsection, the court may allow the prevailing party a reasonable attorney's fee as a part of the costs. Any action to enforce any cause of action under this subsection shall be forever barred unless commenced within two years after the cause of action accrued.

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

The provisions of this Act shall not be construed to change or modify existing State law nor to deprive the proper State courts of jurisdiction. (7 U.S.C. 2305.)

SEPARABILITY

SEC. 7. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 2306).

CAPPER-VOLSTEAD ACT [1]

(7 U.S.C. 291, 292)

AN ACT To authorize association of producers of agricultural products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. (7 U.S.C. 291.)

SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association

[1] Approved February 18, 1922, 42 Stat. 388.

monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof. (7 U.S.C. 292.)

FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1976 [1]

(7 U.S.C. 3001)3006)

To encourage the direct marketing of agricultural commodities from farmers to consumers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farmer-to-Consumer Direct Marketing Act of 1976".

PURPOSE

SEC. 2. It is the purpose of this Act to promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers. To accomplish this objective, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall initiate and coordinate a program designed to facilitate direct marketing from farmers to consumers for the mutual benefit of consumers and farmers. (7 U.S.C. 3001.)

DEFINITION

SEC. 3. For purposes of this Act, the term "direct marketing from farmers to consumers" shall mean the marketing of agricultural commodities at any marketplace (including, but not limited to, roadside stands, city markets, and vehicles used for house-to-house marketing of agricultural commodities) established and maintained for the purpose of enabling farmers to sell (either individually or through a farmers' organization directly representing the farmers who produced the commodities being sold) their agricultural commodities directly to individual consumers, or organizations representing consumers, in a manner calculated to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers. (7 U.S.C. 3002.)

SURVEY

SEC. 4. The Secretary shall provide, through the Economic Research Service of the United States Department of Agriculture, or whatever agency or agencies the Secretary considers appropriate, a continuing survey of

[1] Pub. L. 94-463, Oct. 8, 1975, 90 Stat. 1982-1984.

existing methods of direct marketing from farmers to consumers in each State. The initial survey, which shall be completed no later than one year following the date of enactment of this Act, shall include the number of types of such marketing methods in existence, the volume of business conducted through each such marketing method, and the impact of such marketing methods upon financial returns to farmers (including their impact upon improving the economic viability of small farmers) and food quality and costs to consumers. (7 U.S.C. 3003.)

DIRECT MARKETING ASSISTANCE WITHIN THE STATES

SEC. 5. (a) In order to promote the establishment and operation of direct marketing from farmers to consumers, the Secretary shall provide that funds appropriated to carry out this section be utilized by State departments of agriculture and the Extension Service of the United States Department of Agriculture for the purpose of conducting or facilitating activities which will initiate, encourage, develop, or coordinate methods of direct marketing from farmers to consumers within or among the States. Such funds shall be allocated to a State on the basis of the feasibility of direct marketing from farmers to consumers within that State as compared to other States and shall be allocated within a State to the State department of agriculture and to the Extension Service on the basis of the types of activities which are needed in the State and on the basis of which of these two agencies, or combination thereof, can best perform these activities. The activities shall include, but shall not be limited to)

(1) sponsoring conferences which are designed to facilitate the sharing of information (among farm producers, consumers, and other interested persons or groups) concerning the establishment and operation of direct marketing from farmers to consumers;

(2) compiling laws and regulations relevant to the conduct of the various methods of such direct marketing within the State, formulating drafts of enabling legislation needed to facilitate such direct marketing, determining feasible locations for additional facilities for such direct marketing, and preparing and disseminating practical information on the establishment and operation of such direct marketing; and

(3) providing technical assistance for the purpose of aiding interested individuals or groups in the establishment of arrangements for direct marketing from farmers to consumers.

(b) In the implementation of this section, the Secretary shall take into account consumer preferences and needs which may bear upon the establishment and operation of arrangements for direct marketing from farmers to consumers. (7 U.S.C. 3004.)

ANNUAL REPORT

SEC. 6.[2] The Secretary shall periodically review the activities carried out under this Act and shall report to the Committee on Agriculture, United States House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry, United States Senate, within one year of the date of enactment of this Act, and annually thereafter, with respect to the effectiveness of this Act. The Secretary shall include in such report a State-by-State summary of the results of the survey conducted under this Act, and a summary the activities and accomplishments of the Extension Service and the State departments of agriculture in the development of direct marketing from farmers to consumers during the previous year. (7 U.S.C. 3005.)

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. (a) For purposes of carrying out the provisions of sections 4 and 6, there are authorized to be appropriated such sums as are necessary.

(b) For purposes of carrying out the provisions of section 5, there is authorized to be appropriated $1,500,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978. [3] (7 U.S.C. 3006.)

EMERGENCY HAY PROGRAM [4]

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977, and shall become effective on October 1, 1976, or on the date of enactment of this Act, whichever is later. (45 U.S.C. 5145.)

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[2] Sec. 4(a)(8) of Pub. L. 103-437, 108 Stat. 4582, Nov. 8, 1994, substituted "Committee on Agriculture, Nutrition, and Forestry" for "Committee on Agriculture and Forestry".

[3] Authority for the Farmer-to-Consumer Direct Marketing Act of 1976 expired September 30, 1978.

[4] Emergency Hay Program was administered by the Farm Service Agency (formerly known as the Agricultural Stabilization and Conservation Service Agency), USDA.

Commodity Promotion and Evaluation [1]

(7 U.S.C. 7401)

SEC. 501. COMMODITY PROMOTION AND EVALUATION.

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

(1) the marketing promotion provisions under section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(2) Public Law 89-502 (7 U.S.C. 2101 et seq.);

(3) title III of Public Law 91-670 (7 U.S.C. 2611 et seq.);

(4) Public Law 93-428 (7 U.S.C. 2701 et seq.);

(5) Public Law 94-294 (7 U.S.C. 2901 et seq.);

(6) subtitle B of title I of Public Law 98-180 (7 U.S.C. 4501 et seq.);

(7) Public Law 98-590 (7 U.S.C. 4601 et seq.);

(8) subtitle B of title XVI of Public Law 99-198 (7 U.S.C. 4801 et seq.);

(9) subtitle C of title XVI of Public Law 99-198 (7 U.S.C. 4901 et seq.);

(10) subtitle B of title XIX of Public Law 101-624 (7 U.S.C. 6101 et seq.);

(11) subtitle E of title XIX of Public Law 101-624 (7 U.S.C. 6301 et seq.);

(12) subtitle H of title XIX of Public Law 101-624 (7 U.S.C. 6401 et seq.);

(13) Public Law 103-190 (7 U.S.C. 6801 et seq.);

(14) Public Law 103-407 (7 U.S.C. 7101 et seq.);

(15) subtitle B;

(16) subtitle C;

(17) subtitle D; or

(18) subtitle E.

(b) FINDINGS.)Congress finds the following:

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[1] Title V, Subtitle A, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 1029, Apr. 4, 1996.

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

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

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

(4) The commodity promotion laws were neither designed nor intended to prohibit or restrict, and the promotion programs established and funded pursuant to these laws do not prohibit or restrict, individual advertising or promotion of the covered commodities by any producer, processor, or group of producers or processors.

(5) It has never been the intent of Congress for the generic commodity promotion programs established and funded by the commodity promotion laws to replace the individual advertising and promotion efforts of producers or processors.

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

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

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

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

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

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

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

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

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

(d) ADMINISTRATIVE COSTS.)The Secretary shall annually provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information on administrative expenses on programs established under commodity promotion laws. (7 U.S.C. 7401.)

COMMODITY PROMOTION, RESEARCH, AND INFORMATION ACT OF 1996 [1]

(7 U.S.C. 7411 - 7425)

SEC. 511. SHORT TITLE.

This subtitle may be cited as the "Commodity Promotion, Research, and Information Act of 1996". (7 U.S.C. 7401 note.)

SEC. 512. 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.

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[1] Title V, Subtitle B, Issuance of Orders for Promotion, Research, and Information Activities Regarding Agricultural Commodities, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 1032, Apr. 4, 1996. Provisions generally referred to as the "Generic Commodity Promotion, Research and Information Act".

(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 subtitle is to authorize the establishment, through the exercise by the Secretary of Agriculture of the authority provided in this subtitle, 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 subtitle provides for the control of production or otherwise limits the right of any person to produce, handle, or import an agricultural commodity. (7 U.S.C. 7411)

SEC. 513. DEFINITIONS.

In this subtitle (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 514.

(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 514 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, United States Code, 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, United States Code, 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. (7 U.S.C. 7412.)

SEC. 514. ISSUANCE OF ORDERS.

(a) ISSUANCE AUTHORIZED.)

(1) IN GENERAL.)To effectuate the purpose of this subtitle, 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 516(f).

(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 subtitle, 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 subtitle, 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 subtitle.

(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 subtitle, the Secretary shall issue the final order. Except in the case of an order for which an initial referendum is conducted under section 518(a), 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 523. (7 U.S.C. 7413.)

SEC. 515. 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 subtitle.

(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 516(f), 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 aboard 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 A 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 517 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 517, 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 517, 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 517, 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 501(c), 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 subtitle, 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 subtitle, all information obtained under paragraph (1) or as part of a referendum under section 518 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. (7 U.S.C. 7414.)

SEC. 516. PERMISSIVE TERMS IN ORDERS.

(a) EXEMPTIONS.)An order issued under this subtitle 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 subtitle 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 subtitle 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 515(e) shall apply with respect to activities authorized under this subsection.

(d) RESERVE FUNDS.)An order issued under this subtitle may contain authority to reserve funds from assessments collected under section 517 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 515(e) by the Secretary for any 2 fiscal years.

(e) CREDITS.)

(1) GENERIC ACTIVITIES.)An order issued under this subtitle 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 subtitle.

(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 subtitle may contain authority for the board established under the order to assess under section 517 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 subtitle may contain authority to take any other action that)

(1) is not inconsistent with the purpose of this subtitle, any term or condition specified in section 515, or any rule issued to carry out this subtitle; and

(2) is necessary to administer the order. (7 U.S.C. 7415.)

SEC. 517. ASSESSMENTS.

(a) ASSESSMENTS AUTHORIZED.)While an order issued under this subtitle 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 516(f).

(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) 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). 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 518.

(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).

(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 518(b)(1) 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) 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 518(b)(1))

(A) the escrow account shall be closed; and

(B) the funds shall be available to the board for disbursement as authorized in the order. (7 U.S.C. 7416.)

SEC. 518. 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 517 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). 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 517 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).

(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);

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).

(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. U.S.C. 47417.)

SEC. 519. PETITION AND REVIEW OF ORDERS.

(a) PETITION.)

(1) IN GENERAL.)A person subject to an order issued under this subtitle 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).

(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) 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).

(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) or an action commenced under subsection (b) shall not operate as a stay of any action authorized by section 520 to be taken to enforce this subtitle, including any rule, order, or penalty in effect under this subtitle. (7 U.S.C. 7418.)

SEC. 520. 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 subtitle.

(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 subtitle if the Secretary believes that the administration and enforcement of this subtitle 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 Act 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 here 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).

(d) REVIEW BY COURT OF APPEALS.)

(1) IN GENERAL.)A person against whom an order is issued under subsection (c) 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. (7 U.S.C. 7419.)

SEC. 521. 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 subtitle; or

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

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.)For the purpose of any investigation under subsection (a), 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. (7 U.S.C. 7420.)

SEC. 522. 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 subtitle, 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 518.

(b) IMPLEMENTATION OF SUSPENSION OR TERMINATION.)If, as a result of a referendum conducted under section 518, 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. (7 U.S.C. 7422.)

SEC. 523. AMENDMENTS TO ORDERS.

The provisions of this subtitle applicable to an order shall be applicable to any amendment to an order, except that section 518 shall not apply to an amendment. (7 U.S.C.7422.)

SEC. 524. EFFECT ON OTHER LAWS.

This subtitle shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity. (7 U.S.C. 7423.)

SEC. 525. REGULATIONS.

The Secretary may issue such regulations as may be necessary to carry out this subtitle and the power vested in the Secretary under this subtitle. (7 U.S.C. 7424.)

SEC. 526. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.)There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

(b) LIMITATION ON EXPENDITURES FOR ADMINISTRATIVE EXPENSES.-Funds appropriated to carry out this subtitle may not be expended for the payment of expenses incurred by a board to administer an order. (7 U.S.C. 7425.)

RESEARCH AND PROMOTION PROGRAMS MISCELLANEOUS PROVISIONS

(104 Stat. 3927; 7 U.S.C. 2278)

PRODUCER RESEARCH AND PROMOTION BOARD ACCOUNTABILITY [1]

(a) FINDINGS.)Congress finds that)

(1) United States agricultural producers and importers contribute approximately $600,000,000 annually to support agricultural promotion and research, and consumer information relating to food and nutrition, under federally-authorized checkoff programs;

(2) these federally-authorized checkoff programs are self-help efforts that enable the industry members that contribute to these checkoff programs to take an active role in enhancing the marketing of their farm products;

(3) the federally-authorized checkoff programs, while relatively new, have substantially contributed to strengthening markets for the agricultural products covered by the programs;

(4) the authorizing legislation for these agricultural check-off programs provides for the Secretary of Agriculture to appoint boards or councils comprised of producers and importers to assist the Secretary in administering the programs under the Secretary's oversight;

(5) the boards and councils that participate in administering the federallyauthorized checkoff programs, in each instance, have important responsibilities under, and make substantial contributions to the effective management of, the programs while serving as a valuable link between the industry members that are funding the promotion, research, and information activities under the programs and the Department of Agriculture;

(6) the producers and importers that pay assessments to support the programs must have confidence in, and strongly support, the checkoff programs if these programs are to continue to succeed; and

(7) the checkoff programs cannot operate efficiently and effectively, nor can producer confidence and support for these programs be maintained, unless the boards and councils faithfully and diligently perform the functions assigned to them under the authorizing legislation.

(b) SENSE OF THE CONGRESS.)It is the sense of Congress that, to ensure the continued success of the federally-authorized checkoff programs, boards or councils that participate in the administration of the checkoff programs

[1] Pub. L. 101-624, Section 1999S, 104 Stat. 3927, Nov. 28, 1990.

should take care to faithfully and diligently perform the functions assigned to them
under the authorizing legislation and otherwise meet their crucial program responsibilities. It further is the sense of Congress that each of these boards and councils, in carrying out the responsibilities assigned to it, is accountable to the Secretary of Agriculture, Congress, and the industry contributing funds for the checkoff program involved, and that each currently operational checkoff board or council should review its charter and activities to ensure that its responsibilities and duties have not been inappropriately delegated or otherwise relinquished to another organization. (104 Stat. 3927.)

CONSISTENCY WITH INTERNATIONAL OBLIGATIONS OF THE UNITED STATES [2]

(a) IN GENERAL.)Prior to the promulgation of, or amendment to, any order or plan under a research and promotion program relating to research and promotion of any agricultural commodity or product, after the date of enactment of this title, where such order or plan would provide for an assessment on
imports, the Secretary of Agriculture shall consult with the United States Trade Representative regarding the consistency of the provisions of the order or plan with the international obligations of the United States.

(b) COMPLIANCE WITH U.S. INTERNATIONAL OBLIGATIONS.)The Secretary of Agriculture shall take all steps necessary and appropriate to ensure that any order or plan or amendment to such order or plan, and the implementation and enforcement of any order or plan or amendment to such order or plan, or program as it relates to imports is nondiscriminatory and in compliance with the international obligations of the United States, as interpreted by the United States Trade Representative.

(c) CONSTRUCTION.)Nothing in this section shall be construed as providing for a cause of action under this section. (7 U.S.C. 2278.)

[2] Pub. L. 101)624, Section 1999T, 104 Stat. 3928, Nov. 28, 1990.

Subpart B. Cotton

AGRICULTURAL MARKETING ACT (OF 1929)

(12 U.S.C. 1141j(d))

(Section 15(d)) [1]

GOVERNMENTAL PUBLICATIONS; PREDICTIONS AS TO COTTON PRICES PROHIBITED

(d) That the inclusion in any governmental report, bulletin, or other such publication hereafter issued or published of any prediction with respect to cotton prices is hereby prohibited. Any officer or employee of the United States who authorizes or is responsible for the inclusion in any such report, bulletin, or other publication of any such prediction, or who knowingly causes the issuance or publication of any such report, bulletin, or other publication containing any such prediction, shall, upon conviction thereof, be fined not less than $500 or more than $5,000, or imprisoned for not more than five years, or both: *Provided*. That this subdivision shall not apply to the Governor of the Farm Credit Administration when engaged in the performance of his duties herein provided.[2] (12 U.S.C. 1141j(d).)

COTTON FUTURES PROVISIONS OF INTERNAL REVENUE CODE OF 1954 [3]

CHAPTER 61)INFORMATION AND RETURNS

SEC. 6001. Notice Or Regulations Requiring Records, Statements, and Special Returns.

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[1] Section 15(d) of Agricultural Marketing Act (of 1929), 46 Stat. 19.

[2] Proviso as enacted provided "That this subdivision shall not apply to the members of the board [Federal Farm Board] when engaged in the performance of their duties herein provided." By Ex. Ord. No. 6084, March 27, 1933, the offices of the members, except the chairman, of the Federal Farm Board were abolished, the name of such Board was changed to the Farm Credit Administration, and the name of the office of chairman was changed to Governor of the Farm Credit Administration, who was vested with all the powers and duties of the Federal Farm Board. See note preceding 12 U.S.C. 636.

[3] From the Act of August 16, 1954, 68A Stat. 580, which superseded the similar provisions of the Internal Revenue Code of 1939 which were derived from the United States Cotton Futures Act (approved August 11, 1916) and related laws. Subchapter D of Chapter 39 was repealed by Pub. L. 94-455, Oct. 4, 1976, and recodified at 7 U.S.C. 15b.

Every person liable, for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).[4] (26 U.S.C. 6001.)

CHAPTER 69)GENERAL PROVISIONS RELATING TO STAMPS

SEC. 6804. Attachment and Cancellation.

Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary may prescribe by rules or regulations.[5] (26 U.S.C. 6804.)

CHAPTER 79)DEFINITIONS

SEC. 7701. Definitions.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof)

(1) PERSON)The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

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(11)[6] SECRETARY OF THE TREASURY AND SECRETARY

(A) SECRETARY OF THE TREASURY)The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

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[4] Amended by Pub. L. 94-455, 90 Stat. 1834, Pub. L. 95-600,92 Stat. 2878, Nov. 6, 1978, and Pub. L. 97-248, 96 Stat. 605, Sept. 3, 1982.

[5] Pub. L. 94-455, 90 Stat. 1834, struck out "or his delegate" following "Secretary".

[6] Amended by Pub. L. 94-455, 90 Stat. 1832.

(B) SECRETARY)The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) DELEGATE

(A)[7] IN GENERAL)The term "or his delegate")

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) PERFORMANCE OF CERTAIN FUNCTIONS IN GUAM OR AMERICAN SAMOA)The term "delegate," in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions. (26 U.S.C. 7701(a)(1), (11), and (12).)

[7] Amended by Pub. L. 86-778, approved Sept. 13, 1960, 74 Stat. 941, and Pub. L. 94)455, 90 Stat. 1832-1833.

UNITED STATES COTTON FUTURES ACT

(7 U.S.C. 15b) [1]

(a) SHORT TITLE.)This section may be cited as the "United States Cotton Futures Act".

(b) REPEAL OF TAX ON COTTON FUTURES.)Subchapter D of chapter 39 (relating to tax on cotton futures) is repealed.

(c) DEFINITIONS.)For purposes of this section)

(1) COTTON FUTURES CONTRACT.)The term "cotton futures contract" means any contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which has been designated a "contract market" by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act and the term "contract of sale" as so used shall be held to include sales, agreements of sale, and agreements to sell, except that any cotton futures contract that, by its terms, is settled in cash is excluded from coverage of this paragraph and Act.[2]

(2) FUTURE DELIVERY.)The term "future delivery" shall not include any cash sale of cotton for deferred shipment or delivery.

(3) PERSON.)The term "person" includes an individual, trust, estate, partnership, association, company, or corporation.

(4) SECRETARY.)The term "Secretary" means the Secretary of Agriculture of the United States.

(5) STANDARDS.)The term "standards" means the official cotton standards of the United States established by the Secretary pursuant to the United States Cotton Standards Act, as amended.

(d) BONA FIDE SPOT MARKETS AND COMMERCIAL DIFFERENCES.)

(1) DEFINITION.)For purposes of this section, the only markets which shall be considered bona fide spot markets shall be those which the Secretary shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(2) DETERMINATION.)In determining, pursuant to the provisions of this section, what markets are bona fide spot markets, the Secretary is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary; except that if

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[1] Pub. L. 94-455, October 4, 1976, 90 Stat. 1841-1846. Formerly Subchapter D of Chapter 39 of the Internal Revenue Code of 1954, 26 U.S.C. 4851 *et seq*.

[2] Pub. L. 102-237, 105 Stat. 1844, Dec. 13, 1991, added the provision to exclude future contracts settled for cash from this Act.

there are not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary, to enable him to designate at least five spot markets in accordance with subsection (f)(3), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the market selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to subsection (f) (1) and (2) shall be determined in compliance with such rules and regulations. It shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter.

(3) WITHHOLDING INFORMATION.)Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under paragraph (2) of this subsection, or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(e) FORM AND VALIDITY OF COTTON FUTURES CONTRACTS.)Each cotton futures contract shall be a basis grade contract, or a tendered grade contract, or a specific grade contract as specified in subsections (f), (g), or (h) and shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. No cotton futures contract which does not conform to such requirements shall be enforceable by, or on behalf of, any party to such contract or his privies.

(f) BASIS GRADE CONTRACTS.)

(1) CONDITIONS.)Each basis grade cotton futures contract shall comply with each of the following conditions:

(A) CONFORMITY WITH REGULATIONS.)Conform to the regulations made pursuant to this section.

(B) SPECIFICATION OF GRADE, PRICE, AND DATES OF SALE AND SETTLEMENT.)Specify the basis grade for the cotton involved in

the contract, which shall be one of the grades for which standards are established by the Secretary, except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E), the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled; except that middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(C) PROVISION FOR DELIVERY OF STANDARD GRADES ONLY.)Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E) and no other grade or grades.

(D) PROVISION FOR SETTLEMENT ON BASIS OF ACTUAL COMMERCIAL DIFFERENCES.)Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(E) PROHIBITION OF DELIVERY OF INFERIOR COTTON.)Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed", shall not be delivered on, under, or in settlement of such contract.

(F) PROVISIONS FOR TENDER IN FULL, NOTICE OF DELIVERY DATE, AND CERTIFICATE OF GRADE.)Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the

same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(G)[3] PROVISION FOR TENDER AND SETTLEMENT IN ACCORDANCE WITH GOVERNMENT CLASSIFICATION.)Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations and shall be credited to the account referred to in section 5 of the United States Cotton Standards Act (7 U.S.C. 55). The Secretary may provide by regulation conditions under which cotton samples submitted or used in the performance of services authorized by this act shall become the property of the United States and may be sold and the proceeds credited to the foregoing account: *Provided*, That such cotton samples shall not be subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). The Secretary is authorized to prescribe regulations for carrying out the purposes of this subparagraph and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this subparagraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(2) INCORPORATION OF CONDITIONS IN CONTRACTS.)The provisions of paragraphs (1) (C), (D), (E), (F), and (G) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandums evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (f)."

(3) DELIVERY ALLOWANCES.)For the purpose of this subsection, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basic grade in the settlement of a contract of sale for the future delivery of cotton shall be

[3] Pub. L. 97-35, 95 Stat. 374, Aug. 13, 1981, amended subsection to provide that proceeds from cotton sample sales be credited to the account that incurs the cost.

determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with paragraph (1)(F), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary, as such values were established by the sales of spot cotton, in such designated five or more markets. For purposes of this paragraph, such values in the such spot markets shall be based upon the standards for grades of cotton established by the Secretary. Whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary.

(g) TENDERED GRADE CONTRACTS.)

(1) CONDITIONS.)Each tendered grade cotton future contract shall comply with each of the following conditions:

(A) COMPLIANCE WITH SUBSECTION (f).)Comply with all the terms and conditions of subsection (f) not inconsistent with this subsection; and

(B) PROVISION FOR CONTINGENT SPECIFIC PERFORMANCE.)Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(2) INCORPORATION OF CONDITIONS IN CONTRACT.)Contracts made in compliance with this subsection shall be known as "subsection (g) Contracts". The provisions of this subsection shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (g)".

(3) APPLICATION OF SUBSECTION.)Nothing in this subsection shall be so construed as to authorize any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any

"fixed difference" system, or by arbitration, or by any other method not provided for by this section.

(h) SPECIFIC GRADE CONTRACTS.)

(1) CONDITIONS.)Each specific grade cotton futures contract shall comply with each of the following conditions:

(A) CONFORMITY WITH RULES AND REGULATIONS.)Conform to the rules and regulations made pursuant to this section.

(B) SPECIFICATION OF GRADE, PRICE, DATES OF SALE AND DELIVERY.)Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(C) PROHIBITION OF DELIVERY OF OTHER THAN SPECIFIED GRADE.)Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(D) PROVISION FOR SPECIFIC PERFORMANCE.)Provide that the delivery of cotton under the contract shall not be effected by means of "setoff" or"ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(2) INCORPORATION OF CONDITIONS IN CONTRACT.)The provisions of paragraphs (1) (A), (C), and (D) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States Cotton Futures Act, subsection (h)".

(3) APPLICATION OF SUBSECTION.)This subsection shall not be construed to apply to any contract of sale made in compliance with subsection (f) or (g).

(i) LIABILITY OF PRINCIPAL FOR ACTS OF AGENT.)When construing and enforcing the provisions of this section, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

(j) REGULATIONS.)The Secretary is authorized to make such regulations with the force and effect of law as he determines may be necessary to carry out the provisions of this section and the powers vested in him by this section.

(k) VIOLATIONS.)Any person who knowingly violates any regulation made in pursuance of this section, shall, upon conviction thereof, be fined not less than $100 nor more than $500, for each violation thereof, in the discretion of the court, and, in case of natural persons, may, in addition be punished by imprisonment for not less than 30 days nor more than 90 days, for each violation, in the discretion of the court except that this subsection shall not apply to violations subject to subsection (d)(3).

(l) APPLICABILITY TO CONTRACTS PRIOR TO EFFECTIVE DATE.)The provisions of this section shall not apply to any cotton futures contract entered into prior to the effective date of this section or to any act or failure to act by any person prior to such effective date and all such prior contracts, acts or failure to act shall continue to be governed by the applicable provisions of the Internal Revenue Code of 1954 as in effect prior to the enactment of this section. All designations of bona fide spot markets and all rules and regulations issued by the Secretary pursuant to the applicable provisions of the Internal Revenue Code of 1954 which were in effect on the effective date of this section, shall remain fully effective as designations and regulations under this section until superseded, amended, or terminated by the Secretary.

(m) AUTHORIZATION.)There are authorized to be appropriated such sums as may be necessary to carry out this section.

COTTON RESEARCH AND PROMOTION ACT [1]

(7 U.S.C. 2101-2118)

AN ACT To enable cotton growers to establish, finance, and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for, cotton

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the Cotton Research and Promotion Act. (7 U.S.C. 2101 note.)[2]

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[1] Pub. L. 89-502, 80 Stat. 279, July 13, 1966.

[2] The Agricultural Act of 1970, P.L. 91-524, 84 Stat. 1378-1379, as amended by the Agricultural Act of 1973, P.L. 93-86, 87 Stat. 235, provided "The Commodity Credit Corporation, in furtherance of its powers and duties under subsections (e) and (f) of section 5 of the Commodity Credit Corporation Charter Act, shall, through the Cotton Board established under the Cotton Research and Promotion Act, and upon approval of the Secretary, enter into agreements with the contracting organization specified pursuant to section 7(g) of that Act for the conduct, in domestic and foreign markets, of market development, research of sales promotion programs and programs to aid in the development of new and additional markets, marketing facilities and uses for cotton and cotton products, including programs to facilitate the utilization and commercial application of research findings. Each year the amount available for such agreements shall be 10 million dollars. The Secretary is authorized to deduct from funds available for payments to producers under section 103 of the Agricultural Act of 1949, as amended, on each of the 1972 through 1977 crops of upland cotton such additional sums for use as specified above (not exceeding $10,000,000 for each such crop) as he determines desirable; and the final rate of payment provided in section 103 if higher than the rate of the preliminary payment provided in such section shall be reduced to the extent necessary to defray such costs. No funds made available under this section shall be used for the purpose of influencing legislative action or general farm policy with respect to cotton." (7 U.S.C. 2119) This provision was repealed by Pub. L. 94-366, July 14, 1976, 90 Stat. 991.

Sec. 1998 of Pub. L. 101-624, 104 Stat. 3913, Nov. 28, 1990, as amended by Sec. 808(b) of Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, states:

"SEC. 1998. REPORTS.

"(a) IN GENERAL.)Not later than 1 year after the date on which imports are subject to assessments under this subtitle)

"(1) the Secretary of Agriculture shall prepare a report concerning the implementation and enforcement of the cotton research and promotion program, and any problems that may have arisen in the implementation and enforcement of such program; and

"(2) the Customs Service shall, if on such date it has any role in the implementation or enforcement of such assessments, prepare a report concerning such implementation and enforcement as it relates to imports.

"(b) COMPTROLLER GENERAL REPORT.)Not prior to the date that occurs 3 years after the date on which imports are subject to assessments under this subtitle, the Comptroller General shall prepare a report concerning the administration of the cotton research and promotion program as it relates to such imports. Such report shall be submitted not later than 6 months after such date, and include an analysis of)

"(1) the growth in the United States market for cotton and cotton products, with particular attention provided to the period of time subsequent to the imposition of assessments on such imports;

(continued...)

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Cotton is the basic natural fiber of the Nation. It is produced by many individual cotton growers throughout the various cotton-producing States of the Nation and also outside the United States. Cotton moves in the channels of interstate and foreign commerce and such cotton which does not move in such channels directly burdens or affects interstate commerce in cotton and cotton products. The efficient production of cotton and the maintenance and expansion of existing markets and the development of new or improved markets and uses is vital to the welfare of cotton growers and those concerned with marketing, using, and processing cotton as well as the general economy of the Nation. The great inroads on the market and uses for cotton which have been made by manmade fibers have been largely the result of extensive research and promotion which have not been effectively matched by cotton research and promotion. The production and marketing of cotton by numerous individual farmers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary to the maintenance and improvement of the competitive position of, and markets for, cotton. Without an effective and coordinated method for assuring cooperative and collective action in providing for, and financing such programs, individual cotton farmers are unable adequately to provide or obtain the research and promotion necessary to maintain and improve markets for cotton.

It has long been found to be in the public interest to have, or endeavor to have, a reasonable balance between the supply of and demand for cotton grown in this country. To serve this public interest the Congress has provided for the comprehensive exercise of regulatory authority in regulating the handling of such cotton supplemented by price-support programs with the objective of adjusting supply to demand in the interest of benefiting producers and all others concerned with the production and handling of cotton as well as the general economy of the country. In order for the objective of such programs to be effectuated to the fullest degree, it is

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(...continued)

"(2) the extent to which import restrictions, such as quotas, on imports of cotton and cotton-containing products have permitted or prevented importers from benefiting from any such growth in the United States market; and

"(3) the relevant United States international obligations applicable under trade agreements that relate to the assessments on imports of cotton and cotton products under this subtitle.

"(c) SUBMISSION.—The reports required under subsections (a) and (b) shall be submitted to the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate not later than the applicable dates referred to in such subsections.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such funds as may be necessary to carry out this section." (7 U.S.C. 2101 note.)

necessary that the existing regulation of marketing be supplemented by providing as part of the overall governmental program for effectuating this objective, means of increasing the demand for cotton with the view of eventually reducing or eliminating the need for limiting marketings and supporting the price of cotton.

It is therefore declared to be the policy of the Congress and the purpose of this Act that it is essential in the public interest through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development, financing through adequate assessments on all cotton marketed in the United States and on imports of cotton and carrying out an effective and continuous coordinated program of research and promotion designed to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for United States cotton. (7 U.S.C. 2101.)[3]

COTTON RESEARCH AND PROMOTION ORDERS

SEC. 3. To effectuate the declared policy of this Act, the Secretary shall, subject to the provisions of this Act, issue and from time to time amend, orders applicable to persons engaged in the harvesting, marketing, ginning, or other handling of cotton, hereinafter referred to as handlers. Such orders shall be applicable to all production or marketing areas, or both, in the United States. (7 U.S.C. 2102.)

NOTICE AND HEARING

SEC. 4. Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this Act, he shall give due notice and opportunity for a hearing upon a proposed order. Such hearing may be requested and a proposal for an order submitted by any cotton producer organization certified pursuant to section 14 of this Act or by any other interested person or persons, including the Secretary. (7 U.S.C. 2103.)

FINDING AND ISSUANCE OF AN ORDER

SEC. 5. After notice and opportunity for hearings as provided in section 4, the Secretary shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order

[3] Section as amended by Pub. L. 101-624, 104 Stat. 3909, Nov. 28, 1990, to make applicable to imports of cotton.

and all the terms and conditions thereof will tend to effectuate the declared policy of this Act. (7 U.S.C. 2104.)

PERMISSIVE TERMS IN ORDERS

SEC. 6. Orders issued pursuant to this Act shall contain one or more of the following terms and conditions, and except as provided in section 7, no others.

(a) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products and for the disbursement of necessary funds for such purposes: *Provided, however*, That any such plan or project shall be directed toward increasing the general demand for cotton or its products but no reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against the cotton products of other persons: *And provided further*, That no such advertising or sales promotion programs shall make use of false or unwarranted claims in behalf of cotton or its products or false or unwarranted statements with respect to the quality, value, or use of any competing product. (7 U.S.C. 2105(a).)

(b) Providing for establishing and carrying on research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes. (7 U.S.C. 2105(b).)

(c) Providing that handlers or any class of handlers maintain and make available for inspection such books and records as may be required by the order and for the filing of reports by such handlers at the times, in the manner, and having the content prescribed by the order, to the end that information and data shall be made available to the Cotton Board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of the Act or of any order or regulation issued pursuant to this Act: *Provided, however*, That all information so obtained shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers subject to an order, which statements do not identify the information furnished by any person, or (2) the

publication by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. Any such officer or employee violating the provisions of this subsection shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. (7 U.S.C. 2105(c).)

(d) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this Act and necessary to effectuate the other provisions of such order. (7 U.S.C. 2105(d).)

REQUIRED TERMS IN ORDERS

SEC. 7.[4] Orders issued pursuant to this Act shall contain the following terms and conditions:

(a) Providing for the establishment and selection by the Secretary, of a Cotton Board, and defining its powers and duties, which shall include only the powers: (1) To administer such order in accordance with its terms and provisions; (2) To make rules and regulations to effectuate the terms and provisions of such order, including the designation of the person responsible for collecting the assessment; (3) To receive, investigate, and report to the Secretary complaints of violations of such order; and (4) To recommend to the Secretary amendments to such order. (7 U.S.C. 2106(a).)

(b)[5] Providing that the Cotton Board shall be composed of (1) representatives of cotton producers selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing State, as certified pursuant to section 14 of this Act, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible producer organizations, from nominations made by producers in the manner authorized by the Secretary, so that the representation of cotton producers on the Board for each cotton-producing State shall reflect, to the extent practicable, the proportion which that State's marketings of cotton bears to the total marketings of cotton in the United States, and (2) when imports of cotton are subject to an order, an appropriate number of representatives, as determined by the Secretary, of importers of cotton on which assessments are paid under this Act. Such importer representatives shall be appointed by the Secretary after consultation with organizations representing importers, as determined by the Secretary. Each cotton-producing State shall be entitled to at least one representative on the Cotton Board. The Secretary may

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[4] *Ibid*.

[5] Provision to appoint consumer advisors to the Cotton Board was added by Pub. L. 94-366, July 14, 1976, 90 Stat. 992. Section as amended by Pub. L. 101-624, 104 Stat. 3909, Nov. 28, 1990, to make applicable to imports of cotton.

appoint a number of consumer advisors to the Cotton Board not to exceed 15 per centum of the membership of the Cotton Board. The Cotton Board shall reimburse the consumer advisors for expenses incurred in attending meetings of the Board in the same manner as the Cotton Board members.

(c) Providing that the Cotton Board shall, subject to the provisions of subsection (g) of this section, develop and submit to the Secretary for his approval any advertising or sales promotion or research and development plans or projects, and that any such plan or project must be approved by the Secretary before becoming effective. (7 U.S.C. 2106(c).)

(d) Providing that the Cotton Board shall, subject to the provisions of subsection (g) of this section, submit to the Secretary for his approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising and promotion and research and development projects. (7 U.S.C. 2106(d).)

(e)[6] (1) Providing that--

(A) the producer or other person for whom the cotton is being handled shall pay to the handler of such cotton designated by the Cotton Board pursuant to regulations issued under the order;

(B) such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board; and

(C) each importer shall pay to the Cotton Board on imports of cotton, an assessment prescribed by the order, on the basis of bales of cotton handled or imported. The assessment shall cover such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board under the order, during any period specified by the Secretary.

(2) The order shall provide for reimbursing the Secretary--

(A) for expenses not to exceed $300,000 incurred by the Secretary in connection with any referendum conducted under section 8; and

(B) for administrative costs incurred by the Secretary for supervisory work up to 5 employee years after an order or amendment to any order has been issued and made effective.

There shall also be included in the order a provision for reimbursing any agency of the Federal Government that assists in administering the import

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[6] Sec. 7(e) amended by Pub. L. 94-366, July 14, 1976, 90 Stat. 991, authorizing an increase in the assessment paid by cotton producers to fund a self-help program of research, promotion, and market development, subject to approval by producers in a referendum, and reimbursement for departmental administrative costs. Further amended by Pub. L. 101-624, 104 Stat. 3909, Nov. 28, 1990, to increase from $200,000 to $300,000 the amount the Secretary can be reimbursed for conducting a referendum and to include assessments on imports. Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, changed the word “title” to “Act” in paragraph (4).

provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(3) To facilitate the collection and payment of such assessments, the Cotton Board may designate different handlers or importers or classes of handlers or importers to recognize differences in marketing practices or procedures utilized in any State or area, except that no more than one such assessment shall be made on any bale of cotton, unless specifically authorized by provisions of this subsection.

(4) The rate of assessment prescribed by the order shall be $1 per bale of cotton handled, supplemented by an additional per bale amount not to exceed 1 percent of the value of cotton as determined by the Cotton Board and the Secretary. The rate of assessment on imports of cotton shall be determined in the same manner as the rate of assessment per bale of cotton handled, and the value to be placed on cotton imports for the purpose of determining the assessment on such imports shall be established by the Secretary in a fair and equitable manner. The Secretary shall establish procedures to ensure that the upland cotton content of imported products is not subject to more than one assessment under this Act.

(5) No authority under this Act may be used as a basis to advertise or solicit votes in any referendum relating to the rate of assessment with funds collected under this Act.

(6) The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy. The remedies provided in this section shall be in addition to, and not exclusive of, the remedies provided for elsewhere in this Act or now or hereafter existing at law or in equity.

(7) The provisions of this subsection and subsection (b) shall not apply to cottonseed and the products derived from cottonseed whether domestically produced or imported.

(8) The provisions of this subsection relating to importers and assessments on imports of cotton shall be effective only if approved in a referendum as provided in section 8(b) or 8(c). (7 U.S.C. 2106(e).)

(f) Providing that the Cotton Board shall maintain such books and records and prepare and submit such reports from time to time, to the Secretary as he may prescribe, and for appropriate accounting by the Cotton Board with respect to the receipt and disbursement of all funds entrusted to it. (7 U.S.C. 2106(f).)

(g) Providing that the Cotton Board, with the approval of the Secretary, shall enter into contracts or agreements for the development and carrying out of the activities authorized under the order pursuant to sections 6 (a) and (b), and for the payment of the costs thereof with funds collected pursuant to the order, with an organization or association whose governing body consists of cotton producers selected by the cotton producer organizations certified by

the Secretary under section 14, in such manner that the producers of each cotton-producing State will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such State bears to the total cotton marketed by the producers of all cotton-producing States subject to adjustments to reflect lack of participation in the program by reasons of refunds under section 11. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sale promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require. (7 U.S.C. 2106(g).)

(h) Providing that no funds collected by the Cotton Board under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a)(4) of this section. (7 U.S.C. 2106(h).)

REQUIREMENT OF REFERENDUM AND COTTON PRODUCER APPROVAL

SEC. 8.[7] (a) The Secretary shall conduct a referendum among persons who, during a representative period determined by the Secretary, have been engaged in the production of cotton for the purpose of ascertaining whether the issuance of an order is approved or favored by producers. No order issued pursuant to this Act shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the cotton produced during the representative period by producers voting in such referendum and by not less than a majority of the producers voting in such referendum.

(b)(1) Notwithstanding the provisions of sections 4 and 5, not later than 150 days after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, and after notice and opportunity for public comment, the Secretary shall issue a proposed amendment to the order

[7] Pub. L. 101-624, 104 Stat. 3911, Nov. 28, 1990, designated former section as subsection (a) and added subsections (b) and (c). Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, substituted "17c(2)" for "17C(2)" in paragraph (b)(2).

implementing the provisions of such Act, which shall become effective as provided in paragraph (2).

(2) Notwithstanding the provisions of subsection (a), the Secretary shall, within a period not to exceed 8 months after the date of enactment of the Cotton Research and Promotion Act Amendments of 1990, conduct a referendum among persons who have been cotton producers during a representative period, as determined by the Secretary, and persons who are importers of cotton and who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum under this section imported a quantity of cotton in excess of the de minimis quantity (if any) established by the Secretary under section 17c(2), for the purpose of ascertaining if a majority of those voting approve the proposed amendment to the order issued by the Secretary under paragraph (1). The Secretary shall announce the results of the referendum within 30 days after the date of such referendum. If the amendment is approved in the referendum, within a period not to exceed 90 days from the date of announcement of the results of such referendum, the Secretary shall publish the amendment to the order and regulations implementing the amendment provided for in this subsection.

(c)(1) Notwithstanding the provisions of sections 4 and 5, once every five years after the date of the referendum provided for under subsection (b), the Secretary shall conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of the amendment to the order provided for in the Cotton Research and Promotion Act Amendments of 1990 if such amendment is then in effect or, if such an amendment is not in effect, whether they favor approval of such amendment. The Secretary shall make a public announcement of the results of the review within 60 days after each fifth anniversary date of the referendum provided for under subsection (b). If the Secretary determines to provide for such a referendum, the Secretary shall conduct the referendum within 12 months after a public announcement of the determination to conduct the referendum.

(2) If the Secretary does not provide for such a referendum on the Secretary's own initiative, the Secretary shall conduct such a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum, except that, in counting such requests for a referendum, not more than 20 percent of such requests may be from producers from any one State or importers of cotton. Producers and importers may sign up to request such a referendum at the county office of the Agricultural Stabilization and Conservation Service, or county extension agent, or by mailing such a request to the Secretary, as prescribed in regulations. The sign-up period shall be for a period not to exceed 90 days, shall commence 60 days after the Secretary makes a public announcement of a determination not to provide for a referendum on the Secretary's own initiative, and shall be publicized by the Secretary and the Cotton Board immediately after such public announcement. The referendum

shall be held within 12 months after the end of the sign-up period, if requested by the requisite number of persons.

(3) The amendment to the order provided for in this subsection shall not be effective if it is disapproved by a majority of cotton producers and importers of cotton voting in the referendum. (7 U.S.C. 2107.)

SUSPENSION AND TERMINATION OF ORDERS

SEC. 9. (a) The Secretary shall, whenever he finds that any order issued under this Act, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this Act, terminate or suspend the operation of such order or such provision thereof. (7 U.S.C. 2108(a).)

(b)[8] The Secretary may conduct a referendum at any time, and shall hold a referendum on request of a number of producers and importers (if subject to the order) equivalent to at least 10 percent of those persons voting in the most recent referendum, to determine whether cotton producers and importers subject to the order favor the termination or suspension of the order, except that in counting such requests for a referendum, not more than 20 percent of such requests may be from producers from any one State or importers of cotton (if subject to the order). The Secretary shall suspend or terminate the order at the end of the marketing year, as defined in the order, whenever the Secretary determines suspension or termination of the order is approved by a majority of produces and importers (subject to the order) voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the production and importation of cotton and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum. (7 U.S.C. 2108(b).)

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this Act. (7 U.S.C. 2108(c).)

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 10.[9] (a) Except as provided in subsection (b), the provisions of this Act applicable to orders shall be applicable to amendments to orders.

(b) No amendment to an order issued under this Act shall be effective unless the Secretary determines that--

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[8] As amended by Pub. L. 101-624, 104 Stat. 3912, Nov. 28, 1990.

[9] As amended by Pub. L. 101-624, 104 Stat. 3912, Nov. 28, 1990, and Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991.

(1) with respect to an amendment referred to in subsection (b) or (c) of section 8, the amendment is approved by producers and importers of cotton as provided in such section; or

(2) with respect to any other amendment, that the amendment is approved by a majority of cotton producers and importers subject to the order voting in the referendum.

(c) The disapproval of any amendment to an order issued under this Act shall not be deemed to invalidate such order. (7 U.S.C. 2109.)

PRODUCER REFUNDS

SEC. 11.[10] (a) Notwithstanding any other section of this Act and except as provided in subsection (b), any cotton producer against whose cotton any assessment is made and collected from him under the authority of this Act and who is not in favor of supporting the research and promotion program as provided for herein shall have the right to demand and receive from the Cotton Board a refund of such assessment: *Provided,* That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor. (7 U.S.C. 2110(a).)

(b) The right of a producer to demand a refund under subsection (a) shall terminate if the proposed amendment of the order implementing the Cotton Research and Promotion Amendments Act of 1990 is approved in the referendum provided for under section 8. Such right shall terminate 30 days after the date the Secretary announces the results of such referendum if such proposed amendment is approved. Such right shall be reinstated if the amendment should be disapproved in any subsequent referendum. (7 U.S.C. 2110(b).)

PETITION AND REVIEW

SEC. 12. (a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the

[10] Pub. L. 101-624, 104 Stat. 3912, designated former section as subsection (a) and added subsection (b). Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, inserted "of this Act" after "any other section" and struck "of this Act" after "subsection (b)," in subsection (a).

Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law. (7 U.S.C. 2111(a).)

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 13(a) of this Act. (7 U.S.C. 2111(b).)

ENFORCEMENT

SEC. 13. (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order or regulation made or issued pursuant to this Act. (7 U.S.C. 2112(a).)

(b) Any handler who willfully violates any provision of any order issued by the Secretary under this Act, or who willfully fails or refuses to collect or remit any assessment or fee duly required of him thereunder, shall be liable to a penalty of not more than $1,000 for each offense which shall accrue to the United States and may be recovered in a civil suit brought by the United States. (7 U.S.C. 2112(b).)

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

SEC. 14. The eligibility of each cotton producer organization to represent cotton producers of a cotton producing State to request the issuance of an order under section 4, and to participate in the making of nominations under section 7(b) shall be verified by the Secretary and shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following.

(a) Geographic territory within the State covered by the organization's active membership;

(b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in

which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;

(c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of this Act: *Provided, however*, That the primary consideration in determining the eligibility of an organization shall be whether its cotton farmer membership consists of a sufficiently large number of the cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. The Secretary shall certify any cotton producer organization which he finds to be eligible under this section, and his determination as to eligibility shall be final. (7 U.S.C. 2113.)

REGULATIONS

SEC. 15. The Secretary is authorized to make such regulations with the force and effect of law, as may be necessary to carry out the provisions of this Act and the powers vested in him by this Act. (7 U.S.C. 2114.)

INVESTIGATIONS: POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS: AID OF COURTS

SEC. 16.[11] The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this Act or to determine whether a handler or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any order, or rule or regulation issued under this Act. For the purpose of any such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy

[11] The Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 929, amended Section 16 of the Cotton Research and Promotion Act by striking "(a)" preceding the first sentence and by striking subsection (b) regarding appearance of witnesses. See Part IV of this Compilation for provisions on immunity of witnesses.

by, or refusal to obey a subpena issued to, any person, including a handler, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. (7 U.S.C. 2115.)

DEFINITIONS

SEC. 17.[12] As used in this Act.

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "person" means any individual, partnership, corporation, association, or any other entity.

(c) The term "cotton" means (1) all upland cotton harvested in the United States, and, except as used in section 7(e), includes cottonseed of such cotton and the products derived from such cotton and its seed and (2) imports of upland cotton including the upland cotton content of the products derived from upland cotton (other than industrial products as defined by the Secretary). The term "cotton" shall not, however, include any entry of imported cotton by an importer that has a value or weight less than any de minimis figure as established in accordance with regulations issued by the Secretary. Any de minimis figure as established under this paragraph shall be such as to minimize the burden in administering the assessment provision but still provide for the maximum participation of imports of cotton in the assessment provisions of this Act.

(d) The term "handler" means any person who handles cotton or cottonseed or, for the purposes of sections 3, 6(c), and 13, any person who imports cotton, including de minimis amounts of cotton described in subsection (c), in the manner specified in the order or in the rules and regulations issued thereunder.

(e) The term "United States" means the 50 States of the United States of America.

(f) The term "cotton-producing State" means any State in which the average annual production of cotton during the five years 1960091964 was twenty thousand bales or more, except that any State producing cotton whose production during such period was less than such amount shall under

[12] As amended by Pub. L. 101-624, Stat. 3913, Nov. 28, 1990.

regulations prescribed by the Secretary be combined with another State or States producing cotton in such manner that such an average annual production of such combination of States totaled twenty thousand bales or more, and the term "cotton-producing State" shall include any such combination of States.

(g) The term "marketing" includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

(h)(1) The term "importer" means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States.

(2) The term "import" means any such entry. (7 U.S.C. 2116.)

SEPARABILITY

SEC. 18. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby. (7 U.S.C. 2117.)

AUTHORIZATION

SEC. 19. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for the payment of the expenses or expenditures of the Cotton Board in administering any provisions of any order issued pursuant to the terms of this Act. (7 U.S.C. 2118.)

EFFECTIVE DATE

SEC. 20. This Act shall take effect upon enactment. (7 U.S.C. 2101 note.)

COTTON STATISTICS AND ESTIMATES ACT OF 1927 [1]

(7 U.S.C. 471-476)

AN ACT Authorizing the Secretary of Agriculture to collect and publish statistics of the grade and staple length of cotton

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture be, and he is hereby, authorized and directed to collect and publish annually, on dates to be announced by him, statistics or estimates concerning the grades and staple length of stocks of cotton, known as the carry-over, on hand on the 1st of August of each year in warehouses and other establishments of every character in the continental United States; and following such publication each year, to publish, at intervals in his discretion, his estimate of the grades and staple length of cotton of the then current crop: *Provided*, That not less than three such estimates shall be published with respect to each crop. In any such statistics or estimates published, the cotton which on the date for which such statistics are published may be recognized as tenderable on contracts of sale of cotton for future delivery under the United States Cotton Futures Act of August 11, 1916, as amended, shall be stated separately from that which may be untenderable under said Act as amended. (7 U.S.C. 471.)

SEC. 2. That the information furnished by any individual establishment under the provisions of this Act shall be considered as strictly confidential and shall be used only for the statistical purpose for which it is supplied. Any employee of the Department of Agriculture who, without the written authority of the Secretary of Agriculture, shall publish or communicate any information given into his possession by reason of his employment under the provisions of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than $300 or more than $1,000, or

[1] Act of March 3, 1927, 44 Stat. 1372. Section 156(d) of Pub. L. 97-35, 95 Stat. 374, Aug. 13, 1981, states: "The Secretary of Agriculture shall hold annual meetings with representatives of the cotton industry to review (1) activities and operations under the Cotton Standards Act, and the Cotton Statistics and Estimates Act, (2) activities and operations relating to cotton under the United States Warehouse Act, and (3) the effect of such activities and operations on prices received by producers and sales to domestic and foreign users, for the purpose of improving procedures for financing and administering such activities and operations for the benefit of the industry and the Government. Notwithstanding any other provision of law, the Secretary shall take such action as may be necessary to insure that the universal cotton standards system and the licensing and inspection procedures for cotton warehouses are preserved and that the Government cotton classification system continues to operate so that the United States cotton crop is provided an official quality description."

imprisoned for a period of not exceeding one year, or both so fined and imprisoned, at the discretion of the court. (7 U.S.C. 472.)

SEC. 3. That it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any cotton warehouse, cotton ginnery, cotton mill, or other place or establishment where cotton is stored, whether conducted as a corporation, firm, limited partnership, or individual, and of any owner or holder of any cotton and of the agents and representatives of any such owner or holder, when requested by the Secretary of Agriculture or by any special agent or other employee of the Department of Agriculture acting under the instructions of said Secretary to furnish completely and correctly, to the best of his knowledge, all of the information concerning the grades and staple length of cotton on hand, and when requested to permit such agent or employee of the Department of Agriculture to examine and classify samples of all such cotton on hand. The request of the Secretary of Agriculture for such information may be made in writing or by a visiting representative, and if made in writing shall be forwarded by registered mail or by certified mail,[2] and the registry receipt or receipt for certified mail of the Post Office Department shall be accepted as evidence of such demand. Any owner, president, treasurer, secretary, directory, or other officer or agent of any cotton warehouse, cotton ginnery, cotton mill, or other place or establishment where cotton is stored, or any owner or holder of any cotton or the agent or representative of any such owner or holder, who, under the conditions hereinbefore stated, shall refuse or willfully neglect to furnish any information herein provided for or shall willfully give answers that are false or shall refuse to allow agents or employees of the Department of Agriculture to examine classify any cotton in store in any such establishment, or in the hands of any owner or holder or of the agent or representative of any such owner or holder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 or more than $1,000. (7 U.S.C. 473.)

[2] Act of June 11, 1960, 74 Stat. 200, added "or by certified mail," and "or receipt for certified mail".

SMITH-DOXEY AMENDMENT [3]

SEC. 3a. Effective for each of fiscal years 1992 through 2002, the Secretary of Agriculture shall make cotton classification services available to producers of cotton and shall provide for the collection of classification fees from participating producers, or agents who voluntarily agree to collect and remit the fees on behalf of producers. Such fees, together with the proceeds from the sales of samples submitted under this section, shall cover as nearly as practicable the cost of the services provided under this section, including administrative and supervisory costs: *Provided*, That (1) the uniform per bale classification fee to be collected from producers, or their agents, for the classification service in any year shall be the fee established in the previous year for the prevailing method of classification service, exclusive of adjustments to the fee made in the previous year under clauses (2), (3), and (4), and as may be adjusted by the percentage change in the implicit price deflator for the gross national product as indexed during the most recent 12-month period for which statistics are available; (2) the fee calculated in accordance with clause (1) for a crop year may be increased by an amount not to exceed 1 percent for every 100,000 running bales, or portion thereof, that the Secretary estimates will be classed by the United States Department of Agriculture in the crop year below the level of 12,500,000 running bales, or decreased by a quantity not to exceed 1 percent for every 100,000 running bales, or portion thereof, that the Secretary

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[3] Sections 3a, 3b, and 3c added by Act of April 13, 1937, 50 Stat. 62. Sections are also known as the "Cotton Classification Act." Section 3a was amended by Pub. L. 97-35, 95 Stat. 373-374, Aug. 13, 1981, to require the Secretary, effective for fiscal years 1982-1984, to collect fees directly from participating cotton producers for cotton classing services, and to invest such funds in an interest bearing account. Pub. L. 98-403, 98 Stat.1479, Aug. 28, 1984, extended the authority to charge for classing services through fiscal year 1988. Pub. L. 100-108, 101 Stat. 728, Aug. 20, 1987, extended the authority through fiscal year 1992 and amended the first proviso. Pub. L. 102-237, 105 Stat. 1842, Dec. 13, 1991, extended the authority through fiscal year 1996, and amended clauses (1), (2), and (7) in the first proviso and the third sentence in Section 3a. Sec. 120(e) of Pub. L. 102-237 provided that the amendments made by Pub. L. 102-237 shall be effective for the period beginning on the date of enactment (Dec. 13, 1991) and ending on Sept. 30, 1996. Sec. 912(a) of Pub. L. 104-127, 110 Stat. 1185, Apr. 4, 1996, extended the authority through fiscal year 2002. Sec. 3 of Pub. L. 100-108 states:

"Sec. 3. Study on Processing Certain Cotton Grades.

"(a) STUDY.--The Secretary of Agriculture shall conduct a study, and perform such testing as necessary, of the difference between processing efficiency and product quality for Light Spotted and White grade cottons. The Secretary shall also conduct a survey and research to determine why an increasing proportion of the cotton crop is being classified as Light Spotted.

"(b) REPORT.--Not later than October 1, 1988, the Secretary shall submit an initial report describing the results of the studies required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. A final report shall be submitted to such committees as soon as practicable after submission of the initial report." (7 U.S.C. 473a note) Section 120(d) of Pub. L. 102-237, 105 Stat. 1843, Dec. 13, 1991, repealed Sec. 3 of Pub. L. 100-108.

estimates will be classed by the United States Department of Agriculture in the crop year above the level of 12,500,000 running bales; (3) adjustments made under clause (2) shall not exceed 15 per centum, except when the Secretary estimates that income generated by fees, surcharges, and other sources of income will not provide an ending accumulated operating reserve for a fiscal year of at least 10 per centum of the estimated cost of operating the program; (4) if the Secretary projects an accumulated operating reserve at the end of fiscal year of less than 25 per centum of the estimated cost of operating the program, the Secretary may add a special surcharge, not to exceed 5 cents per bale, applicable; (5) notwithstanding the previous clauses, the Secretary, to the extent practicable, shall not establish a fee which, when combined with all other sources of revenue and adjusted for expenses, would result in a projected operating reserve of more than 25 per centum; (6) the Secretary should continue to recognize that central billing and collection can reduce administrative costs, and offer appropriate discounts where practicable; and (7) the Secretary shall announce the uniform classification fee and any surcharge for the crop not later than June 1 of the year in which the fee applies. Classification services, other than the prevailing method, provided at the request of the producer shall not be subject to the restrictions specified in clauses (1), (2), and (3) of the preceding sentence. All samples of cotton submitted for classification under this section shall become the property of the United States, and shall be sold: *Provided*, That such cotton samples shall not be subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) Any fees collected under this section and under section 3d of this Act, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the current appropriation account that incurs the cost of services provided under this section and section 3d and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services. Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section to the extent that financing is not available from fees and the proceeds from the sales of samples. (7 U.S.C. 473a.)

SEC. 3b. The Secretary of Agriculture is also authorized and directed to collect, authenticate, publish, and distribute, by telegraph, radio, mail, or otherwise, timely information on the market supply, demand, location, condition, and market prices for cotton, and to cause to be prepared regularly and distributed for posting at gins, in post offices, or in other public or conspicuous places in cotton-growing communities, information on prices for the various grades and staple lengths of cotton. (7 U.S.C. 473b.)

SEC. 3c. The Secretary of Agriculture is further authorized to make such rules and regulations as he may deem necessary to effectuate the purposes of this Act. (7 U.S.C. 473c.)

SEC. 3c-1.[4] It shall be unlawful)

(a) for any person sampling cotton for classification under this Act knowingly to sample cotton improperly, or to identify cotton samples improperly, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as a sampler;

(b) for any person to influence improperly or to attempt to influence improperly or to forcibly assault, resist, impede, or interfere with any sampler in the taking of samples for classification under this Act;

(c) for any person knowingly to alter or cause to be altered a sample taken for classification under this Act by any means such as trimming, peeling, or dressing the sample, or by removing any leaf, trash, dust, or other material from the sample for the purpose of misrepresenting the actual quality of the bale from which the sample was taken;

(d) for any person knowingly to cause, or attempt to cause, the issuance of a false or misleading certificate or memorandum of classification under this Act by deceptive baling, handling, or sampling of cotton, or by any other means, or by submitting samples of such cotton for classification knowing that the cotton has been so baled, handled, or sampled;

(e) for any person knowingly to submit more than one sample from the same bale of cotton for classification under this Act, except a second sample submitted for review classification;

(f) for any person knowingly to operate or adjust a mechanical cotton sampler in such a manner that a representative sample is not drawn from each bale; and

(g) for any person knowingly to violate any regulation of the Secretary of Agriculture relating to the sampling of cotton made pursuant to section 3c of this Act. (7 U.S.C. 473c-1.)

SEC. 3c-2.[5] Any person violating any provision of section 3c-1 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than one year, or both. (7 U.S.C. 473c-2.)

SEC. 3c-3.[6] In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act, omission, or failure of the individual, association, partnership, corporation, or firm, as well as that of the person. (7 U.S.C. 473c-3.)

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[4] Section 3c-1 added by Act of July 5, 1960, 74 Stat. 328.
[5] Section 3c-2 added by Act of July 5, 1960, 74 Stat. 328.
[6] Section 3c-3 added by Act of July 5, 1960, 74 Stat. 328.

SEC. 3d.[7] The Secretary of Agriculture is authorized to make analyses of fiber properties, spinning tests, and other tests of the quality of cotton samples submitted to him by cotton breeders and other persons, subject to such terms and conditions and to the payment by such cotton breeders and other persons of such fees as he may prescribe by regulations under this Act. The fees to be assessed hereunder shall be reasonable, and, as nearly as may be, to cover the cost of the service rendered. (7 U.S.C. 473d.)

SEC. 4.[8] The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for the purchase of samples of cotton, for rent outside the District of Columbia, printing, telegrams, telephones, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes. The Secretary of Agriculture shall maintain until at least January 1, 1999, all cotton classing office locations in the State of Missouri that existed on January 1, 1996. (7 U.S.C. 474.)

SEC. 5.[9] COTTON CROP REPORTS.--The Secretary of Agriculture shall cause to be issued as of the first of each month during the cotton growing and harvesting season from August to January inclusive, reports describing the condition and progress of the crop and stating the probable number of bales which will be ginned, these reports to be issued simultaneously with the cotton ginning reports of the Bureau of the Census relating to the same dates, the two reports to be issued from the same place at 3 o'clock postmeridian on or before the 12th day of the month to which the respective reports relate. No such report shall be approved and released by the Secretary of Agriculture until it shall have been passed upon by a cotton crop reporting board consisting of five members or more to be designated by him. Not less than three members of the board shall be supervisory field statisticians of the Department of Agriculture who are located in different sections of the cotton-growing States, are experienced in estimating cotton

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[7] Section 3d added by Act of April 7, 1941, 55 Stat. 131. Section is also known as the "Cotton Service Testing Amendment".

[8] As amended by Sec. 912(b) of Pub. L. 104-127, 110 Stat. 1185, Apr. 4, 1996, requiring the Secretary to keep the cotton classing offices open in the State of Missouri until Jan. 1, 1999.

[9] Act of May 3, 1924, 43 Stat. 115; as amended by Act of March 3, 1927, 44 Stat. 1373; Act of August 8, 1946, 60 Stat. 940; Act of May 29, 1958, 72 Stat. 149; and Act of June 30, 1972, 86 Stat. 400. Section was not enacted as part of the Cotton Statistics and Estimates Act.

production, and have first-hand knowledge of the condition of the cotton crop based upon recent field observations. A majority of the members of the board shall be familiar with the methods and practices of producing cotton. (7 U.S.C. 475.)

SEC. 6.[10] The Secretary of Agriculture shall cause to be issued a report on or before the 12th day of July of each year showing by States and in toto the estimated acreage of cotton planted, to be followed on or before the 12th day of August with an estimate of the acreage for harvest and on or before the 12th day of December with an estimate of the harvested acreage. (7 U.S.C. 476.)

[10] Act of May 27, 1912, 37 Stat. 118; as amended by Act of March 3, 1927, 44 Stat. 1374; Act of May 29, 1958, 72 Stat. 149; and Act of June 30, 1972, 86 Stat. 400. Section was not enacted as part of the Cotton Statistics and Estimates Act. Sec. 3 of Pub. L. 92-331, June 30, 1972, amended Sec. 45 of title 13, U.S.C., to read as follows: "The reports of cotton ginned to the dates as of which the Department of Agriculture is also required to issue cotton crop reports shall be issued simultaneously with the cotton crop reports of that department, the two reports to be issued from the same place at 3 o'clock postmeridian on or before the 12th day of the month to which the respective reports relate." Further Sec. 4 of Pub. L. 92-331 amended Sec. 42, paragraph (a) of title 13, U.S.C. to read as follows:

"(a) The statistics of the quantity of cotton ginned shall show the quantity ginned from each crop prior to August 1, September 1, September 15, October 1, October 15, November 1, November 15, December 1, December 15, January 1, January 15, February 1, and March 1; but the Secretary may limit the canvasses of August 1 and September 1 to those sections of the cotton growing States in which cotton has been ginned."

UNITED STATES COTTON STANDARDS ACT [1]

(7 U.S.C. 51)65)

AN ACT To establish and promote the use of the official cotton standards of the United States in interstate and foreign commerce; to prevent deception therein and provide for the proper application of such standards; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known by the short title of "United States Cotton Standards Act." (7 U.S.C. 51.)

SEC. 2. That it shall be unlawful (a) in or in connection with any transaction or shipment in commerce made after this Act shall become effective, or (b) in any publication of a price or quotation determined in or in connection with any transaction or shipment in commerce after this Act shall become effective, or (c) in any classification for the purposes of or in connection with a transaction or shipment in commerce after this Act shall become effective, for any person to indicate for any cotton a grade or other class which is of or within the official cotton standards of the United States then in effect under this Act by a name, description, or designation, or any system of names, description, or designation not used in said standards: *Provided*, That nothing herein shall prevent a transaction otherwise lawful by actual sample or on the basis of a private type which is used in good faith and not in evasion of or substitution for said standards. (7 U.S.C. 52.)

SEC. 3. That the Secretary of Agriculture may, upon presentation of satisfactory evidence of competency, issue to any person a license to grade or otherwise classify cotton and to certificate the grade or other class thereof in accordance with the official cotton standards of the United States. Any such license may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied, after reasonable opportunity afforded to the licensee for a hearing, that such licensee is incompetent or has knowingly or carelessly classified cotton improperly, or has violated any provision of this

[1] Approved March 4, 1923, 42 Stat. 1517. Section 156(d) of Pub. L. 97-35, 95 Stat. 374, Aug. 13, 1981 states: "The Secretary of Agriculture shall hold annual meetings with representatives of the cotton industry to review (1) activities and operations under the Cotton Standards Act, and the Cotton Statistics and Estimates Act, (2) activities and operations relating to cotton under the United States Warehouse Act, and (3) the effect of such activities and operations on prices received by producers and sales to domestic and foreign users, for the purpose of improving procedures for financing and administering such activities and operations for the benefit of the industry and the Government. Notwithstanding any other provision of law, the Secretary shall take such action as may be necessary to insure that the universal cotton standards system and the licensing and inspection procedures for cotton warehouses are preserved and that the Government cotton classification system continues to operate so that the United States cotton crop is provided an official quality description."

Act or the regulations thereunder so far as the same may relate to him, or has used his license or allowed it to be used for any improper purpose. Pending investigation the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without a hearing. (7 U.S.C. 53.)

SEC. 4. That any person who has custody of or a financial interest in any cotton may submit the same or samples thereof, drawn in accordance with the regulations of the Secretary of Agriculture, to such officer or officers of the Department of Agriculture, as may be designated for the purpose pursuant to the regulations of the Secretary of Agriculture for a determination of the true classification of such cotton or samples, including the comparison thereof, if requested, with types or other samples submitted for the purpose. The final certificate of the Department of Agriculture showing such determination shall be binding on officers of the United States and shall be accepted in the courts of the United States as prima facie evidence of the true classification or comparison of such cotton or samples when involved in any transaction or shipment in commerce. The Secretary of Agriculture shall fix rules and regulations for submitting samples of cotton for classification providing that all samples shall be numbered so that no one interested in the transaction involved shall be known by any classifier engaged in the classification of such cotton samples. (7 U.S.C. 54)

SEC. 5[2] (a) The Secretary of Agriculture shall cause to be collected such fees and charges for licenses issued to classifiers of cotton under section 3 of this Act, for determinations made under section 4 of this Act, and for the establishment of standards and sale of copies of standards under section 6 of this Act, as will cover, as nearly as practicable, and after taking into consideration net proceeds from any sale of samples, the costs incident to providing services and standards under such sections, including administrative and supervisory costs. Any fees or charges, late payment penalties, or proceeds from the sales or samples collected under this subsection, and any interest earned through the investment of such funds shall be credited to the current appropriation account that incurs the costs of the services provided under this Act, and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing services and standards under this Act and the United States Cotton Futures Act (7 U.S.C. 15b). Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. The Secretary may provide by regulation conditions under which cotton samples submitted or used in the performance

[2] Sec. 5 was amended by Pub. L. 97-35, 95 Stat.373, Aug. 13, 1981, to require the Secretary, effective Oct. 1, 1981, to collect fees for cotton classing, establishment of standards, and the sale of copies of standards. Pub. L. 100-518, Sec. 4, 102 Stat. 2587, Oct. 24, 1988, authorized investment of funds in certain interest-bearing accounts or debt instruments.

of services authorized by this Act shall become the property of the United States and may be sold with the proceeds credited to the foregoing account: *Provided*, That such cotton samples shall not be subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(b) The price established by the Secretary of Agriculture under the foregoing provisions of this section for practical forms representing the official cotton standards of the United States shall cover, as nearly as practicable, the estimated actual cost to the Department of Agriculture for developing and preparing such practical forms. (7 U.S.C. 55.)

SEC. 6.[3] (a) That the Secretary of Agriculture is authorized to establish from time to time standards for the classification of cotton by which its quality or value may be judged or determined for commercial purposes, which shall be known as the official cotton standards of the United States. Any such standard or change or replacement thereof shall become effective only on and after a date specified in the order of the Secretary of Agriculture establishing the same, which date shall be not less than one year after the date of such order: *Provided*, That the official cotton standards established, effective August 1, 1923, under the United States Cotton Futures Act shall be at the same time the official cotton standards for the purpose of this Act unless and until changed or replaced under this Act. Whenever any standard or change or replacement thereof shall become effective under this Act, it shall also, when so specified in the order of the Secretary of Agriculture, become effective for the purposes of the United States Cotton Futures Act and supersede any inconsistent standard established under said Act. Whenever the official cotton standards of the United States established under this Act shall be represented by practical forms the Department of Agriculture shall furnish copies thereof, upon request, to any person, and the cost thereof, as determined by the Secretary of Agriculture, shall be paid by the person making the request. The Secretary of Agriculture may cause such copies to be certified under the seal of the Department of Agriculture and may attach such conditions to the purchase and use thereof, including provision for the inspection, condemnation, and exchange thereof by duly authorized representatives of the Department of Agriculture, as he may find to be necessary to the proper application of the official cotton standards of the United States. Any moneys received from or in connection with the sale of cotton purchased for the preparation of such copies and condemned as unsuitable for such use or with the sale of such copies may be expended for the purchase of other cotton for such use. (7 U.S.C. 56, 57.)

[3] Act of Sept. 21, 1944, 58 Stat. 738, redesignated former section as subsection (a) and added subsection (b).

(b) The Secretary of Agriculture is authorized to effectuate agreements with cotton associations, cotton exchanges, and other cotton organizations in foreign countries, for (1) the adoption, use, and observance of universal standards of cotton classification, (2) the arbitration or settlement of disputes with respect thereto, and (3) the preparation, distribution, inspection, and protection of the practical forms or copies thereof under such agreements. (7 U.S.C. 57a.)

SEC. 7. That in order to carry out the provisions of this Act, the Secretary of Agriculture is authorized to cause the inspection, including the sampling, of any cotton involved in any transaction or shipment in commerce, wherever such cotton may be found, or of any cotton with respect to which a determination of the true classification is requested under section 4 of this Act. (7 U.S.C. 58.)

SEC. 8. That it shall be unlawful for any person (a) with intent to deceive or defraud, to make, receive, use, or have in his possession any simulate or counterfeit practical form or copy of any standard or part thereof established under this Act; or (b) without the written authority of the Secretary of Agriculture, to make, alter, tamper with, or in any respect change any practical form or copy of any standard established under this Act; or (c) to display or use any such practical form or copy after the Secretary of Agriculture shall have caused it to be condemned. (7 U.S.C. 59.)

SEC. 9. That (a) any person who shall knowingly violate any provision of sections 2 or 8 of this Act, or (b) any person licensed under this Act who, for the purposes of or in connection with any transaction or shipment in commerce, shall knowingly classify cotton improperly, or shall knowingly falsify or forge any certificate of classification, or shall accept money or other consideration, either directly or indirectly, for any neglect or improper performance of duty as such licensee, or (c) any person who shall knowingly influence improperly or attempt to influence improperly any person licensed under this Act in the performance of his duties as such licensee relating to any transaction or shipment in commerce, or (d) any person who shall forcibly assault, resist, impede, or interfere with or influence improperly or attempt to influence improperly any person employed under this Act in the performance of his duties, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined not exceeding $1,000, or imprisoned not exceeding six months, or both, in the discretion of the court. (7 U.S.C. 60.)

SEC. 10. That for the purposes of this Act the Secretary of Agriculture shall cause to be promulgated such regulations, may cause such investigations, tests, demonstrations, and publications to be made, including the investigation and determination of some practical method whereby repeated and unnecessary sampling and classification of cotton may be avoided, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department

agency, or political subdivision thereof, or any person, as he shall find to be necessary. (7 U.S.C. 61.)

SEC. 11. That wherever used in this Act, (a) the word "person" imports the plural or the singular, as the case demands, and includes an individual, a partnership, a corporation, or two or more persons having a joint or common interest; (b) the word "commerce" means commerce between any State or the District of Columbia and any place outside thereof, or between points within the same State or the District of Columbia but through any place outside thereof, or within the District of Columbia; and (c) the word "cotton" means cotton of any variety produced within the continental United States, including linters. When construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any person, within the scope of his employment or office, shall in every case be deemed also the act, omission, or failure of such person as well as that of such agent, officer, or other person. (7 U.S.C. 62, 63.)

SEC. 12. That there are hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for carrying out the provisions of this Act; and the Secretary of Agriculture is authorized, within the limits of such appropriations, to appoint, remove, and fix the compensations of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the district of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere. (7 U.S.C. 64.)

SEC. 13. That if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 65.)

SEC. 14. That this Act shall become effective on and after August 1, 1923. (7 U.S.C. 51 note.)

JOINT RESOLUTION[4] To authorize and direct the Secretary of Agriculture to provide additional facilities for the classification of cotton under the United States Cotton Standards Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture be requested to extend to cotton growers facilities for the classification of

[4] Joint Resolution approved March 4, 1933, 47 Stat. 1621. Sections 1 and 2 were not enacted as a part of the United States Cotton Standards Act.

cotton authorized in the United States Cotton Standards Act of March 4, 1923 (42 Stat. L. 1517), with such supervision of licensed classifiers as he shall deem necessary under authority of the United States Cotton Futures Act. (7 U.S.C. 51a.)

SEC. 2. Further to carry out the purposes of the said United States Cotton Standards Act the Secretary of Agriculture is authorized to issue to any qualified person, upon presentation of satisfactory evidence of competency, a license to sample cotton. Any such license may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied that such licensee is incompetent or has knowingly or carelessly sampled cotton improperly, or has violated any provision of said Act or the regulations thereunder so far as the same may relate to him, or has used his license, or allowed it to be used, for any improper purpose. The Secretary of Agriculture may prescribe by regulation the conditions under which licenses may be issued hereunder, and may require any licensed sampler to give bond for the faithful performance of his duties and for the protection of persons affected thereby and may prescribe the conditions under which cotton shall be sampled by licensed samplers for the purpose of classification by officers of the Department of Agriculture, or by licensed cotton classifiers. (7 U.S.C. 51b.)

CONTRACTS WITH COOPERATIVES; FURNISHING CLASSERS AMOUNT TYPE OF PAYMENT

That hereafter the Secretary may contract with cooperatives furnishing classers and other facilities for classing cotton and may pay for such services an amount, some part of which may be in kind, not in excess of the value of the samples.[5] (7 U.S.C. 51a)1.)

[5] Extract of Act of July 5, 1952, 66 Stat. 349. This provision was enacted as a part of the Department of Agriculture Appropriation Act, 1953, and not as a part of the United States Cotton Standards Act.

Subpart C. Dairy

CONSOLIDATION AND REFORM OF FEDERAL MILK MARKETING ORDERS [1]

(7 U.S.C. 7253)

SEC. 143. CONSOLIDATION AND REFORM OF FEDERAL MILK MARKETING ORDERS.

(a) AMENDMENT OF ORDERS.-

(1) REQUIRED CONSOLIDATION.)-The Secretary shall amend Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to limit the number of Federal milk marketing orders to not less than 10 and not more than 14 orders.

(2) INCLUSION OF CALIFORNIA AS SEPARATE ORDER.)-Upon the petition and approval of California dairy producers in the manner provided in section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, the Secretary shall designate the State of California as a separate Federal milk marketing order. The order covering California shall have the right to reblend and distribute order receipts to recognize quota value.

(3) RELATED ISSUES ADDRESSED IN CONSOLIDATION.- Among the issues the Secretary is authorized to implement as part of the consolidation of Federal milk marketing orders are the following:

(A) The use of utilization rates and multiple basing points for the pricing of fluid milk.

(B) The use of uniform multiple component pricing when developing 1 or more basic formula prices for manufacturing milk.

(4) EFFECT OF EXISTING LAW.-In implementing the consolidation of Federal milk marketing orders and related reforms under this subsection, the Secretary may not consider, or base any decision on, the table contained in section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, as added by section 131 of the Food Security Act of 1985.

(b) EXPEDITED PROCESS.-

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[1] Title I, Subtitle D, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 915, Apr. 4, 1996.

(1) USE OF INFORMAL RULEMAKING.-To implement the consolidation of Federal milk marketing orders and related reforms under subsection (a), the Secretary shall use the notice and comment procedures provided in section 553 of title 5, United States Code.

(2) TIME LIMITATIONS.-

(A) PROPOSED AMENDMENTS.-The Secretary shall announce the proposed amendments to be made under subsection (a) not later than 2 years after the date of enactment of this title.

(B) FINAL AMENDMENTS.-The Secretary shall implement the amendments not later than 3 years after the date of enactment of this title.

(3) EFFECT OF COURT ORDER.-The actions authorized by this subsection are intended to ensure the timely publication and implementation of new and amended Federal milk marketing orders. In the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective.

(c) FAILURE TO TIMELY CONSOLIDATE ORDERS.-If the Secretary fails to implement the consolidation required under subsection (a)(1) within the time period required under subsection (b)(2)(B) (plus any additional period provided under subsection (b)(3)), the Secretary may not assess or collect assessments from milk producers or handlers under such section 8c for marketing order administration and services provided under such section after the end of that period until the consolidation is completed. The Secretary may not reduce the level of services provided under the section on account of the prohibition against assessments, but shall rather cover the cost of marketing order administration and services through funds available for the Agricultural Marketing Service of the Department.

(d) REPORT REGARDING FURTHER REFORMS.-

(1) REPORT REQUIRED.-Not later than April 1, 1997, the Secretary shall submit to Congress a report)

(A) reviewing the Federal milk marketing order system established pursuant to section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, in light of the reforms required by subsection (a);

(B) describing the efforts underway and the progress made in implementing the reforms required by subsection (a); and

(C) containing such recommendations as the Secretary considers appropriate for further improvements and reforms to the Federal milk marketing order system.

(2) EFFECT OF OTHER LAWS.-Any limitation imposed by Act of Congress on the conduct or completion of reports to Congress shall not apply to the report required under this section, unless the limitation specifically refers to this section. (7 U.S.C. 7253.)

NORTHEAST INTERSTATE DAIRY COMPACT [1]

(7 U.S.C. 7256)

SEC. 147. NORTHEAST INTERSTATE DAIRY COMPACT.

Congress hereby consents to the Northeast Interstate Dairy Compact entered into among the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont as specified in section 1(b) Senate Joint Resolution 28 of the 104th Congress, as placed on the calendar of the Senate, subject to the following conditions:

(1) FINDING OF COMPELLING PUBLIC INTEREST.-Based upon a finding by the Secretary of a compelling public interest in the Compact region, the Secretary may grant the States that have ratified the Northeast Interstate Dairy Compact, as of the date of enactment of this title, the authority to implement the Northeast Interstate Dairy Compact.

(2) LIMITATION ON MANUFACTURING PRICE.-The Northeast Interstate Dairy Compact Commission shall not regulate Class II, Class III, or Class III-A milk used for manufacturing purposes or any other milk, other than Class I (fluid) milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c) reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

(3) DURATION.-Consent for the Northeast Interstate Dairy Compact shall terminate concurrent with the Secretary's implementation of the dairy pricing and Federal milk marketing order consolidation and reforms under section 143.

(4) ADDITIONAL STATES.-Delaware, New Jersey, New York, Pennsylvania, Maryland, and Virginia are the only additional States that may join the Northeast Interstate Dairy Compact, individually or otherwise, if upon entry the State is contiguous to a participating State and if Congress consents to the entry of the State into the Compact after the date of enactment of this title.

(5) COMPENSATION OF COMMODITY CREDIT CORPORATION.-Before the end of each fiscal year that a Compact price regulation is in effect, the Northeast Interstate Dairy Compact Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the projected rate of increase in milk production for the fiscal year within the Compact region

[1] Title I, Subtitle D, of the Federal Agriculture Improvement and Reform Act of 1966, Pub. L. 104-127, 110 Stat. 919, Apr. 4, 1996.

in excess of the projected national average rate of the increase in milk production, as determined by the Secretary.

(6) MILK MARKETING ORDER ADMINISTRATOR.-At the request of the Northeast Interstate Dairy Compact Commission, the Administrator of the applicable Federal milk marketing order issued under section 8(c)5 of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall provide technical assistance to the Compact Commission and be compensated for that assistance.

(7) FURTHER CONDITIONS.-The Northeast Interstate Dairy Compact Commission shall not prohibit or in any way limit the marketing in the Compact region of any milk or milk product produced in any other production area in the United States. The Compact Commission shall respect and abide by the ongoing procedures between Federal milk marketing orders with respect to the sharing of proceeds from sales within the Compact region of bulk milk, packaged milk, or producer milk originating from outside of the Compact region. The Compact Commission shall not use compensatory payments under section 10(6) of the Compact as a barrier to the entry of milk into the Compact region or for any other purpose. Establishment of a Compact over-order price, in itself, shall not be considered a compensatory payment or a limitation or prohibition on the marketing of milk. (7 U.S.C. 7256.)

DAIRY PRODUCTION STABILIZATION ACT OF 1983 [1]

TITLE I)SUBTITLE B)DAIRY PROMOTION PROGRAM

(7 U.S.C. 4501)4513; 4514)

FINDINGS AND DECLARATION OF POLICY

SEC. 110. (a) Congress finds that)

(1) dairy products are basic foods that are a valuable part of the human diet;

(2) the production of dairy products plays a significant role in the Nation's economy, the milk from which dairy products are manufactured is produced by thousands of milk producers, and dairy products are consumed by millions of people throughout the United States;

(3) dairy products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for dairy products are vital to the welfare of milk producers and those concerned with marketing, using, and producing dairy products, as well as to the general economy of the Nation; and

(5) dairy products move in interstate and foreign commerce, and dairy products that do not move in such channels of commerce directly burden or affect interstate commerce of dairy products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States. Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk. (7 U.S.C. 4501.)

DEFINITIONS

SEC. 111. As used in this subtitle)

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[1] Title I of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98)180, 97 Stat. 1136, Nov. 29, 1983.

(a) the term "Board" means the National Dairy Promotion and Research Board established under section 113 of this subtitle;

(b) the term "Department" means the Department of Agriculture;

(c) the term "Secretary" means the Secretary of Agriculture;

(d) the term "milk" means any class of cow's milk produced in the United States;

(e) the term "dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products;

(f) the term "fluid milk products" means those milk products normally consumed in liquid form as a beverage;

(g) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(h) the term "producer" means any person engaged in the production of milk for commercial use;

(i) the term "promotion" means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of and demand for dairy products;

(j) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(k) the term "nutrition education" means those activities intended to broaden the understanding of sound nutritional principles including the role of milk and dairy products in a balanced diet; and

(l) the term "United States" as used in sections 110 through 117 means the forty-eight contiguous States in the continental United States. (7 U.S.C. 4502.)

ISSUANCE OF ORDERS

SEC. 112. (a) During the period beginning with the date of enactment of this subtitle and ending thirty days after receipt of a proposal for an initial dairy products promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment upon the proposed order. The proposal for an order may be submitted by an organization certified under section 114 of this subtitle or by any interested person affected by the provisions of this subtitle.

(b) After notice and opportunity for public comment are given, as provided for in subsection (a) of this section, the Secretary shall issue a dairy products promotion and research order. Such order shall become effective not later than ninety days following publication of the proposal.

(c) The Secretary may, from time to time, amend a dairy products promotion and research order. (7 U.S.C. 4503.)

REQUIRED TERMS IN ORDERS

SEC. 113. Any order issued under this subtitle shall contain terms and conditions as follows:

(a) The order shall provide for the establishment and administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purposes. Any such plan or project shall be directed toward the sale and marketing or use of dairy products to the end that the marketing and use of dairy products may be encouraged, expanded, improved, or made more acceptable. No such advertising or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(b) The order shall provide for the establishment and appointment by the Secretary of a National Dairy Promotion and Research Board that shall consist of not less than thirty-six members. Members of the Board shall be milk producers appointed by the Secretary from nominations submitted by eligible organizations certified under section 114 of this subtitle, or, if the Secretary determines that a substantial number of milk producers are not members of, or their interests are not represented by, any such eligible organization, then from nominations made by such milk producers in the manner authorized by the Secretary. In making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of milk production volume throughout the United States. In determining geographic representation, whole States shall be considered as a unit. A region may be represented by more than one director and a region may be made up of more than one State. The term of appointment to the Board shall be for three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms. The Board shall appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced. The executive committee shall have such duties and powers as are conferred upon it by the Board. Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board including a per diem allowance as recommended by the Board and approved by the Secretary.

(c) The order shall define the powers and duties of the Board that shall include only the powers enumerated in this section. These shall include, in addition to the powers set forth elsewhere in this section, the powers to (1) receive and evaluate, or on its own initiative develop, and budget

for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals, (2) administer the order in accordance with its terms and provisions, (3) make rules and regulations to effectuate the terms and provisions of the order, (4) receive, investigate, and report to the Secretary complaints of violations of the order, and (5) recommend to the Secretary amendments to the order. The Board shall solicit, among others, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use.

(d) The order shall provide that the Board shall develop and submit to the Secretary for approval any promotion, research, or nutrition education plan or project and that any such plan or project must be approved by the Secretary before becoming effective.

(e)[2] The order shall require the Board to submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including projected costs of dairy products promotion and research projects. For each of fiscal year 1997 through 2001, the Board's budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States.

(f) The order shall provide that the Board, with the approval of the Secretary, may enter into agreements for the development and conduct of the activities authorized under the order as specified in subsection (a) and for the payment of the cost thereof with funds collected through assessments under the order. Any such agreement shall provide that (1) the contracting party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project, (2) the plan or project shall become effective upon the approval of the Secretary, and (3) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Board of activities conducted, and such other reports as the Secretary or the Board may require.

(g) The order shall provide that each person making payment to a producer for milk produced in the United States and purchased from the producer shall, in the manner as prescribed by the order, collect an

[2] Sec. 152 of Pub. L. 104-127, 110 Stat. 922, Apr. 4, 1996, added the last sentence to allow the Board to provide funds for development of international markets for each of fiscal years 1997 through 2001.

assessment based upon the number of hundredweights of milk for commercial use handled for the account of the producer and remit the assessment to the Board. The assessment shall be used for payment of the expenses in administering the order, with provision for a reasonable reserve, and shall include those administrative costs incurred by the Department after an order has been promulgated under this subtitle. The rate of assessment prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof. A milk producer or the producer's cooperative who can establish that the producer is participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally shall receive credit in determining the assessment due from such producer for contributions to such programs of up to 10 cents per hundredweight of milk marketed or, for the period ending six months after the date of enactment of this Act, up to the aggregate rate in effect on the date of enactment of this Act of such contributions to such programs (but not to exceed 15 cents per hundredweight of milk marketed) if such aggregate rate exceeds 10 cents per hundredweight of milk marketed. Any person marketing milk of that person's own production directly to consumers shall remit the assessment directly to the Board in the manner prescribed by the order.

(h) 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 it.

(i) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subtitle only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(j) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing governmental policy or action except as provided by subsection (c)(5).

(k) The order shall require that each person receiving milk from farmers for commercial use, and any person marketing milk of that person's own production directly to consumers, maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content

prescribed by the order. Such information shall be made available to the Secretary as is appropriate to the administration or enforcement of this subtitle, or any order or regulation issued under this subtitle. All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was obtained. Nothing in this subsection may be deemed to prohibit (1) the issuance of general statements, based upon the reports, of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, or (2) the publication, by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. No information obtained under the authority of this subtitle may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this subtitle and any investigatory or enforcement action necessary for the implementation of this subtitle. Any person violating the provisions of this subsection shall, upon conviction, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and, if an officer or employee of the Board or the Department, shall be removed from office.

(l) The order shall provide terms and conditions, not inconsistent with the provisions of this subtitle, as necessary to effectuate the provisions of the order. (7 U.S.C. 4504.)

CERTIFICATION OF ORGANIZATIONS

SEC. 114. (a) The eligibility of any organization to represent milk producers, and to participate in the making of nominations under section 113 of this subtitle shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this section and the Secretary's determination as to eligibility shall be final.

(b) Certification shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary, including, but not limited to, the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership including the proportion of the total number of active milk producers represented by the organization;

(3) evidence of stability and permanency of the organization;

(4) sources from which the organization's operating funds are derived;

(5) functions of the organization; and

(6) the organization's ability and willingness to further the aims and objectives of this subtitle.

The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products. (7 U.S.C. 4505.)

REQUIREMENT OF REFERENDUM

SEC. 115. (a) Within the sixty-day period immediately preceding September 30, 1985, the Secretary shall conduct a referendum among producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use for the purpose of ascertaining whether the order then in effect shall be continued. Such order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use. If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that such action is favored by a majority of the producers voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this section and section 116, except for the salaries of Government employees. (7 U.S.C. 4506.)

SUSPENSION AND TERMINATION OF ORDERS

SEC. 116. (a) After September 30, 1985, the Secretary shall, whenever the Secretary finds that any order issued under this subtitle or any provision thereof obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of such order or such provisions thereof.

(b) After September 30, 1985, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 per centum or more of the number of producers subject to the order, to determine whether the producers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use and shall terminate the order in an orderly manner as soon as practicable after such determination.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subtitle. (7 U.S.C. 4507.)

COOPERATIVE ASSOCIATION REPRESENTATION

SEC. 117. Whenever, under the provisions of this subtitle, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, engaged in a bona fide manner in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. If a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer, on whose behalf the cooperative association is expressing approval or disapproval, a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes. (7 U.S.C. 4508.)

PETITION AND REVIEW

SEC. 118. (a) Any person subject to any order issued under this subtitle may file with the Secretary a petition stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity

for a hearing on the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant or carries on business are hereby vested with jurisdiction to review such ruling, if a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had on the Secretary by delivering a copy of the complaint to the Secretary. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. (7 U.S.C. 4509.)

ENFORCEMENT

SEC. 119. (a) The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subtitle. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General minor violations of this subtitle whenever the Secretary believes that the administration and enforcement of this subtitle would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Any person who willfully violates any provision of any order issued by the Secretary under this subtitle shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by the order, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(c) The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 4510.)

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 120. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subtitle or to determine whether any person subject to the provisions of this subtitle has

engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of this subtitle or of any order, or rule or regulation issued under this subtitle. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found. (7 U.S.C. 4511.)

ADMINISTRATIVE PROVISIONS

SEC. 121. (a) Nothing in this subtitle may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this subtitle applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 4512.)

AUTHORIZATION

SEC. 122. There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this subtitle. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of any order issued under the terms of this subtitle. (7 U.S.C. 4513.)

DAIRY REPORTS

SEC. 301.[3] The Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the following reports:

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[3] Section 301 was enacted under Title II, Dairy Reports and Other Provisions, of Pub. L. 98-180 and not as part of title I of Pub. L. 98-180, known as the Dairy Production Stabilization Act of 1983.

(1) ***
(2) ***
(3) ***

(4) Not later than July 1, 1985, and July 1 of each year after the date of enactment of this title, an annual report describing activities conducted under the dairy products promotion and research order issued under subtitle B of title I of this Act and accounting for the receipt and disbursement of all funds received by the National Dairy Promotion and Research Board under such order including an independent analysis of the effectiveness of the program. (7 U.S.C. 4514.)

SUBTITLE C)DAIRY RESEARCH PROGRAM [1]

(7 U.S.C. 4531)4538)

DEFINITIONS

SEC. 130. For purposes of this subtitle)

(1) the term `board' means the board of trustees of the Institute;

(2) the term `Department' means the Department of Agriculture;

(3) the term `dairy products' means manufactured products that are derived from the processing of milk, and includes fluid milk products;

(4) the term `fluid milk products' means those milk products normally consumed in liquid form as a beverage;

(5) the term `Fund' means the Dairy Research Trust Fund established by section 135;

(6) the term `Institute' means the National Dairy Research Endowment Institute established by section 131;

(7) the term `milk' means any class of cow's milk marketed in the United States;

(8) the term `person' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(9) the term `producer' means any person engaged in the production of milk for commercial use;

(10) the term `research' means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(11) the term `Secretary' means the Secretary of Agriculture unless the context specifies otherwise; and

(12) the term `United States' means the several States and the territories and possessions of the United States, except that for purposes of sections 131, 133(a), and 136, and paragraph (7) of this section, such term means the forty-eight contiguous States in the continental United States. (7 U.S.C. 4531.)

ESTABLISHMENT OF NATIONAL DAIRY RESEARCH ENDOWMENT INSTITUTE

[1] Added as Subtitle C of the Dairy Production Stabilization Act of 1983 by Title I, Sec. 121, of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat., 1367, Dec. 23, 1985.

SEC. 131. The Secretary of Agriculture may establish in the Department of Agriculture a National Dairy Research Endowment Institute whose function shall be to aid the dairy industry through the implementation of the dairy products research order, which its board of trustees shall administer, and the use of monies made available to its board of trustees from the Dairy Research Trust Fund to implement the order. In implementing the order, the Institute shall provide a permanent system for funding scientific research activities designed to facilitate the expansion of markets for milk and dairy products marketed in the United States. The Institute shall be headed by a board of trustees composed of the members of the National Dairy Promotion and Research Board. The board may appoint from among its members an executive committee whose membership shall reflect equally each of the different regions in the United States in which milk is produced. The executive committee shall have such duties and powers as are delegated to it by the board. The members of the board shall serve without compensation. While away from their homes or regular places of business in the performance of services for the board, members of the board shall be allowed reasonable travel expenses, including a per diem allowance in lieu of subsistence, as recommended by the board and approved by the Secretary, except that there shall be no duplication of payment for such expenses. (7 U.S.C. 4532.)

ISSUANCE OF ORDER

SEC. 132. (a) After receipt of a proposed dairy products research order, the Secretary may publish such proposed order in the Federal Register and shall give notice and reasonable opportunity for public comment on such proposed order. Such proposed order may be submitted by an organization certified under section 114 or by any interested person affected by the provisions of subtitle B.

(b) After the Secretary provides for such publication and a reasonable opportunity for a hearing under subsection (a), the Secretary may issue the dairy products research order. The order so issued shall become effective not later than 90 days after publication in the Federal Register of the order.

(c) The Secretary may amend, from time to time, the dairy products research order issued under subsection (b). (7 U.S.C. 4533.)

REQUIRED TERMS OF ORDER; AGREEMENTS UNDER ORDER; RECORDS

SEC. 133. (a) The dairy products research order issued under section 132(b) shall)

(1) provide for the establishment and administration, by the Institute, of appropriate scientific research activities designed to facilitate the expansion of markets for dairy products marketed in the United States;

(2) specify the powers of the board, including the powers to—

(A) receive and evaluate, or on its own initiative develop and budget for, research plans or projects designed to—

(i) increase the knowledge of human nutritional needs and the relationship of milk and dairy products to these needs;

(ii) improve dairy processing technologies, particularly those appropriate to small- and medium-sized family farms;

(iii) develop new dairy products; and

(iv) appraise the effect of such research on the marketing of dairy products;

(B) make recommendations to the Secretary regarding such plans and projects;

(C) administer the order in accordance with its terms and provisions;

(D) make rules and regulations to effectuate the terms and provisions of the order;

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

(F) recommend to the Secretary amendments to the order;

(G) enter into agreements, with the approval of the Secretary, for the conduct of activities authorized under the order and for payment of the cost of such activities with any monies in the Fund other than monies appropriated or transferred by the Secretary to the Fund;

(H) with the approval of the Secretary, establish advisory committees composed of individuals other than members of the board, and pay the necessary and reasonable expenses and fees of the members of such committees; and

(I) with the approval of the Secretary, appoint or employ such persons, other than members of the board, as the board deems necessary and define the duties and determine the compensation of each;

(3) specify the duties of the board, including the duties to—

(A) develop, and submit to the Secretary for approval before implementation, any research plan or project to be carried out under this subtitle;

(B) submit to the Secretary for approval, budgets, on a fiscal year basis, of the board's anticipated expenses and disbursements in the administration of the order, including projected costs of carrying out dairy products research plans and projects;

(C) prepare and make public, at least annually, a report of the board's activities and an accounting for funds received and expended by the board;

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

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

(F) account for the receipt and disbursement of all funds entrusted to the board;

(4) prohibit any monies received under this subtitle by the board to be used in any manner for the purpose of influencing governmental policy or actions, except as provided in paragraph (2)(F); and

(5) require that each person receiving milk from producers for commercial use and any person marketing milk of that person's own production directly to consumers maintain and make available for inspection by the Secretary such books and records as may be required by the order and file with the Secretary reports at the time, in the manner, and having the content prescribed by the order.

(b) Any agreement made under subsection (a)(2)(G) shall provide that)

(1) the person with whom such agreement is made shall develop and submit to the board a research plan or project together with a budget that shows estimated costs to be incurred to carry out such plan or project;

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

(3) such person shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the board of activities conducted to carry out such plan or project, and submit such other reports as the Secretary or the board may require.

(c)(1) Information, books, and records made available to, and reports filed with, the Secretary under subsection (a)(6) shall be kept confidential by all officers and employees of the Department, except that such information, books, records, and reports as the Secretary deems relevant may be disclosed by such officers and employees in any suit or administrative proceeding that is brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, and that involves the order issued under section 132(b).

(2) Paragraph (1) shall not be construed to prohibit)

(A) the issuance of general statements, based on such information, books, records, and reports, of the number of persons subject to the order or of statistical data collected from such persons if such statements do not specifically identify the data furnished by any one of such persons; or

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

(3) No information obtained under the authority of this section may be made available to any agency, officer, or employee of the United States for any purpose other than the implementation of this subtitle and any investigatory or enforcement action necessary to implement this subtitle. Any person who violates this paragraph shall be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and, if such person is employed by the board or the Department, shall be terminated from such employment. (7 U.S.C. 4534.)

PETITION AND REVIEW; ENFORCEMENT; INVESTIGATIONS

SEC. 134. The provisions of sections 118, 119, and 120 shall apply, except when inconsistent with this subtitle, to the Institute, the board, the persons subject to the order issued under section 132(b), the jurisdiction of district courts of the United States, and the authority of the Secretary under this subtitle in the same manner as such sections apply with respect to subtitle B. (7 U.S.C. 4535.)

DAIRY RESEARCH TRUST FUND

SEC. 135. (a) There may be established in the Treasury of the United States a trust fund to be known as the `Dairy Research Trust Fund' if the Institute is established under section 131 and a dairy products research order issued under section 132 is effective during such fiscal year.

(b)(1) There is authorized to be appropriated to the Fund or transferred from moneys available to the Commodity Credit Corporation for deposit in the Fund, $100,000,000.

(2) Moneys deposited in the Fund under paragraph (1) shall be invested by the Secretary of the Treasury in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Interest, dividends, and other payments that accrue from such investments shall be deposited in the Fund and also shall be so invested, subject to subsection (c).

(c) Moneys in the Fund, other than moneys appropriated or transferred under paragraph (1) of subsection (b), shall be available to the board, in such amounts, and for such activities authorized by this subtitle, as the Secretary may approve. (7 U.S.C. 4536.)

TERMINATION OF ORDER, INSTITUTE, AND FUND

SEC. 136. (a) The Secretary, whenever the Secretary finds that the order issued under this subtitle or any provision of such order obstructs or does not tend to facilitate the expansion of markets for milk and dairy products marketed in the United States, shall terminate or suspend the operation of the order or such provision.

(b) If the Secretary terminates the order, the Institute shall be dissolved 180 days after the termination of the order.

(c) If the Institute is dissolved for any reason, the moneys remaining in the Fund shall be disposed of as shall be agreed to by the board and the Secretary. (7 U.S.C. 4537.)

ADDITIONAL AUTHORITY

SEC. 137. (a) No provision of this subtitle shall be construed to preempt or supersede any other program relating to milk or dairy products research organized and operated under the laws of the United States or any State.

(b) The provisions of this subtitle applicable to the order issued under section 132(b) shall be applicable to any amendment to the order. (7 U.S.C. 4538.)

FLUID MILK PROMOTION ACT OF 1990 [1]

(7 U.S.C. 6401)6417)

SEC. 1999A. Short Title.

This subtitle may be cited as the "Fluid Milk Promotion Act of 1990". (7 U.S.C. 6401 note.)

SEC. 1999B. Findings and Declaration of Policy.[2]

(a) FINDINGS.)Congress finds that)

(1) fluid milk products are basic foods and are a primary source of required nutrients such as calcium, and otherwise are a valuable part of the human diet; (2) fluid milk products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(3) the dairy industry plays a significant role in the economy of the United States, in that milk is produced by thousands of milk producers and dairy products (including fluid milk products) are consumed every day by millions of people in the United States;

(4) the processing of milk into fluid milk products and the marketing of such products are important to the dairy industry because the fluid milk segment of the dairy market contributes substantially to ensuring that the prices paid to milk producers for raw milk are stable and adequate to maintain the overall strength of the dairy industry;

(5) the maintenance and expansion of markets for fluid milk products are vital to the Nation's fluid milk processors and milk producers, as well as to the general economy of the United States;

(6) the congressional purpose underlying this subtitle is to maintain and expand markets for fluid milk products, not to maintain or expand any processor's share of those markets and that the subtitle does not prohibit or restrict individual advertising or promotion of fluid milk products since the programs created and funded by this subtitle are not extended to replace individual advertising and promotion efforts;

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[1] Pub. L. 101-624, Title XIX, Subtitle H, 104 Stat. 3914, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991.

[2] Sec. 146(a) of Pub. L. 104-127, 110 Stat. 918, Apr. 4, 1996, redesignated paragraphs (6), (7), and (8) as paragraphs (7), (8), and (9), respectively, and added a new paragraph (6). Sec. 146(b) of Pub. L. 104-127, 110 Stat. 918, Apr. 4, 1996, revised section (b).

(7) the cooperative development, financing, and implementation of a coordinated program of advertising and promotion of fluid milk products is necessary to maintain and expand markets for fluid milk products;

(8) it is appropriate to finance the cooperative program described in paragraph (6)[3] with self-help assessments paid by the fluid milk processors; and

(9) fluid milk products move in interstate and foreign commerce, and fluid milk products that do not move in such channels of commerce directly burden or affect interstate commerce in fluid milk products.

(b) POLICY.)It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of powers provided in this subtitle, of an orderly procedure for developing, financing, through adequate assessments on fluid milk products produced in the United States and carrying out an effective, continuous, and coordinated program of promotion, research, and consumer information designed to strengthen the position of the dairy industry in the marketplace and maintain and expand domestic and foreign markets and uses for fluid milk products, the purpose of which is not to compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name fluid milk products, but rather to maintain and expand the markets for all fluid milk products, with the goal and purpose of this subtitle being a national governmental goal that authorizes and funds programs that result in government speech promoting government objectives. (7 U.S.C. 6401.)

SEC. 1999C. Definitions.

As used in this subtitle:

(1) ADVERTISING.)The term "advertising" means any advertising or promotion program involving only fluid milk products and directed toward increasing the general demand for fluid milk products.

(2) BOARD.)The term "Board" means the National Processor Advertising and Promotion Board established under section 1999H(b).

(3) FLUID MILK PRODUCT.)The term "fluid milk product")

(A) means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

[3] So in original. Reference to paragraph (6) probably should be paragraph (7) as Pub. L. 104-127, 110 Stat. 918, Apr. 3, 1996, redesignated former paragraph (6) as paragraph (7).

(B) does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey.

(4)[4] FLUID MILK PROCESSOR.)The term "fluid milk processor" means any person who processes and markets commercially more than 500,000 pounds of fluid milk products in consumer-type packages per month.

(5) DEPARTMENT.)The term "Department" means the Department of Agriculture.

(6)[5] RESEARCH.)The term "research" means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

(7) SECRETARY.)The term "Secretary" means the Secretary of Agriculture.

(8) UNITED STATES.)The term "United States", except as used in sections 1999K through 1999M, means the 48 contiguous States in the continental United States and the District of Columbia. (7 U.S.C. 6402.)

SEC. 1999D. Authority to Issue Orders.

(a) IN GENERAL.)To effectuate the declared policy under section 1999B(b), the Secretary shall issue and from time to time may amend, orders applicable to all fluid milk processors, authorizing)

(1) the collection of assessments on fluid milk products subject to this subtitle; and

(2) the use of the assessments to provide research and advertising in a manner prescribed by this subtitle.

(b) SCOPE.)Any order issued under this subtitle shall be national in scope.

(c) ONE ORDER.)Not more than one order shall be in effect under this subtitle at any one time. (7 U.S.C. 6403.)

SEC. 1999E. Notice and Comment.

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[4] As amended by Pub. L. 103-72, 107 Stat. 717, Aug. 11, 1993, to exclude *de minimis* processors.

[5] As amended by Sec. 146(c) of Pub. L. 104-127, 110 Stat. 918, Apr. 4, 1996.

Not later than 60 days after the Secretary receives a request for the issuance of an order under this subtitle, and a specific proposal for an order from individual fluid milk processors that marketed during a representative period, as determined by the Secretary, not less than 30 percent of the volume of fluid milk products marketed by all processors, the Secretary shall publish the proposed order and give due notice and opportunity for public comment on the proposed order. (7 U.S.C. 6404.)

SEC. 1999F. Findings and Issuance of Orders.

(a) IN GENERAL.)After notice and opportunity for public comment are given, as provided in section 1999E, 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 and the declared policy of this subtitle.

(b) EFFECTIVE DATE.)Such order shall be issued and, if approved by fluid milk processors as provided in section 1999N, shall become effective not later than 180 days following publication of the proposed order. (7 U.S.C. 6405.)

SEC. 1999G. Regulations.

The Secretary may issue such regulations as may be necessary to carry out this subtitle and the powers vested in the Secretary by this subtitle. (7 U.S.C. 6406.)

SEC. 1999H. Required Terms in Orders.

(a) IN GENERAL.)Each order issued under this subtitle shall contain the terms and conditions prescribed in this section.

(b) NATIONAL PROCESSOR ADVERTISING AND PROMOTION BOARD.)

(1) ESTABLISHMENT.)The order shall establish a National Processor Advertising and Promotion Board to administer the order.

(2) SERVICE TO THE ENTIRE INDUSTRY.)In administering the order, the Board shall carry out programs and projects that will provide maximum benefit to the fluid milk industry and promote only fluid milk products. The Board shall, to the extent practicable, ensure that advertising coverage in each region is proportionate to the funds collected from each region.

(3) REGIONS.)The Secretary shall establish not less than 12 nor more than 15 regions in order to ensure appropriate geographic representation on the Board.

(4) BOARD MEMBERSHIP.)The Board shall consist of one member appointed by the Secretary, from among fluid milk processors, to

represent each of the regions established under paragraph (3), with the membership representing, to the extent practicable, differing sizes of operations. The Secretary shall appoint five additional at-large members to the Board, of which at least three shall be fluid milk processors and at least one shall be from the general public.

(5) TERMS OF OFFICE.)The members of the Board shall serve for terms 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. No member shall serve for more than 2 consecutive terms, except that the members that are selected to serve for the initial term of 1 or 2 years shall be eligible to be reappointed for a 3)year term.

(6) COMPENSATION.)Each member of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in the performance of duties of the Board.

(c) POWERS AND DUTIES OF THE 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 make rules to effectuate the terms and conditions of the order;

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

(4) to develop and recommend such rules, regulations, and amendments to the order to the Secretary for approval as may be necessary for the development and execution of programs or projects to carry out the order;

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

(6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal year, a fiscal year 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, with the approval of the Secretary, to develop and carry out programs or projects of research and advertising;

(9) to carry out advertising or research, and pay the costs of the projects with funds collected pursuant to section 1999J;

(10) to keep minutes, books, and records that reflect all of the acts and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(11) to furnish the Secretary with such other information as the Secretary may require; and

(12) to invest funds collected by the Board pursuant to subsection (g).

(d) PLANS AND BUDGETS.)

(1) BUDGETS.)The order shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of the fiscal year, to develop budgets of the anticipated expenses and disbursements of the Board in the implementation of the order, including projected costs of research and advertising. The budget shall be submitted to the Secretary and be effective on the approval of the Secretary.

(2) INCURRING EXPENSES.)The Board may incur such expenses for research or advertising of fluid milk products, and other expenses for the administration, maintenance, and functioning of the Board, as may be authorized by the Secretary. The expenses shall include any implementation, administrative, and referendum costs incurred by the Department.

(3) PAYING EXPENSES.)The funds to cover the expenses referred to in paragraph (2) shall be paid from assessments collected under section 1999J.

(4) LIMITATION ON SPENDING.)Effective 1 year after the date of the establishment of the Board, the Board shall not spend in excess of 5 percent of the assessments collected for the administration of the Board.

(e) PROHIBITION ON BRANDED ADVERTISING.)A program or project conducted under this subtitle shall not make any reference to private brand names or use false or unwarranted claims on behalf of fluid milk products, or false or unwarranted statements with respect to the attributes or use of any competing products, except that this subsection shall not preclude the Board from offering its programs and projects for use by commercial parties, under such terms and conditions as the Board may prescribe as approved by the Secretary.

(f) CONTRACTS AND AGREEMENTS.)

(1) IN GENERAL.)To ensure efficient use of funds collected under this subtitle, the order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects for fluid milk products research and advertising and for the payment of the costs of the programs or projects with funds received by the Board under the order.

(2) REQUIREMENTS.)Any such contract or agreement shall provide that)

(A) the contracting party shall develop and submit to the Board a program or project, together with a budget or budgets that shall disclose estimated costs to be incurred for such 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 of the transactions of the contracting 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.

(g) INVESTMENT OF FUNDS.)

(1) IN GENERAL.)The order shall provide that the Board, with the approval of the Secretary, may invest assessment funds collected by the Board under the order, pending disbursement of the funds, only in)

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any 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.

(2) INCOME.)Income from any such investment may be used for any purpose for which the invested funds may be used.

(h) 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. A report of each such audit shall be submitted to the Secretary.

(i) BOOKS AND RECORDS OF PROCESSORS.)

(1) IN GENERAL.)The order shall require that each fluid milk processor subject to this subtitle maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) USE OF INFORMATION.)Information obtained under paragraph (1) shall be made available to the Secretary as is appropriate for the effectuation, administration, or enforcement of this subtitle, or any order or regulation issued under this subtitle.

(3) CONFIDENTIALITY.)

(A) IN GENERAL.)Except as provided in subparagraphs (B) and (C), commercial or financial information that is obtained under paragraph (1) or (2) and that is privileged or confidential shall be kept confidential by all officers and employees of the Department and agents of the Board, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) AVAILABILITY OF INFORMATION.)Except as otherwise provided in this subtitle, information obtained under this subtitle 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.

(C) OTHER EXCEPTIONS.)Nothing in subparagraph (A) may be construed to prohibit)

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

(4) PENALTY.)Any person 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 such person is an agent of the Board or an officer or employee of the Department, shall be removed from office.

(5) WITHHOLDING INFORMATION.)Nothing in this subsection shall authorize the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

(6) TIME REQUIREMENT.)The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal year of the applicability of the records.

(j) PROHIBITION ON USE OF FUNDS TO INFLUENCE GOVERNMENTAL ACTION.)

(1) IN GENERAL.)Except as otherwise provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) EXCEPTION.)Paragraph (1) shall not apply to the development or recommendation of amendments to the order.

(k) COORDINATION.)The order shall require the Board to take reasonable steps to coordinate the collection of assessments, and advertising and research activities of the Board with the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

(l) EXEMPTIONS.)The order shall exempt fluid milk products exported from the United States from assessments under the order.

(m) REPORT.)The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this subtitle during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

(n) OTHER TERMS AND CONDITIONS.)The order also shall contain such terms and conditions, not inconsistent with this subtitle, as are necessary to effectuate this subtitle, including regulations relating to the assessment of late payment charges. (7 U.S.C. 6407.)

SEC. 1999I. Permissive Terms.

(a) IN GENERAL.)Each order issued under this subtitle may contain one or more of the terms and conditions described in this section.

(b) ADVERTISING.)The order may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising of fluid milk products and the use of funds collected under this subtitle for such programs or projects.

(c) RESEARCH AND DEVELOPMENT.)The order may provide for establishing and carrying out research projects and studies to support the advertising efforts for fluid milk products, and the use of funds collected under the order for such projects and studies.

(d) RESERVE FUNDS.)The order may provide authority to accumulate reserve funds from assessments collected pursuant to the order, to permit an effective and continuous coordinated program of research and advertising in years when the assessment income may be reduced, except that the total reserve fund may not exceed 25 percent of the amount budgeted for the operation in the current
fiscal year of the order.

(e) OTHER TERMS.)The order may contain such other terms and conditions incidental to and not inconsistent with the terms and conditions specified in this subtitle as are necessary to effectuate the other provisions of the order.
(7 U.S.C. 6408.)

SEC. 1999J. Assessments.

(a) IN GENERAL.)The order shall provide that each fluid milk processor shall pay an assessment on each unit of fluid milk product that such person processes and markets commercially in consumer-type packages in the United States.

(b) NO EFFECT ON PRODUCER PRICES.)Such assessments shall not)

(1) reduce the prices paid under the Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(2) otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) REMITTING ASSESSMENTS.)

(1) IN GENERAL.)Assessments required under subsection (a) shall be remitted by the fluid milk processor directly to the Board in accordance with the order and regulations issued by the Secretary.

(2) TIMES TO REMIT ASSESSMENT.)Each processor who is responsible for the remittance of an assessment under paragraph (1) shall remit the assessment to the Board not later than the last day of the month following the month that the milk being assessed was marketed.

(3) VERIFICATION.)Remittances shall be verified by market administrators and State regulatory officials, and local and State Agricultural Stabilization and Conservation Service offices, as provided by the Secretary.

(d) LIMITATION ON ASSESSMENTS.)Not more than one assessment may be assessed under this section for the purposes of this subtitle on a processor for any unit of fluid milk product.

(e)[6] PRODUCER-HANDLERS.)Producer-handlers that are required to pay the assessment imposed under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and that are fluid milk processors, shall also be responsible for the additional assessment imposed by this section.

(f) PROCESSOR ASSESSMENT RATE.)Except as provided in section 1999P(b), the rate of assessment prescribed by the order shall be 20 cents per hundredweight of fluid milk products marketed. (7 U.S.C. 6409.)

SEC. 1999K. Petition and Review.

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[6] Sec. 2(b) of Pub. L. 103-72, 107 Stat. 717, Aug. 11, 1993, inserted ", and that are fluid milk processors." after "4504(g))".

(a) PETITION.)

(1) IN GENERAL.)A person subject to an order issued under this subtitle 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) HEARINGS.)The petitioner shall be given the 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, which shall be final if in accordance with law.

(b) REVIEW.)

(1) COMMENCEMENT OF ACTION.)The district courts of the United States in any district in which the person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS.)Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.)If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either)

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

(B) to take such further proceedings as, in the opinion of the court, the law requires. (7 U.S.C. 6410.)

SEC. 1999L. Enforcement.

(a) JURISDICTION.)The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subtitle.

(b)[7] REFERRAL TO ATTORNEY GENERAL.)A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the

[7] Sec. 809 of Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, substituted "this section" for "this subsection".

Attorney General a violation of this subtitle, or any order or regulation issued under this subtitle, if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by providing a suitable written notice or warning to the person who committed such violation or by administrative action under subsection (c).

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—Any person who violates any provision of any order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulations, may be assessed—

(A) a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation; or

(B) in the case of a willful failure or refusal to pay, collect, or remit any assessment or fee duly required of the person under this subtitle or a regulation issued under this subtitle, a civil penalty by the Secretary of not less than $10,000 nor more than $100,000 for each such violation.

Each violation shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.—In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.—No penalty shall be assessed or cease-and-desist order issued by the Secretary unless the person against whom the penalty is assessed or the order issued is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) FINALITY.—The order of the Secretary assessing a penalty or imposing a cease-and-desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) may obtain review of the penalty or order by—

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

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

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

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

(2) RECORD.)The Secretary shall file promptly in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.)A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.)Any person who fails to obey a cease-and-desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $5,000 for each offense.

Each day during which the failure continues shall be considered as a separate violation of such order.

(f) FAILURE TO PAY PENALTIES.)If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court in which the person resides or conducts business. In the action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) ADDITIONAL REMEDIES.)The remedies provided in this subtitle shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 6411.)

SEC. 1999M. 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 subtitle; or

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

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.)

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

(2) ADMINISTRATIVE HEARINGS.)For the purpose of an administrative hearing held under section 1999K or 1999L, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.)In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.)Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.)Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.)The site of any hearings held under section 1999K or 1999L shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 6412.)

SEC. 1999N. Requirement of Initial Referendum.

(a) IN GENERAL.)Within the 60)day period immediately preceding the effective date of an order issued under section 1999F(a), the Secretary shall conduct a referendum among fluid milk processors to ascertain whether the order shall go into effect.

(b) IMPLEMENTATION.)If, as a result of the referendum conducted under subsection (a), the Secretary determines that implementation of the order is favored)

(1) by at least 50 percent of fluid milk processors voting in the referendum; and

(2)[8] by fluid milk processors voting in the referendum that marketed during the representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the order shall become effective as provided in section 1999F(b).

[8] Sec. 146(d)(1) of Pub. L. 104-127, 110 Stat. 919, Apr. 4, 1996, substituted "fluid milk processors voting in the referendum" for "all processors".

(c) COSTS OF REFERENDUM.)The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this subtitle.

(d) MANNER.)

(1) IN GENERAL.)Referenda conducted pursuant to this subtitle shall be conducted in a manner determined by the Secretary.

(2) ADVANCE REGISTRATION.)A fluid milk processor who chooses to vote in any referendum conducted under this subtitle shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

(3) VOTING.)A fluid milk processor who votes in any referendum conducted under this subtitle shall vote in accordance with procedures established by the Secretary. The ballots and other information or reports that reveal or tend to reveal the vote of any processor shall be held strictly confidential.

(4) NOTICE.)The Secretary shall notify all processors at least 30 days prior to a referendum conducted under this subtitle. The notice shall explain the procedure established under this subsection. (7 U.S.C. 6413.)

SEC. 1999O. Suspension or Termination of Orders.[9]

(a) TERMINATION OF ORDER.)Any order effective under this subtitle shall be terminated December 31, 2002. The Secretary shall)

(1) terminate the collection of assessments under the order upon such date; and

(2) terminate activities under the order in an orderly manner as soon as practicable after such date.

(b) SUSPENSION OR TERMINATION BY SECRETARY.) The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of the order or provision.

(c) OTHER REFERENDA.)

(1) IN GENERAL.)The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Secretary, have been fluid milk processors on whether to suspend or terminate the order, and shall hold such a referendum on request of the Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10

[9] As amended by Sec. 146(d) and (e) of Pub. L. 104-127, 110 Stat. 919, Apr. 4, 1996, to change the referendum adoption requirements to reflect only those processors voting in the referendum and to reauthorized the program through calendar year 2002.

percent or more of the volume of fluid milk products marketed by fluid milk processors voting fin the preceding referendum.

(2) SUSPENSION OR TERMINATION.)If the Secretary determines that the suspension or termination is favored)

(A) by at least 50 percent of fluid milk processors voting in the referendum; and

(B) by fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the Secretary shall, within 6 months after making the determination, suspend or terminate, as appropriate, collection of assessments under the order, and suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(3) COSTS; MANNER.)Subsections (c) and (d) of section 1999N shall apply to a referendum conducted under this subsection. (7 U.S.C. 6414.)

SEC. 1999P. Amendments.

(a) AMENDMENTS TO ORDER.)Subject to subsection (b), the Secretary may issue such amendments to an order as may be necessary to carry out this subtitle.

(b) AMENDMENT TO ASSESSMENT RATES.)

(1) IN GENERAL.)The Secretary may conduct at any time a referendum of persons who, during a representative period as determined by the Secretary, have been fluid milk processors on adjusting the assessment rate under the order issued under this subtitle then in effect, and shall hold such a referendum on request of the Board or any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors.

(2) ADJUSTMENT TO ASSESSMENT RATE.)The Secretary shall adjust the assessment rate under the order whenever the Secretary determines that the adjustment is favored)

(A) by at least 50 percent of fluid milk processors voting in the referendum; and

(B) by fluid milk processors that marketed during a representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by all processors;

In no event shall the rate of assessment prescribed by the order exceed 20 cents per hundredweight.

(3) EFFECTIVE DATE.)The adjusted assessment rate shall be effective on a date, as determined by the Secretary, after the results of

the referendum are known, but not later than 30 days after the referendum.

(4) COSTS; MANNER.)Subsections (c) and (d) of section 1999N shall apply to a referendum conducted under this subsection. (7 U.S.C. 6415.)

SEC. 1999Q. Independent Evaluation of Programs.

(a) REVIEW AND EVALUATION.)The Comptroller General of the United States shall review and evaluate the order to)

(1) determine the effectiveness of the promotion program conducted under this subtitle on fluid milk sales;

(2) determine if the assessments for the program have been passed back to milk producers by fluid milk processors; and

(3) make recommendations for future funding and assessment levels for the program.

(b) REPORT TO CONGRESS.)The Comptroller General shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the valuations made under this section no later than January 1, 1995. (7 U.S.C. 6416.)

SEC. 1999R. Authorization of Appropriations.

(a) IN GENERAL.)There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES.)The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any order issued under this subtitle. (7 U.S.C. 6417.)

DAIRY INSPECTION FOR EXPORT

That the Act of March third, eighteen hundred and ninety-one, as amended March second, eighteen hundred and ninety-five, for the inspection of live cattle and products thereof, shall be deemed to include dairy products intended for exportation to any foreign country, and the Secretary of Agriculture may apply, under rules and regulations to be prescribed by him, the provisions of said Act for inspection and certification appropriate for ascertaining the purity and quality of such products, and may cause the same to be so marked, stamped, or labeled as to secure their identity and make known in the markets of foreign countries to which they may be sent from the United States their purity, quality, and grade; and all the provisions of said Act relating to live cattle and products thereof for export shall apply to dairy products so inspected and certified.[1] (21 U.S.C. 693.)

[1] Proviso from the Department of Agriculture appropriation act for the fiscal year ending June 30, 1909, 35 Stat. 254.

Subpart D. EGGS AND EGG PRODUCTS

EGG PRODUCTS INSPECTION ACT [1]

(21 U.S.C. 1031)1056)

To provide for the inspection of certain egg products by the United States Department of Agriculture; restriction on the disposition of certain qualities of eggs; uniformity of eggs; uniformity of standards for eggs in interstate or foreign commerce; and cooperation with State agencies in administration of this Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Egg Products Inspection Act". (21 U.S.C. 1031 note.)

LEGISLATIVE FINDING

SEC. 2. Eggs and egg products are an important source of the Nation's total supply of food, and are used in food in various forms. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, not adulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the

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[1] Pub. L. 91-597, 84 Stat. 1620-1635, Dec. 29, 1970. Sec. 1012 of Pub. L. 102-237, 105 Stat. 1899, Dec. 13, 1991, provided that:

"(a) FINDINGS AND PURPOSES.)

"(1) FINDINGS.)Congress finds that)

"(A) food borne illness is a serious health problem;

"(B) its incidence can be reduced through proper handling of food; and

"(C) eggs are perishable and therefore are particularly susceptible to supporting microbial growth if proper temperature controls are not maintained.

"(2) PURPOSES.)It is the purposes of this section to prescribe the temperature at which eggs are maintained in order to reduce the potential for harmful microbial growth to protect the health and welfare of consumers." (21 U.S.C. 1031 note.)

wholesome, not adulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this Act are either in interstate or foreign commerce, or substantially affect such commerce, and that regulation by the Secretary of Agriculture and the Secretary of Health and Human Services,[2] and cooperation by the States and other jurisdictions, as contemplated by this Act, are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers. (21 U.S.C. 1031.)

DECLARATION OF POLICY

SEC. 3. It is hereby declared to be the policy of the Congress to provide for the inspection of certain egg products, restrictions upon the disposition of certain qualities of eggs, and uniformity of standards for eggs, and otherwise regulate the processing and distribution of eggs and egg products as hereinafter prescribed to prevent the movement or sale for human food, of eggs and egg products which are adulterated or misbranded or otherwise in violation of this Act. (21 U.S.C. 1032.)

DEFINITIONS

SEC. 4. For purposes of this Act)

(a) The term "adulterated" applies to any egg or egg product under one or more of the following circumstances)

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(A) if it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which may, in the judgment of the Secretary, make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

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[2] The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 695.

(C) if it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(D) if it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: *Provided*, That an article which is not otherwise deemed adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(4) if it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(b) The term "capable of use as human food" shall apply to any egg or egg product, unless it is denatured, or otherwise identified, as required by regulations prescribed by the Secretary to deter its use as human food.

(c) The term "commerce" means interstate, foreign, or intrastate commerce.

(d) The term "container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(1) The term "immediate container" means any consumer package; or any other container in which egg products, not consumer packaged, are packed.

(2) The term "shipping container" means any container used in packaging a product packed in an immediate container.

(e) The term “egg handler” means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food.

(f) The term “egg product” means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(g) The term “egg” means the shell egg of the domesticated chicken, turkey, duck, goose or guinea.

(1) The term “check” means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(2) The term “clean and sound shell egg” means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(3) The term “dirty egg” means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(4) The term “incubator reject” means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(5) The term “inedible” means eggs of the following descriptions: black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(6) The term “leaker” means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(7) The term “loss” means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(8) The term “restricted egg” means any check, dirty egg, incubator reject, inedible, leaker or loss.

(h) The term “Fair Packaging and Labeling Act” means the Act so entitled, approved November 3, 1966 (80 Stat. 1296), and Acts amendatory thereof or supplementary thereto.

(i) The term “Federal Food, Drug, and Cosmetic Act” means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

(j) The term “inspection” means the application of such inspection methods and techniques as are deemed necessary by the responsible Secretary to carry out the provisions of this Act.

(k) The term “inspector” means:

(1) any employee or official of the United States Government authorized to inspect eggs or egg products under the authority of this Act; or

(2) Any employee or official of the government of any State or local jurisdiction authorized by the Secretary to inspect eggs or egg products under the authority of this Act, under an agreement entered into between the Secretary and the appropriate State or other agency.

(l) The term “misbranded” shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the Secretary under section 7 of this Act.

(m) The term “official certificate” means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this Act.

(n) The term “official device” means any device prescribed or authorized by the Secretary for use in applying any official mark.

(o) The term “official inspection legend” means any symbol prescribed by regulations of the Secretary showing that egg products were inspected in accordance with this Act.

(p) The term “official mark” means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article under this Act.

(q) The term “official plant” means any plant, as determined by the Secretary, at which inspection of the processing of egg products is maintained by the Department of Agriculture under the authority of this Act.

(r) The term “official standards” means the standards of quality, grades, and weight classes for eggs, in effect upon the effective date of this Act, or as thereafter amended, under the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended, 7 U.S.C. 1621 et seq.).

(s) The term “pasteurize” means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable micro-organisms by such processes as may be prescribed by regulations of the Secretary.

(t) The term “person” means any individual, partnership, corporation, association, or other business unit.

(u) The terms “pesticide chemical,” “food additive,” “color additive,” and “raw agricultural commodity” shall have the same meaning for purposes of this Act as under the Federal Food, Drug, and Cosmetic Act.

(v) The term “plant” means any place of business where egg products are processed.

(w) the term "processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(x) The term "Secretary" means the Secretary of Agriculture or his delegate.

(y) The term "State" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and the District of Columbia.

(z) The term "United States" means the States. (21 U.S.C. 1033.)

INSPECTION, REINSPECTION, CONDEMNATION

SEC. 5. (a) For the purpose of preventing the entry into or flow or movement in commerce of, or the burdening of commerce by, any egg product which is capable of use as human food and is misbranded or adulterated, the Secretary shall, whenever processing operations are being conducted, cause continuous inspection to be made, in accordance with the regulations promulgated under this Act, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under section 15 of this Act. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of paragraph (a)(1) of section 15 of this Act in the preparation of any articles for human food shall be deemed to be a plant processing egg products, with respect to such operations.

(b) The Secretary, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(c) Eggs and egg products found to be adulterated at official plants shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: *Provided*, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Secretary determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(d) The Secretary shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under section 11 of this Act, as he deems appropriate (and in the

case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of section 8 of this Act, except that the Secretary of Health and Human Services[3] shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of said Secretaries shall be afforded access to all such places of business for purposes of making the inspections provided for in this Act.

(e)[4](1) Subject to paragraphs (2), (3), and (4), the Secretary shall make such inspections as the Secretary considers appropriate of a facility of an egg handler (including a transport vehicle) to determine if shell eggs destined for the ultimate consumer)

(A) are being held under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit after packing; and

(B) contain labeling that indicates that refrigeration is required.

(2) In the case of a shell egg packer packing eggs for the ultimate consumer, the Secretary shall make an inspection in accordance with paragraph (1) at least once each calendar quarter.

(3) The Secretary of Health and Human Services shall cause such inspections to be made as the Secretary considers appropriate to ensure compliance with the requirements of paragraph (1) at food manufacturing establishments, institutions, and restaurants, other than plants packing eggs.

(4) The Secretary shall not make an inspection as provided in paragraph (1) on any egg handler with a flock of not more than 3,000 layers.

(5) A representative of the Secretary and the Secretary of Health and Human Services shall be afforded access to a place of business referred to in this subsection, including a transport vehicle, for purposes of making an inspection required under this subsection. (21 U.S.C. 1034.)

SANITATION, FACILITIES, AND PRACTICES

SEC. 6. (a) Each official plant shall be operated in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the Secretary to effectuate the

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[3] *See* footnote 2.

[4] Subsection (e) added by Pub. L. 102-237, 105 Stat. 1899, Dec. 13, 1991. Section 1012(h) of Pub. L. 102-237 provided:

"This section and the amendments made by this section [amending sections 5, 8, 12, 13, 17, and 23 of this Act and enacting provisions set out as a note under section 1 of this Act] shall become effective 12 months after the Secretary of Agriculture promulgates final regulations implementing this section and the amendments." (21 U.S.C. 1034 note.)

purposes of this Act, including requirements for segregation and disposition of restricted eggs.

(b) The Secretary shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. (21 U.S.C. 1035.)

PASTEURIZATION AND LABELING OF EGG PRODUCTS AT OFFICIAL PLANTS

SEC. 7. (a) Egg products inspected at any official plant under the authority of this Act and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the Secretary, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the Secretary, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the Secretary may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(b) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the Secretary. If the Secretary has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the Secretary, such person may request a hearing, but the use of the labeling or container shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the United States court of appeals for the circuit in which such person has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162, as amended; 7 U.S.C. 194), shall be applicable to appeals taken under this section. (21 U.S.C. 1036.)

PROHIBITED ACTS

SEC. 8.[5] (a)(1) No person shall buy, sell or transport, or offer to buy or sell, or offer or receive for transportation, in any business in commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the Secretary under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for commerce except that such eggs may be so possessed and used when authorized by regulations of the Secretary under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(b)(1) No person shall process any egg products for commerce at any plant except in compliance with the requirements of this Act.

(2) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in commerce any egg products required to be inspected under this Act unless they have been so inspected and are labeled and packaged in accordance with the requirements of section 7 of this Act.

(3) No operator of any official plant shall fail to comply with any requirements of paragraph (a) of section 6 of this Act or the regulations thereunder.

(4) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(c) No egg handler shall possess any eggs after the eggs have been packed into a container that is destined for the ultimate consumer unless the eggs are stored and transported under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit, as prescribed by rules and regulations promulgated by the Secretary.

(d) No person shall violate any provision of section 10, 11, or 17 of this Act. (e) No person shall)

(1) manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary;

(2) forge or alter any official device, mark, or certificate:

(3) without authorization from the Secretary, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under section 7 of this Act after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

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[5] Sec. 1012(c) of Pub. L. 102-237, 105 Stat. 1899, Dec. 13, 1991, redesignated subsections (c) through (e) as subsections (d) through (f), respectively; and added a new subsection (c). *See* footnote 4, second paragraph.

(4) contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(5) knowingly possess, without promptly notifying the Secretary or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device; or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary;

(7) knowingly represent that any article has been inspected or exempted, under this Act, when, in fact, it has, respectively not been so inspected or exempted; and

(8) refuse access, at any reasonable time, to any representative of the Secretary of Agriculture or the Secretary of Health and Human Services,[6] to any plant or other place of business subject to inspection under any provisions of this Act.

(f) No person, while an official or employee of the United States Government or any State or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States Government or any State or other government in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this Act concerning any matter which is entitled to protection as a trade secret. (21 U.S.C. 1037.)

FEDERAL AND STATE COOPERATION

SEC. 9. The Secretary shall, whenever he determines that it would effectuate the purposes of this Act, cooperate with appropriate State and other governmental agencies, in carrying out any provisions of this Act. In carrying out the provisions of this Act, the Secretary may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. The Secretary shall reimburse the States and other agencies for the costs incurred by them in such cooperative programs. (21 U.S.C. 1038.)

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[6] *See* footnote 2.

EGGS AND EGG PRODUCTS NOT INTENDED FOR HUMAN FOOD

SEC. 10. Inspection shall not be provided under this Act at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in commerce, shall be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Secretary (21 U.S.C. 1039.)

RECORD AND RELATED REQUIREMENTS FOR PROCESSOR OF EGGS AND EGG PRODUCTS AND RELATED INDUSTRIES

SEC. 11. For the purpose of enforcing the provisions of this Act and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in commerce or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner as the Secretary of Agriculture or the Secretary of Health and Human Services[7] may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of a duly authorized representative of either of said Secretaries, permit him at reasonable times to have access to and to copy all such records. (21 U.S.C. 1040.)

PENALTIES

SEC. 12.[8] (a) Any person who commits any offense prohibited by section 8 of this Act shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than $5,000, or both such imprisonment and fine, but if such violation involves intent to defraud, or any distribution or attempted distribution of any article that is known to be adulterated (except as defined in section 4(a)(8) of this Act), such person shall be

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[7] *See footnote 2.*

[8] Pub. L. 102-237, 105 Stat. 1899, Dec. 13, 1991, amended Section 12 by increasing the fine from $1,000 to $5,000; designating last sentence of subsection (a) as subsection (d); redesignating subsections (c) and (b) as subsections (b) and (e), respectively; and adding a new subsection (c). *See* footnote 4, second paragraph.

subject to imprisonment for not more than three years or a fine of not more than $10,000, or both.

(b) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under sections 1111 and 1112 of title 18, United States Code.

(c)(1)(A) Except as otherwise provided in this subsection, any person who violates any provision of this Act or any regulation issued under this Act, other than a violation for which a criminal penalty has been imposed under this Act, may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation to which this subparagraph applies shall be considered a separate offense.

(B) No penalty shall be assessed against any person under this subsection unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

(C) The amount of this civil penalty imposed under this subsection)

(i) shall be assessed by the Secretary, by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and

(ii) may be reviewed only as provided in paragraph (2).

(2)(A) The determination and order of this Secretary under this subsection shall be final and conclusive unless the person against whom such a violation is found under paragraph (1) files an application for judicial review within 30 days after service of the order in the United States court of appeals for the circuit in which the person has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit.

(B) Judicial review of any such order shall be based on the record on which the determination and order are based.

(C) If the court determines that additional evidence needs to be taken, the court shall order the hearing to be reopened for this purpose in such manner and on such terms and conditions as the court considers proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, on the basis of the additional evidence so taken.

(3) If any person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General. The Attorney General shall institute a civil action to recover the amount assessed in an

appropriate district court of the United States. In the collection action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(4) All penalties collected under this subsection shall be paid into the Treasury of the United States.

(5) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(6) Paragraph (1) shall not apply to an official plant.

(d) When construing or enforcing the provisions of section 8, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association with the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(e) No carrier or warehouseman shall be subject to the penalties of this Act, other than the penalties for violation of section 11 of this Act, or paragraph (c) of this section 12, by reason of his receipt, carriage, holding or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this Act, or unless the carrier or warehouseman refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman. (21 U.S.C. 1041.)

REPORTING OF VIOLATIONS

SEC. 13.[9] Before any violation of this Act is reported by the Secretary of Agriculture or Secretary of Health and Human Services to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this Act shall be construed as requiring the Secretary of Agriculture or Secretary of Health and Human Services to report for criminal prosecution violations of this Act whenever he believes that the public interest will be adequately served and

[9] *See* footnote 2 and footnote 4, second paragraph. Sec. 1012(e) of Pub. L. 102-237, 105 Stat. 1900, Dec. 13, 1991, added "or an action to assess civil penalties" before the period at the end of the last sentence.

compliance with the Act obtained by a suitable written notice of warning or an action to assess civil penalties. (21 U.S.C. 1042.)

REGULATIONS AND ADMINISTRATION

SEC. 14. The Secretary shall promulgate such rules and regulations as he deems necessary to carry out the purposes or provisions of this Act, and shall be responsible for the administration and enforcement of this Act except as otherwise provided in paragraph (d) of section 5 of this Act. (21 U.S.C. 1043.)

EXEMPTIONS

SEC. 15. (a) The Secretary may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this Act)

(1) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official standards of United States consumer grades for shell eggs;

(2) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the Secretary, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the United States consumer grades for shell eggs, and the egg products processed at such plant.

(3) the sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this paragraph;

(4) the processing of egg products by an poultry producer from eggs of his own flocks, production for sale of such products directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees and the egg products so processed when handled in accordance with this paragraph;

(5) the sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this paragraph;

(6) for such period of time (not to exceed two years) during the initiation of operations under this Act as the Secretary determines that it is impracticable to provide inspection, the processing of egg

products at any class of plants and the egg products processed at such plants; and

(7) the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens.

(b)[10] The Secretary shall, by regulation and under such procedures as he may prescribe, exempt any plant located within noncontiguous areas of the United States from specific provisions of this Act where, despite good faith efforts by the owner of such plant, such owner has not been able to bring his plant into full compliance with this Act: *Provided*, That in order to provide at least minimum standards for the protection of the public health, whenever processing operations are being conducted at any such plant, continuous inspection shall be maintained to assure that it is operated in a sanitary manner. No exemption under this subsection shall be granted for a period extending beyond December 31, 1971.

(c) The Secretary may immediately suspend or terminate any exemption under paragraph (a) (2) or (6) of this section at any time with respect to any person, if the conditions of exemption prescribed by this section or the regulations of the Secretary are not being met. The Secretary may modify or revoke any regulation granting exemption under this Act whenever he deems such action appropriate to effectuate the purposes of this Act. (21 U.S.C. 1044.)

ENTRY OF MATERIALS INTO OFFICIAL PLANTS

SEC. 16. The Secretary may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this Act. (21 U.S.C. 1045.)

IMPORTS

SEC. 17 [11]. (a)(1) No restricted eggs capable of use as human food shall be imported into the United States except as authorized by regulations of the Secretary.

(2) No egg products capable of use as human food shall be imported into the United States unless they were processed under an approved continuous inspection system of the government of the foreign country of origin or subdivision thereof and are labeled and packaged in accordance with, and

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[10] Pub. L. 92-67, 85 Stat. 173, Aug. 6, 1971, designated former subsection (b) as subsection (c) and added a new subsection (b).

[11] Sec. 1012(f) of Pub. L. 102-237, 105 Stat. 1901, Dec. 13, 1991, designated the first, second, and third sentences of subsection (a) as paragraphs (1), (2), and (4), respectively, and added a new paragraph (3). *See* footnote 4, second paragraph.

otherwise comply with the standards of this Act and regulations issued thereunder applicable to such articles within the United States.

(3) No eggs packed into a container that is destined for the ultimate consumer shall be imported into the United States unless the eggs are accompanied by a certification that the eggs have at all times after packaging been stored and transported under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit, as required by sections 5(e) and 8(c).

(4) All such imported articles shall upon entry into the United States be deemed and treated as domestic articles subject to the other provisions of this Act: *Provided*,That they shall be labeled as required by such regulations for imported articles: *Provided further*, That nothing in this section shall apply to eggs or egg products purchased outside the United States by any individual for consumption by him and members of his household and his nonpaying guests and employees.

(b) The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section, unless (1) they are exported by the consignee within the time fixed therefor by the Secretary or (2) in the case of articles which are not in compliance solely because of misbranding, such articles are brought into compliance with this Act under supervision of authorized representatives of the Secretary.

(c) All charges for storage, cartage, and labor with respect to any article which is imported contrary to this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against such article and any other article thereafter imported under this Act by or for such owner or consignee.

(d) The importation of any article contrary to this section is prohibited. (21 U.S.C. 1046.)

REFUSAL OF INSPECTION

SEC. 18. The Secretary (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Act) may refuse to provide or may withdraw inspection service under this Act with respect to any plant if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under this Act, because the applicant or recipient or anyone responsibly connected with the applicant or recipient has been convicted in any Federal or State court, within the previous ten years, of (1) any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or receptively packaged food or fraud in connection with transactions in food, or (2) any felony, involving fraud, bribery, extortion, or

any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health.

For the purpose of this section, a person shall be deemed to be responsibly connected with the business if he is a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock, or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the United States court of appeals for the circuit in which such applicant or recipient has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Judicial review of any such order shall be upon the record upon which the determination and order are based. The provisions of section 204 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 194) shall be applicable to appeals taken under this section.

This section shall not affect in any way other provisions of this Act for refusal of inspection services. (21 U.S.C. 1047.)

ADMINISTRATIVE DETENTION

SEC. 19. Whenever any eggs or egg products subject to the Act, are found by any authorized representative of the Secretary upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this Act or that they are in any other way in violation of this Act, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary, such articles may be detained by such representative for a reasonable period but not to exceed twenty days, pending action under section 20 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such articles and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the Secretary that the articles are eligible to retain such marks. (21 U.S.C. 1048.)

JUDICIAL SEIZURE PROCEEDINGS

SEC. 20. (a) Any eggs or egg products that are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation, in violation of this Act, or in any other way are in violation of

this Act; and any restricted eggs, capable of use as human food, in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any United States district court or other proper court as provided in section 21 of this Act within the jurisdiction of which the articles are found. If the articles are condemned they shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the articles shall not be sold contrary to the provision of this Act, the Federal Food, Drug, and Cosmetic Act or the Fair Packaging and Labeling Act, or the laws of the jurisdiction in which they are sold: *Provided*, That upon the execution and delivery of a good and sufficient bond conditioned that the articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, or the laws of the jurisdiction in which disposal is made, the court may direct that they be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the articles and they are released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any intervening, as claimant thereof. The proceedings in such cases shall conform, as nearly as may be, to the supplemental rules for certain admiralty and maritime claims, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Act, or other laws. (21 U.S.C. 1049.)

JURISDICTION

SEC. 21. The United States district courts and the District Court of the Virgin Islands are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Act, and shall have jurisdiction in all other cases, arising under this Act, except as provided in section 18 of this Act. All proceedings for the enforcement or to restrain violations of this Act shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any such proceeding. (21 U.S.C. 1050.)

APPLICABILITY OF OTHER ACTS

SEC. 22. For the efficient administration and enforcement of this Act, the provisions (including penalties) of sections 6, 8, 9, and 10 of the Federal Trade Commission Act, as amended (38 Stat. 721)723, as amended; 15 U.S.C. 46, 48, 49, and 50) (except paragraphs (c) through (h) of section 6 and the last paragraph of section 9),[12] and the provisions of subsection 409(1) of the Communications Act of 1934 (48 Stat. 1096, as amended; 47 U.S.C. 409(1)), are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this Act and to any person with respect to whom such authority is exercised. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this Act in any part of the United States, and the powers conferred by said sections 9 and 10 of the Federal Trade Commission Act, as amended, on the district courts of the United States may be exercised for the purposes of this Act by any court designated in section 21 of this Act. (21 U.S.C. 1051.)

RELATION TO OTHER AUTHORITIES

SEC. 23. (a) Requirements within the scope of this Act with respect to premises, facilities, and operations of any official plant which are in addition to or different than those made under this Act may not be imposed by any State or local jurisdiction except that any such jurisdiction may impose record-keeping and other requirements within the scope of section 11 of this Act, if consistent therewith, with respect to any such plant.

(b)[13] For eggs which have moved or are moving in interstate or foreign commerce, (1) no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards, (2) with respect to egg handlers specified in paragraphs (1) and (2) of section 5(e), no State or local jurisdiction may impose temperature requirements pertaining to eggs packaged for the ultimate consumer which are in addition to, or different from, Federal requirements, and (3) no State or local jurisdiction other than those in noncontiguous areas of the United States may require labeling to show the State or other geographical area of production or origin: *Provided, however,* That this shall not preclude a State from requiring that the name, address, and license number of the person processing or packaging eggs, be shown on each container. Labeling, packaging, or ingredient requirements, in addition to or different than those made under this Act, the Federal Food,

[12] The last paragraph of section 9 of the Federal Trade Commission Act (15 U.S.C. 49) and subsection 409(1) of the Communications Act of 1934 (47 U.S.C. 409(1)) were repealed by the Organized Crime Control Act, P.L. 91-452, 84 Stat. 929-930, Oct. 15, 1970.

[13] Sec. 1012(g) of Pub. L. 102-237, 105 Stat. 1901, Dec. 13, 1991, struck "and (2)" and inserted "(2) . . . and (3)". *See* footnote 4, second paragraph.

Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, may not be imposed by any State or local jurisdiction, with respect to egg products processed at any official plant in accordance with the requirements under such Acts. However, any State or local jurisdiction may exercise jurisdiction with respect to eggs and egg products for the purpose of preventing the distribution for human food purposes of any articles which are outside of such a plant and are in violation of any of said Federal Acts or any State or local law consistent therewith. Otherwise the provisions of this Act shall not invalidate any law or other provisions of any State or other jurisdiction in the absence of a conflict with this Act.

(c) The provisions of this Act shall not affect the applicability of the Federal Food, Drug, and Cosmetic Act or the Fair Packaging and Labeling Act or other Federal laws to eggs, egg products, or other food products or diminish any authority conferred on the Secretary of Health and Human Services[14] or other Federal officials by such other laws, except that the Secretary of Agriculture shall have exclusive jurisdiction to regulate official plants processing egg products and operations thereof as to all matters within the scope of this Act.

(d) The detainer authority conferred on representatives of the Secretary of Agriculture by section 19 of this Act shall also apply to any authorized representative of the Secretary of Health and Human Services[15] for the purposes of paragraph (d) of section 5 of this Act, with respect to any eggs or egg products that are outside any plant processing egg products. (21 U.S.C. 1052.)

COST OF INSPECTION

SEC. 24. (a) The cost of inspection rendered under the requirements of this Act, and other costs of administration of this Act, shall be borne by the United States, except that the cost of overtime and holiday work performed in official plants subject to the provisions of this Act at such rates as the Secretary may determine shall be borne by such official plants. Sums received by the Secretary from official plants under this section shall be available without fiscal year limitation to carry out the purposes of this Act.

(b) The term "holiday" for the purposes of assessment or reimbursement of the cost of inspection performed under this Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, title 5 of the United States Code. (21 U.S.C. 1053.)

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[14] *See* footnote 2.
[15] *Ibid.*

SMALL BUSINESS ASSISTANCE

SEC. 25[16] [This section amends the Small Business Act to provide financial assistance for alterations required for inspection under this Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act of 1967. See footnote 16 for text of amendment.] (15 U.S.C. 636(b)(4).)

ANNUAL REPORT

SEC. 26. (a) Not later than March 1 of each year following the enactment of this Act the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a comprehensive and detailed written report with respect to)

(1) the processing, storage, handling, and distribution of eggs and egg products subject to the provisions of this title; the inspection of establishments operated in connection therewith; the effectiveness of the operation of the inspection, including the effectiveness of the operations of State egg inspection programs; and recommendations for legislation to improve such program; and

(2) the administration of section 17 of this Act (relating to imports) during the immediately preceding calendar year, including but not limited to)

(A) a certification by the Secretary that foreign plants exporting eggs or egg products to the United States have complied with requirements of this Act and regulations issued thereunder;

(B) the names and locations of plants authorized or permitted to export eggs or egg products to the United States;

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[16] Pub. L. 91-597, 84 Stat. 1633-1634, December 29, 1970, states as follows:

(a) Section 7(b) of the Small Business Act is amended)

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (4) a new paragraph as follows:

"(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate or an immediate or deferred basis) as the Administrator may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed by the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act of 1967 or State laws enacted in conformity therewith, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of such Act is amended by inserting "or (5)" after "paragraph (3)".

(c) Section 4(c)(1) of the Small Business Act is amended by inserting "7(b)(5)", after "7(b)(4),".

(C) the number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (B) hereof and the frequency with which each such plant was inspected by such inspectors;

(D) the number of inspectors that were licensed by each country from which any imports were received and that were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled; and the frequency and effectiveness of such inspections;

(E) the total volume of eggs and egg products which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this title; and

(F) recommendations for legislation to improve such program. (21 U.S.C. 1054.)

APPROPRIATIONS

SEC. 27. Such sums as are necessary to carry out the provisions of this Act are hereby authorized to be appropriated. (21 U.S.C. 1055.)

SEPARABILITY OF PROVISIONS

SEC. 28. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (21 U.S.C. 1056.)

EFFECTIVE DATE

SEC. 29. The provisions of this Act with respect to egg products shall take effect six months after enactment. Otherwise, this Act shall take effect eighteen months after enactment. (21 U.S.C. 1031 note.)

EGG RESEARCH AND CONSUMER INFORMATION ACT [1]

(7 U.S.C. 2701)2718)

To enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. That this Act shall be known as the "Egg Research and Consumer Information Act." (7 U.S.C. 2701 note.)

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Eggs constitute one of the basic, natural foods in the diet. They are produced by many individual egg producers throughout the United States. Egg products, spent fowl, and products of spent fowl are derivatives of egg production. These products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of egg producers and those concerned with marketing, using, and processing eggs as well as the general economy of the Nation. The production and marketing of these products by numerous individual egg producers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary for the maintenance of markets and the development of new products of, and markets for, eggs, egg products, spent fowl, and products of spent fowl. Without an effective and coordinated method for assuring cooperative and collective action in providing for and financing such programs, individual egg producers are unable to provide, obtain, or carry out the research, consumer and producer information, and promotion necessary to maintain and improve markets for any or all of these products.

It has long been recognized that it is in the public interest to provide an adequate, steady supply of fresh eggs readily available to the consumers of the Nation. Maintenance of markets and the development of new markets, both domestic and foreign, are essential to the egg industry if the consumers of eggs, egg products, spent fowl, or products of spent fowl are to be assured of an adequate, steady supply of such products.

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[1] Pub. L. 93-428, 88 Stat. 1171-1179, Oct. 1, 1974.

It is therefore declared to be the policy of the Congress and the purpose of this Act that it is essential and in the public interest, through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development and the financing through an adequate assessment, an effective and continuous coordinated program of research, consumer and producer education, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States. Nothing in this Act shall be construed to mean, or provide for, control of production or otherwise limit the right of individual egg producers to produce commercial eggs. (7 U.S.C. 2701.)

DEFINITIONS

SEC. 3. As used in this Act)

(a) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom they may hereafter be delegated, the authority to act in his stead.

(b) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(c) The term "commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(d) The term "hen" or "laying hen" means a domesticated female chicken twenty weeks of age or over, raised primarily for the production of commercial eggs.

(e) The term "egg producer" means the person owning laying hens engaged in the production of commercial eggs.

(f) The term "case" means a standard shipping package containing thirty dozen eggs.

(g) The term "hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(h) The term "United States" means the forty-eight contiguous States of the United States of America and the District of Columbia.

(i) The term "promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(j) The term "research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

(k) The term “consumer education” means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(l) The term “marketing” means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(m) The term “commerce” means interstate, foreign, or intrastate commerce. (n) The term “egg products” means products produced, in whole or in part, from eggs.

(o) The term “spent fowl” means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(p) The term“products of spent fowl” means commercial products produced from spent fowl.

(q) The term “hatchery operator” means any person engaged in the production of egg-type baby chicks.

(r) The term “started pullet” means a hen less than twenty weeks of age.

(s) The term “started pullet dealer” means any person engaged in the sale of started pullets.

(t) The term “handler” means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production. (7 U.S.C. 2702.)

EGG RESEARCH AND PROMOTION ORDERS

SEC. 4.[2] To effectuate the declared policy of this Act, the Secretary shall, subject to the provisions of this Act, issue and from time to time amend, orders applicable to persons engaged in the hatching and/or sale of egg-type baby chicks and started pullets, persons engaged in the production of commercial eggs and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market, or market such eggs, including eggs of their own production, and persons engaged in the purchase, sale or processing of spent fowl. Such orders shall be applicable to all production or marketing areas, or both, in the United States. (7 U.S.C. 2703.)

NOTICE AND HEARING

SEC. 5. Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this Act, he shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and proposal for an order submitted by an organization certified pursuant to section 16 of this Act, or by any interested person affected by the provisions of this Act, including the Secretary. (7 U.S.C. 2704.)

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[2] Sec. 5 of Pub. L. 103-188, 107 Stat. 2257, Dec. 14, 1993, states:

"**SEC. 5. AMENDMENT TO ORDER.**

"Notwithstanding any other provision of law:

"(1) IN GENERAL.)The Secretary of Agriculture shall issue amendments to the egg promotion and research order issued under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) to implement the amendments made by this Act. The amendments shall be issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title. The Secretary shall issue the proposed amendments to the order not later than 80 days after the date of enactment of this Act.

"(2) EFFECTIVE DATE.)The amendments to the egg promotion and research order required by paragraph (1) shall become effective not later than)

"(A) 30 days after the proposed amendments are issued; or

"(B) if the Director of the Office of Management and Budget determines that the amendments are a significant action that requires review by the Director, 50 days after the proposed amendments are issued.

"(3) REFERENDUM.)The amendments referred to in paragraph (2) shall not be subject to a referendum conducted under the Egg Research and Consumer Information Act." (7 U.S.C. 2703 note.)

FINDING AND ISSUANCE OF AN ORDER

SEC. 6. After notice and opportunity for hearing as provided in section 5, the Secretary shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this Act. (7 U.S.C. 2705.)

PERMISSIVE TERMS IN ORDERS

SEC. 7. Orders issued pursuant to this Act shall contain one or more of the following terms and conditions, and except as provided in section 8, no others.

(a) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl, and for the disbursement of necessary funds for such purposes: *Provided, however*, That any such plans or project shall be directed toward increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl. No reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against eggs, egg products, spent fowl, or products of spent fowl of other persons: *And provided further*, That no such advertising, consumer education, or sales promotion programs shall make use of unfair or deceptive acts or practices in behalf of eggs, egg products, spent fowl, or products of spent fowl or unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

(b) Providing for, establishing, and carrying on research, marketing, and development projects, and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved or made more acceptable, and the data collected by such activities may be disseminated and for the disbursement of necessary funds for such purposes.

(c) Providing that hatchery operators, persons engaged in the sale of egg-type baby chicks and started pullet dealers, persons engaged in the production of commercial eggs and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market, or market such eggs, including eggs of their own production, and persons engaged in the purchase, sale, or processing of spent fowl, maintain and make available for the inspection such books and records as may be required by any order issued pursuant to this Act and for the filing of reports by such persons at the time, in the manner, and having content prescribed by the

order, to the end that information and data shall be made available to the Egg Board and to the Secretary which is appropriate or necessary to the effectuation, administration or enforcement of the Act, or of any order or regulation issued pursuant to this Act: *Provided, however*, That all information so obtained shall be kept confidential by all officers and employees of the Department of Agriculture, the Egg Board, and by all officers and employees of contracting agencies having access to such information, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving the order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period, or (3) the publication by direction of the Secretary of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. Any such officer or employee violating the provision of this subsection shall, upon conviction, be subjected to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and if an officer or employee of the Egg Board or Department of Agriculture shall be removed from office.

(d) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this Act and necessary to effectuate the other provisions of such order. (7 U.S.C. 2706.)

REQUIRED TERMS IN ORDERS

SEC. 8. Orders issued pursuant to this Act shall contain the following conditions: (a) Providing for the establishment and appointment, by the Secretary, of an Egg Board which shall consist of not more than twenty[3] members, and alternates therefor, and defining its powers and duties which shall include only the powers (1) to administer such order in accordance with its terms and provisions, (2) to make rules and regulations to effectuate the terms and provisions of such order, (3) to receive, investigate and report to the Secretary complaints of violations of such order, and (4) to recommend to the Secretary amendments to such order. The term of an appointment to

[3] Pub. L. 96-276, June 17, 1980, 94 Stat. 541, increased the Egg Board membership from eighteen to twenty.

the Egg Board shall be for two years with no member serving more than three consecutive terms, except that initial appointment shall be proportionately for two-year and three-year terms.

(b) Providing that the Egg Board, and alternates therefor, shall be composed of egg producers or representatives of egg producers appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, and certified pursuant to section 16, or, if the Secretary determines that a substantial number of egg producers are not members of or their interests are not represented by any such eligible organizations, associations or cooperatives, then from nominations made by such egg producers in the manner authorized by the Secretary, so that the representation of egg producers on the Board shall reflect, to the extent practicable, the proportion of eggs produced in each geographic area of the United States as defined by the Secretary: *Provided*, *however*, That each such egg producing geographic area shall be entitled to at least one representative on the Egg Board: *Provided further*, That two members of the Egg Board, and alternates therefor, shall be consumers or representatives of consumers, if approved by egg producers voting in a referendum on an amendment to the order. Such consumer appointments shall be made by the Secretary from nominations submitted by eligible organizations. If the Secretary determines that such nominees are not members of either a bona fide consumer organization or do not represent consumers, the Secretary may appoint such consumers or representatives of consumers as deemed necessary to properly represent the interest of consumers. Consumer members of the Egg Board shall be voting members.[4]

(c) Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, develop and submit to the Secretary for his approval any advertising, sales promotion, consumer education, research, and development plans or projects, and that any such plan or project must be approved by the Secretary before becoming effective.

(d)[5] Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, promotion, consumer education, research, and development projects. In preparing a budget for each of the 1994 and subsequent fiscal years, the Egg Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects under this Act that is comparable

[4] Pub. L. 96-276, 94 Stat. 541, extended membership on the Egg Board to include two consumers or representatives of consumers.

[5] Last sentence added by Sec. 3 of Pub. L. 103-188, 107 Stat. 2257, Dec. 13, 1993, requiring the Egg Board to allocate funds for research.

to the proportion of funds that were allocated for research projects under this Act in the budget of the Egg Board for fiscal year 1993.

(e)[6] (1) Providing that each egg producer shall pay to the handler of eggs designated by the order of the Egg Board pursuant to regulations issued under the order, an assessment based upon the number of cases of commercial eggs handled for the account of such producer, in the manner as prescribed by the order, for such expenses and expenditures (including provision for a reasonable reserve and those administrative costs incurred by the Department after an order has been promulgated under this Act) as the Secretary finds are reasonable and likely to be incurred by the Egg Board under the order during any period specified by him. Such handler shall collect such assessment from the producer and shall pay the same to the Egg Board in the manner as prescribed by the order.

(2)(A) The assessment rate shall be prescribed by the order. The rate shall not exceed 20 cents per case (or the equivalent of a case) of commercial eggs.

(B) The order may be amended to increase the rate of assessment if the increase is recommended by the Egg Board and approved by egg producers in a referendum conducted under section 9(b).

(C) The order may be amended to decrease the assessment rate after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

(3) To facilitate the collection of such assessments, the order of the Egg Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in the industry. The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(f) Providing that the Egg Board shall maintain such books and records and prepare and submit such reports from time to time, to the Secretary as he may prescribe, and for appropriate accounting by the Egg Board with respect to the receipt and disbursement of all funds entrusted to it.

(g) Providing that the Egg Board, with the approval of the Secretary, may enter into contracts or agreements for development and carrying out of the

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[6] Pub. L. 96-276, 94 Stat. 541, June 17, 1980, increased the rate of assessment from 5 cents per case to a maximum of 7-1/2 cents for fiscal year 1981 and not to exceed 10 cents per case for each fiscal year thereafter. Sec. 2(a) of Pub. L. 103-188, 107 Stat. 2256, Dec. 14, 1993, designated the former first and second sentences as paragraph (1), the former fifth and sixth sentences as paragraph (3), struck the former third and fourth sentences which prescribed the rate of assessment not to exceed 7-1/2 cents per case for fiscal year 1981 and not to exceed 10 cents per case for each fiscal year thereafter, and added a new paragraph (2) increasing the maximum rate of assessment from 10 cents to 20 cents per case.

activities authorized under the order pursuant to section 7 (a) and (b) and for the payment of the cost thereof with funds collected pursuant to the order. Any such contract or agreement shall provide that such contractors shall develop and submit to the Egg Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon the approval of the Secretary, and further, shall provide that the contracting party shall keep accurate records of all its transactions and make periodic reports to the Egg Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(h) Providing that no funds collected by the Egg Board under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a) (4) of this section.

(i) Providing the Board members, and alternates therefor, shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board. (7 U.S.C. 2707.)

(j)[7] Providing that the total costs incurred by the Egg Board for a fiscal year in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Egg Board for such fiscal year that the Secretary determines to be reasonable. (7 U.S.C. 2707.)

REQUIREMENT OF REFERENDUM AND EGG PRODUCER APPROVAL

SEC. 9.[8] (a) The Secretary shall conduct a referendum among egg producers not exempt hereunder who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, for the purpose of ascertaining whether the issuance of an order is approved or favored by such producers. No order issued pursuant to this Act shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers voting in such referendum, or by a majority of the producers voting in such referendum if such majority produced not less than two-thirds of the commercial eggs produced during a representative period defined by the Secretary.

(b)(1) If the Egg Board determines, based on a scientific study, marketing analysis, or other similar competent evidence, that an increase in the

[7] Subsection (j) added by Pub. L. 100-575, 102 Stat. 2895, Oct. 31, 1988.

[8] Sec. 2(b) of Pub. L. 103-188, 107 Stat. 2256, Dec. 14, 1993, designated the former first and second sentences as subsection (a), designated the former last sentence as subsection (c), and added a new subsection (b).

assessment rate is needed to ensure that assessments under the order are set at an appropriate level to effectuate the policy declared in section 2, the Egg Board may request that the Secretary conduct a referendum, as provided in paragraph (2).

(2)(A) If the Egg Board requests the Secretary to conduct a referendum under paragraph (1) or (3), the Secretary shall conduct a referendum among egg producers not exempt from this Act who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, for the purpose of ascertaining whether the producers approve the change in the assessment rate proposed by the Egg Board.

(B) The change in the assessment rate shall become effective if the change is approved or favored by)

(i) not less than two-thirds of the producers voting in the referendum; or

(ii) a majority of the producers voting in the referendum, if the majority produced not less than two-thirds of all the commercial eggs produced by the producers voting during a representative period defined by the Secretary.

(3)(A) In the case of the order in effect on the date of enactment of this subsection, the Egg Board shall determine under paragraph (1), as soon as practicable after such date of enactment, whether to request that the Secretary conduct a referendum under paragraph (2).

(B) If the Egg Board makes such a request on the basis of competent evidence, as provided in paragraph (1), the Secretary shall conduct the referendum as soon as practicable, but not later than)

(i) 120 days after receipt of the request from the Egg Board; or

(ii) if the Director of the Office of Management and Budget determines that the change in the assessment rate is a significant action that requires review by the Director, 170 days after receipt of the request from the Egg Board.

(4) Notwithstanding any other provision of this Act, if an increase in the assessment rate and the authority for additional increases is approved by producers in a referendum conducted under this subsection, the Secretary shall amend the order to reflect the vote of the producers. The amendment to the order shall become effective on the date of issuance of the amendment.

(c)[9] The failure of egg producers to approve an amendment to any Egg Research and Promotion Order shall not be deemed to invalidate such order. (7 U.S.C. 2708.)

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[9] Sentence added by Pub. L. 96-276, 94 Stat. 541, June 17, 1980. *See* footnote 8.

SUSPENSION AND TERMINATION OF ORDERS

SEC. 10. (a) The Secretary shall, whenever he finds that any order issued under this Act, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this Act, terminate or suspend the operation of such order or such provisions thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of egg producers voting in the referendum approving the order, to determine whether such producers favor the termination or suspension of the order, and he shall suspend or terminate such order six months after he determines that suspension or termination of the order is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 per centum of the volume of eggs produced by the egg producers voting in the referendum.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this Act. (7 U.S.C. 2709.)

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 11. The provisions of this Act applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 2710.)

SEC. 12.[10] Exempted Egg Producers and Breeding Hen Flocks, Conditions and Procedures.

[10] Section as amended by Pub. L. 101-220, 103 Stat., 1877, Dec. 12, 1989, which also increased the exemption from 3,000 to 30,000 laying hens. Sec. 4 of Pub. L. 103-188, 107 Stat. 2257, Dec. 14, 1993, increased the exemption level from 30,000 to 75,000 laying hens. Sec. 3(b) of Pub. L. 101-220 states:

"(b) EGG PROMOTION AND RESEARCH ORDER.)

(1) AMENDMENT.)The Secretary of Agriculture shall issue an amendment to the egg promotion and research order issued under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) to implement the amendments made by this section. Such amendment shall be issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title. The Secretary shall issue a proposed amendment to such order not later than 30 days after the date of enactment of this Act.

(2) EFFECTIVE DATE.)The amendment to the egg promotion and research order required by paragraph (1) shall become effective no later than March 1, 1990, and shall not be subject to a referendum under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.).".

(a) IN GENERAL.)The following shall be exempt from the specific provisions of this Act under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder:

(1) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens, as determined under subsection (b).

(2) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(b) NUMBER OF LAYING HENS.)

(1) IN GENERAL.)For purposes of subsection (a)(1), the aggregate number of laying hens owned by an egg producer shall include)

(A) in cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(B) in cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(C) in cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity.

Ownership of laying hens by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity.

(2) STOCK OR BENEFICIAL INTERESTS.)For purposes of paragraph (1)(C), stock or other beneficial interest in an entity that is held by)

(A) members of the producer's family described in paragraph (1)(A);

(B) a general partnership or similar entity in which the producer is a partner or equity participant;

(C) the partners or equity participants in an entity of the type described in subparagraph (B); or

(D) a corporation, joint stock company, association, co-operative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests,

shall be considered as held by the producer. (7 U.S.C. 2711.)

PRODUCER REFUND

SEC. 13.[11] (a) Notwithstanding any other provisions of this Act except as provided in subsection (b), any egg producer against whose commercial eggs any assessment is made and collected from him under authority of this Act and who is not in favor of supporting the programs as provided for herein shall have the right to demand and receive from the Egg Board a refund of such assessment: *Provided*, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary but in no event more than ninety days after the end of the month in which the assessments are due and collectable, and upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand is received therefor.

(b)(1) With regard to each order issued under this Act that provides for a producer refund, the Secretary shall amend such order to eliminate such refund.

(2) Notwithstanding sections 9 and 11 of this Act, an amendment made by the Secretary pursuant to paragraph (1)

(A) shall take effect on the date that the Secretary issues the amendment; and

(B) shall not be subject to a referendum under section 9 or 10(b) until the end of the 18-month period beginning on such effective date.

(3) During the period prior to the referendum of an amendment issued pursuant to paragraph (1) and beginning on the effective date of such amendment, the Egg Board shall

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

(B) place funds in such account in accordance with paragraph (4).

(4) The Egg Board shall place in such account, from assessments collected during the period referred to in paragraph (3), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(5) Subject to paragraphs (6), (7), and (8), and producer shall have the right to demand and receive from the Egg Board a one-time refund of assessments collected from such producer during the period referred to in paragraph (3) if

(A) such producer is responsible for paying such assessments;

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

[11] Pub. L. 100-575, 102 Stat. 2895, Oct. 31, 1988, redesignated former section as subsection (a) and added subsection (b).

(C) the amendment issued pursuant to paragraph (1) is not approved pursuant to a referendum under section 9 or 10(b).

(6) Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Egg Board.

(7) Such refund shall be made on submission of proof satisfactory to the Egg Board that such producer paid the assessment for which refund is demanded.

(8) If the amount in the escrow account required to be established by paragraph (3) is not sufficient to refund the total amount of assessments demanded by all eligible producers under this subsection and the amendment issued pursuant to paragraph (1) is not approved pursuant to a referendum under section 9 or 10(b), the Egg Board shall prorate the amount of such refunds among all eligible producers who demand such refund. (7 U.S.C. 2712.)

PETITION AND REVIEW

SEC. 14. (a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 15(a) of this Act. (7 U.S.C. 2713.)

ENFORCEMENT

SEC. 15.[12] (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order or regulation made or issued pursuant to this Act. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General violations of this Act whenever he believes that the administration and enforcement of the program would be adequately served by administrative action pursuant to paragraph (b) of this section or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this Act, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of him thereunder, may be assessed a civil penalty by the Secretary of not less than $500 or more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violation or violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (b)(1) of this section may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, shall be subject to a civil

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[12] Pub. L. 96-276, 94 Stat. 541-542, June 17, 1980, amended enforcement provisions to authorize the Secretary to assess civil penalties of not less than $500 or more than $5,000, issue cease and desist orders for violations of orders or regulations, and assess civil penalties of $500 per offense for failure to abide by a duly issued final cease and desist order; authorize actions by the Attorney General in the United States District Court to restrain violations of orders and regulations and to collect civil penalties assessed under the Act; and provide for appeal of the Secretary's order in a contested case to the United States Court of Appeals.

penalty assessed by the Secretary, after opportunity for a hearing and for judicial review pursuant to the procedures specified in paragraphs (b)(1) and (2) of this section, of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 2714).

CERTIFICATION OF ORGANIZATIONS

SEC. 16. The eligibility of any organization to represent commercial egg producers of any egg producing area of the United States to request the issuance of an order under section 5, and to participate in the making of nominations under section 8(b) shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership,

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in each such State,

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies,

(d) Evidence of stability and permanency of the organization, derived,

(e) Sources from which the organization's operating funds are derived.

(f) Functions of the organization, and

(g) The organization's ability and willingness to further the aims and objectives of this Act: *Provided, however*, That the primary consideration in determining the eligibility of an organization shall be whether its commercial egg producer membership consists of a substantial number of egg producers who produce a substantial volume of commercial eggs. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final. Where more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 8(b). (7 U.S.C. 2715.)

REGULATIONS

SEC. 17. The Secretary is authorized to make regulations with force and effect of law, as may be necessary to carry out the provisions of this Act and the powers vested in him by this Act. (7 U.S.C. 2716.)

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 18. The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this Act or to determine whether an egg producer, processor, or other seller of commercial eggs or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this Act, or of any order, or rule or regulation issued under this Act. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, including an egg producer, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may found. (7 U.S.C. 2717.)

SEPARABILITY

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 2701 note.)

AUTHORIZATION

SEC. 20. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Egg Board in administering any provisions of any order issued pursuant to the terms of this Act. (7 U.S.C. 2718.)

EFFECTIVE DATE

SEC. 21. This Act shall take effect upon enactment. (7 U.S.C. 2701 note.)

Subpart E. Fruits; Vegetables; and Specialty Crops

EXPORT APPLE AND PEAR ACT [1]

(7 U.S.C. 581)590)

AN ACT To promote the foreign trade of the United States in apples and/or pears, to protect the reputation of American-grown apples and pears in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving in foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to ship or offer for any person to ship or offer for shipment or for any carrier, or any steamship company, or any person to transport or receive for transportation to any foreign destination, except as provided in this Act, any apples and/or pears in packages which are not accompanied by a certificate issued under authority of the Secretary of Agriculture showing that such apples or pears are of a Federal or State grade which meets the minimum of quality established by the Secretary for shipment in export. The Secretary is authorized to prescribe, by regulations, the requirements, other than those of grade, which the fruit must meet before certificates are issued. The Secretary shall provide opportunity, by public hearing or otherwise, for interested persons to examine and make recommendation with respect to any standard of export proposed to be established or designated, or regulation prescribed, by the Secretary for the purposes of this Act. (7 U.S.C. 581.)

SEC. 2. The Secretary shall give reasonable notice through one or more trade papers of the effective date of standards of export established or designated by him under this Act: *Provided*, That any apples or pears may be certified and shipped for export in fulfillment of any contract made within six months prior to the date of such shipment if the terms of such contract were in accordance with the grades and regulations of the Secretary in effect at the time the contract was made. (7 U.S.C. 582.)

SEC. 3. Where the government of the country to which the shipment is to be made has standards or requirements as to condition of apples or pears the Secretary may in addition to inspection and certification for compliance with the standards established or designated hereunder inspect and certify for determination as to compliance with the standards or requirements of such

[1] Act of June 10, 1933, 48 stat. 123.

foreign government and may provide for special certificates in such cases. (7 U.S.C. 583.)

SEC. 4. Apples or pears in less than carload lots as defined by the Secretary may, in his discretion, be shipped to any foreign country without complying with the provisions of this Act. (7 U.S.C. 584.)

SEC. 5. For inspecting and certifying the grade, quality, and/or condition of apples and/or pears, the Secretary shall cause to be collected a reasonable fee which shall as nearly as may be cover the cost of the service rendered: *Provided*, That when cooperative arrangements satisfactory to the Secretary, or his designated representative, for carrying out the purposes of this Act cannot be made the fees collected hereunder in such cases shall be available until expended to defray the cost of the service rendered, and in such cases the limitations on the amounts expended for the purchase and maintenance of motor-propelled passenger-carrying vehicles shall not be applicable: *Provided further*, That certificates issued by the authorized agents of the United States Department of Agriculture shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained. (7 U.S.C. 585.)

SEC. 6. After opportunity for hearing the Secretary is authorized to refuse the issuance of certificates under this Act for periods not exceeding ninety days to any person who ships or offers for shipment any apples and/or pears in foreign commerce in violation of any of the provisions of this Act. Any person or any common carrier or any transportation agency knowingly violating any of the provisions of this Act shall be fined not less than $100 nor more than $10,000 by a court of competent jurisdiction. (7 U.S.C. 586.)

SEC. 7. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person, whether operating in one or more jurisdictions; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto. (7 U.S.C. 587.)

SEC. 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the

Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 9. That when used in this Act)

(1) The term "person" includes individuals, partnerships, corporations, and associations.

(2) The term "Secretary of Agriculture" means the Secretary of Agriculture of the United States. (7 U.S.C. 588.)

(3) Except as provided herein, the term "foreign commerce" means commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

(4) The term "apples and/or pears" means fresh whole apples or pears, whether or not they have been in storage. (7 U.S.C. 589.)

SEC.10.[2] There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act. (7 U.S.C. 590.)

[2] Added by Act of Oct. 1, 1962, 76 Stat. 676.

EXPORT GRAPE AND PLUM ACT [1]

(7 U.S.C. 591)599)

AN ACT To promote the foreign trade of the United States in grapes and plums, to protect the reputation of American-grown grapes and plums in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving in foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to ship or offer for shipment or for any carrier, or any steamship company, or any person to transport or receive for transportation to any foreign destination, except as provided in this Act, any grapes or plums of any variety in packages which are not accompanied by a certificate issued under authority of the Secretary showing that such grapes or plums are of a Federal or State grade which meets the minimum of quality established for such variety and destination by the Secretary for shipment in export to such destination. The Secretary is authorized to prescribe, by regulations, the requirements, other than those of grades, which the fruit must meet before certificates are issued. The Secretary shall provide opportunity, by public hearing or otherwise, for interested persons to examine and make recommendation with respect to any standard of export proposed to be established or designated, or regulation prescribed, by the Secretary for the purposes of this Act. (7 U.S.C. 591.)[2]

SEC. 2. The Secretary shall give reasonable notice through one or more trade papers of the effective date of standards of export established or designated by him under this Act: *Provided*, That any grapes or plums may be certified and shipped for export in fulfillment of any contract made within two months prior to the date of such shipment if the terms of such contract were in accordance with the grades and regulations of the Secretary in effect at the time the contract was made. (7 U.S.C. 592.)

SEC. 3. Where the government of the country to which the shipment is to be made has standards or requirements as to condition of grapes and plums the Secretary may in addition to inspection and certification for compliance with the standards established or designated hereunder inspect and certify for determination as to compliance with the standards or requirements of such

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[1] Act of September 2, 1960, 74 Stat. 734.

[2] Amended by Act of July 26, 1961, 75 Stat. 220, and Act of January 2, 1975, Pub. L. 93-606,

foreign government and may provide for special certificates in such cases. (7 U.S.C. 593.)

SEC. 4.[3] The Secretary may, by regulation, exempt from compliance with the provisions of this Act (1) any variety or varieties of grapes and plums, and (2) the shipment of such minimum quantities of grapes and plums to any foreign country as he may prescribe. (7 U.S.C. 594.)

SEC. 5. For inspecting and certifying the grade, quality, or condition of grapes or plums the Secretary shall cause to be collected a reasonable fee which shall, as nearly as may be, cover the cost of the service rendered: *Provided*, That when cooperative arrangements satisfactory to the Secretary, or his designated representative, for carrying out the purposes of this Act cannot be made the fees collected hereunder in such cases shall be available until expended to defray the cost of the service rendered, and in such cases the limitations on the amounts expended for the purchase and maintenance of motor-propelled passenger carrying vehicles shall not be applicable: *Provided further*, That certificates issued by the authorized agents of the United States Department of Agriculture shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained. (7 U.S.C. 595.)

SEC. 6. After opportunity for hearing the Secretary is authorized to refuse the issuance of certificates under this Act for periods not exceeding ninety days to any person who ships or offers for shipment any grapes or plums in foreign commerce in violation of any of the provisions of this Act. Any person or any common carrier or any transportation agency violating any of the provisions of this Act shall be fined not less than $100 nor more than $10,000 by a court of competent jurisdiction. (7 U.S.C. 596.)

SEC. 7. The Secretary may make such rules, regulations, and orders, and require such reports, as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person, whether operating in one or more jurisdictions; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in

[3] As amended by Act of July 26, 1961, 75 Stat. 220.

full force and effect except insofar as they are inconsistent herewith or repugnant hereto. (7 U.S.C. 597.)

SEC. 8. If any provision of the Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 598.)

SEC. 9. That when used in this Act)

(1) The term "person" includes individuals, partnerships, corporations, and associations.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) Except as provided herein, the term "foreign commerce" means commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

(4) The term "grapes" means vinifera species table grapes, European type, whether or not they have been in storage.

(5) The term "plums" means both European and Japanese type, whether or not they have been in storage, but does not mean Italian type prunes, nor damson-type plums. (7 U.S.C. 599.)

PEANUT STATISTICS [1]

(7 U.S.C. 951)957)

AN ACT To provide for the collection and publication of statistics of peanuts by the Department of Agriculture

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is hereby authorized and directed to collect and publish statistics of raw peanuts, shelled, unshelled, and crushed, and peanut oil, in the United States, received, processed, shipped, and owned by or in the possession of warehousemen, brokers, cleaners, shellers, dealers, growers' cooperative associations, crushers, salters, manufacturers of peanut products, and owners other than the original producers of peanuts: *Provided*, That the Secretary may, in his discretion, omit for any period of time to collect such statistics from any or all salters of peanuts or manufacturers of peanut products who used, during the calendar year preceding that for which statistics are being collected, less than thirty thousand pounds of shelled and unshelled peanuts. Such statistics shall show the quality of peanuts in such details as to kinds)Virginias, Runners, Spanish, and imported varieties)as the Secretary shall deem necessary for the purposes of this Act. All reports shall be submitted monthly in each year, except as otherwise prescribed by the Secretary.[2] (7 U.S.C. 951.)

SEC. 2[3] Repealed.

SEC. 3[4] It shall be the duty of each warehouseman, broker, cleaner, sheller, dealer, growers' cooperative association, crusher, salter, manufacturer of peanut products, and owner other than the original producer of peanuts to furnish reports, complete and correct to the best of his knowledge, on the quantity of peanuts and peanut oil received, processed, shipped, and owned by him or in his possession. Such reports, when and as requested by the Secretary, shall be furnished within the time prescribed and in accordance with forms provided by him for the purpose. Any person required by this Act, or the regulations promulgated thereunder, to furnish reports or information, and any officer, agent, or employee thereof, who shall refuse to give such reports or information or shall willfully give answers that are false and misleading, shall be guilty of a misdemeanor, and upon

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[1] Act of June 24, 1936, 49 Stat. 1898.

[2] As amended by the Acts of May 12, 1938, 52 Stat. 348; and July 17, 1957, 71 Stat. 306.

[3] This section, which related to the collection and publication of statistics as to quantity of peanuts picked or threshed by any person owning or operating peanut picking or threshing machines, was repealed by the Act of July 17, 1957, 71 Stat. 306.

[4] As amended by the Acts of May 12, 1938, 52 Stat. 349; and July 17, 1957, 71 Stat. 306.

conviction thereof shall be fined not less than $300 nor more than $1,000, or imprisoned not more than one year, or be subject to both such fine and imprisonment. (7 U.S.C. 953.)

SEC. 4. The Secretary is hereby authorized to establish and promulgate grades and standards for the classification of peanuts, whenever in his discretion he may see fit. (7 U.S.C. 954.)

SEC. 5. That the information furnished under the provisions of this Act shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary whereby the data furnished by any person can be identified, nor shall the Secretary permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports. (7 U.S.C. 955.)

SEC. 6. The Secretary may make rules and regulations as may be necessary in the administration of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and else where, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose. (7 U.S.C. 956.)

SEC. 7. That when used in this Act)

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture. (7 U.S.C. 957.)

FRUITS, VEGETABLES, AND WINE [1]

(7 U.S.C. 499a note; 104 Stat. 3568)

FRUIT AND VEGETABLE STUDY, GROWN IN THE U.S. PROGRAM; COUNTRY OF ORIGIN LABELING PROGRAM

SEC. 1301. Findings.

Congress finds that)

(1) fruits, vegetables, and specialty crops are a vital and important source of nutrition for the general health and welfare of the people of the United States; and

(2) fruits and vegetables are recommended as an essential part of a healthy, nutritious diet by numerous health officials and organizations including the Surgeon General of the United States; the National Institutes of Health; the National Cancer Institute; the American Heart Association; the Committee on Diet, Nutrition and Cancer of the National Academy of Sciences; the Department of Agriculture; and the Department of Health and Human Services.

SEC. 1302. Purposes.

The purposes of this subtitle are to)

(1) improve the Nation's dietary and nutritional standards by promoting domestically produced wholesome and nutritious fruit and vegetable products;

(2) increase the public awareness as to the difficulties domestic producers experience regarding the production, harvesting, and marketing of these products; and

(3) aid in the development of new technology and techniques that will assist domestic producers in meeting the challenges of increased demands for fruit and vegetable products in the future.

SEC. 1303. Declaration.

Congress declares that the domestic production of fruits and vegetables is an integral part of this Nation's farm policy.

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[1] Title XIII of Pub. L. 101-624, 104 Stat. 3559; 3568, Nov. 28, 1990, includes several miscellaneous provisions relating to fruits, vegetables and wine which are codified at 7 U.S.C. 499a note and 104 Stat. 3568.

SEC. 1304. Study of the Fruit and Vegetable Industry.

(a) STUDY.)

(1) IN GENERAL.)The Secretary of Agriculture shall conduct a study to determine the state of the domestic fruit and vegetable industry. In conducting such study, the Secretary of Agriculture shall consult with such agencies or departments, as determined necessary by the Secretary of Agriculture, including the Environmental Protection Agency, the Department of Health and Human Services, the Department of Commerce, the Department of Labor, and the Department of Education.

(2) CONTENTS.)The study conducted under paragraph (1) shall include)

(A) a review of the availability of an adequate labor supply for maintaining and harvesting of fruits and vegetables;

(B) a review of the availability of crop insurance or disaster assistance for fruit and vegetable producers;

(C) a review of scientific and technological advances in the areas of genetics, biotechnology, integrated pest management, post harvest protection, and other scientific developments related to the production and marketing of fruits and vegetables;

(D) an examination of the availability of safe and effective chemical for use in the production of fruits and vegetables, and an evaluation of the value of national uniformity to both consumers and producers;

(E) a review of the requirements and cost of labeling fruits and vegetables in the industry, and the benefits that would result from the labeling of such products; and

(F) a review of Federal educational programs that teach the importance of fruits and vegetables to a proper diet.

(b) REPORT.)Not later than 18 months after the date of enactment of this title, the Secretary of Agriculture shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report containing the results of the study described in subsection (a). Such report shall include)

(1) the recommendations of the Secretary concerning the manner in which producers of domestic fruit and vegetable commodities that are not receiving assistance under the programs that provide market enhancement assistance (such as the export enhancement program under subtitle B of title XI of the Food Security Act of 1985 (7 U.S.C. 1736p et seq.) to producers of domestic fruit and vegetable commodities, could participate in such programs; and

(2) the recommendations to the Secretary concerning the establishment of additional programs of the type described in paragraph (1) to

assist producers of domestic fruit and vegetable commodities in increasing their production and in expanding domestic and foreign markets for the products of such producers.

SEC. 1305. Country of Origin Labeling Programs.

(a) GROWN IN THE U.S. PROGRAM.)The Secretary of Agriculture (hereafter referred to in this section as the "Secretary") shall implement a program defining the conditions under which non-perishable agricultural products may be designated as "grown in the U.S.".

(b) PILOT PROGRAM.)

(1) IN GENERAL.)The Secretary shall implement a 2-year pilot program during which time perishable agricultural products (fresh fruits and vegetables) are labeled or marked as to their country of origin. This program shall be conducted nationwide. After the 2-year period, the Secretary shall conduct a study to determine the results of the program. The Secretary shall submit to the Congress the results of the study within 18 months from the date of completion of the program.

(2) DETAILS OF THE PILOT PROGRAM.)

(A) DESIGNATION OF COUNTRY OF ORIGIN.)The program shall require that the country of origin of perishable agricultural products be indicated on any such products or on the package, display, holding unit, or bin by means of a label, stamp, mark, placard, or other clear and visible indication at the point of sale by any commission merchant, dealer, broker, or grocer. A sign near the products shall be an acceptable indication of the country of origin.

(B) APPLICATION OF PROGRAM.)

(i) IMPORTED AND DOMESTIC PRODUCTS.)The program shall apply to imported and domestic perishable agricultural products (including fresh fruit and vegetables).

(ii) IMPORTED PERISHABLE AGRICULTURAL PRODUCTS.)The labeling program shall apply to imported perishable agricultural products that enter the United States marked as to the country of origin and that are in compliance with section 304(a) of the Tariff Act of 1930.

(C) EXEMPTIONS.)The Secretary may provide for exemptions for products that are exempted, under section 304(a)(3)(J) of the Tariff Act of 1930, from the country of origin marking requirements of that Act.

(c) AUTHORIZATION OF APPROPRIATIONS.)There are authorized to be appropriated such sums as are necessary to carry out this section. (7 U.S.C. 499a note.)

WINE AND WINEGRAPE INDUSTRY STUDY [2]

(a) STUDY.)The Secretary of Agriculture shall conduct a study to determine how the Department of Agriculture might best work with and support the United States wine and winegrape industry. Such study shall)

(1) be designed to determine whether existing Department of Agriculture programs could be improved to better assist and support the United States wine and winegrape industry;

(2) be designed to determine whether new methods or programs implemented by the Department of Agriculture could enhance wine and winegrape production and processing and expand markets for United States wine and winegrapes;

(3) be conducted in consultation with local, state, and national associations or organizations of wine and winegrape producers;

(4) give special emphasis to States or other geographic areas that have not traditionally had a wine and winegrape industry.

(b) REPORT.)The Secretary of Agriculture shall submit a report detailing the determinations made in the study under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than December 31, 1991. Such report shall also include any recommendations to the Congress for legislation the Secretary determines may be necessary to implement the programs or methods specified under subsection (a). (104 Stat. 3568.)

[2] Section 1362 of Pub. L. 101-624, 104 Stat. 3568, Nov. 28, 1990.

PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 [1] AS AMENDED

(7 U.S.C. 499a) 499t)

AN ACT To suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.)This Act may be cited as the "Perishable Agricultural Commodities Act, 1930".

(b) DEFINITIONS.)For purposes of this Act:

(1) The term "person" includes individuals, partnerships, corporations, and associations.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia.

(4) The term "perishable agricultural commodity")

(A) means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and

(B) includes cherries in brine as defined by the Secretary in accordance with trade usages.

(5) The term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another.

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[1] Approved June 10, 1930, 46 Stat. 531. *See* footnote 17, paragraph 2.

[2] Section as amended by Act of April 13, 1934, 48 Stat. 584; Act of August 20, 1937, 50 Stat. 725; Act of June 29, 1940, 54 Stat. 696; Act of October 1, 1962, 76 Stat. 673; Pub. L. 91-107, 83 Stat. 182, Nov. 4, 1969; Pub. L. 95-562, 92 Stat. 2381, Nov. 1, 1978; Pub. L. 97-98, 95 Stat. 1269, Dec. 22, 1981; Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991; and Pub. L. 104-48, 109 Stat. 424, 429, 430, Nov. 15, 1995.

(6)[3] The term "dealer" means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of $230,000, and (C) no person buying any commodity other than potatoes for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer".

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a "broker" if such person is an independent agent negotiating sales for and on behalf of the vender and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of $230,000[4] in any calendar year.

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is

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[3] Pub.L. 91-107, 83 Stat. 182, Nov. 4, 1969, substituted "$100,000" for "$90,000"; Pub. L. 95-562, 92 Stat. 2381, Nov. 1, 1978, increased from $100,000 to $200,000 the value of fresh and frozen fruits and vegetables that retailers may purchase before they become subject to PACA license requirements; and the addition of the words "other than potatoes" provides that potato processor shall be subject to licensing under PACA as "dealers", except that no person buying potatoes for processing solely within the State where grown would be deemed to be a dealer until January 1, 1982. Pub. L. 97-98, 95 Stat. 1269, Dec. 22, 1981, increased the retailer/broker exemption to $230,000.

[4] *See* footnote 3.

either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act.

(9)[5] The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this Act and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

(10) The terms "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self employment.

(11)[6] The term "retailer" means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail.

(12)[7] The term "grocery wholesaler" means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items.

(13)[8] The term "collateral fees and expense" means any promotional allowances, rebates, service or materials fees paid or provided, directly or indirectly, in connection with the distribution or marketing of any perishable agricultural commodity. (7 U.S.C. 499a.)

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[5] Sec. 12(a) of Pub. L. 104-48, 109 Stat. 430, Nov. 15, 1995, added new sentence at end of paragraph.

[6] Sec. 2 of Pub. L. 104-48, 109 Stat. 424, Nov. 15, 1995, added new paragraphs (11) and (12).

[7] *Ibid*.

[8] Paragraph (13) added by Sec. 9(a) of Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995.

UNFAIR CONDUCT

SEC. 2.[9] It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:

(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce.

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer.

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce.

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission

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Section as amended by Act of April 13, 1934, 48 Stat. 585; Act of June 19, 1936, 49 Stat. 1533; Act of August 20, 1937, 50 Stat. 725, 726; Act of June 29, 1940, 54 Stat. 696; Act of April 6, 1942, 56 Stat. 200; Act of July 30, 1956, 70 Stat. 726; Act of August 10, 1974, 88 Stat. 423; Pub. L. 97)352, 96 Stat. 1667, Oct. 18, 1982; Pub. L. 98)273, 98 Stat. 166, May 7, 1984, and Pub. L. 104-48, 109 Stat. 430, Nov. 15, 1995. Pub. L. 101)624, Sec. 1309, 104 Stat. 3562, Nov. 28, 1990, states:

"Sec. 1309. Products Produced in Distinct Geographic Areas.

"(a) IN GENERAL.)In the case of a perishable agricultural commodity (as defined under the Perishable Agricultural Commodity Act (7 U.S.C. 499a(4)))

"(1) subject to a Federal marketing order under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.);

"(2) traditionally identified as being produced in a distinct geographic area, State, or region; and

"(3) the unique identity, based on such distinct geographic area, of which has been promoted with funds collected through producer contributions pursuant to such marketing order,

no person may use the unique name or geographical designation of such commodity to promote the sale of a similar commodity produced outside such area, State, or region.

"(b) PENALTIES.)A violation of this section shall be considered a violation of paragraphs (4) and (5) of section 2 of the Perishable Agricultural Commodities Act (7 U.S.C. 499b (4) and (5)).

"(c) REIMBURSEMENT.)A person bringing a complaint under this section shall reimburse the Secretary of Agriculture for any and all costs associated with the enforcement of this section.

"(d) PROHIBITION.)The Secretary of Agriculture shall not increase any fees charged under the Perishable Agricultural Commodities Act (7 U.S.C. 499 et seq.) to offset costs associated with the operation of this section.

"(e) REGULATIONS.)The Secretary shall promulgate regulations to carry out this section." (7 U.S.C. 499b)1.)

merchant, or bought or sold, or contracted to be brought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 5(c). However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this Act.

(5) For any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, any commission merchant, dealer, or broker who has violated)

(A) any provision of this paragraph may, with the consent of the Secretary, admit the violation or violations; or

(B) any provision of this paragraph relating to a misrepresentation by mark, stencil, or label shall be permitted by the Secretary to admit the violation or violations if such violation or violations are not repeated or flagrant; and pay, in the case of a violation under either clause (A) or (B) of this paragraph, a monetary penalty not to exceed $2,000 in lieu of a formal proceeding for the suspension or revocation of license, any payment so made to be deposited in the Treasury of the United States as miscellaneous receipts. A person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of this paragraph by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate or statement under authority of any Federal or State inspector or in compliance with any Federal or State law or regulation as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced.

(7) For any commission merchant, dealer, or broker, without the consent of an inspector, to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of any

perishable agricultural commodity after it has been officially inspected for grading and certification, but this shall not prohibit re-sorting and discarding inferior produce. (7 U.S.C. 499b.)

SEC. 3.[10] LICENSES.

(a)[11] LICENSE REQUIRED; PENALTIES FOR VIOLATIONS.) After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subdivision shall be liable to a penalty of not more than $1,000 for each such offense and not more than $250 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of $250, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited in the Treasury of the United States in the same manner as regular license fees.

(b)[12] APPLICATION AND FEES FOR LICENSE.)

(1) APPLICATION FOR LICENSE.) Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application and to be furnished thereafter.

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[10] Section as amended by Act of August 20, 1937, 50 Stat. 726; Act of June 15, 1950, 64 Stat. 217; Act of July 30, 1956, 70 Stat. 726; Act of October 1, 1962, 76 Stat. 673, 674; Pub. L. 91-107, 83 Stat. 182, Nov. 4, 1969, Pub. L. 95-562, 92 Stat. 2381, Nov. 1, 1978; Pub. L. 97-98, 95 Stat. 1269-1270, Dec. 22, 1981; and Pub. L. 104-48, 109 Stat. 425, 426, 427, Nov. 15, 1995.

[11] Sec. 5(a) of Pub. 104-18, 109 Stat. 427, Nov. 15, 1995, increased the penalty for operating without a licenses from $500 to $1,000, the daily penalty from $25 to $250, and the fine for inadvertent operation without a license from $25 to $250.

[12] As amended by Pub. L. 91-107, 83 Stat. 182, Nov. 4, 1969; Pub. L. 95-562, 92 Stat. 2381, Nov. 1, 1978; and Pub. L. 104-48, 109 Stat. 425, 426, Nov. 15, 1995. Pub. L. 97-98, 95 Stat. 1269-1270, Dec. 22, 1981, increased the license fee to $300, the branch fee to $150, and total aggregate fee ceiling to $3,000. Pub. L. 100-414, 102 Stat. 1102, Aug. 22, 1988, increased the fees to $400, $200, and $4,000, respectively. Pub. L. 101-624, 104 Stat. 3568, Nov. 28, 1990, authorized the investment of reserve funds.

(2)[13] LICENSE FEES.)Upon the filing of an application under paragraph (1), the applicant shall pay such license fees, both individually and in the aggregate, as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497). Thereafter, the licensee shall pay such license fees annually or at such longer interval as the Secretary may prescribe. The Secretary shall take due account of savings to the program when determining an appropriate interval for renewal of licenses. The Secretary shall establish and alter license fees only by rulemaking under section 553 of title 5, United States Code, except that the Secretary may not alter the fees required under paragraph (3) or (4) for retailers and grocery wholesalers that are dealers. Effective on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995 and until such time as the Secretary alters such fees by rule, an individual license fee shall equal $550 per year, plus $200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary, subject to an annual aggregate limit of $4,000 per licensee. Any increase in license fees prescribed by the Secretary under this paragraph shall not take effect unless the Secretary determines that, without such increase, the funds on hand as of the end of the fiscal year in which the increase takes effect will be less than 25 percent of the projected budget to administer such Acts for the next fiscal year. In no case may a license fee increase by the Secretary take effect before the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995.

(3)[14] ONE-TIME FEE FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.)During the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, a retailer or grocery wholesaler making an initial application for a license under this section shall pay the license fee required under subparagraph (A), (B), or (C) of paragraph (4) for license renewals in the year in which the initial application is made. After the end of such period, a retailer or grocery wholesaler making an initial application for a license under this section shall pay an administrative fee equal to $100. In either

[13] Sec. 4 of Pub. L. 104-48, 109 Stat. 426, Nov. 15, 1995, added new paragraph (2), increasing license fee from $400 to $550 and providing authority after three years to adjust the license fee caps through rulemaking procedures when the reserve funds fall below 25 percent of the projected operating costs for the following year.

[14] Sec. 3(a) of Pub. L. 104-48, 109 Stat. 425, Nov. 15, 1995, added new paragraphs (3) and (4), eliminating over a three-year period the annual license fees for retailers and grocery wholesalers.

case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.

(4)[15] GRADUAL ELIMINATION OF ANNUAL FEES FOR RETAILERS AND GROCERY WHOLESALERS THAT ARE DEALERS.)In the case of a retailer grocery wholesaler that holds a license under this section as of the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, payments for the renewal of the license shall be made pursuant to the following schedule:

(A) For anniversary dates occurring during the one-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall pay a renewal fee in an amount equal to 100 percent of the applicable renewal fee (subject to the $4,000 aggregate limit on such payments) in effect under this subsection on the day before such enactment date.

(B) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (A), the licensee shall pay a renewal fee in an amount equal to 75 percent of the amount paid by the licensee under subparagraph (A).

(C) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (B), the licensee shall pay a renewal fee in an amount equal to 50 percent of the amount paid by the licensee under subparagraph (A).

(D) After the end of the three-year period beginning on the date of the enactment of the Perishable Agricultural Commodities Act Amendments of 1995, the licensee shall not be required to pay any fee if the licensee seeks renewal of the license.

(5)[16] PERISHABLE AGRICULTURAL COMMODITIES ACT FUND.)Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act Fund," which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above. Any reserve funds in the Perishable Agricultural Commodities Act Fund may be invested by the Secretary in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any interest earned on such reserve funds shall be credited to the Perishable Agricultural

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[15] *See* footnote 14.15

[1616] As amended by Sections 3 and 4 of Pub. L. 104-48, 109 Stat. 425-426, Nov. 15, 1995. Sec. 4(b) of Pub. L. 104-48, 109 Stat. 426, Nov. 15, 1996, repealed the 25 percent cap on the operating reserve.

Commodities Act Fund and shall be available for the same purposes as the fees deposited in such fund. Financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually.

(c) USE OF TRADE NAMES.)A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant. (7 U.S.C. 499c).

SEC. 4.[17] (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this Act, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, or is automatically suspended under section 7(d) of this Act, but said license shall automatically terminate on the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required): *Provided*, That notice of the

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[1717] Section as amended by Act of April 13, 1934, 48 Stat. 585, 586; Act of June 19, 1936, 49 Stat. 1533; Act of August 20, 1937, 50 Stat. 726; Act of June 15, 1950, 64 Stat. 218; Act of July 30, 1956, 70 Stat. 726; Act of October 1, 1962, 76 Stat. 674; Pub.L. 95-598, 92 Stat. 2673, Nov. 6, 1978; Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991; and Pub. L. 104-48, 109 Stat. 427, 431, Nov. 15, 1995.

Section 525 of P.L. 95-598, 92 Stat. 2593 states:

"Except as provided in Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a-499s), the Packers and Stockyards Act, 1921 (7 U.S.C. 181-229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

necessity of renewing the license and of paying the renewal fee (if such fee is required) shall be mailed at least thirty days before the anniversary date: *Provided further*, That if the renewal fee (if required) is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 3(b), plus $50 which shall be deposited in the Perishable Agricultural Commodities Act Fund provided for by section 3(b): *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt, unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination.

(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is prohibited from employment with a licensee under section 8(b) or is a person who, or is or was responsibly connected with a person who)

(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491)497), relating to the prevention of destruction and dumping of farm produce; or

(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7 (c), to pay any reparation order issued against him within two years prior to the date of the application.

(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the

approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided. The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 8(b).

(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investigation, for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or (b) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent or employee of the applicant. If after investigation the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for hearing within sixty days from the date of the application to show cause why the license should not be refused. If after the hearing the Secretary finds that the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or because the application contains a materially false or misleading statement made by the applicant or by its representative on its behalf, or involves a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary may refuse to issue a license to the applicant.

(e) The Secretary may refuse to issue a license to an applicant if he finds that the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of stock, has, within three years prior to the date of

the application, been adjudicated or discharged as a bankrupt, or was a general partner of a partnership or officer or holder of more than 10 per centum of the stock of a corporation adjudicated or discharged as a bankrupt, and if he finds that the circumstances of such bankruptcy warrant such a refusal, unless the applicant furnishes a bond of such nature and amount as may be determined by the Secretary or other assurance satisfactory to the Secretary that the business of the applicant will be conducted in accordance with this Act (7 U.S.C. 499d.)

LIABILITY TO PERSON DAMAGED

SEC. 5.[18] (a) If any commission merchant, dealer, or broker violates any provision of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages (including any handling fee paid by the injured person or persons under section 6(a)(2)) sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

(c)(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in

[18] Section as amended by Act of Aug. 20, 1937, 50 Stat. 728; Pub. L. 98)273, 98 Stat. 165, May 7, 1984, which added subsection (c), impressing a trust on the commodities and sales proceeds of perishable agricultural commodities for the benefit of the unpaid seller; Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991; and Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995.

connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)), and its members.

(3)[19] The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

(4)[20] In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.".

(5) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust. (7 U.S.C. 499e.)

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[19] As amended by Sec. 6 of Pub. L. 104-48, 109 Stat. 427, Nov. 15, 1995, eliminating the requirement to file a trust notice with the Secretary.

[20]20 Sec. 6(c) of Pub. L. 104-48, 109 Stat. 427, Nov. 15, 1995, redesignated paragraph (4) as paragraph (5) and added a new paragraph (4), providing that the supplier, seller, or agent may perfect its trust claim by giving notice to the buyer on the invoice or billing statement.

SEC. 6.[21] COMPLAINTS, WRITTEN NOTIFICATIONS, AND INVESTIGATIONS.

(a) REPARATION COMPLAINTS.)

(1) PETITION; PROCESS.)Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, where upon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(2)[22] FILING AND HANDLING FEES.)A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of $60 per petition. If the Secretary determines under paragraph (1) that the

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[21] Section as amended by Act of April 13, 1934, 48 Stat. 586, 587; Act of August 20, 1937, 50 Stat. 728; Act of June 11, 1960, 74 Stat. 200; Act of October 1, 1962, 76 Stat. 675; Act of February 15, 1972, 86 Stat. 38, which changed from $1,500 to $3,000 the amount of damages claimed before a formal hearing must be held by USDA; Pub. L. 97-98, 95 Stat. 1270, Dec. 22, 1981, which increased the level of damages claimed from $3,000 to $15,000 before USDA is required to hold an oral hearing; Pub. L. 102-237, 105 Stat. 1895, Dec. 13, 1991; and Pub. L. 104-48, 109 Stat. 428-429, Nov. 15, 1995.

Pub. L. 103-276, 108 Stat. 1406, July 5, 1994, reads as follows:

SECTION 1. FILING AND HANDLING FEES FOR COMPLAINTS OF VIOLATIONS OF PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930.

(a) TEMPORARY FILING FEE REQUIRED.)During fiscal years 1995 and 1996, the Secretary of Agriculture shall require persons who submit petitions to the Secretary under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), alleging a violation of section 2 of such Act (7 U.S.C. 499b), to include a filing fee of $60 per petition.

(b) TEMPORARY HANDLING FEE REQUIRED.)During fiscal years 1995 and 1996, if the Secretary determines under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), that the facts contained in a petition described in such section warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of $300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. In determining the amount of damages incurred by an injured person or persons preparatory to issuing a reparation order under section 7 of such Act (7 U.S.C. 499g), the Secretary shall include the amount of any handling fee paid by the injured person or persons under this subsection.

(c) DEPOSIT OF FEES.)The Secretary shall deposit fees submitted under this section into the Perishable Agricultural Commodities Act Fund. (7 U.S.C. 499f note.)

Sec. 8(c) of Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995, repealed provision of Pub. L. 103-276 (7 U.S.C. 499f note) providing temporary fee authority for violation complaints for fiscal years 1995 and 1996. *See* footnote 22.

[22] Sec. 8(a) of Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995, added new paragraph (2), making permanent the authority to assess fees for formal and informal complaints.

facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of $300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. The Secretary shall deposit fees submitted under this paragraph into the Perishable Agricultural Commodities Act Fund provided for by section 3(b). The Secretary may alter the fees specified in this paragraph by rulemaking under section 553 of title 5, United States Code.

(b)[23] DISCIPLINARY VIOLATIONS.)Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested person (other than an employee of an agency of the Department of Agriculture administering this Act) may file, in accordance with rules prescribed by the Secretary, a written notification of any alleged violation of this Act by any commission merchant, dealer, or broker. In addition, any official certificates of the United States Government or States or Territories of the United States and trust notices filed pursuant to section 5 shall constitute written notification for the purposes of conducting an investigation under subsection (c). The identity of any person filing a written notification under this subsection shall be considered to be confidential information. The identity of such person, and any portion of the notification to the extent that it would indicate the identity of such person, are specifically exempt from disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), as provided in subsection (b)(3) of such section.

(c)[24] INVESTIGATION OF COMPLAINTS AND NOTIFICATIONS.)

(1) COMMENCING OR EXPANDING AN INVESTIGATION.)If there appears to be, in the opinion of the Secretary, reasonable grounds for investigating a complaint made under subsection (a) or a written notification made under subsection (b), the Secretary shall investigate such complaint or notification. In the course of the investigation, if the Secretary determines that violations of this Act are indicated other than the alleged violations specified in the complaint or notification that served as the basis for the investigation, the Secretary may expand the investigation to include such additional violations.

(2) ISSUANCE OF COMPLAINT BY SECRETARY; PROCESS.)In the opinion of the Secretary, if an investigation under this subsection substantiates the existence of violations of this Act, the Secretary may cause a complaint to be issued. The Secretary shall have the complaint

[23] As amended by Sec. 7 of Pub. L. 104-48, 109 Stat. 428, Nov. 15, 1995.
[24] *Ibid.*

served by registered mail or certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the subject of the complaint is engaged in business. However, in complaints wherein the amount claimed as damages does not exceed $30,000, a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact.

(3) SPECIAL NOTIFICATION REQUIREMENTS FOR CERTAIN INVESTIGATIONS.)Whenever the Secretary initiates an investigation on the basis of a written notification made under subsection (b) or expands such an investigation, the Secretary shall promptly notify the subject of the investigation of the existence of the investigation and the nature of the alleged violations of this Act to be investigated. Not later than 180 days after providing the initial notification, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under paragraph (2), terminate the investigation, or continue or expand the investigation. The Secretary shall provide additional status reports at the request of the subject of the investigation and shall promptly notify the subject of the investigation whenever the Secretary terminates the investigation.

(d)[25] DECISIONS ON COMPLAINTS.)After opportunity for hearing on complaints where the damages claimed exceed the sum of $30,000 has been provided or waived and on complaints where damages claimed do not exceed the sum of $30,000 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2.

(e)[26] BOND REQUIRED FOR CERTAIN COMPLAINTS.)In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant

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[25] Sec. 7 of Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995, added the subsection heading and increased the damage threshold required for hearing reparation cases from $15,000 to $30,000.

[26] Section 2 of Pub. L. 97-352, 96 Stat. 1667, Oct. 18, 1982, amended subsection (e) to require U.S. residents to furnish a bond before pursuing a claim for a nonresident. Section 3 of Pub. L. 97-352, states: "The amendment made by section 2 shall not apply with respect to complaints made under section 6(e) of the Perishable Agricultural Commodities Act 1930, before the date of enactment of this Act." Sec. 7(d) of Pub. L. 104-48, 109 Stat. 429, Nov. 15, 1995, added subsection heading.

on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond. (7 U.S.C. 499f.)

REPARATION ORDER

SEC. 7.[27] (a) If after a hearing on a complaint made by any person under section 6, or without hearing as provided in section 6, paragraphs (c) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary determines that the commission merchant, dealer, or broker has violated any provision of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. The Secretary shall order any commission merchant, dealer, or broker who is the losing party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with any such hearing. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum.

(b) If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of

[27] Section as amended by Act of April 13, 1934, 48 Stat. 587, 588; Act of June 19, 1936, 49 Stat. 1534; Act of August 20, 1937, 50 Stat. 728; Act of June 23, 1938, 52 Stat. 953; Act of May 14, 1940, 54 Stat. 214; Act of Oct. 1, 1962, 76 Stat. 675; Act of February 15, 1972, 86 Stat. 38; and Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991.

the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within 30 days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held: *Provided*, That in cases handled without a hearing in accordance with paragraphs (c) and (d) of section 6 or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court.

(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied. (7 U.S.C. 499g.)

SUSPENSION AND REVOCATION OF LICENSE

SEC. 8.[28] (a) Whenever (1) the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person)

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee

[28] Section as amended by Act of April 13, 1934, 48 Stat. 588; Act of August 20, 1937, 50 Stat. 730; Act of July 30, 1956, 70 Stat. 727; Act of October 1, 1962, 76 Stat. 675; Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991; and Pub. L. 104-48, 109 Stat. 431, Nov. 15, 1995.

furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

(c) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions sets forth in paragraph (b) of section 4.

(d) In addition to being subject to the penalties provided by section 3(a) of this Act, any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to period not to exceed ninety days.

(e)[29] ALTERNATIVE CIVIL PENALTIES.)In lieu of suspending or revoking a license under this section when the Secretary determines, as provided by section 6, that a commission merchant, dealer, or broker has violated section 2 or subsection (b) of this section, the Secretary may assess a civil penalty not to exceed $2,000 for each violative transaction or each day the violation continues. In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation. Amounts collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts. (7 U.S.C. 499h.)

ACCOUNTS AND RECORDS

SEC. 9. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days. (7 U.S.C. 499i.)

EFFECTIVE DATE AND FINALITY OF ORDER

SEC. 10. Any order of the Secretary under this Act other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date prescribed for its taking effect application is made to a court of competent jurisdiction by the commission merchant, dealer, or broker against whom such order is directed to have such order set aside or its enforcement, operation, or execution suspended or restrained. (7 U.S.C. 499j.)

INJUNCTIONS

SEC. 11. For the purpose of this Act the provisions of all laws relating to the suspending or restraining of the enforcement, operation, or execution, or

[29] Sec. 11 of Pub. L. 104-48, 109 Stat. 430, Nov. 15, 1995, added new subsection (e), authorizing the imposition of a civil penalty in lieu of a license suspension or revocation.

the setting aside in whole or in part, of the orders of the Interstate Commerce Commission are made applicable to orders of the Secretary under this Act and to any person subject to the provisions of this Act. (7 U.S.C. 499k.)

GENERAL PROVISIONS

SEC. 12. The Secretary may report any violation of this Act for which a civil penalty is provided to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. The costs and expenses of such proceedings shall be paid out of the appropriation for the expenses of the courts of the United States. (7 U.S.C. 499l.)

SEC. 13.[30] (a) The Secretary or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any commission merchant, dealer, or broker as may be material (1) in the investigation of complaints under this Act, or (2) to the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections, or (3) to ascertain whether section 9 of this Act is being complied with, and if any such commission merchant, dealer, or broker refuses to permit such inspection, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender until permission to make such inspection is given. The Secretary or his duly authorized agents shall have the right to inspect any lot of any perishable agricultural commodity covered by this Act, and if any commission merchant, dealer, or broker having ownership of or control over such lot fails or refuses to authorize or allow such inspection, the Secretary may, after thirty days' notice and an opportunity for a hearing, publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

(b) The Secretary or the Secretary's duly authorized agents, in order to insure that the prompt payment provision of section 2(4) of this Act is being complied with, shall from time to time inspect the accounts, records, and memoranda of any commission merchant, dealer, or broker determined in a formal disciplinary proceeding under section 6(b) of this Act to have violated such provision. The Secretary may also require that any such commission

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[30] Section as amended by Act of July 30, 1956, 70 Stat. 727. The Organized Crime Control Act
of 1970, P.L. 91-452, 84 Stat. 928, repealed subsection (f) of section 13 of the Perishable Agricultural Commodities Act (7 U.S.C. 499m(f) relating to appearance of witnesses and presentation of documentary evidence. See Part III of this compilation for provisions on immunity of witnesses. Section further amended by Pub. L. 95-562, November 1, 1978, 92 Stat. 2381, by renumbering subsections (b) through (e) as subsections (c) through (f) and adding a new subsection (b).

merchant, dealer, or broker furnish, maintain, and from time to time adjust a surety bond in form and amount satisfactory to the Secretary as assurance that such commission merchant's dealer's, or broker's business will be conducted in accordance with this Act and that such commission merchant, dealer, or broker will pay all reparation awards, subject to its right of appeal under section 7(c) of this Act: *Provided*, That if such surety bond is furnished, maintained, and adjusted as required by the Secretary, the Secretary shall not thereafter inspect the accounts, records, and memoranda of such commission merchant, dealer, or broker under this subsection more than once a year. If any such commission merchant, dealer, or broker refuses to permit such inspection or fails or refuses to furnish, maintain, or adjust such surety bond, the Secretary may publish the facts and circumstances and, by order, suspend the license of the offender until permission to make such inspection is given or such surety bond is furnished, maintained, or adjusted.

(c) The Secretary, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under this Act.

(d) In case of disobedience to a subpoena, the Secretary or any of his examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Secretary or his examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(e) The Secretary may order testimony to be taken by deposition in any proceeding or investigation or incident to any complaint pending under this Act at any stage thereof. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce accounts, records, and memoranda in the same manner as witnesses may be compelled to appear and testify and produce accounts, records, and memoranda before the Secretary or any of his examiners.

(f) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the court of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the

same fees as are paid for like service in the courts of the United States. (7 U.S.C. 499m.)

SEC. 14.[31] (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C. 1 et seq.), as prima-facie evidence of the truth of the statements therein contained.

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or

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[31] Section as amended by Act of April 13, 1934, 48 Stat. 588; Act of August 20, 1937, 50 Stat. 730; and Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991. Section 1704 of Pub. L. 99-198, 99 Stat. 1635, Dec. 23, 1985, provided that: "The Secretary of Agriculture shall perform random spot checks
of potatoes entering through ports of entry in the northeastern United States. The Secretary of Agriculture shall report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives the results of such spot checks." Sec. 1011(g) of Pub. L. 104-66, 109 Stat. 710, Dec. 21, 1995, eliminated the requirement for a report to be submitted to Congress on spot checks of potatoes. Sec. 304(d) of Pub. L. 100-449, 102 Stat. 1875, Sept. 28, 1988, authorized the U.S. and Canada to enter into negotiations for purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the U.S. and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, desiccated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement shall have annual limitation.

willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., secs. 491)497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court (7 U.S.C. 499n.)

SEC. 15.[32] The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, from the Perishable Agricultural Commodities Act fund provided for by section 3(b) and any supplements to such fund, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects of this Act; but it is intended that all such statutes shall remain in full force and effect except insofar only as they are inconsistent herewith or repugnant hereto. (7 U.S.C. 499o.)

SEC. 16. In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person. (7 U.S.C. 499p.)

SEPARABILITY

SEC. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the

[32] As amended by Act of June 15, 1950, 64 Stat. 218.

Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 499q.)

SEC. 18.[33] Repealed.

SEC. 19.[34] Any unexpended balances of appropriations for the current fiscal year, and any subsequent appropriations, made to carry out the Acts referred to in section 13(b) hereof, may be deposited in the Perishable Agricultural Commodities Act fund. (7 U.S.C. 499s.)

ADVISORY COMMITTEE

SEC. 20.[35] (a) The Secretary of Agriculture shall establish the Perishable Agricultural Commodities Act Industry Advisory Committee to)
New Section 20 added by Pub. L. 100)414, 102 Stat. 1102, Aug. 22, 1988.

(1) review the Perishable Agricultural Commodities Act program to ensure increased program efficiency and equitable treatment among the various segments of the fruit and vegetable industry;

(2) enhance the mutual understanding and cooperation among all segments of the fruit and vegetable industry;

(3) advise the Secretary on the Perishable Agricultural Commodities Act program; and

(4) submit a report to the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Secretary, as provided in subsection (f).

(b) The committee shall be comprised of not more than twenty members, and ten alternates, appointed by the Secretary, representing the balanced interests of the fruit and vegetable industry, including but not limited to growers, shippers, brokers, receivers, wholesalers, retailers, and processors. The Secretary shall appoint the members of the advisory committee not later than 180 days after the date of enactment of this section.

(c) The advisory committee shall be governed by the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(d) The Secretary shall provide the advisory committee with necessary clerical assistance and personnel.

(e) Members of the advisory committee shall serve without compensation, if not otherwise officers or employees of the United States. Member of the advisory committee shall, while away from their homes or regular places of business in the performance of services under this Act, be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5 of the United States Code.

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[33] Sec. 1011(8) of Pub. L. 102-237, 105 Stat. 1898, Dec. 13, 1991, struck Sec. 18 (7 U.S.C. 499r) the short title. *See* Section 1 (7 U.S.C. 499a(a)) of this Act.

[34] As amended by Act of June 15, 1950, 64 Stat. 218.

[35] New Section 20 added by Pub. L. 100-414, 102 Stat. 1102, Aug. 22, 1988.

(f)(1) The advisory committee shall review the Perishable Agricultural Commodities Act program, including but not limited to the administration, operations, and funding of such program.

(2) On the basis of its review, the advisory committee shall make findings and develop recommendations for consideration by Congress and the Secretary of Agriculture with respect to the future operation of the Perishable Agricultural Commodities Act program.

(3) The advisory committee shall submit, to the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Secretary of Agriculture, an interim report no later than September 30, 1989, and a final report no later than May 1, 1990, containing the results of its review and recommendations based on such results.

(g) The advisory committee shall cease to exist on the date of its report to the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Secretary of Agriculture. (7 U.S.C. 499t.)

PRODUCE AGENCY ACT [1]

(7 U.S.C. 491) 497)

AN ACT To prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after June 30, 1927, any person, firm, association, or corporation receiving any fruits, vegetables, melons, dairy, or poultry products or any perishable farm products of any kind or character, hereinafter referred to as produce, in interstate commerce, or in the District of Columbia, for or on behalf of another, who without good and sufficient cause therefor, shall destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, or who shall knowingly and with intent to defraud make any false report or statement to the person, firm, association, or corporation from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, or who shall knowingly and with intent to defraud fail truly and correctly to account therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 and not more than $3,000, or by imprisonment for a period of not exceeding one year, or both, at the discretion of the court.[2] (7 U.S.C. 491.)

SEC. 2. The Secretary of Agriculture is hereby authorized and directed to enforce this Act. It is hereby made the duty of all United States attorneys to prosecute cases arising under this Act, subject to the supervision and control of the Department of Justice. (7 U.S.C. 493.)

SEC. 3. The Secretary of Agriculture may make such rules and regulations as he may deem advisable to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and may call upon any Federal department, board, or commission for assistance in carrying out the purposes of this Act; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law and make such expenditure for rent, outside the District of

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[1] Act of March 3, 1927, 44 Stat. 1355.

[2] Amended by Act of Aug. 9, 1955, 69 Stat. 553.

Columbia, printing, telegrams, telephones, books of reference, books of law, periodicals, newspapers, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be deemed necessary to the administration of this Act in the District of Columbia and elsewhere, and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $25,000 to be available for expenditure during the fiscal year beginning July 1, 1927, and the appropriation of such additional sums as may be necessary thereafter to carry out the purposes of this Act is hereby authorized. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act, but it is intended that all such statutes shall remain in full force and effect, except in so far only as they are inconsistent herewith or repugnant hereto. (7 U.S.C. 494, 495, 496.) Regulations: 7 CFR Part 48.

SEC. 4. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby. (7 U.S.C. 497.)

FLORAL RESEARCH AND CONSUMER INFORMATION ACT[1]

(7 U.S.C. 4301-4319)

SHORT TITLE

SEC. 1701. This title may be cited as the "Floral Research and Consumer Information Act". (7 U.S.C. 4301 note.)

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 1702. Flowers and plants are an integral part of American life, contributing a natural and beautiful element, especially in urban areas, to what is increasingly a manmade, artificial environment for this country's citizens. Providing comfort and pleasure for many special occasions as well as for everyday living, flowers and plants work against visual pollution and, in the case of green plants, generate oxygen within their environment. The flowers and plants to which this title refers are cut flowers, potted flowering plants, and foliage plants. These flowers and plants are produced by many individual producers throughout the United States and in foreign countries. These products move in interstate and foreign commerce, and those that do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of flower and plant producers, brokers, wholesalers, and retailers throughout the Nation. The floral industry within the United States is comprised mainly of small- and medium-sized businesses. The producers are primarily agriculturally-oriented companies rather than promotion-oriented companies. The development and implementation of coordinated programs of research and promotion necessary for the maintenance of markets and the development of new markets have been inadequate. Without cooperative action in providing for and financing such programs, individual flower and plant producers, wholesalers, and retailers are unable to implement programs of research, consumer and producer information, and promotion necessary to maintain and improve markets for these products. It is widely recognized that it is in the public interest to provide an adequate, steady supply of fresh flowers and plants to the consumers of the Nation. The American consumer requires a continuing supply of quality and affordable flowers and plants as an important

[1] Enacted as Title XVII of Pub. L. 97-98, 95 Stat. 1348-1358, Dec. 22, 1981.

element in the quality of life. It is, therefore, declared to be the policy of Congress and the purpose of this title that it is essential and in the public interest to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective and coordinated program of research, consumer and producer education, and promotion designed to strengthen the floral industry's position in the marketplace and maintain, develop, and expand markets for flowers, plants, and flowering plants. Nothing in this title may be construed to dictate quality standards or provide for control of production or otherwise limit the right of individual flower and plant producers to produce commercial flowers and plants. Nothing in this title may be construed as a trade barrier to flowers and plants produced in foreign countries, and this title treats foreign producers equitably. (7 U.S.C. 4301.)

DEFINITIONS

SEC. 1703. As used in this title **)**

(1) The term "Secretary" means the Secretary of Agriculture of the United States Department of Agriculture.

(2) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(3) The term "cut flowers" means all flowers and decorative foliage used as fresh-cut flowers, fresh-cut decorative foliage, dried, preserved, and processed flowers, or dried and preserved decorative foliage, produced either under cover or in field operations.

(4) The term "potted flowering plants" means those plants that normally produce flowers, primarily produced in pots or similar containers, that are primarily used for interior decoration, whether grown under cover or in field operations.

(5) The term "foliage plants" means those plants, normally without flowers, primarily produced in pots or similar containers, that are primarily used for interior decorations, whether grown under cover or in field operations.

(6) The term "propagational material" means any plant material used in the propagation of cut flowers, potted flowering plants, and foliage plants, including cuttings, bulbs and corms, seedlings, canes, liners, plants, cells or tissue cultures, air layers and bublets, rhizomes, and root stocks. This term does not include seeds. (7) The term "flowers and plants" means cut flowers, potted flowering plants, foliage plants, and propagational material.

(8) The term "United States" means the fifty States of the United States of America, the territories and possessions of the United States of America, and the District of Columbia.

(9) The term “promotion” means any action, including paid advertising, to advance the image or desirability of cut flowers, potted flowering plants, and foliage plants.

(10) The term “research” means any type of research to advance the image, desirability, or marketability of cut flowers, potted flowering plants, and foliage plants.

(11) The term “consumer education” means any action to provide information on the care and handling of cut flowers, potted flowering plants, and foliage plants.

(12) The term “marketing” means the sale or other disposition in commerce of cut flowers, potted flowering plants, and foliage plants.

(13) Unless otherwise noted, the term “producer” means any person who produces domestically, for sale in commerce, cut flowers, potted flowering plants, or foliage plants.

(14) The term “Floraboard” means the board provided for under section 1707 of this title.

(15) The term “importer” means any person who imports cut flowers, potted flowering plants, or foliage plants from outside of the United States or who acts as an agent, broker, or consignee of any person or nation that produces flowers and plants outside of the United States for sale in the United States.

(16) The term “commodity group” means that portion of the flower and plant industry devoted to the production and importation of any one of the following: (A) cut flowers; (B) potted flowering plants; or (C) foliage plants.

(17) The term “cost of plant material” means the actual price paid by a producer for any propagational material or any other flowers and plants used in the production of flowers and plants. This term does not include the cost of seeds. (7 U.S.C. 4302.)

FLORAL RESEARCH AND PROMOTION ORDERS

SEC. 1704. To effectuate the declared policy of this title, the Secretary shall, subject to the provisions of this title, issue and, from time to time, may amend orders applicable to persons engaged in production, sale, importation, or handling of flowers and plants. Such orders shall be applicable to all production or marketing areas, or both, in the United States. (7 U.S.C. 4303.)

NOTICE AND HEARING

SEC. 1705. Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title, the Secretary shall give due notice and opportunity for hearing upon a

proposed order. Such hearing may be requested and a proposal for an order submitted by an organization certified pursuant to section 1716 of this title, or by any interested person affected by the provisions of this title, including the Secretary. (7 U.S.C. 4304.)

FINDING AND ISSUANCE OF AN ORDER

SEC. 1706. After notice and opportunity for hearing as provided in section 1705 of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this title. (7 U.S.C. 4305.)

REQUIRED TERMS IN ORDERS

SEC. 1707. Orders issued pursuant to this title shall contain the following terms and conditions and, except as provided in section 1708 of this title, no others:

(1) Providing for the establishment and appointment by the Secretary of a board to be named "Floraboard", which shall consist of not more than seventy-five voting members, and defining its powers and duties, which shall include only the powers to (A) administer such order in accordance with its terms and provisions, (B) make rules and regulations to effectuate the terms and provisions of such order, (C) receive, investigate, and report to the Secretary complaints of violations of such order, and (D) recommend to the Secretary amendments of such order. The term of an appointment to the Floraboard shall be for three years with no member serving more than two consecutive three-year terms: *Provided*, That of the initial appointments, one-third shall be for a term of one year and one-third shall be for a term of two years. The Floraboard shall appoint from its members an executive committee, consisting of not more than fifteen members, whose membership shall, to the maximum extent practicable, reflect the membership composition of the Floraboard, and whose commodity group representation shall be proportional to that of the Floraboard. Such executive committee shall have the authority to employ a staff and conduct routine business within the policies determined by the Floraboard.

(2) Providing that the Floraboard shall be composed of producers and importers appointed by the Secretary from nominations submitted by organizations certified pursuant to section 1716 of this title or if the Secretary determines that a substantial number of producers or importers are not members of or their interests are not represented by any such certified organization then from nominations made by such producers or

importers in a manner authorized by the Secretary. Certified organizations shall submit one nomination for each position on the Floraboard. Initially, the Floraboard shall be composed of one-third producers and importers of cut flowers, one-third producers and importers of potted flowering plants, and one-third producers and importers of foliage plants. Two years after assessment of funds commences pursuant to an order, and periodically thereafter, the Floraboard shall adjust the commodity group representation of these commodity groups on the basis of the amount of assessments, less refunds, collected from each commodity group. There shall at all times be more producers representing a particular commodity group on the Floraboard than importers representing that commodity group. In addition to commodity group representation, the periodic adjustment of the membership of the Floraboard shall reflect, to the maximum extent practicable, the proportionate share of assessments, less refunds, collected from producers in each of several geographic areas of the United States to be defined by the Secretary, and the proportionate share of assessments, less refunds, collected from importers of flowers and plants imported into the United States from each country.

(3) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, develop and submit to the Secretary for approval advertising, sales promotion, consumer education, research, and development plans or projects and that any such plan or project must be approved by the Secretary before becoming effective.

(4) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, promotion, consumer education, research, and development projects.

(5) Providing that **)**

(A) For each sale of flowers and plants by a producer within the United States, such producer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction minus the cost of plant material. If the producer is a retailer, the assessment will be based on the then current wholesale value of the flowers and plants less the cost of plant material. In the case of consignment sales, the assessment shall be paid by the producer based on the dollar value of the sale of flowers and plants less the sales commission, freight cost, and cost of plant material.

(B) For each sale of imported flowers and plants within the United States by the importer of such flowers and plants, such importer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction, without deducting the cost of plant material. If the importer is a retailer, the assessment will be made on the purchase price. In the case of consignment sales, the assessment shall be paid

by the importer and shall be based on the dollar value of the sale of flowers and plants less the sales commission and cost of transportation within the United States.

(C) The assessments provided for in this section shall be remitted to the Floraboard, at the time and in the manner prescribed in the order and regulations thereunder, and shall be used for such expenses and expenditures (including provision for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after an order has been promulgated under this title) as the Secretary finds are reasonable and likely to be incurred by the Floraboard under the order during any period specified by the Secretary.

(6) Providing that the initial rate of assessment, which rate shall remain in effect for the first two years after an order is approved in a referendum, shall not exceed one-half of 1 per centum of the value of flowers and plants sold, as determined under the provisions of paragraph (5) of this section: *Provided*, That the Floraboard may thereafter increase or decrease the rate of assessment prescribed by the order by no more than one-quarter of 1 per centum of the value of flowers and plants sold per year: *Provided further*, That in no event shall the rate of assessment exceed 1-1/2 per centum of the value of flowers and plants sold.

(7) Providing that the Floraboard shall maintain such books and records and shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and providing for appropriate accounting by the Floraboard with respect to the receipt and disbursement of all funds entrusted to it.

(8) Providing that the Floraboard, with the approval of the Secretary, may enter into contracts or agreements for development and carrying out of the activities authorized under the order pursuant to sections 1708(1) and (2) of this title and for the payment of the cost thereof with funds collected pursuant to the order. The Floraboard may contract with industry groups, profit or nonprofit companies, private and State colleges and universities, and governmental groups. Any such contract or agreement shall provide (A) that the contracting party shall develop and submit to the Floraboard a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, (B) that any such plan or project shall become effective upon the approval of the Secretary, and (C) that the contracting party shall keep accurate records of all its transactions and make periodic reports to the Floraboard of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(9) Providing that the Floraboard may convene, from time to time, advisory panels drawn from the production, importation, wholesale, and retail segments of the flower and plant industry to assist in the development of marketing and research programs.

(10) Providing that no funds collected or received by the Floraboard shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by paragraph (1)(D) of this section.

(11) Providing that Floraboard members and members of any advisory panels convened shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Floraboard or advisory panel. (7 U.S.C. 4306.)

PERMISSIVE TERMS IN ORDERS

SEC. 1708. Orders issued pursuant to this title may contain one or more of the following terms and conditions:

(1) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for advertising, sales promotion, urban beautification, and consumer education with respect to the use of flowers and plants, and for the disbursement of necessary funds for such purposes: *Provided*, That any such plan or project shall be directed toward increasing the general demand for flowers and plants and shall make no reference to a private brand or trade name: *Provided further*, That no such advertising, consumer education, urban beautification, or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(2) Providing for establishing and carrying on research, marketing, and development projects, and studies with respect to the sale, distribution, marketing, or utilization of flowers and plants, to the end that the marketing and utilization of flowers and plants may be encouraged, expanded, improved, or made more acceptable, for the dissemination of the data collected by such activities and for the disbursement of necessary funds for such purposes.

(3) Providing that producers, wholesalers, retailers, and importers of flowers and plants maintain and make available for inspection such books and records as are specified in the order and that such persons file reports at the time, in the manner, and having the content prescribed by the order, to the end that information and data shall be made available to the Floraboard and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of this title, or any order or regulation issued pursuant to this title: *Provided*, That all information so obtained shall be kept confidential by employees of the Department of Agriculture and the Floraboard, and only such information as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or in a suit or administrative hearing to which the Secretary or any officer of the United States is a party, and involving the order with

reference to which the information to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of the number of persons subject to an order, or statistical data collected therefrom, which statements do not identify the information furnished by any person, (B) the publication by the Floraboard of general statements relating to refunds made by the Floraboard during any specific period, including regional information on refunds, (C) the publication by the Floraboard of information on the amount of assessments collected from each commodity group and the rate of refund in each commodity group, or (D) the publication by direction of the Secretary of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such persons. No information obtained pursuant to the authority of this title may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this title and any investigatory or enforcement actions necessary for the implementation of this title. Any person violating the provisions of this paragraph shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and, if an officer or employee of the Floraboard or the Department of Agriculture, shall be removed from office.

(4) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this title and necessary to effectuate the other provisions of such order. (7 U.S.C. 4307.)

REQUIREMENT OF REFERENDUM

SEC. 1709. (a) The Secretary shall conduct a referendum among domestic producers and importers not exempt under section 1712 of this title who, during a representative period determined by the Secretary, have been engaged in the production or importation of flowers and plants, for the purpose of ascertaining whether the issuance of an order is approved or favored by such domestic producers and importers. No order issued pursuant to this title shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum, or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the total value of the flowers and plants produced and imported by those producers and importers voting in such referendum during a representative period defined by the Secretary.

(b) The Secretary shall be reimbursed from assessments for all costs incurred by the Government in connection with the conduct of the

referendum, except for the salaries of Government employees. (7 U.S.C. 4308.)

SUSPENSION AND TERMINATION OF ORDERS

SEC. 1710. (a) Whenever the Secretary finds that any order issued under this title, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this title, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of producers and importers voting in the referendum approving the order, to determine whether such producers and importers favor the termination or suspension of the order, and shall suspend or terminate such order six months after the Secretary determines that suspension or termination of the order is approved or favored by a majority of the producers and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of flowers and plants.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this title. (7 U.S.C. 4309.)

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 1711. The provisions of this title applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 4310.)

EXEMPTIONS

SEC. 1712. Any producer or importer whose total sales of flowers and plants do not exceed $100,000 during a twelve consecutive month period prior to the date an assessment is due and payable shall be exempt from assessments under this title under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder and shall not vote in any referendum under this title: *Provided*, That the Floraboard shall have the discretion to make annual adjustments in the level of exemption to account for inflation. For the purpose of this section, a producer's or importer's or importer's total sales shall include, in those cases in which the producer or importer is an individual, sales attributable to such person's spouse, children, grandchildren, and parents; in those cases in which the producer or importer is a partnership or a member of a partnership, sales attributable to the other partners; and, in those cases in which the producer or importer is a corporation, sales attributable to any

corporate subsidiaries of which such corporation owns 50 per centum or more of the stock, or if such subsidiaries are not corporations, subsidiaries which are controlled by such corporation. In addition, in determining a producer's or importer's total sales, the sales of any corporation in which such producer or importer owns 50 per centum or more of the stock shall be attributed to such producer or importer. For these purposes stock in the same corporation which is owned by such producer's or importer's spouse, children, grandchildren, parents, partners, and any corporation 50 per centum or more of whose stock is owned by the producer or importer shall be treated as owned by the producer or importer. (7 U.S.C. 4311.)

PRODUCER OR IMPORTER REFUND

SEC. 1713. Notwithstanding any other provisions of this title, any producer or importer who pays an assessment shall have the right to demand and receive from the Floraboard a refund of such assessment: *Provided*, That such demand shall be made by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the Floraboard and approved by the Secretary, but in no event more than sixty days after the end of the month in which the assessment was paid. Such refund shall be made not later than sixty days after submission of proof satisfactory to the Floraboard that the producer or importer paid the assessment for which refund is sought. (7 U.S.C. 4312.)

PETITION AND REVIEW

SEC. 1714. (a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations prescribed by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling

as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 1715(a) of this title. (7 U.S.C. 4313.)

ENFORCEMENT

SEC. 1715. (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued pursuant to this title. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this title shall be construed as requiring the Secretary to refer to the Attorney General violations of this title whenever the Secretary believes that the administration and enforcement of the program would be adequately served by administrative action pursuant to subsection (b) of this section or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this title, or who fails or refuses to pay, collect, or remit any assessment or fee duly required thereunder, may be assessed a civil penalty by the Secretary of not less than $500 or more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violation or violations. No penalty may be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review pursuant to the procedures specified in paragraphs (1) and (2) of this subsection, of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 4314.)

CERTIFICATION OF ORGANIZATIONS

SEC. 1716. The eligibility of any organization to represent producers of flowers and plants of any producing area of the United States or importers of flowers and plants, for purposes of requesting the issuance of an order under section 1705, or making nominations under section 1707(2) of this title, shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership, the proportion of such active membership accounted for by producers and importers, and information as to the volume of production by State or the volume of importation by country accounted for by the organization's producer and importer members;

(3) the extent to which the producer and importer membership of such organization is represented in setting the organization's policies;

(4) evidence of stability and permanency of the organization;

(5) sources from which the organization's operating funds are derived;

(6) functions of the organization;

(7) whether the majority of the governing board of the organization is composed of producers and importers; and

(8) the organization's ability and willingness to further the aims and objectives of this title.

The primary consideration in determining the eligibility of any organization shall be whether its membership consists of a substantial number of producers and importers who produce and import a substantial volume of flowers and plants. The Secretary shall certify any organization which is found to be eligible under this section, and the Secretary's determination as to eligibility shall be final. Whenever more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 1702(2) of this title. (7 U.S.C. 4315.)

REGULATIONS

SEC. 1717. The Secretary may issue such regulations as may be necessary to carry out the provisions of this title. (7 U.S.C. 4316.)

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 1718. The Secretary may make such investigations as are deemed necessary to carry out the Secretary's responsibilities under this title or to determine whether a producer, importer, wholesaler, retailer, or other seller of flowers and plants, or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this title, or of any order, or rule or regulation issued under this title. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, including a producer of flowers and plants, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All processes in any such cases may be served in the judicial district wherein such person is an inhabitant or wherever such person may be found. (7 U.S.C. 4317.)

SEPARABILITY

SEC. 1719. If any provision of this title or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this title and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 4318.)

AUTHORIZATION

SEC. 1720. There are authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this title. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Floraboard in administering any provisions of any order issued pursuant to the terms of this title. (7 U.S.C. 4319.)

FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ACT OF 1993 [1]

(7 U.S.C. 6801 - 6814)

To authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry and other persons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE. **)** This Act may be cited as the "Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993".

(b) TABLE OF CONTENTS. **)** The table of contents of this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Issuance of orders.
Sec. 5. Required terms in orders.
Sec. 6. Exclusion; determinations.
Sec. 7. Referenda.
Sec. 8. Petition and review.
Sec. 9. Enforcement.
Sec. 10. Investigations and power to subpoena.
Sec. 11. Confidentiality.
Sec. 12. Authority for Secretary to suspend or terminate order.
Sec. 13. Construction
Sec. 14. Regulations.
Sec. 15. Authorization of appropriations. (7 U.S.C. 6801 note.)

Sec. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS. **)** Congress finds that **)**

(1) fresh cut flowers and fresh cut greens are an integral part of life in the United States, are enjoyed by millions of persons every year for a multitude of special purposes (especially important personal events),

[1] Pub. L. 103-190, 107 Stat. 2266, Dec. 14, 1993.

and contribute a natural and beautiful element to the human environment;

(2)(A) cut flowers and cut greens are produced by many individual producers throughout the United States as well as in other countries, and are handled and marketed by thousands of small-sized and medium-sized businesses; and

(B) the production, handling, and marketing of cut flowers and cut greens constitute a key segment of the United States horticultural industry and thus a significant part of the overall agricultural economy of the United States;

(3) handlers play a vital role in the marketing of cut flowers and cut greens in that handlers **)**

(A) purchase most of the cut flowers and cut greens marketed by producers; (B) prepare the cut flowers and cut greens for retail consumption;

(C) serve as an intermediary between the source of the product and the retailer;

(D) otherwise facilitate the entry of cut flowers and cut greens into the current of domestic commerce; and

(E) add efficiencies to the market process that ensure the availability of a much greater variety of the product to retailers and consumers;

(4) it is widely recognized that it is in the public interest and important to the agricultural economy of the United States to provide an adequate, steady supply of cut flowers and cut greens at reasonable prices to the consumers of the United States;

(5)(A) cut flowers and cut greens move in interstate and foreign commerce; and

(B) cut flowers and cut greens that do not move in interstate or foreign channels of commerce but only in intrastate commerce directly affect interstate commerce in cut flowers and cut greens;

(6) the maintenance and expansion of markets in existence on the date of enactment of this Act, and the development of new or improved markets or uses for cut flowers and cut greens, are needed to preserve and strengthen the economic viability of the domestic cut flowers and cut greens industry for the benefit of producers, handlers, retailers, and the entire floral industry;

(7) generic programs of promotion and consumer information can be effective in maintaining and developing markets for cut flowers and cut greens, and have the advantage of equally enhancing the market position for all cut flowers and cut greens;

(8) because cut flowers and cut greens producers are primarily agriculture-oriented rather than promotion-oriented, and because the floral marketing industry within the United States is comprised mainly

of small-sized and medium-sized businesses, the development and implementation of an adequate and coordinated national program of generic promotion and consumer information necessary for the maintenance of markets in existence on the date of enactment of this Act and the development of new markets for cut flowers and cut greens have been prevented;

(9) there exist established State and commodity-specific producer-funded programs of promotion and research that are valuable efforts to expand markets for domestic producers of cut flowers and cut greens and that will benefit from the promotion and consumer information program authorized by this Act in that the program will enhance the market development efforts of the programs for domestic producers;

(10) an effective and coordinated method for ensuring cooperative and collective action in providing for and financing a nationwide program of generic promotion and consumer information is needed to ensure that the cut flowers and cut greens industry will be able to provide, obtain, and implement programs of promotion and consumer information necessary to maintain, expand, and develop markets for cut flowers and cut greens; and

(11) the most efficient method of financing such a nationwide program is to assess cut flowers and cut greens at the point at which the flowers and greens are sold by handlers into the retail market.

(b) POLICY AND PURPOSE.**)** It is the policy of Congress that it is in the public interest, and it is the purpose of this Act, to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for the development and financing (through an adequate assessment on cut flowers and cut greens sold by handlers to retailers and related entities in the United States) of an effective and coordinated program of generic promotion, consumer information, and related research designed to strengthen the position of the cut flowers and cut greens industry in the marketplace and to maintain, develop, and expand markets for cut flowers and cut greens. (7 U.S.C. 6801.)

SEC. 3. DEFINITIONS.

As used in this Act:

(1) CONSUMER INFORMATION.**)** The term "consumer information" means any action or program that provides information to consumers and other persons on appropriate uses under varied circumstances, and on the care and handling, of cut flowers or cut greens.

(2) CUT FLOWERS AND CUT GREENS.-

(A) IN GENERAL.-

(i) CUT FLOWERS.) The term "cut flowers" includes all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations.

(ii) CUT GREENS.) The term "cut greens" includes all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced under cover or in field operations.

(iii) EXCLUSIONS.) The terms "cut flowers" and "cut greens" do not include a foliage plant, floral supply, or flowering plant.

(B) SUBSTANTIAL PORTION.) In any case in which a handler packages cut flowers or cut greens with hard goods in an article (such as a gift basket or similar presentation) for sale to a retailer, the PromoFlor Council may determine, under procedures specified in the order, that the cut flowers or cut greens in the article do not constitute a substantial portion of the value of the article and that, based on the determination, the article shall not be treated as an article of cut flowers or cut greens subject to assessment under the order.

(3) GROSS SALES PRICE.) The term "gross sales price" means the total amount of the transaction in a sale of cut flowers or cut greens from a handler to a retailer or exempt handler.

(4) HANDLER.-

(A) QUALIFIED HANDLER.)

(i) IN GENERAL.) The term "qualified handler" means a person (including a cooperative) operating in the cut flowers or cut greens marketing system)

(I) that sells domestic or imported cut flowers or cut greens to retailers and exempt handlers; and

(II) whose annual sales of cut flowers and cut greens to retailers and exempt handlers are $750,000 or more.

(ii) INCLUSIONS AND EXCLUSIONS.)

(I) IN GENERAL.) The term "qualified handler" includes)

(aa) bouquet manufacturers (subject to paragraph (2)(B));

(bb) an auction house that clears the sale of cut flowers and cut greens to retailers and exempt handlers through a central clearinghouse; and

(cc) a distribution center that is owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales.

(II) TRANSFERS.) For the purpose of determining sales of cut flowers and cut greens to a retailer from a distribution center described in subclause (I)(cc), each non-sale transfer to a retailer shall be treated as a sale in an amount calculated as provided in subparagraph (C).

(III) TRANSPORTATION OR DELIVERY.—The term "qualified handler" does not include a person who only physically transports or delivers cut flowers or cut greens.

(iii) CONSTRUCTION.—

(I) IN GENERAL.—The term "qualified handler" includes an importer or producer that sells cut flowers or cut greens that the importer or producer has imported into the United States or produced, respectively, directly to consumers and whose sales of the cut flowers and cut greens (as calculated under subparagraph (C)), together with sales of cut flowers and cut greens to retailers or exempt handlers, annually are $750,000 or more.

(II) SALES.—Each direct sale to a consumer by a qualified handler described in subclause (I) shall be treated as a sale to a retailer or exempt handler in an amount calculated as provided in subparagraph (C).

(III) DEFINITIONS.—As used in this paragraph:

(aa) IMPORTER.—The term "importer" has the meaning provided in section 5(b)(2)(B)(i)(I).

(bb) PRODUCER.—The term "producer" has the meaning provided in section 5(b)(2)(B)(ii)(I).

(B) EXEMPT HANDLER.—The term "exempt handler" means a person who would otherwise be considered to be a qualified handler, except that the annual sales by the person of cut flowers and cut greens to retailers and other exempt handlers are less than $750,000.

(C) ANNUAL SALES DETERMINED.—

(i) IN GENERAL.—Except as provided in clause (ii), for the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraphs (A) and (B), the amount of a sale shall be determined on the basis of the gross sales price of the cut flowers and cut greens sold.

(ii) TRANSFERS.—

(I) NON-SALE TRANSFERS AND DIRECT SALES BY IMPORTERS.—Subject to subclause (III), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center (as described in subparagraph (A)(ii)(II)), or a direct sale to a consumer by an importer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to the sum of—

(aa) the price paid by the distribution center or importer, respectively, to acquire the cut flowers or cut greens; and

(bb) an amount determined by multiplying the acquisition price referred to in item (aa) by a uniform percentage established by an order to represent the mark-up of a wholesale handler on a sale to a retailer.

(II) DIRECT SALES BY PRODUCERS.) Subject to subclause (III), in the case of a direct sale to a consumer by a producer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by an order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

(III) CHANGES IN UNIFORM PERCENTAGES.) Any change in a uniform percentage referred to in subclause (I) or (II) may become effective after)

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

(5) ORDER.) The term "order" means an order issued under this Act (other than sections 9, 10, and 12).

(6) PERSON.) The term "person" means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

(7) PROMOFLOR COUNCIL.) The term "PromoFlor Council" means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established under section 5(b).

(8) PROMOTION.) The term "promotion" means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers or cut greens, including paid advertising.

(9) RESEARCH.) The term "research" means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers or cut greens, including educational activities.

(10) RETAILER.)

(A) IN GENERAL.) The term "retailer" means a person (such as a retail florist, supermarket, mass market retail outlet, or other end-use seller), as described in an order, that sells cut flowers or cut greens to consumers, and a distribution center described in subparagraph (B)(i).

(B) DISTRIBUTION CENTERS.)

(i) IN GENERAL.) The term "retailer" includes a distribution center that is)

(I) owned or controlled by a person described in subparagraph (A), or owned or controlled cooperatively by a group of the persons, if the predominant retail business activity of the person is not floral sales; or

(II) independently owned but operated primarily to provide food products to retail stores.

(ii) IMPORTERS AND PRODUCERS.— An independently owned distribution center described in clause (i)(II) that also is an importer or producer of cut flowers or cut greens shall be subject to the rules of construction specified in paragraph (4)(A)(iii) and, for the purpose of the rules of construction, be considered to be the seller of the articles directly to the consumer.

(11) SECRETARY.— The term "Secretary" means the Secretary of Agriculture.

(12) STATE.— The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

(13) UNITED STATES.— The term "United States" means the States collectively. (7 U.S.C. 6802.)

SEC. 4. ISSUANCE OF ORDERS

(a) IN GENERAL.—

(1) ISSUANCE.— To effectuate the policy of this Act specified in section 2(b), the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this Act applicable to qualified handlers of cut flowers and cut greens.

(2) SCOPE.— Any order shall be national in scope.

(3) ONE ORDER.— Not more than 1 order shall be in effect at any 1 time.

(b) PROCEDURES.—

(1) PROPOSAL FOR AN ORDER.—

(A) SECRETARY.— The Secretary may propose the issuance of an order.

(B) OTHER PERSONS.— An industry group that represents a substantial number of the industry members who are to be assessed under the order, or any other person who will be affected by this Act, may request the issuance of, and submit a proposal for, an order.

(2) PUBLICATION OF PROPOSAL.— The Secretary shall publish a proposed order and give notice and opportunity for public comment on the proposed order not later than 60 days after the earlier of—

(A) the date on which the Secretary proposes an order, as provided in paragraph (1)(A); and

B) the date of the receipt by the Secretary of a proposal for an order, as provided in paragraph (1)(B).

(3) ISSUANCE OF ORDER.—

(A) IN GENERAL.) After notice and opportunity for pubic comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this Act.

(B) EFFECTIVE DATE.) The order shall be issued and become effective not later than 180 days after publication of the proposed order.

(c) AMENDMENTS.) The Secretary, from time to time, may amend an order. The provisions of this Act applicable to an order shall be applicable to any amendment to an order. (7 U.S.c. 6803.)

SEC. 5. REQUIRED TERMS IN ORDERS

(a) IN GENERAL.) An order shall contain the terms and provisions specified in this section.

(b) PROMOFLOR COUNCIL.)

(1) ESTABLISHMENT AND MEMBERSHIP.)

(A) ESTABLISHMENT.) The order shall provide for the establishment of a Fresh Cut Flowers and Fresh Cut Greens Promotion Council, consisting of 25 members, to administer the order.

(B) MEMBERSHIP.)

(i) APPOINTMENT.) The order shall provide that members of the PromoFlor Council shall be appointed by the Secretary from nominations submitted as provided in paragraphs (2) and (3).

(ii) COMPOSITION.) The PromoFlor Council shall consist of)

(I) participating qualified handlers representing qualified wholesale handlers and producers and importers that are qualified handlers;

(II) representatives of traditional retailers; and

(III) representatives of persons who produce fresh cut flowers and fresh cut greens.

(2) DISTRIBUTION OF APPOINTMENTS.)

(A) IN GENERAL.) The order shall provide that the membership of the PromoFlor Council shall consist of)

(i) 14 members representing qualified wholesale handlers of domestic or imported cut flowers and cut greens;

(ii) 3 members representing producers that are qualified handlers of cut flowers and cut greens;

(iii) 3 members representing importers that are qualified handlers of cut flowers and cut greens;

(iv) 3 members representing traditional cut flowers and cut greens retailers; and

(v) 2 members representing persons who produce fresh cut flowers and fresh cut greens, of whom **)**

(I) 1 member shall represent persons who produce the flowers or greens in locations that are east of the Mississippi River; and

(II) 1 member shall represent persons who produce the flowers or greens in locations that are west of the Mississippi River.

(B) DEFINITIONS. **)** As used in this subsection:

(i) IMPORTER THAT IS A QUALIFIED HANDLER. **)** The term "importer that is a qualified handler" means an entity **)**

(I) whose principal activity is the importation of cut flowers or cut greens into the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles cut flowers or cut greens outside the United States for sale in the United States); and

(II) that is subject to assessments as a qualified handler under the order.

(ii) PRODUCER THAT IS A QUALIFIED HANDLER. **)** The term "producer that is a qualified handler" means an entity that **)**

(I) is engaged **)**

(aa) in the domestic production, for sale in commerce, of cut flowers or cut greens and that owns or shares in the ownership and risk of loss of the cut flowers or cut greens; or

(bb) as a first processor of noncultivated cut greens, in receiving the cut greens from a person who gathers the cut greens for handling; and

(II) is subject to assessments as a qualified handler under the order.

(iii) QUALIFIED WHOLESALE HANDLER. **)**

(I) IN GENERAL. **)** The term "qualified wholesale handler" means a person in business as a floral wholesale jobber or floral supplier that is subject to assessments as a qualified handler under the order.

(II) DEFINITIONS. **)** As used in this clause:

(aa) FLORAL SUPPLIER. **)** The term "floral supplier" means a person engaged in acquiring cut flowers or cut greens to be manufactured into floral articles or otherwise processed for resale.

(bb) FLORAL WHOLESALE JOBBER. **)** The term "floral wholesale jobber" means a person who conducts a commission or other wholesale business in buying and selling cut flowers or cut greens.

(C) DISTRIBUTION OF QUALIFIED WHOLESALE HANDLER APPOINTMENTS. **)** The order shall provide that the appointments of qualified wholesale handlers to the PromoFlor Council made by the Secretary

shall take into account the geographical distribution of cut flowers and cut greens markets in the United States.

(3) NOMINATION PROCESS. **)** The order shall provide that **)**

(A) nominees shall be submitted for each appointment to the PromoFlor Council;

(B) nominations for each appointment of a qualified wholesale handler, producer that is a qualified handler, or importer that is a qualified handler to the PromoFlor Council shall be made by qualified wholesale handlers, producers that are qualified handlers, or importers that are qualified handlers, respectively, through an election process, in accordance with regulations issued by the Secretary;

(C) nominations for **)**

(i) 1 of the retailer appointments shall be made by the American Floral marketing Council or a successor entity; and

(ii) of the retailer appointments shall be made by traditional retail florist organizations, in accordance with regulations issued by the Secretary;

(D) nominations for each appointment of a representative of persons who produce fresh cut flowers and fresh cut greens shall be made by the persons through an election process, in accordance with regulations issued by the Secretary; and

(E) in any case in which qualified wholesale handlers, producers that are qualified handlers, importers that are qualified handlers, persons who produce fresh cut flowers and fresh cut greens, or retailers fail to nominate individuals for an appointment to the PromoFlor Council, the Secretary may appoint an individual to fill the vacancy on a basis provided in the order or other regulations of the Secretary.

(4) ALTERNATES. **)** The order shall provide for the selection of alternate members of the PromoFlor Council by the Secretary in accordance with procedures specified in the order.

(5) TERMS; COMPENSATION. **)** The order shall provide that **)**

(A) each term of appointment to the PromoFlor Council shall be for 3 years, except that, of the initial appointments, 9 of the appointments shall be for 2-year terms, 8 of the appointments shall be for 3-year terms, and 8 of the appointments shall be for 4-year terms;

(B) no member of the PromoFlor Council may serve more than consecutive terms of 3 years, except that any member serving an initial term of 4 years may serve an additional term of 3 years; and

(C) members of the PromoFlor Council shall serve without compensation, but shall be reimbursed for the expenses of the members incurred in performing duties as members of the PromoFlor Council.

(6) EXECUTIVE COMMITTEE. **)**

(A) ESTABLISHMENT. **)**

(i) IN GENERAL. **)** The order shall authorize the PromoFlor Council to appoint, from among the members of the Council, an executive committee of not more than 9 members.

(ii) INITIAL MEMBERSHIP. **)** The membership of the executive committee initially shall be composed of **)**

(I) 4 members representing qualified wholesale handlers;

(II) 2 members representing producers that are qualified handlers;

(III) 2 members representing importers that are qualified handlers; and

(IV) 1 member representing traditional retailers.

(iii) SUBSEQUENT MEMBERSHIP. **)** After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the PromoFlor Council as a whole.

(iv) TERMS. **)** Each initial appointment to the executive committee shall be for a term of 2 years After the initial appointments, each appointment to the executive committee shall be for a term of 1 year.

(B) AUTHORITY. **)** The PromoFlor Council may delegate to the executive committee the authority of the PromoFlor Council under the order to hire and manage staff and conduct the routine business of the PromoFlor Council consistent with such policies as are determined by the PromoFlor Council.

(c) GENERAL RESPONSIBILITIES OF THE PROMOFLOR COUNCIL. **)** The order shall define the general responsibilities of the PromoFlor Council, which shall include the responsibility to **)**

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

(2) make rules and regulations to effectuate the terms and provisions of the order;

(3) appoint members of the PromoFlor Council to serve on an executive committee;

(4) employ such persons as the PromoFlor Council determines are necessary, and set the compensation and define the duties of the persons;

(5)(A) develop budgets for the implementation of the order and submit the budgets to the Secretary for approval under subsection (d); and

(B) propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval under subsection (d) plans and

projects for cut flowers or cut greens promotion, consumer information, or related research;

(6)(A) implement plans and projects for cut flowers or cut greens promotion, consumer information, or related research, as provided in subsection (d); or

(B) contract or enter into agreements with appropriate persons to implement the plans and projects, as provided in subsection (e), and pay the costs of the implementation, or contracts and agreements, with funds received under the order;

(7) evaluate on-going and completed plans and projects for cut flowers or cut greens promotion, consumer information, or related research;

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

(9) recommend to the Secretary amendments to the order;

(10) invest, pending disbursement under a plan or project, funds collected through assessments authorized under this Act only in **)**

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

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

(C) any 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,

except that income from any such invested funds may be used only for a purpose for which the invested funds may be used; and

(11) provide the Secretary such information as the Secretary may require.

(d) BUDGETS; PLANS AND PROJECTS. **)**

(1) SUBMISSION OF BUDGETS. **)** The order shall require the PromoFlor Council to submit to the Secretary for approval budgets, on a fiscal year basis, of the anticipated expenses and disbursements of the Council in the implementation of the order, including the projected costs of cut flowers and cut greens promotion, consumer information, and related research plans and projects.

(2) PLANS AND PROJECTS. **)**

(A) PROMOTION AND CONSUMER INFORMATION. **)** The order shall provide **)**

(i) for the establishment, implementation, administration, and evaluation of appropriate plans and projects for advertising, sales promotion, other promotion, and consumer information with respect to cut flowers and cut greens, and for the disbursement of necessary funds for the purposes described in this clause;

(ii) that any plan or project referred to in clause (i) shall be directed toward increasing the general demand for cut flowers or cut greens and may not make reference to a private brand or trade name, point of origin, or source of supply, except that this clause shall not preclude the PromoFlor Council from offering the plans and projects of the Council for use by commercial parties, under terms and conditions prescribed by the PromoFlor Council and approved by the Secretary; and

(iii) that no plan or project may make use of unfair or deceptive acts or practices with respect to quality or value.

(B) RESEARCH. **)** The order shall provide for **)**

(i) the establishment, implementation, administration, and evaluation of plans and projects for **)**

(I)market development research;

(II) research with respect to the sale, distribution, marketing, or use of cut flowers or cut greens; and

(III) other research with respect to cut flowers or cut greens marketing, promotion, or consumer information;

(ii) the dissemination of the information acquired through the plans and projects; and

(iii) the disbursement of such funds as are necessary to carry out this subparagraph.

(C) SUBMISSION TO SECRETARY. **)** The order shall provide that the PromoFlor Council shall submit to the Secretary for approval a proposed plan or project for cut flowers or cut greens promotion, consumer information, or related research, as described in subparagraphs (A) and (B).

(3) APPROVAL BY SECRETARY. **)** A budget, or plan or project for cut flowers or cut greens promotion, consumer information, or related research may not be implemented prior to approval of the budget, plan, or project by the Secretary.

(e) CONTRACTS AND AGREEMENTS. **)**

(1) PROMOTION, CONSUMER INFORMATION, AND RELATED RESEARCH PLANS AND PROJECTS. **)**

(A) IN GENERAL. **)** To ensure efficient use of funds, the order shall provide that the PromoFlor Council, with the approval of the Secretary, may enter into a contract or an agreement for the implementation of a plan or project for promotion, consumer information, or related research with respect to cut flowers or cut greens, and for the payment of the cost of the contract or agreement with funds received by the PromoFlor Council under the order.

(B) REQUIREMENTS. **)** The order shall provide that any contract or agreement entered into under this paragraph shall provide that **)**

(i) the contracting or agreeing party shall develop and submit to the PromoFlor Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

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

(iii) the contracting or agreeing party shall **)**

(I) keep accurate records of all of the transactions of the party;

(II) account for funds received and expended;

(III) make periodic reports to the PromoFlor Council of activities conducted; and

(IV) make such other reports as the PromoFlor Council or the Secretary may require.

(2) OTHER CONTRACTS AND AGREEMENTS. **)** The order shall provide that the PromoFlor Council may enter into a contract or agreement for administrative services. Any contract or agreement entered into under this paragraph shall include provisions comparable to the provisions described in paragraph (1)(B).

(f) BOOKS AND RECORDS OF THE PROMOFLOR COUNCIL. **)**

(1) IN GENERAL. **)** The order shall require the PromoFlor Council to **)**

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

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

(C) account for the receipt and disbursement of all funds entrusted to the PromoFlor Council.

(2) AUDITS. **)** The PromoFlor Council shall cause the books and records of the Council to be audited by an independent auditor at the end of each fiscal year. A report of each audit shall be submitted to the Secretary.

(g) CONTROL OF ADMINISTRATIVE COSTS. **)** The order shall provide that the PromoFlor Council shall, as soon as practicable after the order becomes effective and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that will ensure that the annual budgets of the PromoFlor Council include only amounts for administrative expenses that cover the minimum administrative activities and personnel needed to properly administer and enforce the order, and conduct, supervise, and evaluate plans and projects under the order.

(h) ASSESSMENTS. **)**

(1) AUTHORITY. **)**

(A) IN GENERAL. **)** The order shall provide that each qualified handler shall pay to the PromoFlor Council, in the manner provided in the order, an assessment on each 49 sale of cut flowers or cut greens to a retailer or an exempt handler (including each transaction

described in subparagraph (C)(ii)), except to the extent that the sale is excluded from assessments under section 6(a).

(B) PUBLISHED LISTS.—To facilitate the payment of assessments under this paragraph, the PromoFlor Council shall publish lists of qualified handlers required to pay assessments under the order and exempt handlers.

(C) MAKING DETERMINATIONS.—

(i) QUALIFIED HANDLER STATUS.—The order shall contain provisions regarding the determination of the status of a person as a qualified handler or exempt handler that include the rules and requirements specified in sections 3(4) and 6(b).

(ii) CERTAIN COVERED TRANSACTIONS.—

(I) IN GENERAL.—The order shall provide that each non-sale transfer of cut flowers or cut greens to a retailer from a qualified handler that is a distribution center (as described in section 3(4)(A)(ii)(II)), and each direct sale of cut flowers or cut greens to a consumer by a qualified handler that is an importer or a producer (as described in section 3(4)(A)(iii)), shall be treated as a sale of cut flowers or cut greens to a retailer subject to assessments under this subsection.

(II) AMOUNT OF SALE IN THE CASE OF NON-SALE TRANSFERS AND DIRECT SALES BY IMPORTERS.—Subject to subclause (IV), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center, or a direct sale to a consumer by an importer, the amount of the sale shall be equal to the sum of—

(aa) the price paid by the distribution center or importer, respectively, to acquire the cut flowers or cut greens; and

(bb) an amount determined by multiplying the acquisition price referred to in item (aa) by a uniform percentage established by the order to represent the mark-up of a wholesale handler on a sale to a retailer.

(III) DIRECT SALES BY PRODUCERS.—Subject to subclause (IV), in the case of a direct sale to a consumer by a producer, the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by the order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

(IV) CHANGES IN UNIFORM PERCENTAGES.—Any change in a uniform percentage referred to in subclause (II) or (III) may become effective after—

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of

title 5, United States Code, and without regard to sections 556 and 557 of such title.

(2) ASSESSMENTS RATES.) With respect to assessment rates, the order shall contain the following terms:

(A) INITIAL RATE.) During the first 3 years the order is in effect, the rate of assessment on each sale or transfer of cut flowers or cut greens shall be 1/2 of 1 percent of)

(i) the gross sales price of the cut flowers or cut greens sold; or

(ii) in the case of transactions described in paragraph (1)(C)(ii), the amount of each transaction calculated as provided in paragraph (1)(C)(ii)

(B) CHANGES IN THE RATE.)

(i) IN GENERAL.) After the first 3 years the order is in effect, the uniform assessment rate may be increased or decreased annually by not more than .25 percent of)

(I) the gross sales price of a product sold; or

(II) in the case of transactions described in paragraph (1)(C)(ii), the amount of each transaction calculated as provided in paragraph (1)(C)(ii),

except that the assessment rate may in no case exceed 1 percent of the gross sales price or 1 percent of the transaction amount.

(ii) REQUIREMENTS.) Any change in the rate of assessment under this subparagraph)

(I) may be made only if adopted by the PromoFlor Council by at least a 2/3 majority vote and approved by the Secretary as necessary to achieve the objectives of this Act (after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title);

(II) shall be announced by the PromoFlor Council not less than 3 days prior to going into effect; and

(III) shall not be subject to a vote in a referendum conducted under section 7.

(3) TIMING OF SUBMITTING ASSESSMENTS.) The order shall provide that each person required to pay assessments under this subsection shall remit, to the PromoFlor Council, the assessment due from each sale by the person of cut flowers or cut greens that is subject to an assessment within such time period after the sale (not to exceed 60 days after the end of the month in which the sale took place) as is specified in the order.

(4) REFUNDS FROM ESCROW ACCOUNT.)

(A) ESTABLISHMENT OF ESCROW ACCOUNT.) The order shall provide that the PromoFlor Council shall)

(i) establish an escrow account to be used for assessment refunds, as needed; and

(ii) place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on the date the order becomes effective, as provided in section 4(b)(3)(B), and ending on the date the initial referendum on the order under section 7(a) is completed.

(B) RIGHT TO RECEIVE REFUND.—

(i) IN GENERAL.—The order shall provide that, subject to subparagraph (C) and the conditions specified in clause (ii), any qualified handler shall have the right to demand and receive from the PromoFlor Council out of the escrow account a one-time refund of any assessments paid by or on behalf of the qualified handler during the time period specified in subparagraph (A)(ii), if—

(I) the qualified handler is required to pay the assessments;

(II) the qualified handler does not support the program established under this Act;

(III) the qualified handler demands the refund prior to the conduct of the referendum on the order under section 7(a); and

(IV) the order is not approved by qualified handlers in the referendum.

(ii) CONDITIONS.—The right of a qualified handler to receive a refund under clause (i) shall be subject to the following conditions:

(I) The demand shall be made in accordance with regulations, on a form, and within a time period specified by the PromoFlor Council.

(II) The refund shall be made only on submission of proof satisfactory to the PromoFlor Council that the qualified handler paid the assessment for which the refund is demanded.

(III) If the amount in the escrow account required under subparagraph (A) is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and the order is not approved in the referendum on the order under section 7(a), the PromoFlor Council shall prorate the amount of all such refunds among all eligible qualified handlers that demand the refund.

(C) PROGRAM APPROVED.—The order shall provide that, if the order is approved in the referendum conducted under section 7(a), there shall be no refunds made, and all funds in the escrow account shall be returned to the PromoFlor Council for use by the PromoFlor Council in accordance with the other provisions of the order.

(5) USE OF ASSESSMENT FUNDS.—The order shall provide that assessment funds (less any refunds expended under the terms of the order required under paragraph (4)) shall be used for payment of costs

incurred in implementing and administering the order, with provision for a reasonable reserve, and to cover the administrative costs incurred by the Secretary in implementing and administering this Act.

(6) POSTPONEMENT OF COLLECTIONS. **)**

(A) AUTHORITY. **)**

(i) IN GENERAL. **)** Subject to the other provisions of this paragraph and notwithstanding any other provision of this Act, the PromoFlor Council may grant a postponement of the payment of an assessment under this subsection for any qualified handler that establishes that the handler is financially unable to make the payment.

(ii) REQUIREMENTS AND PROCEDURES. **)** A handler described in clause (i) shall establish that the handler is financially unable to make the payment in accordance with application and documentation requirements and review procedures established under rules recommended by the PromoFlor Council, approved by the Secretary, and issued after public notice and opportunity for comment in accordance with section 553 8 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

(B) CRITERIA AND RESPONSIBILITY FOR DETERMINATIONS. **)** The PromoFlor Council may grant a postponement under subparagraph (A) only if the handler demonstrates by the submission of an opinion of an independent certified public accountant, and by submission of other documentation required under the rules established under subparagraph (A)(ii), that the handler is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when otherwise due.

(C) PERIOD OF POSTPONEMENT. **)**

(i) IN GENERAL. **)** The time period of a postponement and the terms and conditions of the payment of each assessment that is postponed under this paragraph shall be established by the PromoFlor Council, in accordance with rules established under the procedures specified in subparagraph (A)(ii), so as to appropriately reflect the demonstrated needs of the qualified handler.

(ii) EXTENSIONS. **)** A postponement may be extended under rules established under the procedures 31 specified in subparagraph (A)(ii) for the grant of initial postponements.

(i) PROHIBITION. **)** The order shall prohibit the use of any funds received by the PromoFlor Council in any manner for the purpose of influencing legislation or government action or policy, except that the funds may be used by the PromoFlor Council for the development and recommendation to the Secretary of amendments to the order.

(j) BOOKS AND RECORDS; REPORTS. **)**

(1) IN GENERAL. **)** The order shall provide that each qualified handler shall maintain, and make available for inspection, such books and

records as are required by the order and file reports at the time, in the manner, and having the content required by the order, to the end that such information is made available to the Secretary and the PromoFlor Council as is appropriate for the administration or enforcement of this Act, the order, or any regulation issued under this Act.

(2) CONFIDENTIALITY REQUIREMENT. **)**

(A) IN GENERAL. **)** Information obtained from books, records, or reports under paragraph (1) or subsection (h)(6), or from reports required under section 6(b)(3), shall be kept confidential by all officers and employees of the Department of Agriculture and by the staff and agents of the PromoFlor Council.

(B) SUITS AND HEARINGS. **)** Information described in subparagraph A may be disclosed to the public only **)**

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

(ii) to the extent the Secretary considers the information relevant to the suit or hearing.

(C) GENERAL STATEMENTS AND PUBLICATIONS. **)** Nothing in this paragraph may be construed to prohibit **)**

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

(3) LISTS OF IMPORTERS. **)**

(A) REVIEW. **)** The order shall provide that the staff of the PromoFlor Council shall periodically review lists of importers of cut flowers and cut greens to determine whether persons on the lists are subject to the order.

(B) CUSTOMS SERVICE. **)** On the request of the PromoFlor Council, the Commissioner of the United States Customs Service shall provide to the PromoFlor Council lists of importers of cut flowers and cut greens.

(k) CONSULTATIONS WITH INDUSTRY EXPERTS. **)**

(1) IN GENERAL. **)** The order shall provide that the PromoFlor Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and cut greens industry to assist in the development of promotion, consumer information, and related research plans and projects.

(2) SPECIAL COMMITTEES. **)**

(A) IN GENERAL.) For the purposes described in paragraph (1), the order shall authorize the appointment of special committees composed of persons other than PromoFlor Council members.

(B) CONSULTATION.) A committee appointed under subparagraph (A))

(i) may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government; and

(ii) shall consult directly with the PromoFlor Council.

(l) OTHER TERMS OF THE ORDER.) The order shall contain such other terms and provisions, consistent with this Act, as are necessary to carry out this Act (including provision for the assessment of interest and a charge for each late payment of assessments under subsection (h) and for carrying out section 6). (7 U.S.C. 6804.)

SEC. 6. EXCLUSION; DETERMINATIONS

(a) EXCLUSION.) An order shall exclude from assessments under the order any sale of cut flowers or cut greens for export from the United States.

(b) MAKING DETERMINATIONS.)

(1) IN GENERAL.) For the purpose of applying the $750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler under section 3(4), or to a specific facility in order to determine the status of the facility as an eligible separate facility under section 7(b)(), an order issued under this Act shall provide that)

(A) a determination of the annual sales volume of a person or facility shall be based on the sales of cut flowers and cut greens by the person or facility during the most recently-completed calendar year, except as provided in subparagraph (B); and

(B) in the case of a new business or other operation for which complete data on sales during all or part of the most recently-completed calendar year are not available to the PromoFlor Council, the determination may be made using an alternative time period or other alternative procedure specified in the order.

(2) RULE OF ATTRIBUTION.)

(A) IN GENERAL.) For the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include)

(i) in the case of an individual, sales attributable to the spouse, children, grandchildren, parents, and grandparents of the person;

(ii) in the case of a partnership or member of a partnership, sales attributable to the partnership and other partners of the partnership;

(iii) in the case of an individual or a partnership, sales attributable to any corporation or other entity in which the individual or partnership owns more than 50 percent of the stock or (if the entity is not a corporation) that the individual or partnership controls; and

(iv) in the case of a corporation, sales attributable to any corporate subsidiary or other corporation or entity in which the corporation owns more than 50 percent of the stock or (if the entity is not a corporation) that the corporation controls.

(B) STOCK AND OWNERSHIP INTEREST.) For the purpose of this paragraph, stock or an ownership interest in an entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an individual, or by a partnership in which a person is a partner, or by a corporation more than 50 percent of the stock of which is owned by a person, shall be treated as owned by the individual or person.

(3) REPORTS.) For the purpose of this subsection, the order may require a person who sells cut flowers or cut greens to retailers to submit reports to the PromoFlor Council on annual sales by the person. (7 U.S.C. 6805.)

SEC. 7. REFERENDA

(a) REQUIREMENT FOR INITIAL REFERENDUM.)

(1) IN GENERAL.) Not later than 3 years after the issuance of an order under section 4(b)(3), the Secretary shall conduct a referendum among qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), subject to the voting requirements of subsection (b), to ascertain whether the order then in effect shall be continued.

(2) APPROVAL OF ORDER NEEDED.) The order shall be continued only if the Secretary determines that the order has been approved by a simple majority of all votes cast in the referendum. If the order is not approved, the Secretary shall terminate the order as provided in subsection (d).

(b) VOTES PERMITTED.)

(1) IN GENERAL.) Each qualified handler eligible to vote in a referendum conducted under this section shall be entitled to cast 1 vote for each separate facility of the person that is an eligible separate facility, as defined in paragraph (2).

(2) ELIGIBLE SEPARATE FACILITY.) For the purpose of paragraph (1):

(A) SEPARATE FACILITY.) A handling or marketing facility of a qualified handler shall be considered to be a separate facility if the facility is physically located away from other facilities of the qualified handler or the business function of the facility is substantially different from the functions of other facilities owned or operated by the qualified handler.

(B) ELIGIBILITY.) A separate facility of a qualified handler shall be considered to be an eligible separate facility if the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are $750,000 or more.

(C) ANNUAL SALES DETERMINED.) For the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraph (B), subparagraphs (A) and (C) of section 3(4) shall apply.

(c) SUSPENSION OR TERMINATION REFERENDA.) If an order is approved in a referendum conducted under subsection (a), effective beginning on the date that is 3 years after the date of the approval, the Secretary)

(1) at the discretion of the Secretary, may conduct at any time a referendum of qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), subject to the voting requirements of subsection (b), to ascertain whether qualified handlers favor suspension or termination of the order; and

(2) if requested by the PromoFlor Council or by a representative group comprising 30 percent or more of all qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), shall conduct a referendum of all qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), subject to the voting requirements of subsection (b), to ascertain whether qualified handlers favor suspension or termination of the order.

(d) SUSPENSION OR TERMINATION.) If, as a result of the referendum conducted under subsection (a), the Secretary determines that the order has not been approved by a simple majority of all votes cast in the referendum, or as a result of a referendum conducted under subsection (c), the Secretary determines that suspension or termination of the order is favored by a simple majority of all votes cast in the referendum, the Secretary shall)

(1) not later than 18 days after the referendum, suspend or terminate, as appropriate, collection of assessments under the order; and

(2) suspend or terminate, as appropriate, activities under the order as soon as practicable and in an orderly manner.

(e) MANNER OF CONDUCTING REFERENDA.) Referenda under this section shall be conducted in such manner as is determined appropriate by the Secretary. (7 U.S.C. 6806.)

SEC. 8. PETITION AND REVIEW

(a) PETITION AND HEARING.)

(1) PETITION.) A person subject to an order 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 in accordance with law; and

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

(2) HEARING.**)** 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. Any such hearing shall be conducted in accordance with section 1(b)(2) and be held within the United States judicial district in which the residence or principal place of business of the person is located.

(3) RULING.**)** After a hearing under paragraph (), the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) REVIEW.**)**

(1) COMMENCEMENT OF ACTION.**)** The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or conducts business shall have jurisdiction to review the ruling of the Secretary on the petition of the person, if a complaint requesting the review is filed not later than days after the date of the entry of the ruling by the Secretary.

(2) PROCESS.**)** Service of process in proceedings under this subsection shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMAND.**)** If the court in a proceeding under this subsection determines that the ruling of the Secretary on the petition of the person is not in accordance with law, the court shall remand the matter to the Secretary with directions**)**

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

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

(c) ENFORCEMENT.**)** The pendency of proceedings instituted under this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief under section 9. (7 U.S.C. 6807.)

SEC. 9. ENFORCEMENT

(a) JURISDICTION.**)** A district court of the United States shall have jurisdiction to enforce, and to prevent and restrain any person from violating, this Act or an order or regulation issued by the Secretary under this Act.

(b) REFERRAL TO ATTORNEY GENERAL.**)** A civil action brought under subsection (a) shall be referred to the Attorney General for appropriate

action, except that the Secretary is not required to refer to the Attorney General a violation of this Act, or an order or regulation issued under this Act, if the Secretary believes that the administration and enforcement of this Act would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person who committed or is committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—

(A) IN GENERAL.—A person who violates a provision of this Act, or an order or regulation issued by the Secretary under this Act, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person under an order or regulation issued under this Act, may be assessed by the Secretary—

(i) a civil penalty of not less than $500 nor more than $5,000 for each violation; and

(ii) in the case of a willful failure to remit an assessment as required by an order or regulation, an additional penalty equal to the amount of the assessment.

(B) SEPARATE OFFENSES.—Each violation shall be a separate offense.

(2) CEASE AND DESIST ORDERS.—In addition to or in lieu of a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing a violation of this Act, or an order or regulation issued under this Act.

(3) NOTICE AND HEARING.—No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to the violation. Any such hearing shall be conducted in accordance with section 1(b)(2) and shall be held within the United States judicial district in which the residence or principal place of business of the person is located.

(4) FINALITY.—The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—

(A) IN GENERAL.—Any person against whom a violation is found and a civil penalty is assessed or a cease and desist order is issued under subsection (c) may obtain review of the penalty or order by, within the 3-day period beginning on the date the penalty is assessed or order issued—

(i) filing a notice of appeal in the district court of the United States for the district in which the person resides or conducts business, or in the United States District Court for the District of Columbia; and

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

(B) COPY OF RECORD.) The Secretary shall promptly file in the court a certified copy of the record on which the Secretary found that the person had committed a violation.

(2) STANDARD OF REVIEW.) A finding of the Secretary shall be set aside under this subsection only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY AN ORDER.)

(1) IN GENERAL.) A person who fails to obey a cease and desist order issued under subsection (c) after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary of not more than $5,000 for each offense, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d).

(2) SEPARATE VIOLATIONS.) Each day during which the person fails to obey an order described in paragraph (1) shall be considered as a separate violation of the order.

(f) FAILURE TO PAY A PENALTY.)

(1) IN GENERAL.) If a person fails to pay a civil penalty assessed under subsection (c) or (e) after the penalty has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any United States district court in which the person resides or conducts business.

(2) SCOPE OF REVIEW.) In an action by the Attorney General under paragraph (1), the validity and appropriateness of the civil penalty shall not be subject to review.

(g) ADDITIONAL REMEDIES.) The remedies provided in this Act shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 6808.)

SEC. 10. INVESTIGATIONS AND POWER TO SUBPOENA

(a) INVESTIGATIONS.) The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this Act, or to determine whether any person has engaged or is engaging in any act that constitutes a violation of this Act or any order or regulation issued under this Act.

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS. **)**

(1) INVESTIGATIONS. **)** For the purpose of making an investigation under subsection (a), the Secretary may administer oaths and affirmations, and issue subpoenas to require the 171 production of any records that are relevant to the inquiry. The production of the records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS. **)** For the purpose of an administrative hearing held under section 8(a)() or 9(c)(3), the presiding officer may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of the records may be required from any place in the United States.

(c) AID OF COURTS. **)**

(1) IN GENERAL. **)** In the case of contumacy by, or refusal to obey a subpoena issued under subsection (b) 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 conducted, or where the person resides or conducts business, in order to enforce a subpoena issued under subsection (b).

(2) ORDER. **)** The court may issue an order requiring the person referred to in paragraph (1) to comply with a subpoena referred to in paragraph (1).

(3) FAILURE TO OBEY. **)** Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) PROCESS. **)** Process in any proceeding under this subsection may be served in the United States judicial district in which the person being proceeded against resides or conducts business or wherever the person may be found. (7 U.S.C. 6809.)

SEC. 11. CONFIDENTIALITY

(a) PROHIBITION. **)** No information on how a person voted in a referendum conducted under this Act shall be made public.

(b) PENALTY. **)** Any person who knowingly violates subsection (a) or the confidentiality terms of an order, as described in section 5(j)(2), shall be subject to a fine of not less than $1,000 nor more than $10,000 or to imprisonment for not more than 1 year, or both. If the person is an officer or employee of the Department of Agriculture or the PromoFlor Council, the person shall be removed from office.

(c) ADDITIONAL PROHIBITION. **)** No information obtained under this Act may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this Act or an

investigatory or enforcement action necessary for the implementation of this Act.

(d) WITHHOLDING INFORMATION FROM CONGRESS PROHIBITED.) Nothing in this Act shall be construed to authorize the withholding of information from Congress. (7 U.S.C. 6810.)

SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR TERMINATE ORDER.

If the Secretary finds that an order, or any provision of the order, obstructs or does not tend to effectuate the policy of this Act specified in section (b), the Secretary shall terminate or suspend the operation of the order or provision under such terms as the Secretary determines are appropriate. (7 U.S.C. 6811.)

SEC. 13. CONSTRUCTION

(a) TERMINATION OR SUSPENSION NOT AN ORDER.) The termination or suspension of an order, or a provision of an order, shall not be considered an order under the meaning of this Act.

(b) PRODUCER RIGHTS.) This Act)

(1) may not be construed to provide for control of production 1 or otherwise limit the right of individual cut flowers and cut greens producers to produce cut flowers and cut greens; and

(2) shall be construed to treat all persons producing cut flowers and cut greens fairly and to implement any order in an equitable manner.

(c) OTHER PROGRAMS.) Nothing in this Act may be construed to preempt or supersede any other program relating to cut flowers or cut greens promotion and consumer information organized and operated under the laws of the United States or a State. (7 U.S.C. 6812.)

SEC. 14. REGULATIONS

The Secretary may issue such regulations as are necessary to carry out this Act and the powers vested in the Secretary by this Act, including regulations relating to the assessment of late payment charges and interest. (7 U.S.C. 6813.)

SEC. 15. AUTHORIZATION OF APPROPRIATIONS

(a) IN GENERAL.) There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this Act.

(b) ADMINISTRATIVE EXPENSES.) Funds appropriated under subsection (a) may not be used for the payment of the expenses or expenditures of the

PromoFlor Council in administering a provision of an order. (7 U.S.C. 6814.)

HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT [1]

(7 U.S.C. 4601-4612)

To enable honey producers and handlers to finance a nationally coordinated research, promotion, and consumer information program designed to expand their markets for honey.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Honey Research, Promotion, and Consumer Information Act". (7 U.S.C. 4601 note.)

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds that:

(1) Honey is produced by many individual producers in every State in the United States.

(2) Honey and honey products move in large part in the channels of interstate and foreign commerce, and honey which does not move in such channels directly burdens or affects interstate commerce.

(3) In recent years, large quantities of low-cost, imported honey have been brought into the United States, replacing domestic honey in the normal trade channels.

(4) The maintenance and expansion of existing honey markets and the development of new or improved markets or uses are vital to the welfare of honey producers and those concerned with marketing, using, and processing honey, along with those engaged in general agricultural endeavors requiring bees for pollinating purposes.

(5) The honey production industry within the United States is comprised mainly of small- and medium-sized businesses.

(6) The development and implementation of coordinated programs of research, promotion, and consumer education necessary for the maintenance of markets and the development of new markets have been inadequate.

(7) Without cooperative action in providing for and financing such programs, honey producers, honey handlers, wholesalers, and retailers

[1] Pub. L. 98-590, 98 Stat. 3115, Oct. 30, 1984.

are unable to implement programs of research, promotion, and consumer education necessary to maintain and improve markets for these products.

(b)(1) It is, therefore, the purpose of this Act to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective and coordinated program of research, promotion, and consumer education designed to strengthen the position of the honey industry in the marketplace and maintain, develop, and expand markets for honey and honey products.

(2) Nothing in this Act may be construed to dictate quality standards for honey, provide for control of its production, or otherwise limit the right of the individual honey producer to produce honey. This Act treats foreign producers equitably, and nothing in this Act may be construed as a trade barrier to honey produced in foreign countries. (7 U.S.C. 4601.)

DEFINITIONS

SEC. 3.[2] As used in this Act:

(1) The term "honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

(2) The term "honey products" means products produced, in whole or part, from honey.

(3) The term "Secretary" means the Secretary of Agriculture.

(4) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(5) The term "producer" means any person who produces honey in the United States for sale in commerce.

(6) The term "handler" means any person who handles honey.

(7) The term "handle" means to sell, package, or process honey.

(8) The term "importer" means any person who imports honey or honey products into the United States or acts as an agent, broker, or consignee for any person or nation that produces honey outside of the United States for sale in the United States and who is listed in the import records as the importer of record for such honey or honey products.

(9) The term "producer-packer" means any person who is both a producer and handler of honey.

(10) The term "promotion" means any action, including paid advertising, pursuant to this Act, to present a favorable image for

[2] As amended by Pub. L. 101-624, 104 Stat. 3904, Nov. 28, 1990, to clarify the definition of importer and to add new paragraph (18).

honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

(11) The term "research" means any type of research designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

(12) The term "consumer education" means any action to provide information on the usage and care of honey or honey products.

(13) The term "marketing" means the sale or other disposition in commerce of honey or honey products.

(14) The term "Committee" means the National Honey Nominations Committee provided for under section 7(b) of this Act.

(15) The term "Honey Board" means the board provided for under section 7(c) of this Act.

(16) The term "State association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

(17) The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(18) The term "exporter" means any person who exports honey or honey products from the United States. (7 U.S.C. 4602.)

HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

SEC. 4. To effectuate the declared policy of this Act, the Secretary shall, subject to the provisions of this Act, issue and, from time to time, amend orders applicable to persons engaged in the production, sale, or handling of honey and honey products in the United States and the importation of honey and honey products into the United States. (7 U.S.C. 4603.)[3]

NOTICE AND HEARING

[3] Section 1987 of Pub. L. 101-624, 104 Stat. 3908, Nov. 28, 1990, states:
"Sec. 1987. Conforming Amendment to Order.

"Notwithstanding any provision of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq.), the Secretary of Agriculture, after notice and opportunity for public comment, shall issue an amendment to the order in effect under such Act on the date of the enactment of this Act to conform such order to the amendments made by this subtitle, which shall become effective on the date of the publication of such amendment to the order in the Federal Register without a referendum thereon (except for the referendum specifically provided for under section 1985). The Secretary shall issue such amendment to the order in final form not later than 150 days after the date of the enactment of this Act."

SEC. 5. Whenever the Secretary has reason to believe that the issuance of an order will assist in carrying out the purpose of this Act, the Secretary shall provide due notice of and opportunity for a hearing upon a proposed order. Such hearing may be requested and a proposal for an order submitted by any organization or interested person affected by the provisions of this Act. (7 U.S.C. 4604.)

FINDINGS AND ISSUANCE OF AN ORDER

SEC. 6. After notice of and opportunity for a hearing has been provided in accordance with section 5 of this Act, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, that, upon the evidence introduced at such hearing, the issuance of such order and all the terms and conditions thereof will assist in carrying out the purpose of this Act. (7 U.S.C. 4605.)

REQUIRED TERMS OF AN ORDER

SEC. 7. (a) Any order issued by the Secretary under this Act shall contain the terms and conditions described in this section and, except as provided in section 8 of this Act, no others.

(b)(1) Such order shall provide for the establishment and appointment by the Secretary of a National Honey Nominations Committee which shall consist of not more than one member from each State, from nominations submitted by each State association. If a State association does not submit a nomination, the Secretary may provide for nominations from that State to be made in a different manner, except that if a State which is not one of the top twenty honey-producing States in the United States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(2) Members of the Committee shall serve for three-year terms with no member serving more than two consecutive three-year terms, except that the initial appointments to the Committee shall be staggered with an equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(3) The Committee shall select its Chairman by a majority vote.

(4) The members of the Committee shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee.

(5) The Committee shall nominate the members and alternates of the Honey Board and submit such nominations to the Secretary. In making such nominations, the Committee shall meet annually, except that after the first annual meeting, when determined by the Chairman, the Committee may conduct its business by mail ballot in lieu of an annual meeting. In

order to nominate members to the Honey Board, at least 50 per centum of the members from the twenty leading honey producing States must vote. A majority of the National Honey Nominations Committee shall constitute a quorum for voting at an annual meeting. In the case of a mail ballot, votes must be received from a majority of the Committee.

(c)(1) The order described in subsection (a) shall provide for the establishment and appointment by the Secretary of a Honey Board in accordance with this subsection.

(2)[4] The membership of the Honey Board shall consist of **)**

(A) seven members who are honey producers appointed from nominations submitted by the National Honey Nominations Committee, one from each of seven regions of the United States which shall be established by the Secretary on the basis of the production of honey in the different areas of the country;

(B) two members who are handlers of honey appointed from nominations submitted by the Committee from recommendations made by industry organizations representing handler interests;

(C) two members who are either importers or exporters, of which at least one shall be an importer, appointed from nominations submitted by the Committee from recommendations by industry organizations representing importer and exporter interests;

(D) one member who is an officer or employee of a honey marketing cooperative appointed from nominations submitted by the Committee; and

(E) one member selected by the Secretary from the general public. The Committee shall also submit nominations for an alternate for each member of the Honey Board described in subparagraphs (A) through (D), and the Secretary shall appoint an alternate for the member described in subparagraph (E). Such alternates shall be appointed in the same manner as members are and shall serve only whenever the member is absent from a meeting or is disqualified. However, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in subparagraph (A) or as an alternate to such producer.

(3) Members of the Honey Board shall serve for three-year terms with no member serving more than two consecutive three-year terms except that the initial appointments to the Honey Board shall be staggered with an

[4] As amended by Pub. L. 101-624, 104 Stat. 3905, Nov. 28, 1990, including importers or exporters on the Board, precluding a person who is predominantly a packer from being seated on the Board as a producer representative, and adding the parenthetical phrase at the end of paragraph (4).

equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(4) In the event any member of the Honey Board ceases to be a member of the category of members from which the member was appointed to the Honey Board, such person shall be automatically replaced by an alternate, except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

(5) The members of the Honey Board shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Honey Board.

(6) The powers and duties of the Honey Board shall be to **)**

(A) administer any order, issued by the Secretary under this Act, in accordance with its terms and provisions and consistent with the provisions of this Act;

(B) prescribe rules and regulations to effectuate the terms and provisions of such an order;

(C) receive, investigate, and report to the Secretary, accounts of violations of such an order;

(D) make recommendations to the Secretary with respect to amendments which should be made to such order; and

(E) employ a manager and staff.

(d) The Honey Board shall prepare and submit to the Secretary, for the Secretary's approval, a budget (on a fiscal period basis) of its anticipated expenses and disbursements in the administration of the order, including probable costs of research, promotion, and consumer information.

(e)[5](1) The Honey Board shall administer collection of the assessment provided for in this paragraph to finance the expenses described in subsections (d) and (f). The assessment rate shall be $0.01 per pound, with payment to be made in the manner described in section 9.

(2)(A) Honey that is consumed at home by the producer or importer or donated by the producer or importer to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sold shall be exempt from assessment under the order, except that donated honey that later is sold in a commercial outlet by a donee or a donee's assignee shall be subject to assessment on such sale.

(B)(i) A producer, producer-packer, or importer who produces or imports during any year less than 6,000 pounds of honey shall be eligible

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[5] Pub. L. 101-624, 104 Stat. 3905, Nov. 28, 1990, amended subsection (e) to delete the authority to increase assessments up to 4 cents per pound, and to change the exemption provisions.

for an exemption in such year from paying an assessment on honey such person distributes directly through local retail outlets, as determined by the Secretary, during such year.

(ii) In order to claim an exemption under this subparagraph, a person shall submit an application to the Honey Board stating the basis on which the person claims the exemption for such year.

(iii) If, after a person claims an exemption from assessments for any year under this subparagraph, such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Honey Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

(3) If a producer, producer-packer, or importer does not pay any assessments under this Act due to the applicability to such person of the exemptions from assessments provided in paragraph (2), then such producer, producer-packer, or importer shall not be considered a producer or importer for purposes of voting in any referendum conducted under this Act during the period the person's exemption from all assessments is in effect.

(f) Funds collected by the Honey Board from the assessments shall be used by the Honey Board for financing research, promotion, and consumer information, other expenses as described in subsection (d), such other expenses for the administration, maintenance, and functioning of the Honey Board as may be authorized by the Secretary, any reserve established under section 8(5), and those administrative costs incurred by the Department of Agriculture pursuant to this Act after an order has been promulgated under this Act. The Secretary shall be reimbursed from assessments collected by the Honey Board for any expenses incurred for the conduct of referenda.

(g) No promotion funded with assessments collected under this Act may make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product.

(h) No funds collected through assessments authorized by this Act may, in any manner, be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this Act.

(i) The Honey Board shall develop and submit to the Secretary, for approval, plans for research, promotion, and consumer information. Any such plans or projects must be approved by the Secretary before becoming effective. The Honey Board may enter into contracts or agreements with the approval of the Secretary for the development and carrying out of

research, promotion, and consumer information, and for the payment of the cost thereof with funds collected pursuant to this Act.

(j) The Honey Board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

(k)[6] Any patent on any product, copyright on any material, or any invention, product formulation or publication developed through the use of funds collected by the Honey Board shall be the property of the Honey Board. The funds generated from any such patent, copyright, invention, product formulation, or publication shall inure to the benefit of the Honey Board. (7 U.S.C. 4606.)

PERMISSIVE TERMS AND PROVISIONS

SEC. 8. On the recommendation of the Honey Board, and with the approval of the Secretary, an order issued pursuant to this Act may contain one or more of the following provisions:

(1) Providing authority to exempt from the provisions of the order honey used for exporting and providing authority for the Honey Board to require satisfactory safeguards against improper use of such exemption.

(2) Providing that in a State with an existing marketing order with respect to honey, the objectives of which the Secretary determines are comparable to the program established under this Act, there shall be paid to the Honey Board as provided in section 9 that portion of the national assessment which is above the State assessment, if any, actually paid on such honey.

(3) Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

(4) Providing that the Honey Board may convene from time to time working groups drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research and marketing programs for honey.

(5) Providing for authority to accumulate reserve funds from assessments collected pursuant to this Act to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years when the production and assessment income may be

[6] New subsection (k) added by Pub. L. 101-624, 104 Stat. 3905, Nov. 28, 1990.

reduced, but the total reserve fund may not exceed the amount budgeted for one year's operation.

(6) Providing for the authority to use funds collected under this Act with the approval of the Secretary for the development and expansion of honey and honey product sales in foreign markets.

(7) Providing for terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in this Act and necessary to effectuate the other provisions of such an order. (7 U.S.C. 4607.)

COLLECTION OF ASSESSMENTS; REFUNDS

SEC. 9.[7] (a) Except as provided by subsections (c), (d), (e), and (i), the first handler of honey shall be responsible for the collection from the producer, and payment to the Honey Board, of assessments authorized by this Act.

(b) The first handler shall maintain a separate record on each producer's honey so handled, including honey owned by the handler.

(c) The assessment on imported honey and honey products shall be paid by the importer at the time of entry into the United States and shall be remitted to the Honey Board.

(d) In any case in which a loan, or a loan deficiency payment is made with respect to honey under the honey price support loan program established under the Agricultural Act of 1949, or successor statute, the Secretary shall provide for the assessment to be deducted from the disbursement of any loan funds or from the loan deficiency payment made to the producer and for the amount of such assessment to be forwarded to the Honey Board. The Secretary shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

(e) Producer-packers shall pay to the Honey Board the assessment on the honey they produce.

(f) Handlers, importers, producers, and producer-packers responsible for payment of assessments and persons receiving an exemption from assessments under section 7(e)(2), shall maintain and make available for inspection by the Secretary such books and records as are required by the order and file reports at the times, in the manner, and having the content prescribed by the order, so that information and data shall be made available to the Honey Board and to the Secretary which is appropriate or

[7] Section as amended by Pub. L. 101-624, 104 Stat. 3906, Nov. 28, 1990; Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991; and Pub. L. 104-127, Sec. 591, 110 Stat. 1084, Apr. 4, 1996.

necessary to the effectuation, administration, or enforcement of the Act or of any order or regulation issued pursuant to this Act.

(g) All information obtained pursuant to subsection (f) shall be kept confidential by all officers and employees of the Department of Agriculture and of the Honey Board. Only such information as the Secretary deems relevant shall be disclosed and only in a suit or administrative hearing brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party involving the order with reference to which the information was furnished or acquired. Nothing in this section prohibits **)**

(1) issuance of general statements based upon the reports of a number of handlers subject to any order, if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary, of the name of any person violating any order issued under this Act, together with a statement of the particular provisions of the order violated by such person.

(h)(1)(A) Except as otherwise provided in paragraph (2), any producer or importer may obtain a refund of the assessment collected from the producer or importer if demand is made within the time and in the manner prescribed by the Honey Board and approved by the Secretary; except that, during any year, the amount of refunds made to an importer, as a percentage of total assessments collected from such importer, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Such refund shall be made by the Honey Board in June and December of each year.

(B) A producer that has obtained a honey price support loan under the Agricultural Act of 1949, or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received under subsection (d) of the amount of assessment deducted from the loan funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made.

(2) With respect to the order in effect on the date of the enactment of this paragraph, following the referendum on such order required under section 13(b)(2), a producer or importer may obtain a refund of an assessment under such order as provided in paragraph (1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum.

(i) If a first handler or the Secretary fails to collect an assessment from a producer under this section, the producer shall be responsible for the payment of the assessment to the Honey Board. (7 U.S.C. 4608.)

PETITION AND REVIEW

SEC. 10. (a) Any person subject to an order may file, within a period prescribed by the Secretary, a written petition with the Secretary, stating that such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 11 of this Act. (7 U.S.C. 4609.)

ENFORCEMENT

SEC. 11. (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation issued under this Act. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. Nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General violations of this Act whenever the Secretary believes that the administration and enforcement of any such plan or regulation would be adequately served by administrative action under subsection (b) or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this Act, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and

desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2) of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 4610.)

INVESTIGATIONS AND POWER TO SUBPOENA [8]

SEC. 11A. (a) IN GENERAL.—The Secretary may make such investigations as the Secretary determines necessary—

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

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

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[8] New Section 11A added by Pub. L. 101-624, 104 Stat. 3908, Nov. 28, 1990. Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991, struck "section" after "10 or" in paragraph (b)(2).

(b) POWER TO SUBPOENA.—

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

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 10 or 11, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In 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 such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under section 10 or 11 shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 4610a.)

REQUIREMENTS OF REFERENDUM

SEC. 12. For the purpose of ascertaining whether issuance of an order is approved or favored by producers and importers, the Secretary shall conduct a referendum among those producers and importers not exempt under section 7(e)(2) who, during a representative period determined by the Secretary, have been engaged in the production and importation of honey. No order issued pursuant to this Act shall be effective unless the Secretary determines that the issuance of such an order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the honey produced and imported during the representative period. The ballots and other information or reports which reveal, or tend

to reveal, the vote of any producer or importer of honey shall be held strictly confidential and shall not be disclosed. (7 U.S.C. 4611.)

SUSPENSION AND TERMINATION

SEC. 13. (a) Whenever the Secretary finds that any order issued under this Act, or any provisions thereof, obstructs or does not tend to effectuate the declared purpose of this Act, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

(b)(1) Except as otherwise provided in paragraph (2), five years from the date on which the Secretary issues an order authorizing the collection of assessments on honey under provisions of this Act, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination, or suspension of the order.

(2)(A) In lieu of the first referendum otherwise required to be conducted under paragraph (1) for the order in effect on the date of the enactment of this paragraph, the Secretary shall conduct a referendum to determine if honey producers and importers favor **)**

(i) the continuation of the order; and

(ii) termination of the authority for producers and importers to obtain a refund of assessments under section 9(h)(1).

The referendum shall be conducted at the time the first referendum otherwise required under paragraph (1) would have been conducted, except for the operation of this paragraph.

(B)(i) The Secretary shall terminate such order at the end of the marketing year during which such referendum is conducted, if the Secretary determines that termination of the order is approved or favored by not less than a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

(ii) If the Secretary determines that termination of the authority for producers and importers to receive refunds of assessments under section 9(h)(1) is favored or approved by a majority of the producers and importers voting in such referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum, then the Secretary shall amend such order as necessary to reflect the vote of producers and importers. Such amendment to the order shall become effective on the date it is issued, but in no case more than 180 days after the conduct of such referendum.

(c) The Secretary shall hold a referendum on the request of the Honey Board or when petitioned by 10 per centum or more of the honey

producers and importers to determine if the honey producers and importers favor termination or suspension of the order.

(d) The Secretary shall terminate or suspend an order at the end of the marketing year in which a referendum in conducted under subsection (b) or (c) whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum and that the producers and importers comprising this majority produce and import more than 50 per centum of the volume of honey produced and imported by those voting in the referendum.[9] (7 U.S.C. 4612.)

[9] Pub. L. 101-624, 104 Stat. 3907, Nov. 28, 1990, designated former subsection (b) as paragraph (b)(1), added new paragraph (b)(2), and made conforming amendments to paragraph (d).

LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT OF 1990 [1]

(7 U.S.C. 6201-6212)

SEC. 1951. SHORT TITLE.

This subtitle may be cited as the "Lime Research, Promotion, and Consumer Information Act of 1990". (7 U.S.C. 6201 note.)

SEC. 1952. FINDINGS, PURPOSES, AND LIMITATIONS.[2]

(a) FINDINGS.) Congress finds that)

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[1] Pub. L. 101-624, Title XIX, Subtitle D, 104 Stat. 3870, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat. 1882, Dec. 13, 1991.

[2] Sections 1 and 2 of Pub. L. 103-194, 107 Stat. 2294, Dec. 14, 1993, state:

"SEC. 1 SHORT TITLE.

"This Act may be cited as the `Lime Research, Promotion, and Consumer Information Improvement Act'.

"SEC. 2. FINDINGS AND PURPOSE.

"(a) FINDINGS.) Congress finds the following:

"(1) The Lime Research, Promotion, and Consumer Information Act of 1990 was enacted on November 28, 1990, for the purpose of establishing an orderly procedure for the development and financing of an effective and coordinated program of research, promotion, and consumer information to strengthen the domestic and foreign markets for limes.

"(2) The lime research, promotion, and consumer information order required by such Act became effective on January 27, 1992.

"(3) Although the intent of such Act was to cover seedless limes, the definition of the term `lime' in section 1953(6) of such Act applies to seeded limes. Therefore, the Act and the order need to be revised before a research, promotion, and consumer information program on seedless limes can go into effect.

"(4) Since the enactment of the Lime Research, Promotion, and Consumer Information Act of 1990, the United States production of fresh market limes has plummeted and the volume of imports has risen dramatically. The drop in United States production is primarily due to damage to lime orchards in the State of Florida by Hurricane Andrew in August 1992. United States production is not expected to reach pre-Hurricane Andrew levels for possible two to three years because a majority of the United States production of limes is in Florida.

"(b) PURPOSES.) The purpose of this Act is)

"(1) to revise the definition of the term `lime' in order to cover seedless and not seeded limes;

"(2) to increase the exemption level;

"(3) to delay the initial referendum date; and

"(4) to alter the composition of the Lime Board." (7 U.S.C. 6201 note.)

(1) domestically produced limes are grown by many individual producers; (2) virtually all domestically produced limes are grown in the States of Florida and California;

(3) limes move in interstate and foreign commerce, and limes that do not move in such channels of commerce directly burden or affect interstate commerce in limes;

(4) in recent years, large quantities of limes have been imported into the United States;

(5) the maintenance and expansion of existing domestic and foreign markets for limes and the development of additional and improved markets for limes are vital to the welfare of lime producers and other persons concerned with producing, marketing, or processing limes;

(6) a coordinated program of research, promotion, and consumer information regarding limes is necessary for the maintenance and development of such markets; and

(7) lime producers, lime producer-handlers, lime handlers, and lime importers are unable to implement and finance such a program without cooperative action.

(b) PURPOSES.) The purposes of this subtitle are)

(1) to authorize the establishment of an orderly procedure for the development and financing (through an adequate assessment) of an effective and coordinated program of research, promotion, and consumer information regarding limes designed)

(A) to strengthen the position of the lime industry in domestic and foreign markets, and

(B) to maintain, develop, and expand markets for limes; and

(2) to treat domestically produced and imported limes equitably.

(c) LIMITATION.) Nothing in this subtitle shall be construed to require quality standards for limes, control the production of limes, or otherwise limit the right of the individual producers to produce limes. (7 U.S.C. 6201.)

SEC. 1953. DEFINITIONS.

As used in this subtitle:

(1) BOARD.) The term "Board" means the Lime Board provided for under section 1955(b).

(2) CONSUMER INFORMATION.) The term "consumer information" means any action taken to provide information to, and broaden the understanding of, the general public regarding the use, nutritional attributes, and care of limes.

(3) HANDLE.) The term "handle" means to sell, purchase, or package limes.

(4) HANDLER.) The term "handler" means any person in the business of handling limes.

(5) IMPORTER.) The term "importer" means any person who imports limes into the United States.

(6)[3] LIME.) The term "lime" means the fruit of a citrus latifolia tree for the fresh market.

(7) MARKETING.) The term "marketing" means the sale or other disposition of limes in commerce.

(8) ORDER.) The term "order" means a lime research, promotion, and consumer information order issued by the Secretary under section 1954(a).

(9) PERSON.) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

(10) PRODUCER.) The term "producer" means any person who produces limes in the United States for sale in commerce.

(11) PRODUCER-HANDLER.) The term "producer-handler" means any person who is both a producer and handler of limes.

(12) PROMOTION.) The term "promotion" means any action taken under this subtitle (including paid advertising) to present a favorable image for limes to the general public with the express intent of improving the competitive position and stimulating the sale of limes.

(13) RESEARCH.) The term "research" means any type of research relating to the use and nutritional value of limes and designed to advance the image, desirability, marketability, or quality of limes.

(14) SECRETARY.) The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.) The term)

(A) "State" means each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(B) "United States" means the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 6202.)

SEC. 1954. ISSUANCE OF ORDERS.

(a) IN GENERAL.) Subject to this subtitle, and to effectuate the declared purposes of this subtitle, the Secretary shall issue and, from time to time, amend lime research, promotion, and consumer information orders

[3] Sec. 3 of Pub. L. 103-194, 107 Stat. 2295, Dec. 14, 1993, changed the scientific name from "citrus aurantifolia" to "citrus latifolia".

applicable to handlers, producers, producer-handlers, and importers of limes. Any such order shall be national in scope. Not more than one order shall be in effect under this subtitle at any one time.

(b) PROCEDURE.—

(1) PROPOSAL FOR ISSUANCE OF ORDER.—Any person that will be affected by this subtitle may request the issuance of, and submit a proposal for, an order under this subtitle.

(2) PROPOSED ORDER.—Not later than 60 days after the receipt of a request and proposal by an interested person for an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) ISSUANCE OF ORDER.—After notice and opportunity for public comment are 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 subtitle.

(4) EFFECTIVE DATE OF ORDER.—Such order shall be issued and become effective not later than 150 days following publication of the proposed order.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any order issued under this section. The provisions of this subtitle applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 6203.)

SEC. 1955. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—An order issued by the Secretary under section 1954(a) shall contain the terms and conditions described in this section and, except as provided in section 1956, no other terms or conditions.

(b)[4] LIME BOARD.—Such order shall provide for the establishment of a Lime Board as follows:

(1) MEMBERSHIP.—The Board shall be composed of—

(A) 3 members who are producers and who are not exempt from an assessment under subsection (d)(5)(A);

(B) 3 members who are importers and who are not exempt from an assessment under subsection (d)(5)(A); and

(C) one member appointed from the general public.

(2) APPOINTMENT AND NOMINATION.—

(A) APPOINTMENT.—The Secretary shall appoint the members of the Board.

[4] As amended by Sec. 4(a) and (b) of Pub. L. 103-194, 107 Stat. 2295, Dec. 14, 1993, which changed the composition of the Lime Board.

(B) PRODUCERS.) The 3 members who are producers shall be appointed from individuals nominated by lime producers.

(C) IMPORTERS.) The 3 members who are importers shall be appointed from individuals nominated by lime importers.

(D) PUBLIC.) The public representative shall be appointed from nominations of the Board.

(E) FAILURE TO NOMINATE.) If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order. If the Board fails to nominate a public representative, such member may be appointed by the Secretary without a nomination.

(F) INITIAL BOARD.) The Secretary shall establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in paragraph (1), the Secretary shall perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate. The Secretary shall terminate the initial Board established under this subsection as soon as practicable after the date of the enactment of the Lime Research, Promotion, and Consumer Information Improvement Act.

(G) BOARD ALLOCATION.) The producer and importer representation of the Board shall be allocated on the basis of 2 producer members and 1 importer member from the district east of the Mississippi River and 1 producer member and 2 importer members from the district west of the Mississippi River.

(3) ALTERNATES.) The Secretary shall appoint an alternate for each member of the Board. An alternate shall)

(A) be appointed in the same manner as the member for whom such individual is an alternate; and

(B) serve on the Board if such member is absent from a meeting or is disqualified under paragraph (5).

(4) TERMS.) The initial members of the Board appointed under the amended order shall serve a term of 30 months. Subsequent appointments to the Board shall be for a term of 3 years, except that)

(A) 2 members shall be appointed for a term of 1 year;

(B) 2 members shall be appointed for a term of 2 years; and

(C) 3 members shall be appointed for a term of 3 years; as designated by the Secretary at the time of appointment.

(5) REPLACEMENT.) If a member or alternate of the Board who was appointed as a producer, importer, or public representative ceases to belong to the group for which such member was

appointed, such member or alternate shall be disqualified from serving on the Board.

(6) COMPENSATION.) Members and alternates of the Board shall serve without pay.

(7) TRAVEL EXPENSES.) While away from their homes or regular places of business in the performance of duties for the Board, members and alternates shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(8) POWERS AND DUTIES.) The Board shall)

(A) administer orders issued by the Secretary under section 1954(a), and amendments to such orders, in accordance with their terms and provisions and consistent with this subtitle;

(B) prescribe rules and regulations to effectuate the terms and provisions of such orders;

(C) receive, investigate, and report to the Secretary accounts of violations of such orders;

(D) make recommendations to the Secretary with respect to amendments that should be made to such orders; and

(E) employ a manager and staff.

(c) BUDGETS AND PLANS.) Such order shall provide for periodic budgets and plans as follows:

(1) BUDGETS.) The Board shall prepare and submit to the Secretary a budget (on a fiscal period basis determined by the Secretary) of the anticipated expenses and disbursements of the Board in the administration of the order, including probable costs of research, promotion, and consumer information. A budget shall take effect on the approval of the Secretary.

(2) PLANS.) Each budget shall include a plan for research, promotion, and consumer information regarding limes. A plan under this paragraph shall take effect on the approval of the Secretary. The Board may enter into contracts and agreements, with the approval of the Secretary, for)

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

(B) the payment of the cost of such plan with funds collected pursuant to this subtitle.

(d) ASSESSMENTS.) Such order shall provide for the imposition and collection of assessments with regard to the production and importation of limes as follows: (1) RATE.) The assessment rate shall not exceed $.01 per pound of limes.

(2) COLLECTION BY FIRST HANDLERS.) Except as provided in paragraph (4), the first handler of limes shall)

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

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

(3) PRODUCER-HANDLERS.—For purposes of paragraph (2), a producer-handler shall be considered the first handler of limes produced by such producer-handler.

(4) IMPORTERS.—The assessment on imported limes shall be paid by the importer at the time of entry into the United States and shall be remitted to the Board.

(5)[5] DE MINIMIS EXCEPTION.—The following persons are exempt from an assessment under this subsection—

(A) a producer who produces less than 200,000 pounds of limes per year;

(B) a producer-handler who produces and handles less than 200,000 pounds of limes per year; and

(C) an importer who imports less than 200,000 pounds of limes per year.

(6) CLAIMING AN EXEMPTION.—To claim an exemption under paragraph (5) for a particular year, a person shall submit an application to the Board—

(A) stating the basis for such exemption; and

(B) certifying that such person will not exceed the limitation required for such exemption in such year.

(e)[6] USE OF ASSESSMENTS.—

(1) IN GENERAL.—Such order shall provide that funds paid to the Board as assessments under subsection (d)—

(A) may be used by the Board to—

(i) pay for research, promotion, and consumer information described in the budget of the Board under subsection (c) and for other expenses incurred by the Board in the administration of an order;

(ii) pay such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary; and

(iii) fund a reserve established under section 1956(4); and

(B) shall be used to pay the expenses incurred by the Secretary, including salaries and expenses of Government employees in

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[5] Sec. 4(c) of Pub. L. 103-194, 107 Stat. 2295, Dec. 14, 1993, increased the exemption level from 35,000 to 200,000 pounds.

[6] As amended by Sec. 805 of Pub. L. 102-237, 105 Stat. 1882, Dec. 13, 1991.

implementing and administering the order, except as provided in paragraph (2).

(2) REFERENDA.—Such order shall provide that the Board shall reimburse the Secretary, from assessments collected under subsection (d), for any expenses incurred by the Secretary in conducting referenda under this subtitle, except for the salaries of Government employees.

(f) FALSE CLAIMS.—Such order shall provide that any promotion funded with assessments collected under subsection (d) may not make—

(1) any false or unwarranted claims on behalf of limes; and

(2) any false or unwarranted statements with respect to the attributes or use of any product that competes with limes for sale in commerce.

(g) PROHIBITION ON USE OF FUNDS.—Such order shall provide that funds collected by the Board under this subtitle through assessments authorized by this subtitle may not, in any manner, be used for the purpose of influencing legislation or governmental policy or action, except for making recommendations to the Secretary as provided for in this subtitle.

(h) BOOKS, RECORDS, AND REPORTS.—

(1) BY THE BOARD.—Such order shall require the Board—

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

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

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

(2) BY OTHERS.—So that information and data will be available to the Board and the Secretary that is appropriate or necessary for the effectuation, administration, or enforcement of this subtitle (or any order or regulation issued under this subtitle), such order shall require handlers, producer-handlers, and importers who are responsible for the collection, payment, or remittance of assessments under subsection (d)—

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

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

(i) CONFIDENTIALITY.—

(1) IN GENERAL.—Such order shall require that all information obtained pursuant to subsection (h)(2) shall be kept confidential by all officers and employees of the Department and of the Board. Only

such information as the Secretary considers relevant shall be disclosed to the public and only in a suit or administrative hearing, brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, involving the order with respect to which the information was furnished or acquired.

(2) LIMITATIONS.—Nothing in this subsection prohibits—

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

(B) the publication by direction of the Secretary, of the name of any person violating an order issued under section 1954(a), together with a statement of the particular provisions of the order violated by such person.

(j) WITHHOLDING INFORMATION.—Nothing in this subtitle shall be construed to authorize the withholding of information from Congress. (7 U.S.C. 6204.)

SEC. 1956. PERMISSIVE TERMS IN ORDERS.

On the recommendation of the Board and with the approval of the Secretary, an order issued under section 1954(a) may—

(1) provide authority to the Board to exempt from such order limes exported from the United States, subject to such safeguards as the Board may establish to ensure proper use of the exemption;

(2) provide authority to the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures;

(3) provide that the Board may convene from time to time working groups drawn from producers, handlers, producer-handlers, importers, exporters, or the general public to assist in the development of research and marketing programs for limes;

(4) provide authority to the Board to accumulate reserve funds from assessments collected pursuant to section 1955(d) to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years in which production and assessment income may be reduced, except that any reserve fund so established may not exceed the amount budgeted for operation of this subtitle for 1 year;

(5) provide authority to the Board to use, with the approval of the Secretary, funds collected under section 1955(d) for the development and expansion of lime sales in foreign markets; and

(6) provide for terms and conditions—

(A) incidental to, and not inconsistent with, the terms and conditions specified in this subtitle; and

(B) necessary to effectuate the other provisions of such order. (7 U.S.C. 6205.)

SEC. 1957. PETITION AND REVIEW.

(a) PETITION. **)**

(1) IN GENERAL. **)** A person subject to an order may file with the Secretary a petition **)**

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

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

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

(3) RULING. **)** After the hearing, the Secretary shall make a ruling on the petition which shall be final if in accordance with law.

(b) REVIEW. **)**

(1) COMMENCEMENT OF ACTION. **)** The district courts of the United States in any district in which such person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS. **)** Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS. **)** If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either **)**

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

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

(4) ENFORCEMENT. **)** The pendency of proceedings instituted pursuant to subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 1958. (7 U.S.C. 6206.)

SEC. 1958. ENFORCEMENT.

(a) JURISDICTION.) Each district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.) A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this subtitle, or any order or regulation issued under this subtitle, if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by administrative action under subsection (c) or suitable written notice or warning to any person committing the violation.

(c) CIVIL PENALTIES AND ORDERS.)

(1) CIVIL PENALTIES.) Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) CEASE AND DESIST ORDERS.) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) 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 gives the person against whom the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to such violation.

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

(d)[7] REVIEW BY UNITED STATES DISTRICT COURT.)

(1) COMMENCEMENT OF ACTION.) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) may obtain review of the penalty or order in the district court of the United States for the district in which such person resides or does business, or the United States District Court for the District of Columbia, by)

[7] *Ibid.*

(A) filing a notice of appeal in such court not later than 30 days after the date of such order; and

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

(2) RECORD.**)** The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.**)** A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.**)** Any person who fails to obey a cease and desist order issued by the Secretary after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $500 for each offense. Each day during which such failure continues shall be considered a separate violation of such order.

(f) FAILURE TO PAY PENALTIES.**)** If a person fails to pay an assessment of a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of the final order imposing such civil penalty shall not be subject to review. (7 U.S.C. 6207.)

SEC. 1959. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) IN GENERAL.**)** The Secretary may make such investigations as the Secretary considers necessary**)**

(1) for the effective carrying out of the responsibilities of the Secretary under this subtitle; or

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

(b)[8] POWER TO SUBPOENA.**)**

(1) INVESTIGATIONS.**)** For the purpose of an investigation made under subsection (a), the Secretary may administer oaths and

[8] *Ibid.*

affirmations and may issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) ADMINISTRATIVE HEARINGS.**)** For the purpose of an administrative hearing held under section 1957 or 1958, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.**)** In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.**)** Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.**)** Process in any such case may be served in the judicial district of which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.**)** The site of any hearings held under section 1957 or 1958 shall be within the judicial district where such person is an inhabitant or has a principal place of business. (7 U.S.C. 6208.)

SEC. 1960. INITIAL REFERENDUM.

(a)[9] REQUIREMENT.**)** Not later than 30 months after the date on which the collection of assessments begins under the order pursuant to section 1955(d), the Secretary shall conduct a referendum among producers, producer-handlers, and importers who**)**

(1) are not exempt from assessment under section 1955(d)(5); and

(2) produced or imported limes during a representative period as determined by the Secretary.

(b) PURPOSE OF REFERENDUM.**)** The referendum referred to in subsection (a) is for the purpose of determining whether the issuance of the order is approved or favored by not less than a majority of the producers,

[9] Sec. 5 of Pub. L. 103-194, 107 Stat. 2295, Dec. 14, 1993, changed the initial referendum from "Not later than 2 years after the date on which the Secretary first issues an order under section 1954(a)" to "Not later than 30 months after the date on which the collection of assessments begins under the order pursuant to section 1955(d).".

producer-handlers, and importers voting in the referendum. The order shall continue in effect only with such a majority.

(c) CONFIDENTIALITY.) The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this section, or section 1961, shall be held strictly confidential and shall not be disclosed.

(d) REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT.)

(1) IN GENERAL.) A portion of the assessments collected from producers, producer-handlers, and importers prior to announcement of the results of the referendum provided for in this section shall be held in an escrow account until the results of the referendum are published by the Secretary. The amount in the escrow account shall be equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(2) APPROVAL OF ORDER.) If the order is approved by a majority of the producers, producer-handlers, and importers voting in the initial referendum under subsection (a), the funds in the escrow account shall be released to be used for the purposes of this subtitle.

(3) DISAPPROVAL OF ORDER.)

(A) PRORATION.) If)

(i) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by producers, producer-handlers, or importers; and

(ii) the plan is not approved pursuant to the referendum conducted under subsection (a);

the Board shall prorate the amount of such refunds among all eligible producers, producer-handlers, or importers who demand such refund.

(B) RIGHT TO REFUND.) A producer, producer-handler, or importer shall be eligible to receive a refund)

(i) if demand is made personally, in accordance with regulations and on a form and within a time period prescribed by the Board, but in no event less than 90 days after the date of publication of the results of the referendum; and

(ii) on submission of proof satisfactory to the Board that the person paid the assessment for which refund is sought and did not collect the assessment from another person.

(C) SURPLUS FUNDS.) Any funds not refunded under this paragraph shall be released to be used to carry out this subtitle. (7 U.S.C. 6209.)

SEC. 1961. SUSPENSION AND TERMINATION.

(a) FINDING OF SECRETARY. **)** If the Secretary finds that an order issued under section 1954(a), or a provision of such order, obstructs or does not tend to effectuate the purposes of this subtitle, the Secretary shall terminate or suspend the operation of such order or provision.

(b) PERIODIC REFERENDA. **)** The Secretary may periodically conduct a referendum to determine if lime producers, producer-handlers, and importers favor the continuation, termination, or suspension of any order issued under section 1954(a) and in effect at the time of such referendum.

(c) REQUIRED REFERENDA. **)** The Secretary shall hold a referendum under subsection (b) **)**

(1) at the request of the Board; or

(2) if not less than 10 percent of the lime producers, producer-handlers, and importers subject to assessment under this subtitle submit a petition requesting such a referendum.

(d) LIMITATION. **)** The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subtitle.

(e) VOTE. **)** The Secretary shall suspend or terminate the order at the end of the marketing year if the Secretary determines that **)**

(1) the suspension or termination of the order is favored by not less than a majority of those persons voting in a referendum under subsection (b); and

(2) the producers, producer-handlers, and importers comprising this majority produce and import more than 50 percent of the volume of limes produced and imported by those voting in the referendum. (7 U.S.C. 6210.)

SEC. 1962. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL. **)** There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES. **)** The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of an order issued under this subtitle. (7 U.S.C. 6211.)

SEC. 1963. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 6212.)

MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT OF 1990 [1]

(7 U.S.C. 6101-6112)

SEC. 1921. SHORT TITLE.

This subtitle may be cited as the "Mushroom Promotion, Research, and Consumer Information Act of 1990". (7 U.S.C. 6101 note.)

SEC. 1922. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.) Congress finds that)

(1) mushrooms are an important food that is a valuable part of the human diet;

(2) the production of mushrooms plays a significant role in the Nation's economy in that mushrooms are produced by hundreds of mushroom producers, distributed through thousands of wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) mushroom production benefits the environment by efficiently using agricultural byproducts;

(4) mushrooms must be high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of this important product are available to the people of the United States;

(5) the maintenance and expansion of existing markets and uses, and the development of new markets and uses, for mushrooms are vital to the welfare of producers and those concerned with marketing and using mushrooms, as well as to the agricultural economy of the Nation;

(6) the cooperative development, financing, and implementation of a coordinated program of mushroom promotion, research, and consumer information are necessary to maintain and expand existing markets for mushrooms; and

(7) mushrooms move in interstate and foreign commerce, and mushrooms that do not move in such channels of commerce directly burden or affect interstate commerce in mushrooms.

(b) POLICY.) It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing,

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[1] Pub. L. 101-624, Title XIX, Subtitle B, 104 Stat. 3854, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat., Dec. 13, 1991.

financing through adequate assessments on mushrooms produced domestically or imported into the United States, and carrying out, an effective,
continuous, and coordinated program of promotion, research, and consumer and industry information designed to **)**

(1) strengthen the mushroom industry's position in the marketplace;

(2) maintain and expand existing markets and uses for mushrooms; and

(3) develop new markets and uses for mushrooms.

(c) CONSTRUCTION. **)** Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms. (7 U.S.C. 6101.)

SEC. 1923. DEFINITIONS.

As used in this subtitle **)**

(1) COMMERCE. **)** The term "commerce" means interstate, foreign, or intrastate commerce.

(2) 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 mushrooms.

(3) COUNCIL. **)** The term "Council" means the Mushroom Council established under section 1925(b).

(4) DEPARTMENT. **)** The term "Department" means the Department of Agriculture.

(5) FIRST HANDLER. **)** The term "first handler" means any person, as described in an order issued under this subtitle, who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

(6) IMPORTER. **)** The term "importer" means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

(7) INDUSTRY INFORMATION. **)** The term "industry information" means information and programs that are designed to lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

(8) MARKETING. **)** The term "marketing" means the sale or other disposition of mushrooms in any channel of commerce.

(9) MUSHROOMS. **)** The term "mushrooms" means all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that

are marketed, except that such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed, as may be determined by the Secretary.

(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 engaged in the production of mushrooms who owns or who shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

(12) PROMOTION.**)** The term "promotion" means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

(13) RESEARCH.**)** The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of mushrooms.

(14) SECRETARY.**)** The term "Secretary" means the Secretary of Agriculture.

(15) STATE AND UNITED STATES.**)** The terms "State" and "United States" include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 6102.)

SEC. 1924. ISSUANCE OF ORDERS.

(a) IN GENERAL.**)** To effectuate the declared policy of section 1922(b), the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this subtitle applicable to producers, importers, and first handlers of mushrooms. Any such order shall be national in scope. Not more than one order shall be in effect under this subtitle at any one time.

(b) PROCEDURES.**)**

(1) ISSUANCE OF AN ORDER.**)** The Secretary may propose the issuance of an order under this subtitle, or an association of mushroom producers or any other person that will be affected by this subtitle may request the issuance of, and submit a proposal for, such an order.

(2) PUBLICATION OF ORDER.**)** Not later than 60 days after the receipt of a request and proposal by an interested person for an order, or when the Secretary determines to propose an order, the Secretary shall publish the 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 the 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 subtitle. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 1926(a), shall become effective not later than 180 days following publication of the proposed order.

(c) AMENDMENTS.—

(1) IN GENERAL.—The Secretary, from time to time, may amend any order issued under this section.

(2) APPLICATION OF SUBTITLE.—The provisions of this subtitle applicable to an order shall be applicable to amendments to the order. (7 U.S.C. 6103.)

SEC. 1925. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—Each order issued under this subtitle shall contain the terms and conditions prescribed in this section.

(b) MUSHROOM COUNCIL.—

(1) ESTABLISHMENT AND MEMBERSHIP OF COUNCIL.—

(A) ESTABLISHMENT.—The order shall provide for the establishment of, and selection of members to, a Mushroom Council that shall consist of at least 4 members and not more than 9 members.

(B) MEMBERSHIP.—Except as provided for in paragraph (2), the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

(2) APPOINTMENTS.—

(A) IN GENERAL.—In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

(B) UNITS.—In establishing such geographical distribution of mushroom production, a whole State shall be considered as a unit and such units shall be organized into 4 regions that shall fairly represent the geographic distribution of mushroom production within the United States.

(C) IMPORTERS.—Importers shall be represented as one region, which shall be separate from the regions established for mushrooms produced in the United States.

(D) MEMBERS PER REGION.—The Secretary shall appoint one member from each region if such region produces or imports, on average, at least 35,000,000 pounds of mushrooms annually.

(E) ADDITIONAL MEMBERS.—Subject to the nine-member limit on the number of members on the Council provided in paragraph (1), the Secretary shall appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region.

(F) For purposes of this paragraph, in determining average annual mushroom production in each of the 4 regions of the United States established under this paragraph, the Secretary shall only consider mushrooms produced by producers covered by this subtitle, as defined in section 1923(11).

(G) FAILURE TO NOMINATE.—If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order.

(3) TERMS; COMPENSATION.—

(A) TERMS.—The term of appointment to the Council shall be for 3 years, except that the initial appointments shall to the extent practicable be proportionately for 1-year, 2-year, and 3-year terms.

(B) COMPENSATION.—Council members shall serve without compensation but shall be reimbursed for their expenses incurred in performing their duties as members of the Council.

(c) POWERS AND DUTIES OF THE COUNCIL.—The order shall define the powers and duties of the Council, which shall include the following powers and duties—

(1) to administer the order in accordance with its terms and provisions;

(2) to make rules and regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Council to serve on an executive committee;

(4) to propose, receive, evaluate, approve and submit to the Secretary for approval under subsection (d) budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;

(5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

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

(7) to recommend to the Secretary amendments to the order; and

(8) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subtitle only in **)**

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any 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,

except that income from any such invested funds may only be used for any purpose for which the invested funds may be used.

(d) PLANS AND BUDGETS. **)**

(1) SUBMISSION TO SECRETARY. **)** The order shall provide that the Council 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 Council to submit to the Secretary for approval budgets on a fiscal year basis of its anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

(3) APPROVAL BY SECRETARY. **)** No plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary.

(e) CONTRACTS AND AGREEMENTS. **)**

(1) IN GENERAL. **)** To ensure efficient use of funds, the order shall provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including contracts with producer organizations, and for the payment of the cost thereof with funds received by the Council under the order.

(2) REQUIREMENTS. **)** Any such contract or agreement shall provide that **)**

(A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such 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 all of its transactions, account for funds received and expended, make periodic reports to the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

(3) PRODUCER ORGANIZATIONS. **)** The order shall provide that the Council may contract with producer organizations for any other

services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of paragraph (2).

(f) BOOKS AND RECORDS OF COUNCIL.—

(1) IN GENERAL.—The order shall require the Council 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 Council.

(2) AUDITS.—The Council shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) ASSESSMENTS.—

(1) COLLECTION AND PAYMENT.—

(A) IN GENERAL.—The order shall provide that each first handler of mushrooms for the domestic fresh market produced in the United States shall collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

(B) IMPORTERS.—The order also shall provide that each importer of mushrooms for the domestic fresh market shall pay assessments to the Council in the manner prescribed by the order.

(C) DIRECT MARKETING.—Any person marketing mushrooms of that person's own production directly to consumers shall remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

(2) RATE OF ASSESSMENT.—The rate of assessment shall be determined and announced by the Council and may be changed by the Council at any time. The order shall provide that the rate of assessment—

(A) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(B) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(C) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(D) for the following years of the order, may not exceed one cent per pound of mushrooms.

(3) USE OF ASSESSMENTS.—The order shall provide that the assessments shall be used for payment of the expenses in implementing and administering this subtitle, with provision for a reasonable reserve, and to cover those administrative costs incurred

by the Secretary in implementing and administering this subtitle, except for the salaries of Government employees incurred in conducting referenda.

(4) LIMITATION ON COLLECTION.) No assessment may be collected on mushrooms that a first handler certifies will be exported as mushrooms.

(h) PROHIBITION.) The order shall prohibit any funds received by the Council under the order from being used in any manner for the purpose of influencing legislation or governmental action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this subtitle and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(i) BOOKS AND RECORDS.)

(1) IN GENERAL.) The order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) AVAILABILITY TO SECRETARY.) Such information shall be made available to the Secretary as is appropriate for the administration or enforcement of this subtitle, the order, or any regulation issued under this subtitle.

(3) CONFIDENTIALITY.)

(A) IN GENERAL.) Except as otherwise provided in this subtitle, all information obtained under paragraph (1) shall be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) LIMITATIONS.) Nothing in this paragraph may be construed to prohibit)

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which 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 the order, together with a statement of the particular provisions of the order violated by such person.

(4) AVAILABILITY OF INFORMATION. **)**

(A) IN GENERAL. **)** Except as otherwise provided in this subtitle, information obtained under this subtitle 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.

(B) 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 Council or the Department, shall be removed from office.

(5) WITHHOLDING INFORMATION. **)** Nothing in this subtitle shall be construed to authorize the withholding of information from Congress.

(j) OTHER TERMS AND CONDITIONS. **)** The order also shall contain such terms and conditions, not inconsistent with this subtitle, as are necessary to effectuate this subtitle, including provisions for the assessment of a penalty for each late payment of assessments under subsection (g). (7 U.S.C. 6104.)

SEC. 1926. REFERENDA.

(a) INITIAL REFERENDUM. **)**

(1) IN GENERAL. **)** Within the 60-day period immediately preceding the effective date of an order issued under section 1924(b), the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

(2) APPROVAL OF ORDER. **)** The order shall become effective, as provided in section 1924(b), if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

(b) SUCCEEDING REFERENDA. **)**

(1) DETERMINATION CONCERNING ORDER. **)**

(A) IN GENERAL. **)** Effective 5 years after the date on which an order becomes effective under section 1924(b), the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the order. (B) REQUEST FOR REFERENDUM. **)** Effective beginning 3 years after the date on which an order becomes effective under section 1924(b),

the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

(2) SUSPENSION OR TERMINATION.) If, as a result of any referendum conducted under paragraph (1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall)

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(c) MANNER.) Referenda conducted pursuant to this section shall be conducted in such a manner as is determined by the Secretary. (7 U.S.C. 6105.)

SEC. 1927. PETITION AND REVIEW.

(a) PETITION.)

(1) IN GENERAL.) A person subject to an order issued under this subtitle 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 in accordance with law; and

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

(2) HEARINGS.) The petitioner shall be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) RULING.) After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) REVIEW.)

(1) COMMENCEMENT OF ACTION.) The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary under subsection (a).

(2) PROCESS.) Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.) If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either)

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

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

(4) ENFORCEMENT.) The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 1928. (7 U.S.C. 6106.)

SEC. 1928. ENFORCEMENT.

(a) JURISDICTION.) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.) A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this subtitle, or any order or regulation issued under this subtitle, if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person who committed or is committing the violation.

(c) CIVIL PENALTIES AND ORDERS.)

(1) CIVIL PENALTIES.) A person who willfully violates a provision of any order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under such order or regulation, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.) No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) FINALITY.) The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.)

(1) COMMENCEMENT OF ACTION.) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) may obtain review of the penalty or order by)

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia; and

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

(2) RECORD.) The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.) A person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $500 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) FAILURE TO PAY PENALTIES.) If a person fails to pay an assessment of a civil penalty after it has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty shall not be subject to review. (7 U.S.C. 6107.)

SEC. 1929. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) INVESTIGATIONS.) The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this

subtitle or to determine whether any person subject to this subtitle has engaged or is engaging in any act that constitutes a violation of this subtitle or of any order, rule, or regulation issued under this subtitle.

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

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

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 1927 or 1928, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In 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 such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under section 1927 or 1928 shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 6108.)

SEC. 1930. SAVINGS PROVISION.

Nothing in this subtitle may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. (7 U.S.C. 6109.)

SEC. 1931. SUSPENSION OR TERMINATION OF ORDERS.

The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of such order or

provision. The termination or suspension of any order, or any provision thereof, shall not be considered an order under the meaning of this subtitle. (7 U.S.C. 6110.)

SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL. **)** There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES. **)** The funds so appropriated shall not be available for payment of the expenses or expenditures of the Council in administering any provision of an order issued under this subtitle. (7 U.S.C. 6111.)

SEC. 1933. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 6112.)

NATIONAL KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT. [1]

(7 U.S.C. 7461 - 7473)

SEC. 551. SHORT TITLE.

This subtitle may be cited as the "National Kiwifruit Research, Promotion, and Consumer Information Act". (7 U.S.C. 7401 note.)

SEC. 552. FINDINGS AND PURPOSES.

(a) FINDINGS. **)** Congress finds that **)**

(1) domestically produced kiwifruit are grown by many individual producers;

(2) virtually all domestically produced kiwifruit are grown in the State of California, although there is potential for production in many other areas of the United States;

(3) kiwifruit move in interstate and foreign commerce, and kiwifruit that do not move in channels of commerce directly burden or affect interstate commerce;

(4) in recent years, large quantities of kiwifruit have been imported into the United States;

(5) the maintenance and expansion of existing domestic and foreign markets for kiwifruit, and the development of additional and improved markets for kiwifruit, are vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit;

(6) a coordinated program of research, promotion, and consumer information regarding kiwifruit is necessary for the maintenance and development of the markets; and

(7) kiwifruit producers, handlers, and importers are unable to implement and finance such a program without cooperative action.

(b) PURPOSES. **)** The purposes of this subtitle are **)**

(1) to authorize the establishment of an orderly procedure for the development and financing (through an assessment) of an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit;

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[1] Title V, Subtitle D, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 1064, Apr. 4, 1996.

(2) to use the program to strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and

(3) to treat domestically produced kiwifruit and imported kiwifruit equitably. (7 U.S.C. 7461.)

SEC. 553. DEFINITIONS.

In this subtitle (unless the context otherwise requires):

(1) BOARD.) The term "Board" means the National Kiwifruit Board established under section 555.

(2) CONSUMER INFORMATION.) The term "consumer information" means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of kiwifruit.

(3) EXPORTER.) The term "exporter" means any person from outside the United States who exports kiwifruit into the United States.

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

(5) IMPORTER.) The term "importer" means any person who imports kiwifruit into the United States.

(6) KIWIFRUIT.) The term "kiwifruit" means all varieties of fresh kiwifruit grown in or imported into the United States.

(7) MARKETING.) The term "marketing" means the sale or other disposition of kiwifruit into interstate, foreign, or intrastate commerce by buying, marketing, distribution, or otherwise placing kiwifruit into commerce.

(8) ORDER.) The term "order" means a kiwifruit research, promotion, and consumer information order issued by the Secretary under section 554.

(9) PERSON.) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

(10) PROCESSING.) The term "processing" means canning, fermenting, distilling, extracting, preserving, grinding, crushing, or in any manner changing the form of kiwifruit for the purpose of preparing the kiwifruit for market or marketing the kiwifruit.

(11) PRODUCER.) The term "producer" means any person who grows kiwifruit in the United States for sale in commerce.

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

(13) RESEARCH.—The term "research" means any type of research relating to the use, nutritional value, and marketing of kiwifruit conducted for the purpose of advancing the image, desirability, marketability, or quality of kiwifruit.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) UNITED STATES.—The term "United States" means the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 7462.)

SEC. 554. ISSUANCE OF ORDERS.

(a) ISSUANCE.—To effectuate the purposes of this subtitle specified in section 552(b), the Secretary shall issue an order applicable to producers, handlers, and importers of kiwifruit. Any such order shall be national in scope. Not more than 1 order shall be in effect under this subtitle at any 1 time.

(b) PROCEDURE.—

(1) PROPOSAL FOR ISSUANCE OF ORDER.—Any person that will be affected by this subtitle may request the issuance of, and submit a proposal for, an order under this subtitle.

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

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

(c) AMENDMENTS.—The Secretary may amend any order issued under this section. The provisions of this subtitle applicable to an order shall be applicable to an amendment to an order. (7 U.S.C. 7463.)

SEC. 555. NATIONAL KIWIFRUIT BOARD.

(a) MEMBERSHIP.—An order issued by the Secretary under section 554 shall provide for the establishment of a National Kiwifruit Board that consists of the following 11 members:

(1) 6 members who are producers (or representatives of producers) and who are not exempt from an assessment under section 556(b).

(2) 4 members who are importers (or representatives of importers) and who are not exempt from an assessment under section 556(b) or are exporters (or representatives of exporters).

(3) 1 member appointed from the general public.

(b) ADJUSTMENT OF MEMBERSHIP. **)**

(1) IN GENERAL. **)** Subject to the 11-member limit and to paragraph (2), the Secretary may adjust membership on the Board to accommodate changes in production and import levels of kiwifruit.

(2) NUMBER OF PRODUCER MEMBERS. **)** Producers shall comprise not less than 51 percent of the membership of the Board.

(c) APPOINTMENT AND NOMINATION. **)**

(1) APPOINTMENT. **)** The Secretary shall appoint the members of the Board from nominations submitted in accordance with this subsection.

(2) PRODUCERS. **)** The members referred to in subsection (a)(1) shall be appointed from individuals nominated by producers.

(3) IMPORTERS AND EXPORTERS. **)** The members referred to in subsection (a)(2) shall be appointed from individuals nominated by importers or exporters.

(4) PUBLIC REPRESENTATIVE. **)** The public representative shall be appointed from nominations submitted by other members of the Board.

(5) FAILURE TO NOMINATE. **)** If producers, importers, and exporters fail to nominate individuals for appointment, the Secretary may appoint members and alternates on a basis provided for in the order. If the Board fails to nominate a public representative, the member may be appointed by the Secretary without a nomination.

(d) ALTERNATES. **)** The Secretary shall appoint an alternate for each member of the Board. An alternate shall **)**

(1) be appointed in the same manner as the member for whom the individual is an alternate; and

(2) serve on the Board if the member is absent from a meeting or is disqualified under subsection (f).

(e) TERMS. **)** A member of the Board shall be appointed for a term of 3 years. No member may serve more than 2 consecutive 3-year terms, except that of the members first appointed **)**

(1) 5 members shall be appointed for a term of 2 years; and

(2) 6 members shall be appointed for a term of 3 years.

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

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

(h) GENERAL POWERS AND DUTIES. **)** The Board shall **)**

(1) administer an order issued by the Secretary under section 554, and an amendment to the order, in accordance with the order and amendment and this subtitle;

(2) prescribe rules and regulations to carry out the order;

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

(4) receive, investigate, and report to the Secretary accounts of violations of the order;

(5) make recommendations to the Secretary with respect to an amendment that should be made to the order; and

(6) employ or contract with a manager and staff to assist in administering the order, except that, to reduce administrative costs and increase efficiency, the Board shall seek, to the extent practicable, to employ or contract with personnel who are already associated with organizations involved in promoting kiwifruit that are chartered by a State, the District of Columbia, or the Commonwealth of Puerto Rico. (7 U.S.C. 7464.)

SEC. 556. REQUIRED TERMS IN ORDER.

(a) BUDGETS AND PLANS. **)**

(1) IN GENERAL. **)** An order issued under section 554 shall provide for periodic budgets and plans in accordance with this subsection.

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

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

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

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

(b) ASSESSMENTS. **)**

(1) IN GENERAL. **)** The order shall provide for the imposition and collection of assessments with regard to the production and importation of kiwifruit in accordance with this subsection.

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

(3) COLLECTION BY FIRST HANDLERS.) Except as provided in paragraph (5), the first handler of kiwifruit shall)

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

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

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

(5) EXEMPTION FROM ASSESSMENT.) The following persons or activities are exempt from an assessment under this subsection:

(A) A producer who produces less than 500 pounds of kiwifruit per year.

(B) An importer who imports less than 10,000 pounds of kiwifruit per year.

(C) A sale of kiwifruit made directly from the producer to a consumer for a purpose other than resale.

(D) The production or importation of kiwifruit for processing.

(6) CLAIM OF EXEMPTION.) To claim an exemption under paragraph (5) for a particular year, a person shall)

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

(B) be on a list of approved processors developed by the Board.

(c) USE OF ASSESSMENTS.)

(1) AUTHORIZED USES.) The order shall provide that funds paid to the Board as assessments under subsection (b) may be used by the Board)

(A) to pay for research, promotion, and consumer information described in the budget of the Board under subsection (a) and for other expenses incurred by the Board in the administration of an order;

(B) to pay such other expenses for the administration, maintenance, and functioning of the Board (including any enforcement efforts for the collection of assessments) as may be authorized by the Secretary, including interest and penalties for late payments; and

(C) to fund a reserve established under section 557(d).

(2) REQUIRED USES.) The order shall provide that funds paid to the Board as assessments under subsection (b) shall be used by the Board)

(A) to pay the expenses incurred by the Secretary, including salaries and expenses of Federal Government employees, in implementing and administering the order; and

(B) to reimburse the Secretary for any expenses incurred by the Secretary in conducting referenda under this subtitle.

(3) LIMITATION ON USE OF ASSESSMENTS.) Except for the first year of operation of the Board, expenses for the administration, maintenance, and functioning of the Board may not exceed 30 percent of the budget for a year.

(d) FALSE CLAIMS.) The order shall provide that any promotion funded with assessments collected under subsection (b) may not make)

(1) any false claims on behalf of kiwifruit; and

(2) any false statements with respect to the attributes or use of any product that competes with kiwifruit for sale in commerce.

(e) PROHIBITION ON USE OF FUNDS.) The order shall provide that funds collected by the Board under this subtitle through assessments may not, in any manner, be used for the purpose of influencing legislation or governmental policy or action, except for making recommendations to the Secretary as provided for under this subtitle.

(f) BOOKS, RECORDS, AND REPORTS.)

(1) BOARD.) The order shall require the Board)

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

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

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

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

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

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

(g) CONFIDENTIALITY.)

(1) IN GENERAL.) The order shall require that all information obtained pursuant to subsection (f)(2) be kept confidential by all officers, employees, and agents of the Department of Agriculture and of the Board. Only such information as the Secretary considers relevant shall be disclosed to the public and only in a suit or administrative hearing, brought at the request of the Secretary or to which the Secretary or any

officer of the United States is a party, involving the order with respect to which the information was furnished or acquired.

(2) LIMITATIONS.) Nothing in this subsection prohibits)

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

(B) the publication, by direction of the Secretary, of the name of any person violating an order issued under section 554(a), together with a statement of the particular provisions of the order violated by the person.

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

(h) WITHHOLDING OF INFORMATION.) Nothing in this subtitle authorizes the withholding of information from Congress. (7 U.S.C. 7465.)

SEC. 557. PERMISSIVE TERMS IN ORDER.

(a) PERMISSIVE TERMS.) On the recommendation of the Board and with the approval of the Secretary, an order issued under section 554 may include the terms and conditions specified in this section and such additional terms and conditions as the Secretary considers necessary to effectuate the other provisions of the order and are incidental to, and not inconsistent with, this subtitle.

(b) ALTERNATIVE PAYMENT AND REPORTING SCHEDULES.) The order may authorize the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

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

(d) RESERVE FUNDS.) The order may authorize the Board to accumulate reserve funds from assessments collected pursuant to section 556(b) to permit an effective and continuous coordinated program of research, promotion, and consumer information in years in which production and assessment income may be reduced, except that any reserve fund may not exceed the amount budgeted for operation of this subtitle for 1 year.

(e) PROMOTION ACTIVITIES OUTSIDE UNITED STATES.) The order may authorize the Board to use, with the approval of the Secretary, funds collected under section 556(b) and funds from other sources for the

development and expansion of sales in foreign markets of kiwifruit produced in the United States. (7 U.S.C. 7466.)

SEC. 558. PETITION AND REVIEW.

(a) PETITION. **)**

(1) IN GENERAL. **)** A person subject to an order may file with the Secretary a petition **)**

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

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

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

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

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

(b) REVIEW. **)**

(1) COMMENCEMENT OF ACTION. **)** The district court of the United States for any district in which the person who is a petitioner under subsection (a) resides or carries on business is vested with jurisdiction to review the ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS. **)** Service of process in the proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS. **)** If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions **)**

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

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

(4) ENFORCEMENT. **)** The pendency of a proceeding instituted pursuant to subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 559. (7 U.S.C. 7467.)

SEC. 559. ENFORCEMENT.

(a) JURISDICTION.—A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.—A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this subtitle, or any order or regulation issued under this subtitle, if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.—In addition to or in lieu of the civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation.

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

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

(d) REVIEW BY UNITED STATES DISTRICT COURT.—

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

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

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

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

(3) STANDARD OF REVIEW.) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY CEASE-AND-DESIST ORDERS.) Any person who fails to obey a cease-and-desist order issued by the Secretary after the cease-and-desist order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $500 for each offense. Each day during which the failure continues shall be considered a separate violation of the cease-and-desist order.

(f) FAILURE TO PAY PENALTIES.) If a person fails to pay an assessment of a civil penalty after the assessment has become a final and unappealable order issued by the Secretary, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 7468.)

SEC. 560. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) IN GENERAL.) The Secretary may make such investigations as the Secretary considers necessary)

(1) for the effective carrying out of the responsibilities of the Secretary under this subtitle; or

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

(b) POWER TO SUBPOENA.)

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

(2) ADMINISTRATIVE HEARINGS.) For the purpose of an administrative hearing held under section 558 or 559, the presiding officer is

authorized to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS. **)** In the case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, to enforce a subpoena issued by the
Secretary under subsection (b). The court may issue an order
requiring the person to comply with the subpoena.

(d) CONTEMPT. **)** Any failure to obey the order of the court may be punished by the court as a contempt of the court.

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

(f) HEARING SITE. **)** The site of any hearing held under section 558 or 559 shall be in the judicial district where the person affected by the hearing resides or has a principal place of business. (7 U.S.C. 7469.)

SEC. 561. REFERENDA.

(a) INITIAL REFERENDUM. **)**

(1) REFERENDUM REQUIRED. **)** During the 60-day period immediately preceding the proposed effective date of an order issued under section 554, the Secretary shall conduct a referendum among kiwifruit producers and importers who will be subject to assessments under the order, to ascertain whether producers and importers approve the implementation of the order.

(2) APPROVAL OF ORDER. **)** The order shall become effective, as provided in section 554, if the Secretary determines that **)**

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

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

(b) SUBSEQUENT REFERENDA. **)** The Secretary may periodically conduct a referendum to determine if kiwifruit producers and importers favor the continuation, termination, or suspension of any order issued under section 554 that is in effect at the time of the referendum.

(c) REQUIRED REFERENDA. **)** The Secretary shall hold a referendum under subsection (b) **)**

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

(2) at the request of the Board; or

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

(d) VOTE.**)** On completion of a referendum under subsection (b), the Secretary shall suspend or terminate the order that was subject to the referendum at the end of the marketing year if**)**

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

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

(e) CONFIDENTIALITY.**)** The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this subtitle and the voting list shall be held strictly confidential and shall not be disclosed. (7 U.S.C. 7470.)

SEC. 562. SUSPENSION OR TERMINATION.

(a) IN GENERAL.**)** If the Secretary finds that an order issued under section 554, or a provision of the order, obstructs or does not tend to effectuate the purposes of this subtitle, the Secretary shall suspend or terminate the operation of the order or provision.

(b) LIMITATION.**)** The suspension or termination of any order, or any provision of an order, shall not be considered an order under this subtitle. (7 U.S.C. 7471.)

SEC. 563. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 7472.)

SEC. 564. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subtitle. (7 U.S.C. 7473.)

PECAN PROMOTION AND RESEARCH ACT OF 1990 [1]

(7 U.S.C. 6001-6013)

SEC. 1905. SHORT TITLE.

This subtitle may be cited as the "Pecan Promotion and Research Act of 1990". (7 U.S.C. 6001 note.)

SEC. 1906. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS. **)** Congress finds that **)**

(1) pecans are a native American nut that is an important food, and is a valuable part of the human diet;

(2) the production of pecans plays a significant role in the economy of the United States in that pecans are produced by thousands of pecan producers, shelled and processed by numerous shellers and processors, and pecans produced in the United States are consumed by millions of people throughout the United States and foreign countries;

(3) pecans must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of pecans;

(4) the maintenance and expansion of existing markets and development of new markets for pecans are vital to the welfare of pecan producers and those concerned with marketing, using, and producing pecans, as well as to the general economy of the United States, and necessary to ensure the ready availability and efficient marketing of pecans;

(5) there exist established State organizations conducting pecan promotion, research, and industry and consumer education programs that are invaluable to the efforts of promoting the consumption of pecans;

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

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[1] Pub. L. 101-624, Title XIX, Subtitle A, 104 Stat. 3838, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat. 1882, Dec. 13, 1991.

(7) pecans move in interstate and foreign commerce, and pecans that do not move in such channels of commerce directly burden or affect interstate commerce in pecans.

(b) POLICY.— It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing (through adequate assessments on pecans produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research, industry information, and consumer information designed to—

(1) strengthen the pecan industry's position in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for pecans; and

(3) develop new markets and uses for pecans.

(c) CONSTRUCTION.— Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of any person to produce pecans. (7 U.S.C. 6001.)

SEC. 1907. DEFINITIONS.

As used in this subtitle—

(1) BOARD.— The term "Board" means the Pecan Marketing Board established in section 1910(b).

(2) COMMERCE.— The term "commerce" means interstate, foreign, or intrastate commerce.

(3) CONFLICT OF INTEREST.— The term "conflict of interest" means a situation in which a member has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with the Board.

(4) 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 pecans.

(5) DEPARTMENT.— The term "Department" means the Department of Agriculture.

(6) DISTRICT.— The term "district" means a geographical area of the United States, as determined by the Board and approved by the Secretary, in which there is produced approximately one-fourth of the volume of pecans produced in the United States.

(7) FIRST HANDLER.— The term "first handler" means the first person who buys or takes possession of pecans from a grower for marketing. If a grower markets pecans directly to consumers, such grower shall be considered the first handler with respect to pecans grown by such grower.

(8) GROWER.) The term "grower" means any person engaged in the production and sale of pecans in the United States who owns, or who shares the ownership and risk of loss of, such pecans.

(9) GROWER-SHELLER.) The term "grower-sheller" means a person who)

(A) shells pecans, or has pecans shelled for such person, in the United States; and

(B) during the immediately previous year, grew 50 percent or more of the pecans such person shelled or had shelled for such person.

(10) HANDLE.) The term "handle" means receipt of in-shell pecans by a sheller or first handler, including pecans produced by such sheller or first handler.

(11) IMPORTER.) The term "importer" means any person who imports pecans from outside of the United States for sale in the United States.

(12) INDUSTRY INFORMATION.) The term "industry information" means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the pecan industry.

(13) IN-SHELL PECAN.) The term "in-shell pecan" means a pecan that has a shell that has not been removed.

(14) TO MARKET.) The term "to market" means to sell or offer to dispose of pecans in any channel of commerce.

(15) MEMBER.) The term "member" means a member of the Board.

(16) PECAN.) The term "pecan" means the nut of the pecan tree carya illinoensis.

(17) PERSON.) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(18) PLAN.) The term "plan" means a plan issued under section 1908.

(19) PROMOTION.) The term "promotion" means any action taken by the Board, pursuant to this subtitle, to present a favorable image of pecans to the public with the express intent of improving the competitive position of pecans in the marketplace and stimulating sales of pecans, including paid advertising.

(20) RESEARCH.) The term "research" means any type of test, study, or analysis designed to advance the image, desirability, usage, marketability, production, product development, or quality of pecans.

(21) SECRETARY.) The term "Secretary" means the Secretary of Agriculture.

(22) SHELL.) The term "shell" means to remove the shell from an in-shell pecan.

(23) SHELLED PECAN.) The term "shelled pecan" means a pecan kernel, or portion of a kernel, after the pecan shell has been removed.

(24) SHELLER.) The term "sheller" means any person who)

(A) shells pecans or has pecans shelled for the account of such person; and

(B) during the immediately previous year, purchased more than 50 percent of the pecans such person shelled or had shelled for such account.

(25) STATE.) The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(26) UNITED STATES.) The term "United States" means collectively the several States, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 6002.)

SEC. 1908. ISSUANCE OF PLANS.

(a) IN GENERAL.) To effectuate the declared policy of section 1906(b), the Secretary shall, subject to this subtitle, issue and from time to time amend, plans applicable to growers, grower-shellers, shellers, first handlers, and importers of pecans. Any such plan shall be national in scope. Not more than one plan shall be in effect under this subtitle at any one time.

(b) PROCEDURE.)

(1) PROPOSAL FOR ISSUANCE OF PLAN.) The Secretary may propose the issuance of a plan under this subtitle, or an association of pecan growers or grower-shellers or any other person that will be affected by this subtitle may request the issuance of, and submit a proposal for, such a plan.

(2) PROPOSED PLAN.) Not later than 60 days after the receipt of a request and proposal by an interested person for a plan, or when the Secretary determines to propose a plan, the Secretary shall publish a proposed plan and give due notice and opportunity for public comment on the proposed plan.

(3) ISSUANCE OF PLAN.) After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue a plan, taking into consideration the comments received and including in the plan provisions necessary to ensure that the plan is in conformity with the requirements of this subtitle.

(4) EFFECTIVE DATE OF PLAN.) Such plan shall be issued and become effective not later than 150 days following publication of the proposed plan.

(c) AMENDMENTS.) The Secretary, from time to time, may amend any plan issued under this section. The provisions of this subtitle applicable to a plan shall be applicable to amendments to a plan. (7 U.S.C. 6003.)

SEC. 1909. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 6004.)

SEC. 1910. REQUIRED TERMS IN PLANS.

(a) IN GENERAL. **)** Each plan issued under this subtitle shall contain the terms and conditions prescribed in this section.

(b) PECAN MARKETING BOARD. **)**

(1) ESTABLISHMENT. **)** The plan shall establish a Pecan Marketing Board to carry out the program referred to in section 1906(b).

(2) SERVICE TO ENTIRE INDUSTRY. **)** The Board shall carry out programs and projects that will provide maximum benefit to the pecan industry in all parts of the United States and only generically promote pecans.

(3) BOARD MEMBERSHIP. **)** The Board shall consist of 15 members, including **)**

(A) 8 members who are growers;

(B) 4 members who are shellers;

(C) one member who is a first handler and who derives over 50 percent of the member's gross income from buying and selling pecans;

(D) one member who is an importer of pecans into the United States, nominated by the Board;

(E) one member representing the general public, nominated by the Board; and

(F) at the option of the Board, a consultant or advisor representing the views of pecan producers in a country other than the United States who may be chosen to attend Board functions as a nonvoting member.

(4) REPRESENTATION OF MEMBERS. **)**

(A) GROWER REPRESENTATIVES. **)** Of the growers referred to in paragraph (3)(A), 2 members shall be from each district.

(B) SHELLER REPRESENTATIVES. **)** Of the shellers referred to in paragraph (3)(B) **)**

(i) 2 members shall be selected from among shellers whose place of residence is east of the Mississippi River; and

(ii) 2 members shall be selected from among shellers whose place of residence is west of the Mississippi River.

(C) FIRST HANDLER REPRESENTATIVE. **)** The first handler representative on the Board referred to in paragraph (3)(C) shall be selected from among first handlers whose place of residence is in a district.

(D) IMPORTER REPRESENTATIVE.—The importer representative on the Board referred to in paragraph (3)(D) shall be an individual who imports pecans into the United States.

(E) PUBLIC REPRESENTATIVE.—The public representative on the Board referred to in paragraph (3)(E) shall not be a grower, grower-sheller, sheller, first handler, or importer.

(5) ALTERNATE FOR EACH MEMBER.—Each member of the Board shall have an alternate with the same qualifications as the member such alternate would replace.

(6) LIMITATION ON STATE RESIDENCE.—There shall be no more than one member from each State in each district, except that the State of Georgia may have 2 growers from such State representing the district that it is in.

(7) 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—

(A) review the geographic distribution of pecan production throughout the United States; and

(B) if warranted, recommend to the Secretary that the Secretary reapportion a district in order to reflect the geographic distribution of pecan production.

(8) SELECTION PROCESS FOR MEMBERS.—

(A) PUBLICITY.—The Board shall give reasonable publicity to the industry for nomination of persons interested in being nominated for Board membership.

(B) ELIGIBILITY.—Each grower and sheller shall be eligible to vote for the nomination of members who represent that class of members on the Board. Growers shall be eligible to vote for the nomination of the first handler members on the Board.

(C) SELECTION OF NOMINEES.—Each person referred to in subparagraph (B) shall have one vote. The 2 eligible candidates receiving the largest number of votes cast for each Board position for each class of members shall be the nominees for such position.

(D) CERTIFICATION.—Except for the establishment of the initial Board, the nominations made under subparagraph (C) and subsections (b)(3)(D) and (b)(3)(E) shall be certified by the Board and submitted to the Secretary no later than May 1 or such other date recommended by the Board and approved by the Secretary preceding the commencement of the term of office for Board membership, as established in paragraph (9).

(E) APPOINTMENT.—To each vacant Board position, the Secretary shall appoint 1 individual from among the nominees certified and submitted under subparagraph (D).

(F) REJECTION OF NOMINEES.—The Secretary may reject any nominee submitted under subparagraph (D). If there are insufficient nominees from which to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in the same manner.

(G) INITIAL BOARD.—The Secretary shall establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in subparagraphs (A), (B), and (C) of paragraph (3), the Secretary shall perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate. Nominations for those members of the initial Board described in subparagraphs (D) and (E) of paragraph (3) shall be made in accordance with paragraph (3).

(H) FAILURE TO NOMINATE.—If growers and shellers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the plan. If the Board fails to nominate an importer or a public representative, such member may be appointed without a nomination.

(9) TERMS OF OFFICE.—

(A) IN GENERAL.—The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board established under paragraph (8)(G) shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

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

(C) LIMITATION ON TERMS.—No individual may serve more than 2 consecutive 3-year terms as a member.

(D) VACANCIES.—

(i) SUBMITTING NOMINATIONS.—To fill any vacancy created by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that at least 2 eligible nominations for a successor for each such vacancy be submitted by the Board in the manner provided in paragraph (8).

(ii) LACK OF NOMINATIONS.—If at least 2 eligible nominations are not submitted under clause (i), the Secretary shall determine the manner of submission of nominations for the vacancy.

(10) 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 THE BOARD.—The plan shall define the powers and duties of the Board, which shall include the power and duty—

(1) to administer the plan in accordance with its terms and conditions;

(2) to make regulations to effectuate the terms and conditions of the plan;

(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 such persons;

(6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal period, a recommended rate of assessment under section 1912, and a fiscal period budget of the anticipated expenses in the administration of the plan, 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 promotion, research, industry information and consumer information;

(9) to carry out research, promotion, industry information, and consumer information, and to pay the costs of such projects with assessments collected pursuant to section 1912;

(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 growers, grower-shellers, first handlers, shellers, importers, and the public to assist in the development of research, promotion, industry information, and consumer information programs for pecans;

(12) to invest, pending disbursement under a program or project, funds collected through assessments authorized under this subtitle, only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any 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;

except that income from any such invested funds may be used for any purpose for which the invested funds may be used;

(13) to receive, investigate, and report to the Secretary complaints of violations of the plan;

(14) to furnish the Secretary with such information as the Secretary may request;

(15) to recommend to the Secretary amendments to the plan; and

(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 plan.

(d) PROGRAMS AND BUDGETS.—

(1) SUBMISSION TO SECRETARY.—The plan shall provide that the Board shall submit to the Secretary for approval any program or project of promotion, research, consumer information, or industry information. No program or project shall be implemented prior to its approval by the Secretary.

(2) BUDGETS.—The plan shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of such fiscal year, to submit to the Secretary for approval budgets of its anticipated expenses (including reimbursements under subsection (b)(10)) and disbursements in the implementation of the plan, including projected costs of promotion, research, 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 1912 or funds borrowed pursuant to paragraph (5).

(5) AUTHORITY TO BORROW.—In order 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.

(6) LIMITATION ON SPENDING.—Effective on the date that is 3 years after the date of the establishment of the Board, the Board shall not spend in excess of 20 percent of the assessments collected under section 1912 for administration of the Board.

(e) CONTRACTS AND AGREEMENTS. **)**

(1) IN GENERAL. **)** To ensure efficient use of funds, the plan shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects of pecan promotion, research, consumer information, or industry information, including contracts with grower and grower-sheller organizations, and for the payment of the cost thereof with funds received by the Board under the plan.

(2) REQUIREMENTS. **)** Any such contract or agreement shall provide that **)**

(A) the contracting party shall develop and submit to the Board a program or project together with a budget or budgets that shall show estimated costs to be incurred for such 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 of its 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) GROWER AND GROWER-SHELLER ORGANIZATIONS. **)** The plan shall provide that the Board may contract with grower and grower-sheller organizations for any other services. Any such contract shall include provisions comparable to those required by paragraph (2).

(f) BOOKS AND RECORDS OF BOARD. **)**

(1) IN GENERAL. **)** The plan 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 its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) PROHIBITION. **)** The Board shall not engage in any action to, nor shall any funds received by the Board under this subtitle be used to **)**

(1) influence legislation or governmental action, other than recommending to the Secretary amendments to the plan;

(2) engage in any action that would be a conflict of interest; or

(3) engage in any advertising that may be false or misleading.

(h) BOOKS AND RECORDS. **)**

(1) IN GENERAL. **)** The plan shall require that each first handler, grower-sheller, or importer shall **)**

(A) maintain and submit to the Board any reports considered necessary by the Secretary to ensure compliance with this subtitle; 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 subtitle, including such records as are necessary to verify any required reports.

(2) TIME REQUIREMENT.) The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal period of the applicability of such records.

(3) CONFIDENTIALITY.)

(A) IN GENERAL.) Except as otherwise provided in this subtitle, 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 only 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 subtitle.

(C) MISCONDUCT.) Any disclosure of confidential information in violation of subparagraph (A) by any Board member or employee of the Board, except as required by other law or allowed under subparagraph (B) or (D), shall be considered a violation of this subtitle.

(D) GENERAL STATEMENTS.) Nothing in this paragraph may be construed to prohibit)

(i) the issuance of general statements, based on the reports, of the number of persons subject to the plan or statistical data collected therefrom, which 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 the plan, together with a statement of the particular provisions of the plan violated by such person.

(4) AVAILABILITY OF INFORMATION.)

(A) EXCEPTION.) Except as provided in this subtitle, information obtained under this subtitle 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.

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

(5) WITHHOLDING INFORMATION.— Nothing in this subtitle shall be construed to authorize the withholding of information from Congress.

(i) USE OF ASSESSMENTS.— The plan shall provide that the assessments collected under section 1912 shall be used for payment of the expenses in implementing and administering this subtitle, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this subtitle, except for the salaries of Government employees incurred in conducting referenda.

(j) OTHER TERMS AND CONDITIONS.— The plan also shall contain such terms and conditions, not inconsistent with this subtitle, as determined necessary by the Secretary to effectuate this subtitle. (7 U.S.C. 6005.)

SEC. 1911. PERMISSIVE TERMS IN PLANS.

(a) IN GENERAL.— A plan issued pursuant to this subtitle may contain one or more of the terms and conditions contained in this section.

(b) EXEMPTIONS.— The plan may provide authority to exempt from the plan pecans used for nonfood uses and authority for the Board to require satisfactory safeguards against improper uses of such exemptions.

(c) DIFFERENT PAYMENT AND REPORTING SCHEDULES.— The plan may provide authority to designate different payment and reporting schedules for growers, grower-shellers, first handlers and importers to recognize differences in marketing practices and procedures utilized in different production areas.

(d) PROMOTION.— The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the promotion of pecans and for the disbursement of necessary funds for such purposes, except that—

(1) any such program or project shall be directed toward increasing the general demand for pecans; and

(2) such promotional activities shall comply with other restrictions on the use of funds that are established under this subtitle.

(e) RESEARCH AND INFORMATION.— The plan may provide for establishing and carrying on research, consumer information, and industry

information projects and studies to the end that the marketing and utilization of pecans may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) RESERVE FUNDS.—The plan may provide authority to accumulate reserve funds from assessments collected pursuant to this subtitle, to permit an effective and continuous coordinated program of research, consumer information, industry information and promotion in years when the production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for the operation of the plan for 2 years.

(g) FOREIGN MARKETS.—The plan may provide authority to use funds collected under this subtitle, with the approval of the Secretary, for the development and expansion of pecan sales in foreign markets. (7 U.S.C. 6006.)

SEC. 1912. ASSESSMENTS.

(a) IN GENERAL.—During the effective period of a plan issued pursuant to this subtitle, assessments shall be—

(1) levied on all pecans produced in, and all pecans imported into, the United States and marketed; and

(2) deducted from the payment made to a grower for all pecans sold to a first handler.

(b) LIMITATION ON ASSESSMENTS.—No more than one assessment may be assessed under subsection (a) on a grower (as remitted by a first handler), grower-sheller, or importer, for any lot of pecans handled or imported.

(c) REMITTING ASSESSMENTS.—

(1) IN GENERAL.—Assessments required under subsection (a) shall be remitted to the Board by—

(A) a first handler; and

(B) an importer.

(2) Times to remit assessment.—

(A) FIRST HANDLERS.—Each first handler who is not a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board no later than the last day of the month following the month that the pecans being assessed were purchased or marketed by such first handler.

(B) GROWER-SHELLERS.—Each first handler who is a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board, to the extent practicable, in payments of one-third of the total annual

amount of such assessment due to the Board on January 31, March 31, and May 10, or such dates as may be recommended by the Board and approved by the Secretary, during the fiscal year that the pecans being assessed were harvested.

(C) IMPORTERS.— Importers of pecans into the United States shall pay the assessment at the time the pecans enter the United States and shall remit such assessment to the Board.

(d) ASSESSMENT RATE.—

(1) IN GENERAL.— Except as provided in paragraph (2), assessment rates shall be recommended by the Board and approved by the Secretary, except that the maximum assessment shall not exceed—

(A) during the period commencing on the effective date of the issuance of a plan and ending on the date the referendum is conducted under section 1916(a), one-half cent per pound for in-shell pecans as determined by the Board and approved by the Secretary; and

(B) after such period, 2 cents per pound for in-shell pecans.

(2) ADJUSTING RATE FOR SHELLED PECANS.— The rate of assessment of shelled pecans shall be twice the rate established for in-shell pecans pursuant to paragraph (1).

(3) SPECIAL STATE ASSESSMENT.—

(A) IN GENERAL.— Notwithstanding any other provision of this subtitle, with the approval of the Secretary and if authorized by State law and requested by such State, a special assessment of one-quarter cent per pound for in-shell pecans, and an appropriate per-pound assessment for shelled pecans as adjusted under paragraph (2), shall be remitted to the Board for the purpose of utilizing such funds by a State pecan marketing board for research projects to promote pecans pursuant to State law.

(B) COLLECTION AND REMITTANCE.— The Board shall collect such assessments and upon receipt of such assessments shall remit such assessments to the State, within a time period mutually agreed upon between the State and the Board, and approved by the Secretary. In the collection of such State assessments, neither the Board nor the Secretary shall in any manner enforce the collection or remittance of any such payment by producers of such State assessments or investigate nonpayment of such State assessments, except to provide to a State the names of growers from whom such assessments were collected and the respective amounts of assessments collected.

(C) REGULATIONS.— The Secretary is authorized to make such regulations as may be necessary to carry out the provisions of this section.

(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 due date established by the Board under subsection (c)(2), to the Board the total amount for which such 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 effective date of a plan first issued under section 1908 and ending on the date the referendum is conducted under section 1916(a), the Board shall—

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

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

(2) PLACEMENT OF FUNDS IN ACCOUNT.—The Board shall place in such 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 such period by 10 percent.

(3) RIGHT TO RECEIVE REFUND.—Subject to paragraphs (4), (5), and (6), any grower, grower-sheller, or importer shall have the right to demand and receive from the Board a one-time refund of assessments paid by or on behalf of such grower, grower-sheller, or importer during the period referred to in paragraph (1) if—

(A) such grower, grower-sheller, or importer is required to pay such assessments;

(B) such grower, grower-sheller, or importer does not support the program established under this subtitle;

(C) such grower, grower-sheller, or importer demands such refund prior to the conduct of the referendum under section 1916(a); and

(D) the plan is not approved pursuant to the referendum conducted under section 1916(a).

(4) FORM OF DEMAND.—Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

(5) MAKING OF REFUND.—Such refund shall be made on submission of proof satisfactory to the Board that such grower, grower-sheller, or importer paid the assessment for which refund is demanded.

(6) PRORATION.—If—

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible growers, grower-shellers, or importers; and

(B) the plan is not approved pursuant to the referendum conducted under section 1916(a);

the Board shall prorate the amount of such refunds among all eligible growers, grower-shellers, and importers who demand such refund.

(7) PROGRAM APPROVED.**)** If the plan is approved pursuant to the referendum conducted under section 1916(a), all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this subtitle. (7 U.S.C. 6007.)

SEC. 1913. PETITION AND REVIEW.

(a) PETITION.**)**

(1) IN GENERAL.**)** A person subject to a plan issued under this subtitle may file with the Secretary a petition**)**

(A) stating that the plan, any provision of the plan, or any obligation imposed in connection with the plan is not in accordance with law; and

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

(2) HEARINGS.**)** The petitioner shall be given the opportunity for a hearing on the petition, on the record and in accordance with regulations issued by the Secretary.

(3) RULING.**)** After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) REVIEW.**)**

(1) COMMENCEMENT OF ACTION.**)** The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a).

(2) PROCESS.**)** Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) REMANDS.**)** If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either**)**

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

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

(4) ENFORCEMENT.—The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 1914. (7 U.S.C. 6008.)

SEC. 1914. 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, this subtitle or any plan or regulation issued under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.—A civil action to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this subtitle or any plan or regulation issued under this subtitle if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by administrative action under subsection (c) or by providing a suitable written notice or warning to any person committing the violation.

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—

(A) IN GENERAL.—A person who willfully violates any provision of this subtitle or any plan or regulation issued under this subtitle, or who fails to pay, collect, or remit any assessment or fee required of the person under this subtitle or any plan or regulation issued under this subtitle, may be assessed by the Secretary a civil penalty of not less than $1,000 nor more than $10,000 for each such violation.

(B) SEPARATE OFFENSE.—Each violation described in subparagraph (A) shall be a separate offense.

(2) CEASE AND DESIST ORDERS.—In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) NOTICE AND HEARING.—No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

(4) FINALITY.—The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person against whom the order is issued files an appeal from the Secretary's order in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.) A person against whom a civil penalty is assessed or a cease and desist order is issued under subsection (c) may obtain review of such penalty or order in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia, by)

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

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

(2) RECORD.) The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) STANDARD OF REVIEW.) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS.) Any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing on the record and for judicial review under the procedures specified in subsections (c) and (d), of not more than $1,000 for each offense. Each day during which the failure continues shall be considered a separate violation of such order.

(f) FAILURE TO PAY PENALTY.) If a person fails to pay a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate district court has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of such order imposing such civil penalty shall not be subject to review. (7 U.S.C. 6009.)

SEC. 1915. INVESTIGATION AND POWER TO SUBPOENA.

(a) IN GENERAL.) The Secretary may make such investigations as the Secretary determines necessary)

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

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this subtitle, or of any plan, rule, or regulation issued under this subtitle.

(b) POWER TO SUBPOENA.)

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

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 1913 or 1914, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In 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 such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under section 1913 or 1914 shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 6010.)

SEC. 1916. REQUIREMENT OF REFERENDUM.

(a) IN GENERAL.—Not later than 24 months after the effective date of the plan first issued under section 1908, the Secretary shall conduct a referendum among growers, grower-shellers, and importers, who during a representative period determined by the Secretary have been engaged in the production or importation of pecans, for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the plan.

(b) OTHER REFERENDA.—

(1) IN GENERAL.—After the referendum required under subsection (a), the Secretary shall hold a referendum on request of the Board or 10 percent or more of the total number of growers, grower-shellers, and importers, to determine if growers, grower-shellers, and importers favor the termination or suspension of the plan.

(2) SUSPENSION OR TERMINATION.) The Secretary shall terminate or suspend such plan, in accordance with section 1917(b), whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum.

(c) COSTS OF REFERENDUM.) The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this subtitle, except for the salaries of Government employees.

(d) MANNER.)

(1) IN GENERAL.) Referenda conducted pursuant to this subtitle shall be conducted in such a manner as is determined by the Secretary.

(2) ADVANCE REGISTRATION.) A grower, grower-sheller, or importer who chooses to vote in any referendum conducted under this subtitle shall register in person prior to the voting period at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary, for such grower, grower-sheller, or by mailing such a request to the Secretary on behalf of an importer.

(3) VOTING.) A grower, grower-sheller, or importer who votes in any referendum conducted under this subtitle shall vote in person at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary or by mail to the Secretary.

(4) NOTICE.) Each Agricultural Stabilization and Conservation Service office shall notify all growers, grower-shellers, and importers in the area of such office, as determined by the Secretary, at least 30 days prior to a referendum conducted under this subtitle. Such notice shall explain the registration and voting procedures established under this subsection. (7 U.S.C. 6011.)

SEC. 1917. SUSPENSION OR TERMINATION OF PLAN.

(a) MANDATORY SUSPENSION OR TERMINATION.) The Secretary shall, whenever the Secretary finds that the plan or any provision of the plan obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of such plan or provision.

(b) SUSPENSION OR TERMINATION.) If, as a result of any referendum conducted under this subtitle, the Secretary determines that suspension or termination of a plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, the Secretary shall)

(1) within 6 months after making such determination, suspend or terminate, as the case may be, collection of assessments under the plan; and

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

(c) The termination or suspension of any plan, or any provision thereof, shall not be considered a plan within the meaning of this subtitle. (7 U.S.C. 6012.)

SEC. 1918. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.**)** There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES.**)** Funds appropriated to carry out this subtitle shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any plan issued under this subtitle. (7 U.S.C. 6013.)

POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT [1]

(7 U.S.C. 7481 - 7491)

SEC. 571. SHORT TITLE.

This subtitle may be cited as the "Popcorn Promotion, Research, and Consumer Information Act". (7 U.S.C. 7401 note.)

SEC. 572. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS. **)** Congress finds that **)**

(1) popcorn is an important food that is a valuable part of the human diet;

(2) the production and processing of popcorn plays a significant role in the economy of the United States in that popcorn is processed by several popcorn processors, distributed through wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) popcorn must be of high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of popcorn are available to the people of the United States;

(4) the maintenance and expansion of existing markets and uses and the development of new markets and uses for popcorn are vital to the welfare of processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States;

(5) the cooperative development, financing, and implementation of a coordinated program of popcorn promotion, research, consumer information, and industry information is necessary to maintain and expand markets for popcorn; and

(6) popcorn moves in interstate and foreign commerce, and popcorn that does not move in those channels of commerce directly burdens or affects interstate commerce in popcorn.

(b) POLICY. **)** It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing (through adequate assessments on unpopped popcorn processed domestically), and

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[1] Title V, Subtitle E, of the Federal Agriculture Improvement and Reform Act of 1996, Pub.L. 104-127, 110 Stat. 1074, Apr. 4, 1996.

carrying out an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to **)**

(1) strengthen the position of the popcorn industry in the marketplace; and

(2) maintain and expand domestic and foreign markets and uses for popcorn.

(c) PURPOSES. **)** The purposes of this subtitle are to **)**

(1) maintain and expand the markets for all popcorn products in a manner that **)**

(A) is not designed to maintain or expand any individual share of a producer or processor of the market;

(B) does not compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name popcorn products; and

(C) authorizes and funds programs that result in government speech promoting government objectives; and

(2) establish a nationally coordinated program for popcorn promotion, research, consumer information, and industry information.

(d) STATUTORY CONSTRUCTION **)** -This subtitle treats processors equitably. Nothing in this subtitle **)**

(1) provides for the imposition of a trade barrier to the entry into the United States of imported popcorn for the domestic market; or

(2) provides for the control of production or otherwise limits the right of any individual processor to produce popcorn. (7 U.S.C. 7481.)

SEC. 573. DEFINITIONS.

In this subtitle (unless the context otherwise requires):

(1) BOARD. **)** The term "Board" means the Popcorn Board established under section 575(b).

(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 574.

(8) PERSON.—The term "person" means an individual, group of individuals, partnership, corporation, association, or cooperative, or any other legal entity.

(9) POPCORN.—The term "popcorn" means unpopped popcorn (Zea Mays L) that is—

(A) commercially grown;

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

(C) introduced into a channel of commerce.

(10) PROCESS.—The term "process" means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

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

(12) PROMOTION.—The term "promotion" means an action, including paid advertising, to enhance the image or desirability of popcorn.

(13) RESEARCH.—The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

(14) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(15) STATE.—The term "State" means each of the 50 States and the District of Columbia.

(16) UNITED STATES.—The term "United States" means all of the States. (7 U.S.C. 7482.)

SEC. 574. ISSUANCE OF ORDERS.

(a) IN GENERAL.—To effectuate the policy described in section 572(b), 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 subtitle 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 subtitle. 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 subtitle 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. (7 U.S.C. 7483.)

SEC. 575. 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 hundredweight of popcorn.

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

(4) USE OF ASSESSMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and subsection (c)(5), 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 THE 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 subtitle or a regulation issued under this subtitle. The information shall be made available to the Secretary as appropriate for the administration or enforcement of this subtitle, the order, or any regulation issued under this subtitle.

(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 subtitle may be made available to another agency or officer of the Federal Government for any purpose other than the implementation of this subtitle and any investigatory or enforcement activity necessary for the implementation of this subtitle.

(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 subtitle, as are necessary to effectuate this subtitle, including regulations relating to the assessment of late payment charges. (7 U.S.C. 7484.)

SEC. 576. REFERENDA.

(a) INITIAL REFERENDUM.—

(1) IN GENERAL.— Within the 60-day period immediately preceding the effective date of an order, as provided in section 574(b)(3), 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 574(b), 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 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 575(i)(3)(C)(ii). (7 U.S.C. 7485.)

SEC. 577. 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 by delivering a copy of the complaint to the Secretary.

(3) REMANDS.—If the court determines, under paragraph (1), that a ruling issued under subsection (a)(4) is not in accordance with applicable law, the court shall remand the matter to the Secretary with directions—

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

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

(c) ENFORCEMENT.—The pendency of proceedings instituted under subsection (a) may not impede, hinder, or delay the Secretary or the Attorney General from taking action under section 578. (7 U.S.C. 7486.)

SEC. 578. ENFORCEMENT.

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

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

(c) REFERRAL TO ATTORNEY GENERAL.**)** A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action. (7 U.S.C. 7487.)

SEC. 579. 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 subtitle; and

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

(b) OATHS, AFFIRMATIONS, AND SUBPOENAS.**)** For the purpose of an investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States.

(c) AID OF COURTS.**)**

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

(2) ENFORCEMENT ORDER OF THE COURT.**)** The court may issue an enforcement order requiring the person to appear before the Secretary to produce records or to give testimony concerning the matter under investigation.

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

(4) PROCESS. **)** Process in a case under this subsection may be served in the judicial district in which the person resides or carries on business or wherever the person may be found. (7 U.S.C. 7488.)

SEC. 580. RELATION TO OTHER PROGRAMS.

Nothing in this subtitle preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State. (7 U.S.C. 7489.)

SEC. 581. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 7490.)

SEC. 582. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle. Amounts made available under this section or otherwise made available to the Department, and amounts made available under any other marketing or promotion order, may not be used to pay any administrative expense of the Board. (7 U.S.C. 7491.)

POTATO RESEARCH AND PROMOTION ACT [1]

(7 U.S.C. 2611-2627)

This title may be cited as the "Potato Research and Promotion Act". (7 U.S.C. 2611 note.)

FINDINGS AND DECLARATION OF POLICY

SEC. 302.[2] Potatoes are a basic food in the United States and foreign countries. They are produced by many individual potato growers in every State in the United States and imported into the United States from foreign countries. In 1966, there were one million four hundred and ninety-seven thousand acres of cropland in the United States devoted to the production of potatoes.

Potatoes and potato products move in the channels of interstate or foreign commerce, and potatoes which do not move in such channels directly burden or affect interstate commerce in potatoes and potato products.

The maintenance and expansion of existing potato markets and the development of new or improved markets are vital to the welfare of potato growers and those concerned with marketing, using, and processing potatoes as well as the general economic welfare of the Nation.

Therefore, it is the declared policy of the Congress and the purpose of this title that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the financing, through adequate assessments on all potatoes harvested in the United States for commercial use and imported into the United States from foreign countries, and the carrying out of an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products. (7 U.S.C. 2611.)

DEFINITIONS

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[1] The Potato Research and Promotion Act was enacted as Title III of Pub. L. 91-670, 84 Stat. 2041-2047, January 11, 1971.

[2] As amended by Pub. L. 101-624, 104 Stat. 3865, Nov. 28, 1990, to make the Act applicable to potatoes produced in foreign countries and imported into the United States.

SEC. 303.[3] As used in this title:

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "person" means any individual, partnership, corporation, association, or other entity.

(c) The term "potatoes" means all varieties of Irish potatoes grown by producers in the 50 States of the United States, and grown in foreign countries and imported into the United States.

(d) The term "handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes in a manner specified in a plan issued pursuant to this title or in the rules and regulations issued thereunder.

(e) The term "producer" means any person engaged in the growing of five or more acres of potatoes.

(f) The term "promotion" means any action taken by the National Potato Promotion Board, pursuant to this title, to present a favorable image for potatoes to the public with the express intent of improving their competitive positions and stimulating sales of potatoes and shall include, but shall not be limited to, paid advertising.

(g) The term "importer" means any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans or seed potatoes into the United States. (7 U.S.C. 2612.)

AUTHORITY TO ISSUE A PLAN

SEC. 304.[4] To effectuate the declared policy of this title, the Secretary shall, subject to the provisions of this title, issue and from time to time amend, orders applicable to handlers and importers and shall have authority to issue orders authorizing the collection of assessments on potatoes handled or imported under the provisions of this title, and to authorize the use of such funds to provide research, development, advertising, and promotion of potatoes in a manner prescribed in this title. Any order issued by the Secretary under this title shall hereinafter in this title be referred to as a "plan". Any such plan shall be applicable to potatoes produced in the 50 States of the United States and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States. (7 U.S.C. 2613.)

NOTICE AND HEARINGS

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[3] Pub. L. 101-624, 104 Stat. 3866, changed "forty-eight" contiguous" to "50" in subsection (c) and added a new subsection (g).

[4] As amended by Pub. L. 101-624, 104 Stat. 3866, Nov. 28, 1990.

SEC. 305.[5] When sufficient evidence is presented to the Secretary by interested persons, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this title, he shall give due notice and opportunity for a hearing upon a proposed plan. Such hearing may be requested by any interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan. (7 U.S.C. 2614.)

FINDING AND ISSUANCE OF A PLAN

SEC. 306. After notice and opportunity for hearing, the Secretary shall issue a plan if he finds, and sets forth in such plan, upon the evidence introduced at such hearing, that the issuance of such plan and all the terms and conditions thereof will tend to effectuate the declared policy of this title. (7 U.S.C. 2615.)

REGULATIONS

SEC. 307. The Secretary is authorized to make such regulations with the force and effect of law, as may be necessary to carry out the provisions of this title and the powers vested in him by this title. (7 U.S.C. 2616.)

REQUIRED TERMS IN PLANS

SEC. 308. Any plan issued pursuant to this title shall contain the following terms and conditions:

(a) Providing for the establishment by the Secretary of a National Potato Promotion Board (hereinafter referred to as "the board") and for defining its powers and duties, which shall include powers **)**

(1) to administer such plan in accordance with its terms and conditions;

(2) to make rules and regulations to effectuate the terms and conditions of such plan;

(3) to receive, investigate, and report to the Secretary complaints of violations of such plan; and

(4) to recommend to the Secretary amendments to such plan.

[5] *Ibid.*

(b)[6] Providing that the board shall be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection. If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary. Representatives of producers shall be nominated by producers in such manner as may be prescribed by the Secretary. Public representatives shall be nominated by the board in such manner as may be prescribed by the Secretary. If producers or importers fail to select nominees for appointment to the board, or the board fails to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan. The requirement for inclusion of public representatives on the board shall not be subject to producer approval, or to importer approval when importers are subject to a plan, in a referendum.

(c) Providing that board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the board.

(d) Providing that the board shall prepare and submit to the Secretary for his approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(e)[7] Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate at not more than 2 cents per one hundred pounds of potatoes handled; except that if approved by producers, and importers when importers are subject to a plan, pursuant to section 314, the rate of assessment shall not exceed one-half of 1 per centum of the immediate past ten-calendar-year United States average price received for potatoes by growers as reported by the Department of Agriculture.

(f) Providing that)

[6] Amended by Pub. L. 97-244, 96 Stat. 310, Aug. 26, 1982, to provide for public representation on the Board, and by Pub. L. 98-171, 97 Stat. 1117, Nov. 29, 1983, to clarify that the provision for public representatives to the board is not subject to producer approval in a referendum. Pub. L. 101-624, 104 Stat. 3866, Nov. 28, 1990, added importers on the board when importers are subject to a plan.

[7] Amended by Pub. L. 97-244, 96 Stat. 310, and Pub. L. 98-171, 97 Stat. 1117, to provide for a change in the rate of assessment. Pub. L. 101-624, 104 Stat. 3867, increased the assessment rate from 1 cent to 2 cents and made applicable to importers when importers are subject to a plan.

(1)[8] funds collected by the board shall be used for research, development, advertising, or promotion of potatoes and potato products and such other expenses for the administration, maintenance, and functioning of the board, as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this title: *Provided*, That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval, or importer approval when importers are subject to a plan, in a referendum;

(2) no advertising or sales promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products; and

(3) no funds collected by the board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a)(4) of this section.

(g) Providing that the board shall, subject to the provisions of subsections (e) and (f) of this section, develop and submit to the Secretary for his approval any research, development, advertising or promotion programs or projects, and that any such program or project must be approved by the Secretary before becoming effective.

(h) Providing the board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertising or promotion programs or projects, and the payment of the cost thereof with funds collected pursuant to this title.

(i) Providing that the board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.[9] (7 U.S.C. 2617.)

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[8] Amended by Pub. L. 97-244, 96 Stat. 310, to provide for reimbursement of referendum and administrative costs incurred by USDA, and by Pub. L. 98-171, 97 stat. 1117, to clarify that the provision requiring the USDA to be reimbursed for any referendum and administrative costs incurred is exempt from producer approval in a referendum. Pub. L. 101-624, 104 Stat. 3867, provided that such costs are not subject to importer approval if importers are subject to a plan.

[9] Pub. L. 101-624, 104 Stat. 3867, Nov. 28, 1990, deleted former paragraph (g) and redesignated paragraphs (h), (i), and (j) as paragraphs (g), (h), and (i), respectively.

PERMISSIVE TERMS IN PLANS

SEC. 309. Any plan issued pursuant to this title may contain one or more of the following terms and conditions:

(a) Providing authority to exempt from the provisions of the plan potatoes used for nonfood users, and authority for the board to require satisfactory safeguards against improper use of such exemptions.

(b) Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures utilized in different production areas.

(c) Providing for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and sales promotion of potatoes and potato products and for the disbursement of necessary funds for such purposes: *Provided, however*, That any such program or project shall be directed toward increasing the general demand for potatoes and potato products: *And provided further*, That such promotional activities shall comply with the provisions of section 308(f) of this title.

(d) Providing for establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(e) Providing for authority to accumulate reserve funds from assessments collected pursuant to this title, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when the production and assessment income may be reduced: *Provided*, That the total reserve fund does not exceed the amount budgeted for two years' operation.

(f) Providing for authority to use funds collected herein, with the approval of the Secretary, for the development and expansion of potato and potato product sales in foreign markets.

(g) Providing that any potato producer or importer against whose potatoes any assessment is made and collected under authority of this title and who is not in favor of supporting the research and promotion program as provided for under this title shall have the right to demand and receive from the board a refund of such assessment. Such demand shall be made personally by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than 90 days, and upon submission of the proof satisfactory to the board that the producer or importer paid the assessment for which refund is sought, and any such refund shall be made within 60 days after demand therefor.

(h) Providing for authority to assess imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.

(i) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this title and necessary to effectuate the other provisions of such plan.[10] (7 U.S.C. 2618.)

ASSESSMENTS

SEC. 310.[11] (a)(1) Each handler designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes; and such handler may collect from any producer or deduct from the proceeds paid to any producer, on whose potatoes such assessment is made, any such assessment required to be paid by such handler. Such handler shall maintain a separate record with respect to each producer for whom potatoes were handled, and such records shall indicate the total quantity of potatoes handled by him including those handled for producers and for himself, shall indicate the total quantity of potatoes handled by him which are included under the terms of a plan as well as those which are exempt under such plan, and shall indicate such other information as may be prescribed by the board. To facilitate the collection and payment of such assessments, the board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in any State or area. No more than one such assessment shall be made on any potatoes.

(2) When importers are subject to a plan, each importer designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes. The assessment on imported tablestock, frozen, or processed potatoes for ultimate consumption by humans, and seed potatoes shall be established by the board so that the effective assessment shall equal that on domestic production and shall be paid by the importer to the board at the time of entry into the United States. Each such importer shall maintain a separate record including the total quantity of tablestock, frozen, processed potatoes for ultimate consumption by humans, and seed potatoes imported into the United States that are included under the terms of the plan as well as those that are

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[10] Pub. L. 101-624, 104 Stat. 3867, Nov. 28, 1990, designated former subsection (g) as (i) and added new subsections (g) and (h).

[11] Pub. L. 101-624, 104 Stat. 3867, designated former subsection (a) as paragraph (a)(1), added new paragraph (a)(2), and amended paragraphs (b) and (c)(1) to include importers. Pub. L. 102-237, 105 Stat. 1882, Dec. 13, 1991, substituted "(2) When" for "(2) when".

exempt under such plan, and shall indicate such other information as may be prescribed by the board. No more than one assessment shall be made on any imported potatoes.

(b) Handlers and importers responsible for payment of assessments under subsection (a) of this section shall maintain and make available for inspection by the Secretary such books and records as required by the plan and file reports at the times, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of this title or of any plan or regulation issued pursuant to this title.

(c) All information obtained pursuant to subsections (a) and (b) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit **)**

(1) the issuance of general statements based upon the reports of a number of handlers or importers subject to a plan if such statements do not identify the information furnished by any person, or

(2) the publication by direction of the Secretary of the name of any person violating any plan together with a statement of the particular provisions of the plan violated by such person.

Any such officer or employee violating the provisions of this subsection shall upon conviction be subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, and shall be removed from office. (7 U.S.C. 2619.)

PETITION AND REVIEW

SEC. 311. (a) Any person subject to a plan may file a written petition with the Secretary, stating that such plan or any provision of such plan or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling: *Provided*, That a complaint

for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 312(a) of this title. (7 U.S.C. 2620.)

ENFORCEMENT

SEC. [12] (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any plan or regulation made or issued under this title. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this title shall be construed as requiring the Secretary to refer to the Attorney General violations of this title whenever the Secretary believes that the administration and enforcement of any such plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 or more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

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[12] Section was amended by Pub. L. 97-244, 96 Stat. 310-311, to provide authority for the Secretary to deal directly with violators through the assessment of civil penalties and the issuance of cease and desist orders in administrative proceedings.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (b)(1) of this section may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (b)(1) and (2) of this section, of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 2621.)

INVESTIGATION AND POWER TO SUBPENA

SEC. 313.[13] (a) The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this title or to determine whether any person has engaged or is engaging in any acts or practices which constitute a violation of any provision of this title, or of any plan, or rule or regulation issued under this title. For the purpose of any such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a handler, the Secretary may invoke the

[13] As amended by Pub. L. 101-614, 104 Stat. 3868, Nov. 28, 1990.

aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. The site of any hearings held under this section shall be within the judicial district where such person is an inhabitant or has his principal place of business.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpena of the Secretary, or in any cause or proceeding, criminal or otherwise, based upon, or growing out of any alleged violation of this title, or of any plan, or rule or regulation issued thereunder on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (7 U.S.C. 2622.)

REQUIREMENT OF REFERENDUM

SEC. 314.[14] (a) The Secretary shall conduct a referendum among producers, who during a representative period determined by the Secretary have been engaged in the production of potatoes, for the purpose of ascertaining whether the issuance of a plan is approved or favored by such producers. When the issuance of a plan would subject importers to the terms and conditions of a plan, the Secretary also shall conduct the referendum among importers, who during a representative period

[14] Section as amended by Pub. L. 97-244, 96 Stat. 311-312. Section 3(b) of Pub. L. 98-171, 97 Stat. 1118, Nov. 29, 1983, states: "The failure of potato producers in December 1982 to approve amendments to the plan issued under this title shall not be deemed to invalidate the plan." (7 U.S.C.
2623 note.) Further amended by Pub. L. 101-624, 104 Stat. 3868, Nov. 28, 1990, to include importers when importers are subject to a plan and to change referendum approval requirements from two-thirds to a majority.

determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.

(b) No plan issued under this title shall be effective unless the Secretary determines that the issuance of such plan is approved or favored by not less than a majority of the producers voting in such referendum or a majority of the producers and importers when the issuance of a plan would subject importers to the terms and conditions of a plan, voting in such referendum.

(c) The failure of potato producers and importers to approve an amendment to any plan issued under this title shall not be deemed to invalidate such plan.

(d) The ballots and other information or reports which reveal or tend to reveal the vote of any producer or his production of potatoes, or any importer or the volume of potatoes imported by such importer, shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall upon conviction be subject to the penalties provided in section 310(c) above. (7 U.S.C. 2623.)

SUSPENSION OR TERMINATION OF PLANS

SEC. 315.[15] (a) The Secretary shall, whenever he finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the board or of 10 per centum or more of the potato producers, or of the total number of producers and importers when importers are subject to a plan, to determine if potato producers and importers favor the termination or suspension of the plan, and he shall terminate or suspend such plan at the end of the marketing year whenever he determines that such suspension or termination is favored by a majority of those voting in a referendum, and who produce and import more than 50 per centum of the volume of the potatoes produced and imported by those voting in the referendum.

(c) The termination or suspension of any plan, or any provision thereof, shall not be considered the issuance of a plan within the meaning of this part. (7 U.S.C. 2624.)

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[15] As amended by Pub. L. 101-624, 104 Stat. 3868, Nov. 28, 1990.

AMENDMENT PROCEDURE

SEC. 316. The provisions of this title applicable to plans shall be applicable to amendments to plans.[16] (7 U.S.C. 2625.)

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[16] Section 1946 of Pub. L. 101-624, 104 Stat. 3869 states:

"Sec. 1946. Amendment Procedure.

"(a) IN GENERAL. **)** Notwithstanding any provision of the Potato Research and Promotion Act (hereafter in this section referred to as the "Act"), the procedure specified in this section shall apply if a producer or a producer organization requests the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") to amend the plan in effect under that Act (hereafter in this section referred to as the "plan") to **)**

"(1) subject importers to the terms and conditions of a plan, and

"(2) eliminate provisions for refunds of assessments for those not in favor of supporting the research and promotion program as provided under that Act.

"The procedure under this section shall apply only in the case of the first such request received after the date of enactment of this Act.

"(b) PUBLICATION OF PROPOSED AMENDMENTS. **)** The Secretary shall publish for public comment such proposed amendments to the plan within 60 days.

"(c) ISSUANCE OF FINAL AMENDMENTS. **)** Not later than 150 days after publication of such amendment, and after notice and opportunity for public comment, the Secretary shall issue the amendments to the plan, as described in subsection (a), if the Secretary has reason to believe that such amendments will tend to effectuate the declared policy of this subtitle.

"(d) REFERENDUM. **)** Not later than 24 months after the date of issuance of such amendments to the plan, the Secretary shall conduct a referendum among producers and importers who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes. The amendments shall be continued only if the Secretary determines that the amendments to the plan have been approved by a majority of the total number of producers and importers voting in the referendum.

"(e) REFUNDS. **)** The board shall **)**

"(1) establish an escrow account to be used for assessment refunds, and place funds in such account in accordance with paragraph (2) during the period beginning on the effective date of the amendments to the plan issued under subsection (c) and ending on the date of the referendum on the amendments to the plan;

"(2) place in the account established under paragraph (1), from assessments collected under the plan during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent;

"(3) subject to paragraph (4), (5), and (6), provide that for the period referred to in paragraph (1) any producer or importer shall have the right to demand and receive from the board a one-time refund of assessments collected from such producer or importer during such period if **)**

"(A) such producer or importer is responsible for paying such assessments;

"(B) such producer or importer does not support the program established under the plan; and

"(C) the amendments to the plan to eliminate provisions for refunds of assessments are not approved pursuant to a referendum conducted under subsection (d);

"(4) require such demand to be made in accordance with regulations, on a form, and within a time prescribed by the board;

"(5) require such refund to be made on submission of proof satisfactory to the board that such producer or importer paid the assessment for which refund is demanded; and

(continued...)

SEPARABILITY

SEC. 317. If any provision of this title or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this title and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 2626.)

AUTHORIZATION

SEC. 318. There is hereby made available from the funds provided by section 32 of Public Law 320, Seventy-fourth Congress (49 Stat. 774), as amended (7 U.S.C. 612c), such sums as are necessary to carry out the provisions of this title: *Provided*, That no such sum shall be used for the payment of any expenses or expenditures of the board in administering any provision of any plan issued under authority of this title. (7 U.S.C. 2627.)

EFFECTIVE DATE

SEC. 319. This title shall take effect upon enactment. (7 U.S.C. 2611 note.)

(...continued)

"(6) if the amount in the escrow account required to be established by paragraph (1) is not sufficient to refund the total amount of assessments demanded by all eligible producers and importers under this subsection, prorate the amount of such refunds among all eligible producers and importers who demand such refund.

"(f) TERMINATION.) If such amendments to the plan are not approved, the Secretary shall terminate the amendments and the plan shall continue in effect without the amendments.

"(g) AMENDMENT TO INCLUDE THE 50 STATES.) Notwithstanding any provision of the Act, the Secretary shall, upon request of a producer or a producer organization, issue an amendment to the plan to include the 50 States of the United States. Such amendment shall not be subject to a referendum." (7 U.S.C. 2625 note.)

WATERMELON RESEARCH AND PROMOTION ACT [1]

(7 U.S.C. 4901-4916)

SHORT TITLE

SEC. 1641. This subtitle may be cited as the "Watermelon Research and Promotion Act". (7 U.S.C. 4901 note.)

FINDINGS AND DECLARATION OF POLICY

SEC. 1642.[2] (a) Congress finds that **)**

(1) the per capita consumption of watermelons in the United States has declined steadily in recent years;

(2) watermelons are an important cash crop to many farmers in the United States and are an economical, enjoyable, and healthful food for consumers;

(3) approximately 2,607,600,000 pounds of watermelons with a farm value of $158,923,000 were produced in 1981 in the United States;

(4) watermelons move in the channels of interstate commerce, and watermelons that do not move in such channels directly affect interstate commerce;

(5) the maintenance and expansion of existing markets and the establishment of new or improved markets and uses for watermelons are vital to the welfare of watermelon growers and those concerned with marketing, using, handling, and importing watermelons, as well as the general economic welfare of the Nation; and

(6) the development and implementation of coordinated programs of research, development, advertising, and promotion are necessary to maintain and expand existing markets and establish new or improved markets and uses for watermelons.

(b) It is declared to be the policy of Congress that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the development, financing (through adequate assessments on watermelons harvested in the United States, or imported into the United States, for commercial use), and carrying out of an effective, continuous, and coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's competitive position in the marketplace, and establish,

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[1] Title XVI, Subtitle C, of Pub. L. 99-198, 99 Stat. 1622, Dec. 23, 1985.

[2] As amended by Sec. 8(k) of Pub. L. 103-189, 107 Stat. 2262, Dec. 14, 1993, to make applicable to watermelon imports.

maintain, and expand domestic and foreign markets for watermelons. The purpose of this subtitle is to so authorize the establishment of such procedure and the development, financing, and carrying out of such program. Nothing in this subtitle may be construed to dictate quality standards nor provide for the control of production or otherwise limit the right of individual watermelon producers to produce watermelons. (7 U.S.C. 4901.)

DEFINITIONS

SEC. 1643.[3]6 As used in this subtitle:

(1) The term "Secretary" means the Secretary of Agriculture.

(2) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

(3) The term "watermelon" means all varieties of watermelon grown by producers in the United States or imported into the United States.

(4) The term "handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons in a manner specified in a plan issued under this subtitle or in regulations promulgated thereunder.

(5) The term "producer" means any person engaged in the growing of 10 or more acres of watermelons.

(6) The term "importer" means any person who imports watermelons into the United States.

(7) The term "plan" means an order issued by the Secretary under this subtitle.

(8) The term "promotion" means any action taken by the Board, under this subtitle, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

(9) The term "Board" means the National Watermelon Promotion Board provided for in section 1647.

(10) The term "United States" means each of the several States and the District of Columbia. (7 U.S.C. 4902.)

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[3] Section as amended by Sec. 8(a) and (k) of Pub. L. 103-189, 107 Stat. 2261; 2263, Dec. 14, 1993. Sec. 3 of Pub. L. 103-189, 107 Stat. 2259, Dec. 14, 1993, struck "the forty-eight contiguous States of" in paragraph (3) and added paragraph (10), to cover all 50 States by the Plan. Sec. 9(a) of Pub. L. 103-189 also struck "five" and inserted "10" in paragraph (5), increasing the exemption level.

ISSUANCE OF PLANS

SEC. 1644.[4] To effectuate the declared policy of this subtitle, the Secretary shall, under the provisions of this subtitle, issue, and from time to time may amend, orders (applicable to producers, handlers, and importers of watermelons) authorizing the collection of assessments on watermelons under this subtitle and the use of such funds to cover the costs of research, development, advertising, and promotion with respect to watermelons under this subtitle. Any plan shall be applicable to watermelons produced in the United States or imported into the United States. (7 U.S.C. 4903.)

NOTICE AND HEARINGS

SEC. 1645.[5] (a) When sufficient evidence, as determined by the Secretary, is presented to the Secretary by watermelon producers, handlers, and importers or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this subtitle, the Secretary shall give due notice and opportunity for a hearing on a proposed plan. Such hearing may be requested by watermelon producers, handlers, or importers or by any other interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

(b) After notice and opportunity for hearing as provided in subsection (a) of this section, the Secretary shall issue a plan if the Secretary finds, and sets forth in such plan, on the evidence introduced at the hearing that the issuance of the plan and all the terms and conditions thereof will tend to effectuate the declared policy of this subtitle. (7 U.S.C. 4904.)

REGULATIONS

SEC. 1646. The Secretary may issue such regulations as may be necessary to carry out the provisions of this subtitle and the powers vested in the Secretary under this subtitle. (7 U.S.C. 4905.)

REQUIRED TERMS IN PLANS

SEC. 1647. (a) Any plan issued under this subtitle shall contain the terms and provisions described in this section.

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[4] As amended by Sec. 8(b) of Pub. L. 103-189, 107 Stat. 2261, Dec. 14, 1993.
[5] As amended by Sec. 8(c) of Pub. L. 103-189, 107 Stat. 2261, Dec. 14, 1993.

(b) The plan shall provide for the establishment by the Secretary of the National Watermelon Promotion Board and for defining its powers and duties, which shall include the powers to **)**

(1) administer the plan in accordance with its terms and conditions;

(2) make rules and regulations to effectuate the terms and conditions of the plan;

(3) receive, investigate, and report to the Secretary complaints of violations of the plan; and

(4) recommend to the Secretary amendments to the plan.

(c)[6] (1) The plan shall provide that the Board shall be composed of representatives of producers and handlers, and one representative of the public, appointed by the Secretary from nominations submitted in accordance with this subsection. An equal number of representatives of producers and handlers shall be nominated by producers and handlers, and the representative of the public shall be nominated by the other members of the Board, in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided for in the plan. If the Board fails to nominate a public representative, the Secretary shall choose such representative for appointment.

(2) A producer shall be eligible to serve on the Board only as a representative of handlers, and not as a representative of producers, if **)**

(A) the producer purchases watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or

(B) the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producers' production is more than 50 percent of the producer's own production.

(3)(A) If importers are subject to the plan, the Board shall also include 1 or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.

(B) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least 1 representative of importers shall serve on the Board.

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[6] Sec. 4 of Pub. L. 103-189, 107 Stat. 2260, Dec. 14, 1993, designated former section as paragraph (1) and added new paragraph (2). Sec. 8(d) of Pub. L. 103-189, 107 Stat. 2261, Dec. 14, 1993, struck "producer and handler members" and inserted "other members" in the second sentence of paragraph (1) and added paragraph (3).

(C) If importers are subject to the plan and fail to select nominees for appointment to the Board, the Secretary may appoint any importers as the representatives of importers.

(D) Not later than 5 years after the date that importers are subjected to the plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(d) The plan shall provide that all Board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the Board.

(e) The plan shall provide that the Board shall prepare and submit to the Secretary for the Secretary's approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(f)[7] The plan shall provide for the fixing by the Secretary of assessments to cover costs incurred under the budgets provided for in subsection (e), and under section 1648(f), based on the Board's recommendation as to the appropriate rate of assessment, and for the payment of the assessments to the Board. In fixing or changing the rate of assessment pursuant to the plan, the Secretary shall comply with the notice and comment procedures established under section 553 of title 5, United States Code, Sections 556 and 557 of such title shall not apply with respect to fixing or changing the rate of assessment.

(g)[8] The plan shall provide the following:

(1) Funds received by the Board shall be used for research, development, advertising, or promotion of watermelons and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this subtitle.

(2) No advertising or sales promotion program under this subtitle shall make any reference to private brand names nor use false or unwarranted claims in behalf of watermelons or their products or false or unwarranted statements with respect to attributes or use of any competing products.

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[7] As amended by Sec. 5 of Pub. L. 103-189, 107 Stat. 2260, Dec. 14, 1993, to clarify the collection of assessments; and by Sec. 6 of Pub. L. 103-189, 107 Stat. 2260, Dec. 14, 1993, to provide for changes in the assessment rate by informal rulemaking procedures.

[8] As amended by Sec. (5) and Sec. 8(e) and (k) of Pub. L. 103-189, 107 Stat. 2262; 2263, Dec. 14, 1993.

(3) No funds received by the Board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsections (b)(4) and (f).

(4) Assessments shall be made on watermelons produced by producers and watermelons handled by handlers, and the rate of such assessments in the case of producers and handlers shall be the same, on a per-unit basis, for producers and handlers. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(5) If importers are subject to the plan, an assessment shall also be made on watermelons imported into the United States by the importers. The rate of assessment for importers who are subject to the plan shall be equal to the combined rate for producers and handlers.

(h)[9](1) Except as provided in paragraph (2), the plan shall provide that, notwithstanding any other provisions of this subtitle, any watermelon producer or handler (or importer who is subject to the plan) against whose watermelons an assessment is made and collected under this subtitle and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this subtitle shall have the right to demand a refund of the assessment from the Board, under regulations, and on a form and within a time period (not less than 90 days), prescribed by the Board and approved by the Secretary. A producer or handler (or importer who is subject to the plan) who timely makes demand in accord with the regulations, on submission of proof satisfactory to the Board that the producer, handler, or importer paid the assessment for which the refund is sought, shall receive such refund within 60 days after demand therefor.

(2) If approved in the referendum required by section 1655(b) relating to the elimination of the assessment refund under paragraph (1), the Secretary shall amend the plan that is in effect on the day before the date of the enactment of the Watermelon Research and Promotion Improvement Act of 1993 to eliminate the refund provision.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B), if importers are subject to the plan, the plan shall provide that an importer of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is based on the rate of assessment paid by domestic producers.

(B) The Secretary may adjust the quantity of the weight exemption specified in subparagraph (A) on the recommendation of the Board after

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[9] As amended by Sec. 8(f) of Pub L. 103-189, 107 Stat. 2262, Dec. 14. 1993, to make applicable to imports. Sec. 7 of Pub. L. 103-189, 107 Stat. 2260, Dec. 14, 1993, redesignated former subsection (h) as paragraph (1) and added new paragraphs (2) and (3), authorizing the elimination of refunds.

an opportunity for public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title, to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(i) The plan shall provide that the Board, subject to the provisions of subsections (e), (f), and (g), shall develop and submit to the Secretary, for the Secretary's approval, any research, development, advertising, or promotion program or project, and that a program or project must be approved by the Secretary before becoming effective.

(j) The plan shall provide the Board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertising, or promotion programs or projects, and the payment of the cost thereof with funds collected under this subtitle.

(k) The plan shall provide that the Board shall (1) maintain books and records, (2) prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and (3) cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

(l)[10] The plan shall provide that the Board shall have the authority to establish rules for certifying whether a person meets the definition of a producer under section 1643(5). (7 U.S.C. 4906.)

PERMISSIVE TERMS IN PLANS

SEC. 1648. (a) Any plan issued under this subtitle may contain one or more of the terms and provisions described in this section, but except as provided in section 1647 no others.

(b) The plan may provide for the exemption, from the provisions of the plan, of watermelons used for nonfood uses, and authority for the Board to establish satisfactory safeguards against improper use of such exemption.

(c) The plan may provide for the designation of different handler payment and reporting schedules with respect to assessments, as provided for in sections 1647 and 1649, to recognize differences in marketing practices and procedures used in different production areas.

(d) The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and other sales promotion of watermelons and for the disbursement of

[10] Subsection (l) added by Sec. 9(b) of Pub. L. 103-189. 107 Stat. 2264, Dec. 14, 1993.

necessary funds for such purposes. Any such program or project shall be directed toward increasing the general demand for watermelons, and promotional activities shall comply with the provisions of section 1647(g).

(e) The plan may provide for establishing and carrying out research and development projects and studies to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) The plan may provide authority for the accumulation of reserve funds from assessments collected under this subtitle, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when watermelon production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for two years operation.

(g) The plan may provide for the use of funds from assessments collected under this subtitle, with the approval of the Secretary, for the development and expansion of sales of watermelons in foreign markets.

(h) The plan may contain terms and conditions incidental to and not inconsistent with the terms and conditions specified in this subtitle and necessary to effectuate the other provisions of the plan. (7 U.S.C. 4907.)

ASSESSMENT PROCEDURES

SEC. 1649.[11] (a)(1) Each handler required to pay assessments under a plan, as provided for under section 1647(f), shall be responsible for payment to the Board, as it may direct, of the assessments. A handler also shall collect from any producer, or shall deduct from the proceeds paid to any producer, on whose watermelons a producer assessment is made, the assessments required to be paid by the producer. The handler shall remit producer assessments to the Board as the Board directs. Such handler shall maintain a separate record with respect to each producer for whom watermelons were handled. Such records shall indicate the total quantity of watermelons handled by the handler, including those handled for producers and for the handler, the total quantity of watermelons handled by the handler that are included under the terms of the plan, as well as those that are exempt under the plan, and such other information as may be prescribed by the Board. To facilitate the collection and payment of assessments, the Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures used in any State or area. The handler shall be assessed an equal amount

[11] Sec. 8(g) of Pub. L. 103-189, 107 Stat. 2262, Dec. 14, 1993, redesignated former subsection (a) as paragraph (1) and added new paragraph (2).

as the producer. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any watermelons.

(2)(A) If importers are subject to the plan, each importer required to pay assessments under the plan shall be responsible for payment of the assessment to the Board, as the Board may direct.

(B) The assessment on imported watermelons shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer to the Board at the time of the entry of the watermelons into the United States.

(C) Each importer required to pay assessments under the plan shall maintain a separate record that includes a record of **)**

(i) the total quantity of watermelons imported into the United States that are included under the terms of the plan;

(ii) the total quantity of watermelons that are exempt from the plan; and

(iii) such other information as may be prescribed by the Board.

(D) No more than 1 assessment shall be made on any imported watermelon.

(b)[12] Handlers and importers responsible for payment of assessments under subsection (a) shall maintain and make available for inspection by the Secretary such books and records as required by the plan and file reports at the times, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the Board and to the Secretary that is appropriate or necessary to the effectuation, administration, or enforcement of this subtitle or of any plan or regulation issued under this subtitle.

(c)[13] All information obtained under subsections (a) and (b) shall be kept confidential by all officers and employees of the Department of Agriculture and of the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only 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 United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this subsection shall be deemed to prohibit **)**

(1) the issuance of general statements based on the reports of a number of handlers or importers subject to a plan if such statements do not identify the information furnished by any person; or

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[12] As amended by Sec. 8(g) of Pub. L. 103-189, 107 Stat. 2262, Dec. 14, 1993, to make applicable to imports.

[13] *Ibid.*

(2) the publication by direction of the Secretary of the name of any person violating any plan together with a statement of the particular provisions of the plan violated by such person.

Any such officer or employee violating the provisions of this subsection shall be subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, and shall be removed from office. (7 U.S.C. 4908.)

PETITION AND REVIEW

SEC. 1650. (a) Any person subject to a plan may file a written petition with the Secretary, stating that the plan or any provision of the plan, or any obligation imposed in connection therewith, is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary. After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with the law.

(b) The district courts of the United States in any district in which the person is an inhabitant, or in which the person's principal place of business is located, are hereby vested with jurisdiction to review such ruling, provided that a complaint for that purpose is filed within twenty days from the date of the entry of the ruling. service of process in such proceedings may be had on the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the Secretary with directions either to (1) make such ruling as the court shall determine to be in accordance with law, or (2) take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted under subsection (a) shall not impede or delay the United States or the Secretary from obtaining relief under section 1851(a). (7 U.S.C. 4909.)

ENFORCEMENT

SEC. 1651. (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation made or issued under this subtitle. The facts relating to any civil action that may be brought under this subsection shall be referred to the Attorney General for appropriate action, except that nothing in this subtitle shall be construed as requiring the Secretary to refer to the Attorney General violations of this subtitle whenever the Secretary believes that the administration and enforcement of the plan or regulation would be adequately served by administrative

action under subsection (b) or suitable written notice or warning to any person committing the violations.

(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation. No penalty shall be assessed nor cease and desist order issued unless the person is given notice and opportunity for a hearing before the Secretary with respect to the violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person affected by the order files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record on which the violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2), of not more than $500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (7 U.S.C. 4910.)

INVESTIGATION AND POWER TO SUBPOENA

SEC. 1652. (a)[14] The Secretary may make such investigations as the Secretary deems necessary to carry out effectively the Secretary's responsibilities under this subtitle or to determine whether a person has engaged or is engaging in any acts or practices that constitute a violation of any provision of this subtitle, or of any plan or regulation issued under this subtitle. For the purpose of an investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a handler (or an importer who is subject to the plan), the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring the person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by the court as contempt thereof. All process in any such case may be served in the judicial district in which the person is an inhabitant or wherever the person may be found. The site of any hearing held under this subsection shall be within the judicial district in which the person is an inhabitant or in which the person's principal place of business is located.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based on, or growing out of, any alleged violation of this subtitle, or of any plan or regulation issued thereunder, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (7 U.S.C. 4911.)

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[14] As amended by Sec. 8(h) of Pub. L. 103-189, 107 Stat. 2262, Dec. 14, 1993, to make applicable to importers.

REQUIREMENT OF REFERENDUM

SEC. 1653.[15] (a) The Secretary shall conduct a referendum among producers, handlers, and importers not exempt under sections 1643(5) and 1648(b) who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons, for the purpose of ascertaining whether the issuance of a plan is approved or favored by producers, handlers, and importers. The ballots and other information or reports that reveal or tend to reveal the vote of any producer, handler, or importer or the person's volume of watermelons produced, handled, or imported shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall be subject to the penalties provided in section 1649(c) of this subtitle.

(b) A plan issued under this subtitle shall not take effect unless the Secretary determines that the issuance of the plan is approved or favored by a majority of the producers and handlers (and importers who are subject to the plan) voting in the referendum. (7 U.S.C. 4912.)

SUSPENSION OR TERMINATION OF PLANS

SEC. 1654. (a) Whenever the Secretary finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this subtitle, the Secretary shall terminate or suspend the operation of the plan or provision.

(b)[16] The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers eligible to vote in a referendum, to determine if watermelon producers, handlers, and importers favor the termination or suspension of the plan. The Secretary shall terminate or suspend the plan at the end of the marketing year whenever the Secretary determines that the termination or suspension is favored by a majority of those voting in the referendum, and who produce, handle, or import more than 50 percent of the combined total of the volume of the watermelons produced by the producers, handled by the handlers, or imported by the importers voting in the referendum. (7 U.S.C. 4913.)

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[15] As amended by Sec. 2 of Pub. L. 103-189, 107 Stat. 2259, Dec. 14, 1993, by designating former section as paragraph (a) and adding paragraph (b), changing the criteria for determining the outcome of referenda to a simple majority; and as further amended by Sec. 8(i) of Pub. L. 103-189, 107 Stat. 2263, Dec. 14, 1993, to delete requirement that referenda be held at county extension offices and to make applicable to imports.

[16] As amended by Sec. 8(j) of Pub. L. 103-189, 107 Stat. 2263, Dec. 14, 1993.

AMENDMENT PROCEDURE

SEC. 1655.[17] (a) IN GENERAL.—Before a plan issued by the Secretary under this subtitle may be amended, the Secretary shall publish the proposed amendments for public comment and conduct a referendum in accordance with section 1653.

(b) SEPARATE CONSIDERATION OF AMENDMENTS.—

(1) IN GENERAL.—The amendments described in paragraph (2) that are required to be made by the Secretary to a plan as a result of the amendments made by the Watermelon Research and Promotion Improvement Act of 1993 shall be subject to separate line item voting and approval in a referendum conducted pursuant to section 1653 before the Secretary alters the plan as in effect on the day before the date of the enactment of such Act.

(2) AMENDMENTS.—The amendments referred to in paragraph (1) are the amendments to a plan required under—

(A) section 7 of the Watermelon Research and Promotion Improvement Act of 1993 relating to the elimination of the assessment refund; and

(B) section 8 of such Act relating to subjecting importers to the terms and conditions of the plan,.

(3) IMPORTERS.—When conducting the referendum relating to subjecting importers to the terms and conditions of a plan, the Secretary shall include as eligible voters in the referendum producers, handlers, and importers who would be subject to the plan if the amendments to a plan were approved. (7 U.S.C. 4914.)

SEPARABILITY

SEC. 1656. If any provision of this subtitle or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this subtitle and the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 4915.)

AUTHORIZATION OF APPROPRIATIONS

SEC. 1657. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this subtitle, except that the funds so appropriated shall not be available for the payment of any expenses or expenditures of the Board in administering any provision of any plan issued under authority of this subtitle. (7 U.S.C. 4916.)

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[17] As amended by Sec. 10 of Pub. L. 103-189, 107 Stat. 2264, Dec. 14, 1993.

Subpart F. Livestock; Seed; Wheat; Wool

FEDERAL SEED ACT [1]

(7 U.S.C. 1551-1611)

AN ACT To regulate interstate and foreign commerce in seeds; to require labeling and to prevent misrepresentation of seeds in interstate commerce; to require certain standards with respect to certain imported seeds; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Seed Act."

TITLE I) DEFINITIONS

SEC. 101.[2] (a) When used in this Act)

(1) The term "United States" means the several States, District of Columbia, and Puerto Rico.

(2) The term "person" includes a partnership, corporation, company, society, or association.

(3) The term "interstate commerce" means)

(A) commerce between any State, Territory, possession, or the District of Columbia, and any other State, Territory, possession, or the District of Columbia; or

(B) commerce between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or

(C) commerce within the District of Columbia.

(4) For the purpose of this Act with respecting to labeling for treatment, variety and origin (but not in anywise limiting the foregoing definition), seeds shall be considered to be in interstate commerce, or delivered for transportation in interstate commerce, if such seeds are part of, or delivered for transportation in, that current of commerce usual in the

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[1] Approved August 9, 1939, 53 Stat. 1275.

[2] Section as amended by Act of June 25, 1948, 62 Stat. 870; Act of August 1, 1956, 70 Stat. 908; Act of August 1, 1958, 72 Stat. 476; and Act of October 15, 1966, 80 Stat. 975. The latter Act amended the section, in part, by deleting the former list of agricultural seeds and providing for the Secretary to list them in the regulations, and by substituting "soybean, flax, carrot, radish" for "wheat, oat, vetch, sweetclover." Pub. L. 97-439, 96 Stat. 2287, approved Jan. 8, 1983, deleted the terms "weed seeds" and "pure-live seed" for purposes of title III.

transportation and/or merchandising of seeds, whereby such seeds are sent from one State with the expectation that they will end their transit in another, including, in addition to cases within the above general description, all cases where seeds are transported or delivered for transportation to another State, or for processing or cleaning for seeding purposes with the State and shipment outside the State of the processed or cleaned seeds. Seeds normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act.

(5) The term "foreign commerce" means commerce between the United States, its possessions, or any Territory of the United States, and any foreign country.

(6) (a) The term "district court of the United States" means any court exercising the powers of a district court of the United States.

(b) The term "court of appeals," in case the principal place of business or the place of residence of a person against whom a cease and desist order is issued is in the District of Columbia, includes the Court of Appeals of the District of Columbia.

(7) The term **)**

(A) "Agricultural seeds" shall mean grass, forage, and field crop seeds which the Secretary of Agriculture finds are used for seeding purposes in the United States and which he lists in the rules and regulations prescribed under section 402 of this Act.

(B) "Vegetable seeds" shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seeds.

(8) For the purpose of title II, the term "weed seeds" means the seeds or bulblets of plants recognized as weeds either by the law or rules and regulations of **)**

(A) The State into which the seed is offered for transportation, or transported; or

(B) Puerto Rico, Guam, or District of Columbia into which transported, or District of Columbia in which sold.

(9) (A) For the purpose of title II, the term "noxious-weed seeds" means the seeds or bulblets of plants recognized as noxious **)**

(i) by the law or rules and regulations of the State into which the seed is offered for transportation, or transported;

(ii) by the law or rules and regulations of Puerto Rico, Guam, or the District of Columbia, into which transported, or District of Columbia in which sold; or

(iii) by the rules and regulations of the Secretary of Agriculture under this Act, when after investigation he shall determine that a weed

is noxious in the United States or in any specifically designated area thereof.

(B) For the purpose of title III, the term "noxious-weed seeds" means the seeds of *Lepidium draba* L. *Lepidium repens* (Schrenk) Boiss, *Hymenophysa pubescens* C. A. Mey, white top; *Cirsium arvense* (L) Scop., Canada thistle; *Cuscuta* spp., dodder; *Agropyron repens* (L.) Beauv., quackgrass; *Sorghum halepense* (L.) Pers., Johnson-grass; *Convolvulus arvensis* L., bindweed; *Centaurea picris* Pall., Russian knapweed; *Sonchus arvensis* L., perennial sow thistle; *Euphorobia esula* L., leafy spurge; and seeds or bulblets of any other kinds which after investigation the Secretary of Agriculture finds should be included.

(10) The term "origin" means the State, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country, or designated portion thereof, where the seed was grown.

(11) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, soybean, flax, carrot, radish, cabbage, cauliflower, and so forth.

(12) The term "variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind, for example, Marquis wheat, Flat Dutch cabbage, Manchu soybeans, Oxheart carrot, and so forth.

(13) The term "type" means either (A) a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions, or (B) when used with a variety name means seed of the variety named which may be mixed with seed of other varieties of the same kind and of similar character, the manner of and the circumstances connected with the use of the designation to be governed by rules and regulations prescribed under section 402 of this Act.

(14) The term "germination" means the percentage of seeds capable of producing normal seedlings under ordinarily favorable conditions (not including seeds which produce weak, malformed, or obviously abnormal sprouts), determined by methods prescribed under section 403 of this Act.

(15) The term "hard seed" means the percentage of seeds which because of hardness or impermeability do not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned, determined by methods prescribed under section 403 of this Act. (16) The term "inert matter" means all matter not seeds, and includes among others broken seeds, sterile florets, chaff, fungus bodies, and stones, determined by methods prescribed under section 403 of this Act.

(17) The term "label" means the display or displays of written, printed, or graphic matter upon or attached to the container of seed.

(18) The term "labeling" includes all labels, and other written, printed, and graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

(19) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this Act.

(20) Subject to such tolerances as the Secretary of Agriculture is authorized to prescribe under the provisions of this Act **)**

(A) the term "false labeling" means any labeling which is false or misleading in any particular;

(B) the term "false advertisement" means any advertisement which is false or misleading in any particular.

(21) The term "screening" shall include chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seeds in any kind of cleaning or processing and which contain less than 25 per centum of live agricultural or vegetable seeds.

(22) The term "in bulk" refers to seed when loose either in vehicles of transportation or in storage, and not to seed in bags or other containers.

(23) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom.

(24) The term "seed certifying agency"[3] means (A) an agency authorized under the laws of a State, Territory, or possession, to officially certify seed and which has standards and procedures approved by the Secretary (after due notice, hearings, and full consideration of the views of farmer users of certified seed and other interested parties) to assure the genetic purity and identity of the seed certified, or (B) an agency of a foreign country determined by the Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under (A). (7 U.S.C. 1561.)

SEC. 102.[4] Any labeling, advertisement, or other representation subject to this Act which represents that any seed is certified seed or any class thereof shall be deemed to be false in this respect unless (a) it has been determined by a seed certifying agency that such seed conformed to standards of genetic purity and identity as to kind or variety, and is in compliance with the rules and regulations of such agency pertaining to such seed; and (b) the seed bears an official label issued for such seed by

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[3] Amended by Pub. L. 91-89, 83 Stat. 134, Oct. 17, 1969.

[4] Section added by Act of August 1, 1958, 72 Stat. 476, as amended by Pub. L. 91-89, 83 Stat. 1969, Oct. 17, 1969, and Pub. L. 91-577, 84 Stat. 1558, Dec. 24, 1970.

a seed certifying agency certifying that the seed is of a specified class and a specified kind or variety.

Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

"(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

"(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation." (7 U.S.C. 1562.)

TITLE II) INTERSTATE COMMERCE

PROHIBITIONS RELATING TO INTERSTATE COMMERCE IN CERTAIN SEEDS

SEC. 201.[5] It shall be unlawful for any person to transport or deliver for transportation in interstate commerce)

(a) Any agricultural seeds or any mixture of agricultural seeds for seeding purposes, unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this Act:

(1) The name of the kind or kind and variety for each agricultural seed component present in excess of 5 per centum of the whole and the percentage by weight of each: *Provided*, That (A), except with respect to seed mixtures intended for lawn and turf purposes, if any such component is one which the Secretary of Agriculture has determined, in rules and regulations prescribed under section 402 of this Act, is generally labeled as to variety, the label shall bear, in addition to the name of the kind, either the name of such variety or the statement "Variety Not Stated", (B) in the case of any such component which is a hybrid seed it shall, in addition to the above requirements, be designated as hybrid on the label, and (C) seed mixtures intended for lawn and turf purposes shall be designated as

[5] Act of August 1, 1958, 72 Stat. 476, amended section with respect to percentages and varieties. Act of October 15, 1966, 80 Stat. 975, amended section with respect to hybrid seed, requirements for seed in containers of one-pound or less and in containers of more than one-pound, provided for new requirements dealing with seed packaged in containers which will maintain seed viability, and set forth requirements for lawn and turf seed mixtures. Pub. L. 97-439, 96 Stat. 2287, Jan. 8, 1983, amended section with respect to lawn and turf seed labeling requirements, seed mixture test dates, and period between germination tests and transportation.

a mixture on the label and each seed component shall be listed on the label in the order of predominance;

(2) Lot number or other identification;

(3) Origin, stated in accordance with paragraph (a)(1) of this section, of each agricultural seed present which has been designated by the Secretary of Agriculture as one on which a knowledge of the origin is important from the standpoint of crop production, if the origin is known, and if each such seed is present in excess of 5 per centum. If the origin of such agricultural seed or seeds is unknown, that fact shall be stated;

(4) Percentage by weight of weed seeds, including noxious-weed seeds;

(5) Kinds of noxious-weed seeds and the rate of occurrence of each, which rate shall be expressed in accordance with and shall not exceed the rate allowed for shipment, movement, or sale of such noxious-weed seeds by the law and regulations of the State into which the seed is offered for transportation or transported or in accordance with the rules and regulations of the Secretary of Agriculture, when under the provisions of section 101(a)(9)(A)(iii) he shall determine that weeds other than those designated by State requirements are noxious;

(6) Percentage by weight of agricultural seeds other than those included under Paragraph (a)(1) of this section;

(7) Percentage by weight of inert matter;

(8) For each agricultural seed, in excess of 5 per centum of the whole, stated in accordance with paragraph (a)(1) of this section, and each kind or variety or type of agricultural seed shown in the labeling to be present in a proportion of 5 per centum or less of the whole, (A) percentage of germination, exclusive of hard seed, (B) percentage of hard seed, if present, and (C) the calendar month and year the test was completed to determine such percentages, except that, in the case of a seed mixture, it is only necessary to state the calendar month and year of such test for the kind or variety or type of agricultural seed contained in such mixture which has the oldest calendar month and year test date among the tests conducted on all the kinds or varieties or types of agricultural seed contained in such mixture;

(9) Name and address of (A) the person who transports, or delivers for transportation, said seed in interstate commerce, or (B) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce;

(10) The year and month beyond which an inoculant, if shown in the labeling, is no longer claimed to be effective.

(b) Any vegetable seeds, for seeding purposes, in containers, unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this Act:

(1) For containers of one pound or less of seed that germinates equal to or above the standard last established by the Secretary of Agriculture, as provided under section 403(c) of this Act **)**

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and

(B) Name and address of **)**

(i) the person who transports, or delivers for transportation, said seed in interstate commerce; or

(ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce;

(2) For containers of one pound or less of seed that germinates less than the standard last established by the Secretary of Agriculture, as provided under section 403(c) of this Act **)**

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and

(B) For each named kind and variety of seed **)**

(i) the percentage of germination, exclusive of hard seed;

(ii) the percentage of hard seed, if present;

(iii) the calendar month and year the test was completed to determine such percentages;

(iv) the words “Below Standard”; and

(C) Name and address of **)**

(i) the person who transports, or delivers for transportation, said seed in interstate commerce; or

(ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce.

(3) For containers of more than one pound of seed **)**

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each and, further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label;

(B) Lot number or other lot identification;

(C) For each named kind and variety of seed **)**

(i) the percentage of germination, exclusive of hard seed;

(ii) the percentage of hard seed, if present;

(iii) the calendar month and year the test was completed to determine such percentages; and

(D) Name and address of **)**

(i) the person who transports, or delivers for transportation, said seed in interstate commerce; or

(ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce.

(c) Any agricultural or vegetable seed unless the test to determine the percentage of germination required by this section shall have been completed within a five-month period, exclusive of the calendar month in which the test was completed, immediately prior to transportation or delivery for transportation in interstate commerce: *Provided, however*, That the Secretary of Agriculture may by rules and regulations designate: (a) a shorter period for kinds of agricultural or vegetable seed which he finds under ordinary conditions of handling will not maintain, during the aforesaid five-month period, a germination within the established limits of tolerance; or (2) a longer period for any kind of agricultural or vegetable seed which (A) is packaged in such container materials and under such other conditions prescribed by the Secretary of Agriculture as he finds will, during such longer period, maintain the viability of said seed under ordinary conditions of handling; or (B) the Secretary finds will maintain a percentage of germination within the limits of tolerance established under this Act under ordinary conditions of handling.

(d) Any agricultural seeds or vegetable seeds having a false labeling, or pertaining to which there has been a false advertisement, or to sell or offer for sale such seed for interstate shipment by himself or others.

(e) Seed which is required to be stained under the provisions of this Act and the regulations made and promulgated thereunder, and is not so stained.

(f) Seed which has been stained to resemble seed stained in accordance with the provisions of this Act and the regulations made and promulgated thereunder.

(g) Seed which is a mixture of seeds which are required to be stained or which are stained with different colors under the provisions of this Act and of the regulations made and promulgated thereunder, or which is a mixture of any seed required to be stained under the provisions of this Act and of the regulations made and promulgated thereunder, with seed of the same kind produced in the United States.

(h) Screenings of any seed subject to this Act, unless they are not intended for seeding purposes; and it is stated on the label, if in containers, or on the invoice, if in bulk, that they are intended for cleaning, processing or manufacturing purposes, and not for seeding purposes.

(i) Any agricultural seeds or any mixture thereof or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act: (1) A word or statement indicating that the seeds have been treated;

(2) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment;

(3) If the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the Secretary of Agriculture as adequate for the protection of the public, such as "Do not use for food or feed or oil purposes": *Provided*, That the caution statement for mercurials and similarly toxic substances, as defined in said rules and regulations, shall be a representation of a skull and crossbones and a statement such as "Thus seed has been treated with POISON", in red letters on a background of distinctly contrasting color; and

(4) A description, approved by the Secretary of Agriculture as adequate for the protection of the public, of any process used in such treatment. (7 U.S.C. 1571.)

RECORDS

SEC. 202.[6] All persons transporting, or delivering for transportation, in interstate commerce, agricultural seeds shall keep for a period of three years a complete record of origin, treatment, germination, and purity of each lot of such agricultural seeds, and all persons transporting, or delivering for transportation, interstate commerce, vegetable seeds shall keep for a period of three years a complete record of treatment, germination and variety of such vegetable seeds. The Secretary of

[6] Act of August 1, 1958, 72 Stat. 477, added the requirement for the keeping of records of vegetable seeds, and the Act of October 15, 1966, 80 Stat. 978, added the word "treatment."

Agriculture, or his duly authorized agents, shall have the right to inspect such records for the purpose of the effective administration of this Act. (7 U.S.C. 1572.)

EXEMPTIONS

SEC. 203.[7] (a) The provisions of sections 201 and 202 shall not apply to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier: *Provided*, That such carrier is not engaged in processing or merchandising seed subject to the provisions of this Act; and such provisions shall not apply to seeds produced by any farmer on his own premises and sold by him directly to the consumer, provided such farmer is not engaged in the business of selling seeds not produced by him: *And provided further*, That such seeds produced or sold by him when transported or offered for transportation to any State, Territory, or District, shall not be exempted from the provisions of sections 201 and 202 unless said seeds shall be in compliance with the operation and effect of the laws of such State, Territory, or District, enacted in the exercise of its police power, to the same extent and in the same manner as though such seed had been produced, sold, offered or exposed for sale in such State, Territory, or District, and shall not be exempted therefrom by reason of being introduced therein in original packages or otherwise: *And provided further*, That such seeds produced or sold by him are in compliance with the seed laws of the State into which the seed is transported.

(b) The provisions of section 201 (a), (b) or (i) shall not apply **)**

(1) to seed or grain not intended for seeding purposes when transported or offered for transportation in ordinary channels of commerce usual for such seed or grain intended for manufacture or feeding; or

(2) to seed intended for seeding purposes when transported or offered for transportation in interstate commerce **)**

(A) if in bulk, in which case, however, the invoice or other records accompanying and pertaining to such seed shall bear the various statements required for the respective seeds under sections 201 (a), (b)a, and (i); or

(B) if in containers and in quantities of twenty thousand pounds or more: *Provided*, That (i) the omission from each container of the information required under sections 201 (a), (b), and (i) is with the knowledge and consent of the consignee prior to the transportation

[7] Section as amended by Act of August 1, 1958, 72 Stat. 477, and Act of October 15, 1966, 80 Stat. 978.

or delivery for transportation of such seed in interstate commerce, (ii) each container shall have stenciled upon it or bear a label containing a lot designation, and (iii) the invoice or other records accompanying and pertaining to such seed shall bear the various statements required for the respective seeds under sections 2091 (a), (b), and (i); or

(C) if consigned to a seed cleaning or processing establishment, to be cleaned or processed for seeding purposes: *Provided*, That (i) this fact is so stated in the invoice or other records accompanying and pertaining to such seed if the seed is in bulk or if the seed is in containers and in quantities of twenty thousand pounds or more, (ii) this fact is so stated on attached labels, if the seed is in containers and in quantities less than twenty thousand pounds, and (iii) any such seed later to be labeled as to origin and/or variety shall be labeled as to origin and/or variety in accordance with rules and regulations prescribed under section 402 of this Act.

(c) When the Secretary of Agriculture finds that, because of the time interval between seed harvesting and sowing, or because of an emergency beyond human control, the information required by this Act as to the germination, and hard seed of certain kinds of seeds, cannot be given prior to transportation or delivery for transportation in interstate commerce, he may promulgate, with or without a hearing, rules and regulations providing that the provisions of section 201 (a) and (b) as to the required labeling for germination and hard seed shall not apply for such period and to such kinds of seed as he may specify in his said rules and regulations.

(d) The provisions of sections 201 (a) and (b) relative to the labeling of agricultural and vegetable seeds with the percentages of the kind or kind and variety of seeds shall not be deemed violated if there are seeds in the container or bulk which could not be, or were not, identified because of their indistinguish-ability in appearance from the seeds intended to be transported or delivered for transportation in interstate commerce: *Provided*, That the records of the person charged with the duty under said section of labeling or invoicing the seeds, kept in accordance with the rules and regulations of the Secretary of Agriculture, together with other pertinent facts, disclose that said person has taken reasonable precautions to insure the identity of the seeds to be that stated.

(e) The provisions of section 201 (i) relative to the labeling of agricultural and vegetable seeds with the name of any substance used in the treatment of seeds shall not be deemed violated if the substance or substances used in such treatment could not be or were not identified because of their indistinguishability from the substance or substances intended to be used in the treatment of the seeds: *Provided*, That the records of the person charged with the duty under said section of labeling or invoicing the seeds, kept in accordance with the rules and regulations

of the Secretary of Agriculture, together with other pertinent facts, disclosed that said person has taken reasonable precautions to insure the identity of the substance or substances to be as stated. (7 U.S.C. 1573.)

DISCLAIMERS AND NONWARRANTIES

SEC. 204.[8] The use of a disclaimer, limited warranty, or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter, pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or other proceeding brought under the provisions of this Act, or the rules and regulations made and promulgated thereunder. Nothing in this section is intended to preclude the use of a disclaimer, limited warranty, or nonwarranty clause as a defense in any proceeding not brought under this Act. (7 U.S.C. 1574.)

FALSE ADVERTISING

SEC. 205. It shall be unlawful for any person to disseminate, or cause to be disseminated, any false advertisement concerning seed, by the United States mails, or in interstate or foreign commerce, in any manner or by any means, including radio broadcasts: *Provided, however*, That no person, advertising agency, or medium for the dissemination of advertising, except the person who transported, delivered for transportation, sold, or offered for sale seed to which the false advertisement relates, shall be liable under this section by reason of disseminating or causing to be disseminated any false advertisement, unless he or it has refused, on the request of the Secretary of Agriculture, to furnish the Secretary the name and post-office address of the person, or advertising agency, residing in the United States, who caused, directly or indirectly, the dissemination of such advertisement. (7 U.S.C. 1575.)

TITLE III) FOREIGN COMMERCE [9]

PROHIBITIONS AND PROCEDURES RELATING TO IMPORTATIONS

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[8] Section as amended by Act of July 9, l956, 70 Stat. 508, and Act of Aug. 1, 1958, 72 Stat. 478.

[9] Effective Oct. 1, 1982, the responsibility for administering Title III was transferred to the Animal and Plant Health Inspection Service (APHIS) by Secretary's Memorandum 1030-5, dated Aug. 30, 1982. A Memorandum of Understanding, between Agricultural Marketing Service (AMS) and APHIS, dated Sept. 28, 1982, approved such transfers of funds, personnel and incidentals as necessary to implement the provisions of SM 1030-5.

SEC. 301.[10] The importation into the United States is prohibited of **)**

(1) any agricultural or vegetable seeds if any such seed contains noxious-weed seeds or the labeling of which is false or misleading in any respect;

(2) screenings of any seeds subject to title III of this Act (except that this shall not apply to screenings of wheat, oats, rye, barley, buckwheat, field corn, sorghum, broomcorn, flax, millet, proso, soybeans, cowpeas, field peas, or field beans, which are not imported for seeding purposes and are declared for cleaning, processing, or manufacturing purposes, and not for seeding purposes);

(3) any seed containing 10 per centum or more of any agricultural or vegetable seeds, unless the invoice pertaining to such seed and any other labeling of such seed bear a lot identification and the name of each kind or kind and variety of vegetable seed present in any amount and each kind or kind and variety of agricultural seed present in excess of 5 per centum of the whole, and unless in the case of hybrid seed present in excess of 5 per centum of the whole it is designated as hybrid;

(4) any agricultural seeds or any mixture thereof, or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act:

(A) A word or statement indicating that the seeds have been treated;

(B) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment;

(C) If the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the Secretary of Agriculture as adequate for the protection of the public, such as "Do not use for food or feed or oil purposes: *Provided*, That the caution statement for mercurials and similarly toxic substances, as defined in said rules and regulations, shall be a representation of a skull and crossbones and a statement such

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[10] Section as amended by Act of Aug. 1, 1958, 72 Stat. 478; Act of Oct. 15, 1966, 80 Stat. 978; and Pub. L. 97-439, 96 Stat. 2288, Jan. 8, 1983. Pub. L. 103-465, 108 Stat, 4973, Dec. 8, 1994, further amended section to delete the requirement that imported seed be stained.

Sec. 451 of Pub. L. 103-465, 108 Stat. 4973, Dec. 8, 1994, provided that amendments by Pub. L. 103-465 effective on the date of entry into force of the WTO Agreement with respect to the United States except as otherwise provided. (19 U.S.C. 3601 note.)

as "This seed has been treated with POISON", in red letters on a background of distinctly contrasting color; and

(D) A description, approved by the Secretary of Agriculture as adequate for the protection of the public, of any process used in such treatment. (7 U.S.C. 1581.)

SEC. 302.[11] (a) The Secretary of the Treasury shall deliver to the Secretary of Agriculture, subject to joint rules and regulations prescribed under section 402 of this Act, samples of seed and screenings which are being imported into the United States, or offered for import, giving notice thereof to the owner or consignee, and if it appears from the examination of such samples that any seed or screenings offered to be imported into the United States are subject to the provisions of this title and do not comply with the provisions of this title, or if the labeling of such seed is false or misleading in any respect, such seed or screenings shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the owner or consignee, who may appear, however, before the Secretary of Agriculture and show cause why the seed or screenings should be admitted. Seed or screenings refused admission and not exported by the owner or consignee within twelve months from the date of notice of such refusal shall be destroyed in accordance with joint rules and regulations prescribed under section 402 of this Act: *Provided*, That the Secretary of the Treasury may authorize the delivery of seed or screenings which are being imported or offered for import to the owner or consignee thereof, pending decision as to the admission of such seed or screenings and for cleaning, labeling, or other reconditioning if required to bring such seed or screenings into compliance with the provisions of this Act, upon the execution by such owner or consignee of a good and sufficient bond conditioned upon redelivery of the seed or screenings upon demand unless redelivery is waived because the seed is reconditioned to bring it into compliance with this Act or is destroyed under Government supervision under this Act, and providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury: *And provided further*, That all expenses incurred by the United States (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the supervision of cleaning, labeling, other reconditioning, or

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[11] Section as amended by Act of August 1, 1958, 72 Stat. 478; and Act of October 15, 1966, 80 Stat. 975. Latter Act amended section to authorize Secretary of Agriculture to apply statistical sampling techniques. Further amended by Pub. L. 97-439, 96 Stat. 2288, Jan. 8, 1983. Subsection (e) was generally amended by Pub. L. 100-449, 102 Stat. 1868, Sept. 28, 1988. Subsequently, Pub. L. 103-465, 108 Stat. 4973, Dec. 8, 1994, deleted subsection (e), and also struck "staining," before "cleaning, labeling" in two places in subsection (a). *See* footnote 10, second paragraph.

destruction, of seed or screenings under this title shall be reimbursed to the United States by the owner or consignee of the seed or screenings, and such reimbursements shall be recredited to the appropriation from which the expenses were paid, the amount of such expenses to be determined in accordance with joint regulations under section 402 of this Act, and all expenses in connection with the storage, cartage, and labor on the seed or screenings which are refused admission or delivery, shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against future importations made by such owner or consignee.

(b) The refuse from any seeds or screenings which are allowed to be cleaned under bond shall be destroyed in accordance with joint rules and regulations prescribed under section 402 of this Act.

(c) The provisions of this title shall not apply **)**

(1) when seed is shipped in bond through the United States, or

(2) when the Secretary of Agriculture finds that a substantial proportion of the importations of any kind of seed is used for other than seeding purposes, and he provides by rules and regulations that seed of such kind not imported for seeding purposes shall be exempted from the provisions of the Act: *Provided*, That importations of such kinds of seed shall be accompanied by a declaration setting forth the use for which imported when and as required under joint rules and regulations prescribed under section 402 of this Act.

(d) The provisions of this title prohibiting the importation of seed shall not apply **)**

(1) when seed grown in the United States is returned from a foreign country without having been admitted into the commerce of any foreign country: *Provided*, That there is satisfactory proof as provided for in the joint rules and regulations prescribed under section 402 of this Act, that the seed was grown in the United States and was not admitted into the commerce of a foreign country and was not commingled with other seed, or

(2) when seed is imported for sowing for experimental or breeding purposes and not for sale: *Provided*, That declarations are filed, and importations are limited in quantity, as provided for in the rules and regulations prescribed under section 402 of this Act, to assure that the importations are for experimental or breeding purposes. (7 U.S.C. 1582.)

SEC. 303.[12] CERTAIN SEEDS NOT ADAPTED FOR GENERAL AGRICULTURAL USE.

Whenever the Secretary of Agriculture, after a public hearing, determines that seed of alfalfa or red clover from any foreign country is not adapted for general agricultural use in the United States, the Secretary shall publish the determination and the reasons for the determination. (7 U.S.C. 1585.)

CERTAIN ACTS PROHIBITED

SEC. 304.[13] It shall be unlawful for any person)

(a) To sell or offer for sale)

(1) any seed for seeding purposes if imported under this title for other than seeding purposes;

(2) any screenings of any seeds for seeding purposes if imported under this title for other than seeding purposes; or

(3) any seed which is prohibited entry under the provisions of this Act.

(b) To make any false or misleading representation with respect to any seed subject to this title being imported into the United States or offered for import: *Provided*, That this subsection shall not be deemed violated by any person if the false or misleading representation is the name of a variety indistinguishable in appearance from the seed being imported or offered for import and the records and other pertinent facts reveal that such person relied in good faith upon representations with respect to the name of the indistinguishable variety made by the shipper of the seed. (7 U.S.C. 1586.)

TITLE IV) GENERAL PROVISIONS

DELEGATION OF DUTIES

SEC. 401. Any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this Act may with like force and effect be executed by such officer or officers, agent or agents, of the Department of

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[12] Pub. l. 97-439, 96 Stat. 2288, Jan. 3, 1983, repealed sections 303 and 304 (7 U.S.C. 1583 and 1584), which provided definitions of when imported seed is considered adulterated or unfit for seeding purposes, and redesignated section 305 and 306 as sections 303 and 304, respectively. Sec. 441 of Pub. L. 103-465, 108 Stat. 4973, Dec. 8, 1994, struck former section 303 (7 U.S.C. 1585) that related to a requirement that certain seeds containing alfalfa and/or red clover be stained and inserted a new section 303. *See* footnote 10, second paragraph.

[13] Section as amended by Act of Aug. 1, 1958, 72 Stat. 476. Sec. 441 of Pub. L. 103-465, 108 Stat. 4973, Dec. 8, 1994, deleted paragraphs (a)(4) through (7) and subsection (b), and redesignated former subsection (c) as subsection (b). *See* footnote 10, second paragraph.

Agriculture as the Secretary may designate for the purpose. (7 U.S.C. 1591.)

RULES AND REGULATIONS

SEC. 402. (a) The Secretary of Agriculture shall make such rules and regulations as he may deem necessary for the effective enforcement of this Act, except as otherwise provided in this section.

(b) The Secretary of the Treasury and the Secretary of Agriculture shall make, jointly or severally, such rules and regulations as they may deem necessary for the effective enforcement of title III of this Act.

(c) Prior to the promulgation of any rule or regulation under this Act, due notice shall be given by publication in the Federal Register of intention to promulgate and the time and place of a public hearing to be held with reference thereof, and no rule or regulation may be promulgated until after such hearing. Any rule or regulation shall become effective on the date fixed in the promulgation, which date shall be not less than thirty days after publication in the Federal Register, and may be amended or revoked in the manner provided for its promulgation. (7 U.S.C. 1592.)

STANDARDS, TESTS, AND TOLERANCES

SEC. 403. (a) The samplings, analyses, tests, or examinations of seeds made in connection with the administration of this Act shall be made by methods set forth by rules and regulations prescribed under section 402 of this Act.

(b) The Secretary of Agriculture is authorized and directed to make and promulgate by rules and regulations, reasonable tolerances as to the percentages and rates of occurrence required to be stated or required by this Act.

(c) For the purpose of section 201(b) of this Act, the Secretary of Agriculture is authorized and directed to investigate, determine, establish, and promulgate from time to time such reasonable standards of germination for each kind of vegetable seed as will in his judgment best protect crop production. (7 U.S.C. 1593.)

PROHIBITION AGAINST ALTERATIONS

SEC. 404. No person shall detach, alter, deface, or destroy any label provided for in this Act or the rules and regulations made and promulgated thereunder by the Secretary of Agriculture, or alter or substitute seed in a manner that may defeat the purpose of this Act. (7 U.S.C. 1594.)

SEIZURE

SEC. 405. (a) Any seed sold, delivered for transportation in interstate commerce, or transported in interstate or foreign commerce in violation of any of the provisions of this Act shall, at the time of such violation or at any time thereafter, be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which the seed is found.

(b) If seed is condemned by a decree of the court as being in violation of the provisions of this Act, it may be disposed of by the court by **)**

(1) sale; or

(2) delivery to the owner thereof after he has appeared as claimant and paid the court costs and fees and storage and other proper expenses and executed and delivered a bond with good and sufficient sureties that such seed will not be sold or disposed of in any jurisdiction contrary to the provisions of this Act and the rules and regulations made and promulgated thereunder, or the laws of such jurisdiction; or

(3) destruction.

(c) if such seed is disposed of by sale, the proceeds of the sale, less the court costs and fees and storage and other proper expenses, shall be paid into the Treasury as miscellaneous receipts, but such seed provisions of this Act and the rules and regulations made and promulgated thereunder, or the laws of such jurisdiction.

(d) The proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case; and such proceedings shall be at the suit of and in the name of the United States. (7 U.S.C. 1595.)

PENALTIES

SEC. 406.[14] (a) Any person who knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of this Act or the rules and regulations made and promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than $1,000, for the first offense, and upon conviction for each subsequent offense not more than $2,000.

(b) Any person who violates any provision of this Act or the rules and regulations made and promulgated thereunder shall forfeit to the United

[14] Section as amended by Act of July 9, 1956, 70 Stat. 508, which added civil penalties.

States a sum, not less than $25 or more than $500, for each such violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States. (7 U.S.C. 1596.)

SEC. 407. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person, partnership, corporation, company, society, or association, shall in every case be also deemed to be the act, omission, or failure of such person, partnership, corporation, company, society, or association, as well as that of the person employed. (7 U.S.C. 1597.)

SEC. 408. Before any violation of this Act is reported by the Secretary of Agriculture to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. (7 U.S.C. 1598.)

CEASE-AND-DESIST PROCEEDINGS

SEC. 409. (a)[15] When the Secretary of Agriculture has reason to believe that any person has violated or is violating any of the provisions of this Act or the rules and regulations made and promulgated thereunder, he shall cause a complaint in writing to be served upon the person, stating his charges in that respect, and requiring the person to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the person a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such rules and regulations as the Secretary of Agriculture may prescribe. At any time prior to the close of the hearing the Secretary of Agriculture may amend the complaint; but in case of any amendment adding new provisions the hearing shall, on the request of the person, be adjourned for a period not exceeding fifteen days.

(b) If, after such hearing, the Secretary of Agriculture finds that the person has violated or is violating any provisions of the Act or rules and regulations covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the person an order requiring such person to cease and desist from continuing such violation. The testimony taken at the hearing

[15] Section as amended by Act of June 25, 1948, 62 Stat. 991; Act of May 24, 1949, 63 Stat. 107; Act of August 28, 1958, 72 Stat. 949; and Act of June 11, 1960, 74 Stat. 200.

shall be reduced to writing and filed in the records of the Department of Agriculture.

(c) Until the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order in whole or in part.

(d) Complaints, orders, and other processes of the Secretary of Agriculture under this section may be served by anyone duly authorized by the Secretary of Agriculture, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its last known principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said order shall be proof of the same, and the return post-office receipt for said complaint, order, or other process mailed by registered mail or by certified mail, as aforesaid shall be proof of the service of the same. (7 U.S.C. 1599.)

SEC. 410.[16] An order made under section 409 shall be final and conclusive unless within thirty days after the service the person appeals to the court of appeals for the circuit in which such person resides or has his principal place of business by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs.

The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed, the Secretary amends or sets this report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees

[16] Section as amended by Act of June 25, 1948, 62 Stat. 991; Act of May 24, 1949, 63 Stat. 107; and Act of Aug. 28, 1958, 72 Stat. 949.

from violating any of the provisions of the order pending the final determination of the appeal.

The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

The court may affirm, modify, or set aside the order of the Secretary.

If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

If the court of appeals affirm or modifies the order of the Secretary its decree shall operate as an injunction to restrain the person and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified. (7 U.S.C. 1600.)

SEC. 411.[17] If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as provided in section 410 for applications to set aside or modify orders.

The proceedings in such cases shall be made a preferred cause and shall be expedited in every way. (7 U.S.C. 1601.)

SEPARABILITY OF PROCEEDINGS

SEC. 412.[18] The institution of any one of the proceedings provided for in sections 405, 406, 409, 410, and 411, shall not bar institution of any of the others, except that action shall not be instituted under both subsections 406 (a) and (b) for the same cause of action. Nothing in this Act shall be

[17] *Ibid.*

[18] Section as amended by Act of July 9, 1956, 70 Stat. 508.

construed as requiring the Secretary of Agriculture to recommend prosecution or institution of civil penalty proceedings, libel proceedings, cease-and-desist proceedings, or proceedings for the enforcement of a cease-and-desist order, for minor violations of this Act or the rules and regulations made and promulgated thereunder whenever he believes that the public interest will be adequately served by suitable written notice or warning. (7 U.S.C. 1602.)

SEC. 413. (a) In carrying on the work herein authorized, the Secretary of Agriculture, or any officer or employee designated by him for such purpose, shall have the power to hold hearings, administer oaths, sign and issue subpenas, examine witnesses, take depositions, and require the production of books, records, accounts, memoranda, and papers, and have access to office and warehouse premises. Upon refusal by any person to appear, testify, or produce pertinent books, records, accounts, memoranda, and papers in response to a subpena, or to permit access to premises, the proper United States district court shall have power to compel obedience thereto.

(b) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions as taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States. (7 U.S.C. 1603.)

PUBLICATION

SEC. 414. After judgment by the court, or the issuance of a cease and desist order, in any case arising under this Act, notice thereof shall be given by publication in such manner as may be prescribed in the rules and regulations made and promulgated under this Act. (7 U.S.C. 1604.)

AUTHORITY FOR APPROPRIATIONS

SEC. 415.[19] (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this Act.

(b) Funds appropriated for carrying into effect the purpose of this Act shall be available for allotment by the Secretary of Agriculture to the bureaus and offices of the Department of Agriculture and for transfer to other departments and agencies of the Government which the Secretary of Agriculture may call upon to assist or cooperate in carrying out such

[19] Section as amended by Act of Sept. 21, 1944, 58 Stat. 741.

purposes or for services rendered or to be rendered in connection therewith.

Appropriations made under this authorization, within the limit prescribed in such appropriations, may be expended for the share of the United States in the expense of the International Seed Testing Congress in carrying out plants for correlating the work of the various adhering governments on problems relating to seed analyses or other subjects which the Congress may determine to be necessary in the interest of international seed trade. (7 U.S.C. 1605.)

AUTHORIZED FOR EXPENDITURES

SEC. 416. The Secretary of Agriculture is authorized to make such expenditures for rent, outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publication, furniture, stationery, office and laboratory equipment, travel and other supplies, including reporting services, such research necessary to develop methods of processing, bulking, blending, sampling, testing, and merchandising seeds necessary to the administration of this Act, and other necessary expenses in the District of Columbia and elsewhere, and as may be appropriated for by the Congress. (7 U.S.C. 1606.)

COOPERATION

SEC. 417. The Secretary of Agriculture is authorized to cooperate with any other department or agency of the Federal Government; or with any State, Territory, District, or possession, or department, agency, or political subdivision thereof; or with any producing, trading, or consuming organization, whether operating in one or more jurisdictions, in carrying out the provisions of this Act. (7 U.S.C. 1607.)

SEPARABILITY OF PROVISION

SEC. 418. If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (7 U.S.C. 1608.)

REPEALS

SEC. 419. The Importation of Adulterated Seeds Act, approved August 24, 1912, as amended August 11, 1916, and as amended April 26, 1926 (7 U.S.C., 111-116, inclusive), is hereby repealed on the one hundred and eightieth day after the passage of this Act: *Provided, however*, That the

notices with respect to imported alfalfa and red clover seed promulgated by the Secretary of Agriculture under the authority of the Importation of Adulterated Seeds Act, approved August 24, 1912, as amended (7 U.S.C., 111-116, inclusive), and now in effect, shall remain with the same full force and effect as if promulgated under this Act. (7 U.S.C. 1609.)

EFFECTIVE DATE

SEC. 420. This Act shall take effect as follows: As to agricultural seeds, and the importation of vegetable seeds, on the one hundred and eightieth day after its enactment; as to vegetable seeds in interstate commerce, one year after its enactment; as to sections 401, 402, and 403, on the date of its enactment. (7 U.S.C. 1610.)

TITLE V) SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

SEC. 501.[20] It shall be unlawful in the United States or in interstate or foreign commerce to sell or offer for sale or advertise, by variety name, seed not certified by an official seed certifying agency, when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: Provided, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owners of the variety. (7 U.S.C. 1611.)

[20] Section 501 added by Pub. L. 91-577, 84 Stat. 1558, December 24, 1970; and amended by Pub. L. 97-98, 95 Stat. 1272, Dec. 22, 1981.

BEEF RESEARCH AND INFORMATION ACT [1]

(Beef Promotion and Research Act of 1985)

(7 U.S.C. 2901-2911)

To enable cattle producers to establish, finance, and carry out a coordinated program of research, producer and consumer information, and promotion to improve, maintain, and develop markets for cattle, beef, and beef products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Beef Research and Information Act". (7 U.S.C. 2901 note.)

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress finds that **)**

(1) beef and beef products are basic foods that are a valuable part of human diet;

(2) the production of beef and beef products plays a significant role in the Nation's economy, beef and beef products are produced by thousands of beef producers and processed by numerous processing entities, and beef and beef products are consumed by millions of people throughout the United States and foreign countries;

(3) beef and beef products should be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for beef and beef products are vital to the welfare of beef producers and those concerned with marketing, using, and producing beef products, as well as to the general economy of the Nation;

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

(6) beef and beef products move in interstate and foreign commerce, and beef and beef products that do not move in such

[1] Pub. L. 94-294, 90 Stat. 529, May 28, 1976, as amended by Pub. L. 95-334, 92 Stat. 433, Aug. 4, 1978. Title XVI, Subtitle A, of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1597, Dec. 23, 1985, revised sections 2 through 20 (7 U.S.C. 2901-2918.) and Section 1601(a) provided: "This Section may be cited as the Beef Promotion and Research Act of 1985.".

channels of commerce directly burden or affect interstate commerce of beef and beef products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all cattle sold in the United States and on cattle, beef, and beef products imported into the United States) and carrying out a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. Nothing in this Act shall be construed to limit the right of individual producers to raise cattle. (7 U.S.C. 2901.)

DEFINITIONS

SEC. 3. For purposes of this Act **)**

(1) the term "beef" means flesh of cattle;

(2) the term "beef products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom;

(3) the term "Board" means the Cattlemen's Beef Promotion and Research Board established under section 5(1);

(4) the term "cattle" means live domesticated bovine animals regardless of age;

(5) the term "Committee" means the Beef Promotion Operating Committee established under section 5(4);

(6) the term "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products;

(7) the term "Department" means the Department of Agriculture.

(8) the term "importer" means any person who imports cattle, beef, or beef products from outside the United States;

(9) the term "industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry;

(10) The term "order" means a beef promotion and research order issued under section 4.

(11) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(12) the term "producer" means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be

a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee;

(13) the term "promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace;

(14) the term "qualified State beef council" means a beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives voluntary contributions and conducts beef promotion, research, and consumer information programs, and that is recognized by the Board as the beef promotion entity within such State;

(15) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development;

(16) the term "Secretary" means the Secretary of Agriculture;

(17) The term "State" means each of the 50 States; and

(18) the term "United States" means the several States and the District of Columbia. (7 U.S.C. 2902.)

ISSUANCE OF ORDERS

SEC. 4. (a) During the period beginning on the effective date of this section and ending thirty days after receipt of a proposal for a beef promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment on such proposed order. Such proposal may be submitted by any organization meeting the requirements for certification under section 6 or any interested person, including the Secretary.

(b) After notice and opportunity for public comment are given, as provided for in subsection (a), the Secretary shall issue a beef promotion and research order. The order shall become effective not later than one hundred and twenty days following publication of the proposed order. (7 U.S.C. 2903.)

REQUIRED TERMS IN ORDERS

SEC. 5. An order issued under section 4(b) shall contain the following terms and conditions:

(1) The order shall provide for the establishment and selection of a Cattlemen's Beef Promotion and Research Board. Members of the Board shall be cattle producers and importers appointed by the Secretary from (A) nominations submitted by eligible State

organizations certified under section 6 (or, if the Secretary determines that there is no eligible State organization in a State, the Secretary may provide for nominations from such State to be made in a different manner), and (B) nominations submitted by importers under such procedures as the Secretary determines appropriate. In determining geographic representation for cattle producers on the Board, whole States shall be considered as a unit. Each State that has a total cattle inventory greater than five hundred thousand head shall be entitled to at least one representative on the Board. A State that has a total inventory of fewer than 500,000 cattle shall be grouped, as far as practicable, with other States each of which has a combined total inventory of not less than 500,000 cattle, into geographically contiguous units in a manner prescribed in the order. A unit may be represented on the Board by more than one member. For each additional million head of cattle within a unit, such unit shall be entitled to an additional member on the Board. The Board may recommend a change in the level of inventory per unit necessary for representation on the Board and, on such recommendation, the Secretary may change the level necessary for representation on the Board. The number of members on the Board that represent importers shall be determined by the Secretary on a proportional basis, by converting the volume of imported beef and beef products into live animal equivalencies.

(2) The order shall define the powers and duties of the Board, which shall be exercised at an annual meeting, and shall include only the following powers:

(A) To administer the order in accordance with its terms and provisions.

(B) To make rules and regulations to effectuate the terms and provisions of the order.

(C) To elect members of the Board to serve on the Committee.

(D) To approve or disapprove budgets submitted by the Committee.

(E) To receive, investigate, and report to the Secretary complaints of violations of the order.

(F) To recommend to the Secretary amendments to the order.

In addition, the order shall determine the circumstances under which special meetings of the Board may be held.

(3) The order shall provide that the term of appointment to the Board shall be three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms; and that Board members shall serve without compensation, but shall be

reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

(4)(A) The order shall provide that the Board shall elect from its membership ten members to serve on the Beef Promotion Operating Committee, which shall be composed of ten members of the Board and ten producers elected by a federation that includes as members the qualified State beef councils. The producers elected by the federation shall be certified by the Secretary as producers that are directors of a qualified State beef council. The Secretary also shall certify that such directors are duly elected by the federation as representatives to the Committee.

(B) The Committee shall develop plans or projects of promotion and advertising, research, consumer information, and industry information, which shall be paid for with assessments collected by the Board. In developing plans or projects, the Committee shall **)**

(i) to the extent practicable, take into account similarities and differences between certain beef, beef products, and veal; and

(ii) ensure that segments of the beef industry that enjoy a unique consumer identity receive equitable and fair treatment under this Act.

(C) The Committee shall be responsible for developing and submitting to the Board, for its approval, budgets on a fiscal year basis of its anticipated expenses and disbursements, including probable costs of advertising and promotion, research, consumer information, and industry information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit such budget to the Secretary for the Secretary's approval.

(D) The total costs of collection of assessments and administrative staff incurred by the Board during any fiscal year shall not exceed 5 per centum of the projected total assessments to be collected by the Board for such fiscal year. The Board shall use, to the extent possible, the resources, staffs, and facilities of existing organizations.

(5) The order shall provide that terms of appointment to the Committee shall be one year, and that no person may serve on the Committee for more than six consecutive terms. Committee members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee. The Committee may utilize the resources, staffs, and facilities of the Board and industry organizations. An employee of an industry organization may not receive compensation for work performed for the Committee, but shall be reimbursed from assessments collected by the Board for reasonable expenses incurred in performing such work.

(6) The order shall provide that, to ensure coordination and efficient use of funds, the Committee shall enter into contracts or agreements for implementing and carrying out the activities authorized by this Act with established national nonprofit industry-governed organizations, including the federation referred to in paragraph (4), to implement programs of promotion, research, consumer information, and industry information. Any such contract or agreement shall provide that **)**

(A) the person entering the contract or agreement shall develop and submit to the Committee a plan or project together with a budget or budgets that shows 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 person entering the contract or agreement shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Committee of activities conducted, and such other reports as the Secretary, the Board, or the Committee may require.

(7) The order shall require the Board and the Committee 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 them.

(8)(A) The order shall provide that each person making payment to a producer for cattle purchased from the producer shall, in the manner prescribed by the order, collect an assessment and remit the assessment to the Board. The Board shall use qualified State beef councils to collect such assessments.

(B) If an appropriate qualified State beef council does not exist to collect an assessment in accordance with paragraph (1), such assessment shall be collected by the Board.

(C) The order also shall provide that each importer of cattle, beef, or beef products shall pay an assessment, in the manner prescribed by the order, to the Board. The assessments shall be used for payment of the costs of plans and projects, as provided for in paragraph (4), and expenses in administering the order, including more administrative costs incurred by the Secretary after the order has been promulgated under this Act, and to establish a reasonable reserve. The rate of assessment prescribed by the order shall be one dollar per head of cattle, or the equivalent thereof in the case of imported beef and beef

products. A producer who can establish that the producer is participating in a program of an established qualified State beef council shall receive credit, in determining the assessment due from such producer, for contributions to such program of up to 50 cents per head of cattle or the equivalent thereof. There shall be only one qualified State beef council in each State. Any person marketing from beef from cattle of the person's own production shall remit the assessment to the Board in the manner prescribed by the order.

(9) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement, funds collected through assessments only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(10) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing governmental action or policy, with the exception of recommending amendments to the order.

(11) The order shall require that each person making payment to a producer, any person marketing beef from cattle of the person's own production directly to consumers, and any importer of cattle, beef, or beef products maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. Such information shall be made available to the Secretary as is appropriate to the administration or enforcement of this Act, the order, or any regulation issued under this Act. In addition, the Secretary shall authorize the use of information regarding persons paying producers that is accumulated under a law or regulation other than this Act or regulations under this Act.

All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order. Nothing in this paragraph may be deemed to prohibit **)**

(A) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

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

No information obtained under the authority of this Act may be made available to any agency or officer of the United States for any purpose other than the implementation of this Act and any investigatory or enforcement act necessary for the implementation of this Act. Any person violating the provisions of this paragraph shall be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and if an officer or employee of the Board or the Department, shall be removed from office.

(12) The order shall contain terms and conditions, not inconsistent with the provisions of this Act, as necessary to effectuate the provisions of the order. (7 U.S.C. 2904.)

CERTIFICATION OF ORGANIZATIONS TO NOMINATE

SEC. 6. (a) The eligibility of any State organization to represent producers and to participate in the making of nominations under section 5(1) shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under subsection (b) and such determination as to eligibility shall be final.

(b) A State cattle association or State general farm organization may be certified as described in subsection (a) if such association or organization meets all of the following eligibility criteria:

(1) The association or organization's total paid membership is comprised of at least a majority of cattle producers or the association or organization's total paid membership represents at least a majority of the cattle producers in the State.

(2) The association or organization represents a substantial number of producers that produce a substantial number of cattle in the State.

(3) The association or organization has a history of stability and permanency.

(4) A primary or overriding purpose of the association or organization is to promote the economic welfare of cattle producers.

(c) Certification of State cattle associations and State general farm organizations shall be based on a factual report submitted by the association or organization involved.

(d) If more than one State organization is certified in a State (or in a unit referred to in section 5(1)), such organizations may caucus to determine any of such State's (or such unit's) nominations under section 5(1). (7 U.S.C. 2905.)

REQUIREMENT OF REFERENDUM

SEC. 7. (a) For the purpose of determining whether the initial order shall be continued, not later than 22 months after the issuance of the order (or any earlier date recommended by the Board), the Secretary shall conduct a referendum among persons who have been producers or importers during a representative period, as determined by the Secretary. The order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum who, during a representative period as determined by the Secretary, have been engaged in the production of cattle. If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that continuation of the order is not favored by a majority voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) After the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 10 per centum or more of the number of cattle producers to determine whether cattle producers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period as determined by the Secretary, have been engaged in the production of cattle and shall terminate or suspend the order in an orderly manner as soon as practicable after such determination.

(c) The Department shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with conducting any referendum under this section, except for the salaries of Government employees. Any referendum conducted under this section shall be conducted on a date established by the Secretary, whereby producers shall certify that they were engaged in the production of cattle during the representative period and, on the same day, shall be provided an opportunity to vote in the referendum. Each referendum shall be conducted at county extension offices, and there shall be provision for an absentee mail ballot on request. (7 U.S.C. 2906.)

REFUNDS

SEC. 8. (a) During the period prior to the approval of the continuation of an order pursuant to the referendum required under section 7(a), subject to subsection (f), the Board shall **)**

(1) establish an escrow account to be used for assessment refunds;

(2) place funds in such account in accordance with subsection (b); and

(3) refund assessments to persons in accordance with this section.

(b) Subject to subsection (f), the Board shall place in such account, from assessments collected under section 7 during the period referred to in subsection (a), an amount equal to the product obtained by multiplying **)**

(1) the total amount of assessments collected under section 7 during such period; by

(2) the greater of **)**

(A) the average rate of assessment refunds provided to producers under State beef promotion, research, and consumer information programs financed through producer assessments, as determined by the Board; or

(B) 15 percent.

(c) Subject to subsections (d), (e), and (f) and notwithstanding any other provision of this subtitle, any person shall have the right to demand and receive from the Board a one-time refund of all assessments collected under section 7 from such person during the period referred to in subsection (a) if such person **)**

(1) is responsible for paying such assessment; and

(2) does not support the program established under this Act.

(d) Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

(e) Such refund shall be made on submission of proof satisfactory to the Board that the producer, person, or importer **)**

(1) paid the assessment for which refund is sought; and

(2) did not collect such assessment from another producer, person, or importer.

(f)(1) If the amount in the escrow account required to be established by subsection (a) is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is approved pursuant to the referendum required under section 10(a), the Board shall **)**

(A) continue to place in such account, from assessments collected under section 5, the amount required under subsection (b), until such time as the Board is able to comply with subparagraph (B); and

(B) provide to all eligible persons the total amount of assessments demanded by all eligible producers.

(2) If the amount in the escrow account required to be established by subsection (a) is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is not approved pursuant to the referendum required under section 7(a), the Board shall prorate the amount of such refunds among all eligible persons who demand such refund. (7 U.S.C. 2907.)

ENFORCEMENT

SEC. 9. (a) If the Secretary believes that the administration and enforcement of this Act or an order would be adequately served by such procedure, following an opportunity for an administrative hearing on the record, the Secretary may **)**

(1) issue an order to restrain or prevent a person from violating an order; and

(2) assess a civil penalty of not more than $5,000 for violation of such order.

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

(c) A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action. (7 U.S.C. 2908.)

INVESTIGATIONS; POWER TO SUBPOENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 10. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this Act or to determine whether any person subject to this Act has engaged or is about to engage in any act that constitutes or will constitute a violation of this Act, the order, or any rule or regulation issued under this Act. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of the person and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony regarding the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found. (7 U.S.C. 2909.)

ADMINISTRATIVE PROVISIONS

SEC. 11. (a) Nothing in this Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this Act applicable to the order shall be applicable to amendments to the order. (7 U.S.C. 2910.)

AUTHORIZATION OF APPROPRIATIONS

SEC. 12. There are authorized to be appropriated such sums as may be necessary to carry out this Act. Sums appropriated to carry out this Act shall not be available for payment of the expenses or expenditures of the Board or the Committee in administering any provisions of the order issued under section 4(b) of this Act. (7 U.S.C. 2911.)

SEC. 13 to 20. Omitted.[2]

[2] Sections 13 to 20 (7 U.S.C. 2912-2918) were omitted in the general revision of this Act by Pub. L. 99-198.

CANOLA AND RAPESEED RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT [1]

(7 U.S.C. 7441 - 7452)

SEC. 531. SHORT TITLE.

This subtitle may be cited as the "Canola and Rapeseed Research, Promotion, and Consumer Information Act". (7 U.S.C. 7401 note.)

SEC. 532. 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;

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[1] Title V, Subtitle C, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 1048, Apr. 4, 1996.

(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 subtitle 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 subtitle provides for the control of production or otherwise limits the right of individual producers to produce canola, rapeseed, or canola or rapeseed products. (7 U.S.C. 7441.)

SEC. 533. DEFINITIONS.

In this subtitle (unless the context otherwise requires):

(1) BOARD.—The term "Board" means the National Canola and Rapeseed Board established under section 535(b).

(2) CANOLA; RAPESEED.—The terms "canola" and "rapeseed" mean any brassica plant grown in the United States for the production of an oilseed, the oil of which is used for a food or nonfood use.

(3) CANOLA OR RAPESEED PRODUCT.—The term "canola or rapeseed product" means a product produced, in whole or in part, from canola or rapeseed.

(4) COMMERCE.—The term "commerce" includes interstate, foreign, and intrastate commerce.

(5) CONFLICT OF INTEREST.—The term "conflict of interest" means a situation in which a member of the Board has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with the Board.

(6) CONSUMER INFORMATION.—The term "consumer information" means information that will assist consumers and other persons in

making evaluations and decisions regarding the purchase, preparation, and use of canola, rapeseed, or canola or rapeseed products.

(7) DEPARTMENT.) The term "Department" means the Department of Agriculture.

(8) FIRST PURCHASER.) The term "first purchaser" means)

(A) except as provided in subparagraph (B), a person who buys or otherwise acquires canola, rapeseed, or canola or rapeseed products produced by a producer; or

(B) the Commodity Credit Corporation, in a case in which canola or rapeseed is forfeited to the Commodity Credit Corporation as collateral for a loan issued under a price support loan program administered by the Commodity Credit Corporation.

(9) INDUSTRY INFORMATION.) The term "industry information" means information or a program that will lead to the development of new markets, new marketing strategies, or increased efficiency for the canola and rapeseed industry, or an activity to enhance the image of the canola or rapeseed industry.

(10) INDUSTRY MEMBER.) The term "industry member" means a member of the canola and rapeseed industry who represents)

(A) manufacturers of canola or rapeseed products; or

(B) persons who commercially buy or sell canola or rapeseed.

(11) MARKETING.) The term "marketing" means the sale or other disposition of canola, rapeseed, or canola or rapeseed products in a channel of commerce.

(12) ORDER.) The term "order" means an order issued under section 534.

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

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

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

(16) RESEARCH.) The term "research" means any type of test, study, or analysis to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of canola, rapeseed, or canola or rapeseed products, including research

activity designed to identify and analyze barriers to export sales of canola or rapeseed produced in the United States.

(17) SECRETARY.**)** The term "Secretary" means the Secretary of Agriculture.

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

(19) UNITED STATES.**)** The term "United States" means collectively the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 7442.)

SEC. 534. ISSUANCE AND AMENDMENT OF ORDERS.

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

(b) PROCEDURE.**)**

(1) PROPOSAL OR REQUEST FOR ISSUANCE.**)** The Secretary may propose the issuance of an order under this subtitle, or an association of canola and rapeseed producers or any other person that would be affected by an order issued pursuant to this subtitle may request the issuance of, and submit a proposal for, an order.

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

(3) ISSUANCE OF ORDER.**)** After notice and opportunity for public comment are given as provided in paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this subtitle. 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. (7 U.S.C. 7443.)

SEC. 535. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.**)** An order issued under this subtitle shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF THE 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 536, 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 THE 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 536, 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 536;

(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 536, 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 536 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 THE 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 subtitle 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 subtitle; 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 subtitle, including such records as are necessary to verify any required reports.

(2) CONFIDENTIALITY.—

(A) IN GENERAL.—Except as otherwise provided in this subtitle, 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 subtitle.

(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 subtitle.

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

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

(5) WITHHOLDING OF INFORMATION.**)** Nothing in this subtitle authorizes the withholding of information from Congress.

(i) USE OF ASSESSMENTS.**)** The order shall provide that the assessments collected under section 536 shall be used for payment of the expenses in implementing and administering this subtitle, with provision for a reasonable reserve, and to cover administrative costs incurred by the Secretary in implementing and administering this subtitle.

(j) OTHER TERMS AND CONDITIONS.**)** The order shall contain such other terms and conditions, not inconsistent with this subtitle, as are determined necessary by the Secretary to effectuate this subtitle. (7 U.S.C. 7444.)

SEC. 536. ASSESSMENTS.

(a) IN GENERAL.**)**

(1) FIRST PURCHASERS.) During the effective period of an order issued pursuant to this subtitle, 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 535(b)(6), 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 535(b)(6) 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 537(a), the Board recommends an increase above 10 cents per hundredweight; and (B) the increase is approved in a referendum under section 537(b).

(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 535(b)(6) 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 534(b)(3) and ending on the date on which a referendum is conducted under section 537(a), 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 subtitle; and

(C) the producer demands the refund prior to the conduct of the referendum under section 537(a).

(4) FORM OF DEMAND. **)** The demand shall be made in accordance with such regulations, in such form, and within such time period as prescribed by the Board.

(5) MAKING OF REFUND. **)** The refund shall be made on submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is demanded.

(6) PRORATION. **)** If **)**

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible producers; and

(B) the order is not approved pursuant to the referendum conducted under section 537(a); the Board shall prorate the amount of the refunds among all eligible producers who demand a refund.

(7) PROGRAM APPROVED. **)** If the plan is approved pursuant to the referendum conducted under section 537(a), all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this subtitle. (7 U.S.C. 7445.)

SEC. 537. REFERENDA.

(a) INITIAL REFERENDUM.—

(1) REQUIREMENT.—During the period ending 30 months after the date on which an order is first issued under section 534(b)(3), the Secretary shall conduct a referendum among producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed for the purpose of ascertaining whether the order then in effect shall be continued.

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

(3) APPROVAL OF ORDER.—The order shall be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum.

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

(b) ADDITIONAL REFERENDA.—

(1) IN GENERAL.—

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

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

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

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

(3) OPPORTUNITY TO REQUEST ADDITIONAL REFERENDA.—

(A) IN GENERAL.—Beginning on the date that is 5 years after the conduct of a referendum under this subtitle, and every 5 years thereafter, the Secretary shall provide canola and rapeseed producers an opportunity to request an additional referendum.

(B) METHOD OF MAKING REQUEST.—

(i) IN-PERSON REQUESTS.—To carry out subparagraph (A), the Secretary shall establish a procedure under which a producer may make a request for a reconfirmation referendum in person at a county Cooperative State Research, Education, and Extension Service office or a county Consolidated Farm Service Agency office during a period established by the Secretary, or as provided in clause (ii).

(ii) MAIL-IN REQUESTS.—In lieu of making a request in person, a producer may make a request by mail. To facilitate the submission of requests by mail, the Secretary may make mail-in request forms available to producers.

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

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

(E) TIME LIMIT.—An additional referendum requested under the procedures provided in this paragraph shall be conducted not later

than 1 year after the Secretary determines that a representative group of producers, as described in paragraph (1)(B), have requested the conduct of the referendum.

(c) PROCEDURES.—

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

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

(3) PLACE.—Referenda under this section shall be conducted at locations determined by the Secretary. On request, absentee mail ballots shall be furnished by the Secretary in a manner prescribed by the Secretary. (7 U.S.C. 7446.)

SEC. 538. PETITION AND REVIEW.

(a) PETITION.—

(1) IN GENERAL.—A person subject to an order issued under this subtitle may file with the Secretary a petition—

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

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

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

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

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

(b) REVIEW.—

(1) COMMENCEMENT OF ACTION.—The district court of the United States for any district in which the person who is a petitioner under subsection (a) resides or carries on business shall have jurisdiction to

review a ruling on the petition, if a complaint is filed by the person not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a)(3).

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

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

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

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

(4) ENFORCEMENT.—The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 539. (7 U.S.C. 7447.)

SEC. 539. ENFORCEMENT.

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

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

(c) CIVIL PENALTIES AND ORDERS.—

(1) CIVIL PENALTIES.—

(A) IN GENERAL.—Any person who willfully violates any provision of an order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit an assessment or fee required of the person under an order or regulation, may be assessed—

(i) a civil penalty by the Secretary of not more than $1,000 for each violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order or regulation, an additional penalty equal to the amount of the assessment.

(B) SEPARATE OFFENSE.—Each violation under subparagraph (A) shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.—In addition to, or in lieu of, a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing a violation.

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

(4) FINALITY.—The order of the Secretary assessing a penalty or imposing a cease-and-desist order under this subsection shall be final and conclusive unless the affected person files an appeal of the order in the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.—

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

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

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

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

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

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

(3) STANDARD OF REVIEW.—A finding of the Secretary under this section shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY CEASE-AND-DESIST ORDERS.—Any person who fails to obey a cease-and-desist order issued under this section after the cease-and-desist order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $5,000

for each offense. Each day during which the failure continues shall be considered as a separate violation of the cease-and-desist order.

(f) FAILURE TO PAY PENALTIES.) If a person fails to pay an assessment of a civil penalty under this section after the assessment has become a final and unappealable order, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) ADDITIONAL REMEDIES.) The remedies provided in this subtitle shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 7448.)

SEC. 540. 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 subtitle; and

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

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.)

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

(2) ADMINISTRATIVE HEARINGS.) For the purpose of an administrative hearing held under section 538 or 539, the presiding officer is authorized to administer oaths and affirmations, subpoena and compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States.

(c) AID OF COURTS.) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring the person to comply with the subpoena.

(d) CONTEMPT. **)** A failure to obey an order of the court under this section may be punished by the court as contempt of the court.

(e) PROCESS. **)** Process may be served on a person in the judicial district in which the person resides or carries on business or wherever the person may be found.

(f) HEARING SITE. **)** The site of a hearing held under section 538 or 539 shall be in the judicial district where the person affected by the hearing resides or has a principal place of business. (7 U.S.C. 7449.)

SEC. 541. SUSPENSION OR TERMINATION.

The Secretary shall, whenever the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the declared policy of this subtitle, suspend or terminate the operation of the order or provision. The suspension or termination of an order shall not be considered an order within the meaning of this subtitle. (7 U.S.C. 7450.)

SEC. 542. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 7451.)

SEC. 543. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL. **)** There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES. **)** Funds appropriated under subsection (a) shall not be available for payment of the expenses or expenditures of the Board in administering a provision of an order issued under this subtitle. (7 U.S.C. 7452.)

PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT OF 1985 [1]

(7 U.S.C. 4801-4819)

SHORT TITLE

SEC. 1611. This subtitle may be cited as the "Pork Promotion, Research, and Consumer Information Act of 1985". (7 U.S.C. 4801 note.)

FINDINGS AND DECLARATION OF PURPOSE

SEC. 1612. (a) Congress finds that **)**

(1) pork and pork products are basic foods that are a valuable and healthy part of the human diet;

(2) the production of pork and pork products plays a significant role in the economy of the United States because pork and pork products are **)**

(A) produced by thousands of producers, including many small- and medium-sized producers; and

(B) consumed by millions of people throughout the United States on a daily basis;

(3) pork and pork products must be available readily and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets, and development of new markets, for pork and pork products are vital to **)**

(A) the welfare of pork producers and persons concerned with producing and marketing pork and pork products; and

(B) the general economy of the United States;

(5) pork and pork products move in interstate and foreign commerce;

(6) pork and pork products that do not move in such channels of commerce directly burden or affect interstate commerce in pork and pork products; and

(7) in recent years, increasing quantities of low-cost, imported pork and pork products have been brought into the United States and replaced domestic pork and pork products in normal channels of trade.

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[1] Title XVI, Subtitle B, of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1606, Dec. 23, 1985.

(b)(1) It is the purpose of this subtitle to authorize the establishment of an orderly procedure for financing, through adequate assessments, and carrying out an effective and coordinated program of promotion, research, and consumer information designed to **)**

(A) strengthen the position of the pork industry in the marketplace; and

(B) maintain, develop, and expand markets for pork and pork products.

(2) Such procedure shall be implemented, and such program shall be conducted, at no cost to the Federal Government.

(3) Nothing in this subtitle may be construed to **)**

(A) permit or require the imposition of quality standards for pork or pork products;

(B) provide for control of the production of pork or pork products; or

(C) otherwise limit the right of an individual pork producer to produce pork and pork products. (7 U.S.C. 4801.)

DEFINITIONS

SEC. 1613. For purposes of this subtitle:

(1) The term "Board" means the National Pork Board established under section 1619.

(2) The term "consumer information" means an activity intended to broaden the understanding of sound nutritional attributes of pork or pork products, including the role of pork or pork products in a balanced, healthy diet.

(3) The term "Delegate Body" means the National Pork Producers Delegate Body established under section 1617.

(4) The term "imported" means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

(5) The term "importer" means a person who imports porcine animals, pork, or pork products into the United States.

(6) The term "order" means a pork and pork products promotion, research, and consumer information order issued under section 1614.

(7) The term "person" means an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

(8) The term "porcine animal" means a swine raised for **)**

(A) feeder pigs;

(B) seedstock; or

(C) slaughter.

(9) The term “pork” means the flesh of a porcine animal.

(10) The term “pork product” means a product produced or processed in whole or in part from pork.

(11) The term “producer” means a person who produces porcine animals in the United States for sale in commerce.

(12) The term “promotion” means an action, including paid advertising, taken to present a favorable image for porcine animals, pork, or pork products to the public with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

(13) The term “research” means **)**

(A) research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products; or

(B) dissemination to a person of the results of such research.

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

(15) The term “State” means each of the 50 States.

(16) The term “State association” means **)**

(A) the single organization of pork producers in a State that is **)**

(i) organized under the laws of the State in which such association operates; and

(ii) recognized by the chief executive officer of such State as representing the pork producers of such State; or

(B) if such organization does not exist on the effective date of this subtitle, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

(17) The term “to market” means to sell or to otherwise dispose of a porcine animal, pork, or pork product in commerce. (7 U.S.C. 4802.)

PORK AND PORK PRODUCT ORDERS

SEC. 1614. (a) To carry out this subtitle, the Secretary shall, in accordance with this subtitle, issue and, from time to time, amend orders applicable to persons engaged in **)**

(1) the production and sale of porcine animals, pork, and pork products in the United States; and

(2) the importation of porcine animals, pork, or pork products into the United States.

(b) The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 4803.)

NOTICE AND HEARING

SEC. 1615. During the period beginning on the effective date of this subtitle and ending 30 days after receipt of a proposal for an initial order submitted by any person affected by this subtitle, the Secretary shall **)**

(1) publish such proposed order; and

(2) give due notice of and opportunity for public comment on such proposed order. (7 U.S.C. 4804.)

FINDINGS AND ISSUANCE OF ORDERS

SEC. 1616. (a) After notice and opportunity for public comment have been provided in accordance with section 1615, the Secretary shall issue and publish an order if the Secretary finds, and sets forth in such order, that the issuance of such order and all terms and conditions thereof will assist in carrying out this subtitle.

(b) Not more than one order may be in effect at a time.

(c) An order shall become effective on a date that is not more than 90 days following the publication of such order.

(d) An order shall contain such terms and conditions as are required in sections 1617 through 1620 and, except as provided in section 1621, no others. (7 U.S.C. 4805.)

NATIONAL PORK PRODUCERS DELEGATE BODY

SEC. 1617. (a) The order shall provide for the establishment and appointment by the Secretary, not later than 60 days after the effective date of such order, of a National Pork Producers Delegate Body.

(b)(1) The Delegate Body shall consist of **)**

(A) producers, as appointed by the Secretary in accordance with paragraph (2), from nominees submitted as follows:

(i) in the case of the initial Delegate Body appointed by each State in accordance with section 1618.

(ii) in the case of each succeeding Delegate Body, each State association shall submit nominations selected by such association pursuant to a selection process that **)**

(I) is approved by the Secretary;

(II) requires public notice of the process to be given at least one week in advance by publication in a

newspaper or newspaper of general circulation in such State and in pork production and agriculture trade publications; and

(III) that provides complete and equal access to the nominating process to every producer who has paid all assessments due under section 1620 and not demanded a refund under section 1624,

or pursuant to an election of nominees conducted in accordance with section 1618.

(iii) In the case of a State that has a State association that does not submit nominations or that does not have a State association, such State shall submit nominations in a manner prescribed by the Secretary; and

(B) importers, as appointed by the Secretary in accordance with paragraph (3).

(2) The number of producer members appointed to the Delegate Body from each State shall equal at least two members, and additional members, allocated as follows:

(A) Shares shall be assigned to each State **)**

(i) for the 1986 calendar year, on the basis of one share for each $400,000 of farm market value of porcine animals marketed from such State (as determined by the Secretary based on the annual average of farm market value in the most recent 3 calendar years preceding such year), rounded to the nearest $400,000; and

(ii) for each calendar year thereafter, on the basis of one share for each $1,000 of the aggregate amount of assessments collected (minus refunds under section 1624) in such State from persons described in section 1620(a)(1) (A) and (B), rounded to the nearest $1,000.

(B) If during a calendar year the number of such shares of a State is **)**

(i) less than 301, the State shall receive a total of two producer members;

(ii) more than 300 but less than 601, the State shall receive a total of three producer members;

(iii) more than 600 but less than 1,001, the State shall receive a total of four producer members; and

(iv) more than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) The number of importer members appointed to the Delegate Body shall be determined as follows:

(A) Shares shall be assigned to importers **)**

(i) for the 1986 calendar year, on the basis of one share for each $575,000 of market value of marketed porcine animals, pork, or pork products (as determined by the Secretary based on the annual average of imports in the most recent 3 calendar years preceding such year), rounded to the nearest $575,000; and

(ii) for each calendar year thereafter, on the basis of one share for each $1,000 of the aggregate amount of assessments collected (minus refunds under section 1624) from importers, rounded to the nearest $1,000.

(B) The number of importer members appointed to the Delegate Body shall equal a total of **)**

(i) three members for the first 1,000 such shares; and

(ii) one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(c)(1) A producer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to **)**

(A) the number of shares attributable to the State of the member; divided by

(B) the number of producer members from such State.

(2) An importer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to **)**

(A) the number of shares allocated to importers; divided by

(B) the number of importer members.

(3) Members entitled to cast a majority of the votes (including fractions thereof) on the Delegate Body shall constitute a quorum.

(4) A majority of the votes (including fractions thereof) cast at a meeting at which a quorum is present shall be decisive of a motion or election presented to the Delegate Body for a vote.

(d) A member of the Delegate Body shall serve for a term of 1 year, except that the term of a member of the Delegate Body shall continue until the successor of such member, if any, is appointed in accordance with subsection (b)(1).

(e)(1) At the first annual meeting, the Delegate Body shall select a Chairman by a majority vote.

(2) At each annual meeting thereafter, the President of the Board shall serve as the Chairman of the Delegate Body.

(f) A member of the Delegate Body shall serve without compensation, but may be reimbursed by the Board from assessments collected under section 1620 for transportation expenses incurred in performing duties as a member of the Delegate Body.

(g)(1) The Delegate Body shall **)**

(A) nominate **)**

(i) not less than 23 persons for appointment to the Board, for the first year for which nominations are made; and

(ii) not less than 1\1/2\ persons (rounded up to the nearest person) for each vacancy in the Board that requires nominations thereafter; and

(B) submit such nominations to the Secretary.

(2) The Delegate Body shall meet annually to make such nominations.

(3) A majority of the Delegate Body shall vote in person in order to nominate members to the Board.

(h) The Delegate Body shall **)**

(1) recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 1620(5); and

(2) determine the percentage of the aggregate amount of assessments collected in a State that each State association shall receive under section 1620(c)(1). (7 U.S.C. 4806.)

SELECTION OF DELEGATE BODY

SEC. 1618. (a)(1) Not later than 30 days after the effective date of the order, the Secretary shall call for the nomination within each State of candidates for appointment as producer members of the initial Delegate Body.

(2) Each State association may nominate producers who are residents of such State to serve as such candidates.

(3)(A) Additional producers who are residents of a State may be nominated as candidates of such State by written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. The Secretary shall establish and publicize the procedures governing the time and place for filing petitions.

(b)(1) After the Secretary has received the nominations required under subsection (a) and not later than 45 days after the effective date of the order, the Secretary shall call for an election within each State of persons for appointment as producer members of the initial Delegate Body.

(2) To be eligible to vote in an election held in a State, a person must be a producer who is a resident of such State.

(3)(A) Notice of each such election shall be given by the Secretary **)**

(i) by publication in a newspaper or newspapers of general circulation in each State, and in pork production and agriculture trade publications, at least 1 week prior to the election; and

(ii) in any other reasonable manner determined by the Secretary.

(B) The notice shall set forth the period of time and places for voting and such other information as the Secretary considers necessary.

(4) Each State shall nominate to the Delegate Body the number of producer members required under section 1617(b)(2)(B).

(5) The producers who receive the highest number of votes in each State shall be nominated for appointment as members of the Delegate Body from such State. (c)(1) Except as provided in paragraph (3), after the election of the producer members of the initial Delegate Body, the Board shall administer all subsequent nominations and elections of the producer members to be nominated for appointment as members of the Delegate Body, with the assistance of the Secretary and in accordance with subsections (a)(3) and (b).

(2) The Board shall determine the timing of an election referred to in paragraph (1).

(3) To be eligible to vote in such an election in a State, a person must **)**

(A) be a producer who is a resident of such State;

(B) have paid all assessments due under section 1620; and

(C) not demanded a refund of an assessment under section 1624.

(d)(1) Prior to the expiration of the term of any producer member of the Delegate Body, the Board shall appoint a nominating committee of producers who are residents of the State represented by such member.

(2) Such committee shall nominate producers of such State as candidates to fill the position for which an election is to be held.

(3) Additional producers who are residents of a State may be nominated to fill such positions in accordance with subsection (a)(3). (7 U.S.C. 4807.)

NATIONAL PORK BOARD

SEC. 1619. (a)(1) The order shall provide for the establishment and appointment by the Secretary of a 15-member National Pork Board.

(2)[2] The Board shall consist of producers representing at least 12 States and importers appointed by the Secretary from nominations submitted under section 1617(g).

(2)[3] The Board shall consist of producers or importers appointed by the Secretary from nominations submitted under section 1617(g).

(3) A member of the Board shall serve for a 3-year term, with no such member serving more than two consecutive 3-year terms, except that initial appointments to the Board shall be staggered with an equal number of members appointed, to the maximum extent possible, to 1-year, 2-year, and 3-year terms, except that the term of a member of the Board shall

[2] So in original.

[3] *See* footnote 2.

continue until the successor of such member, if any, is appointed in accordance with paragraph (2).

(4) The Board shall select its President by a majority vote.

(5)(A) A majority of the members of the Board shall constitute a quorum at a meeting of the Board.

(B) A majority of votes cast at a meeting at which a quorum is present shall determine a motion or election.

(6) A member of the Board shall serve without compensation, but shall be reimbursed by the Board from assessments collected under section 1620 for reasonable expenses incurred in performing duties as a member of the Board.

(b)(1) The Board shall **)**

(A) develop, at the initiative of the Board or other person, proposals for promotion, research, and consumer information plans and projects;

(B) submit such plans and projects to the Secretary for approval;

(C) administer the order, in accordance with the order and this subtitle;

(D) prescribe such rules as are necessary to carry out such order;

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

(F) make recommendations to the Secretary with respect to amendments to such order; and

(G) employ a staff and conduct routine business.

(2) The Board shall prepare and submit to the Secretary, for the approval of the Secretary, a budget for each fiscal year of anticipated expenses and disbursements of the Board in the administration of the order, including the projected cost of **)**

(A) any promotion, research or consumer information plan or project to be conducted by the Board directly or by way of contract or agreement; and

(B) the budgets, plans, or projects for which State associations are to receive funds pursuant to section 1620(c)(1).

(3) No plan, project, or budget referred to in paragraph (1) or (2) may become effective unless approved by the Secretary.

(4)(A) The Board, with the approval of the Secretary, may enter into contracts or agreements with a person for **)**

(i) the development and conduct of activities authorized under an order; and

(ii) the payment of the cost thereof with funds collected through assessments under such order.

(B) Such contract or agreement shall require that **)**

(i) the contracting party develop and submit to the Board a plan or project, together with a budget or budgets that include the estimated cost to be incurred under such plan or project;

(ii) such plan or project become effective on the approval of the Secretary; and

(iii) the contracting party **)**

(I) keep accurate records of all relevant transactions of the party;

(II) make periodic reports to the Board of **)**

(aa) relevant activities the party has conducted; and

(bb) an accounting for funds received and expended under such contract; and

(III) make such other reports as the Secretary or Board may require. (7 U.S.C. 4808.)

ASSESSMENTS

SEC. 1620. (a)(1) The order shall provide that, not later than 30 days after the effective date of the order under section 1616(c) an assessment shall be paid, in the manner prescribed in the order. Upon the appointment of the Board, the assessments held in escrow shall be distributed to the Board. Except as provided in paragraph (3), assessments shall be payable by **)**

(A) each producer for each porcine animal described in subparagraph (A) or (C) of section 1613(8) produced in the United States that is sold or slaughtered for sale;

(B) each producer for each porcine animal described in subsection 1613(8)(B) that is sold; and

(C) each importer for each porcine animal, pork, or pork product that is imported into the United States.

(2) Such assessment shall be collected and remitted to the Board once it is appointed pursuant to section 1619, but, until that time, to the Secretary, who shall promptly proceed to distribute the funds received by him in accordance with the provisions of subsection (c), except that the Secretary shall retain the funds to be received by the Board until such time as the Board is appointed pursuant to section 1619, by **)**

(A) in the case of subparagraph (A) of paragraph (1), the purchaser of the porcine animal referred to in such subparagraph;

(B) in the case of subparagraph (B) of paragraph (1), the producer of the porcine animal referred to in such subparagraph; and

(C) in the case of subparagraph (C) of paragraph (1), the importer referred to in such subparagraph.

(3) A person is not required to pay an assessment for a porcine animal, pork, or pork product under paragraph (1) if such person proves to the Board that an assessment was paid previously under such paragraph by a person for such porcine animal (of the same category described in subparagraph (A), (B), or (C) of section 1613(8)), pork, or pork product.

(b)(1) Except as provided in paragraph (2), the rate of assessment prescribed by the initial order shall be the lesser of **)**

(A) 0.25 percent of the market value of the porcine animal, pork, or pork product sold or imported; or

(B) an amount established by the Secretary based on a recommendation of the Delegate Body.

(2) Except as provided in paragraph (3), the rate of assessment in the initial order may be increased by not more than 0.1 percent per year on recommendation of the Delegate Body.

(3) The rate of assessment may not exceed 0.50 percent of such market value unless **)**

(A) after the initial referendum required under section 1622(a), the Delegate Body recommends an increase in such rate above 0.50 percent; and

(B) such increase is approved in a referendum conducted under section 1622(b).

(4)(A) Pork or pork products imported into the United States shall be assessed based on the equivalent value of the live porcine animal from which such pork or pork products were produced, as determined by the Secretary.

(B) The Secretary may waive the collection of assessments on a type of such imported pork or pork products if the Secretary determines that such collection is not practicable.

(c) Funds collected by the Board from assessments collected under this section shall be distributed and used in the following manner:

(1)(A) Each State association, shall receive an amount of funds equal to the product obtained by multiplying **)**

(i) the aggregate amount of assessments attributable to porcine animals produced in such State by persons described in subsection (a)(1) (A) and (B) minus that State's share of refunds determined pursuant to paragraph (4) by such persons pursuant to section 1624; and

(ii) a percentage applicable to such State association determined by the Delegate Body, but in no event less than sixteen and one-half percent, or

(B) in the case of a State association that was conducting a pork promotion program in the period from July 1, 1984, to June 30, 1985, if greater than (A) an amount of funds equal to the amount of funds that would have been collected in such State pursuant to the

pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals, subject to assessment and to which no refund was received in such State in each year following the enactment of this Act, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessments then in effect and the rate of return then in effect from each State to the Council described in paragraph (2)(A), and other national entities involved in pork promotion, research and consumer information.

(C) A State association shall use such funds and any proceeds from the investment of such funds for financing **)**

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses incurred in connection with such plans and projects.

(2)(A) The National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa, shall receive an amount of funds equal to **)**

(i) 37½ percent of the aggregate amount of assessments collected under this section throughout the United States from the date assessment commences pursuant to subsection (a)(1) until the first day of the month following the month in which the Board is appointed pursuant to section 1619.

(ii) 35 percent thereafter until the referendum is conducted pursuant to section 1622,

(iii) 25 percent until twelve months after the referendum is conducted, and

(iv) no funds thereafter except insofar as it obtains such funds from the Board pursuant to section 1619 or 1620, each of which amounts determined under (i), (ii), and (iii) shall be less the Council's share of refunds determined pursuant to paragraph (4).

(B) The Council shall use such funds and proceeds from the investment of such funds for financing **)**

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses of the Council.

(3)(A) The Board shall receive the amount of funds that remain after the distribution required under paragraphs (1) and (2).

(B) The Board shall use such funds and any proceeds from the investment of such funds pursuant to subsection (g) for **)**

(i) financing promotion, research, and consumer information plans and projects in accordance with this title;

(ii) such expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary;

(iii) accumulation of a reasonable reserve to permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced; and

(iv) administrative costs incurred by the Secretary to carry out this title, including any expenses incurred for the conduct of a referendum under this title.

(4)(A) Each State's share of refunds shall be determined by multiplying the aggregate amount of refunds received by producers in such State by the percentage applicable to such State pursuant to paragraph (1)(A)(ii).

(B) The National Pork Producers Council's share of refunds shall be determined by multiplying its applicable percent of the aggregate amount of assessments by the product of **)**

(i) subtracting from the aggregate amount of refunds received by all producers the aggregate amount of State share or refunds in every State determined pursuant to subparagraph (A), and

(ii) adding to that sum the aggregate amount of refunds received by importers.

(d) No promotion funded with assessments collected under this subtitle may make **)**

(1) a false or misleading claim on behalf of pork or a pork product; or

(2) a false or misleading statement with respect to an attribute or use of a competing product.

(e) No funds collected through assessments authorized by this section may, in any manner, be used for the purpose of influencing legislation, as defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954.

(f) The Board shall **)**

(1) maintain such books and records, and prepare and submit to the Secretary such reports from time to time, as may be required by the Secretary for appropriate accounting of the receipt and disbursement of funds entrusted to the Board or a State association, as the case may be; and

(2) cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

(g) The Board, with the approval of the Secretary, may invest funds collected through assessments authorized under this section, pending disbursement for a plan or project, only in **)**

(1) an obligation of the United States, or of a State or political subdivision thereof;

(2) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(3) an obligation fully guaranteed as to principal and interest by the United States. (7 U.S.C. 4809.)

PERMISSIVE PROVISIONS

SEC. 1621. (a) On the recommendation of the Board, and with the approval of the Secretary, an order may contain one or more of the following provisions:

(1) Each person purchasing a porcine animal from a producer for commercial use, and each importer, shall **)**

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

(B) file reports at the time, in the manner, and having the content prescribed by the order,

including documentation of the State of origin of a purchased porcine animal or the place of origin of an imported porcine animal, pork, or pork product.

(2) A term or condition **)**

(A) incidental to, and not inconsistent with, the terms and conditions specified in this subtitle; and

(B) necessary to effectuate the other provisions of such order.

(b)(1) Information referred to in subsection (a)(1) shall be made available to the Secretary and the Board as is appropriate or necessary for the effectuation, administration, or enforcement of this subtitle or an order.

(2)(A) Except as provided in subparagraphs (B) and (C), information obtained under subsection (a)(1) shall be kept confidential by officers or employees of the Department of Agriculture or the Board.

(B) Such information may be disclosed only **)**

(i) in a suit or administrative hearing involving the order with respect to which the information was furnished or acquired **)**

(I) brought at the direction or on the request of the Secretary; or

(II) to which the Secretary or an officer of the United States is a party; and

(ii) if the Secretary considers such information to be relevant to such suit or hearing.

(C) Nothing in this section prohibits **)**

(i) the issuance of a general statement based on the reports of a number of persons subject to an order, or statistical data collected

therefrom, if such statement or data does not identify the information furnished by any person; or

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

(c) A person who willfully violates subsection (a)(1) or (b) shall, on conviction, be **)**

(1) subject to a fine of not more than $1,000 or imprisoned for not more than 1 year, or both; and

(2) if such person is an employee of the Department of Agriculture or the Board, removed from office. (7 U.S.C. 4810.)

REFERENDUM

SEC. 1622. (a) For the purpose of determining whether an order then in effect shall be continued during the period beginning not earlier than 24 months after the issuance of the order and ending not later than 30 months after the issuance of the order, the Secretary shall conduct a referendum among persons who have been pork producers and importers during a representative period, as determined by the Secretary.

(b)(1) Such order shall be continued only if the Secretary determines that such order has been approved by not less than a majority of the producers and importers voting in the referendum.

(2) If the continuation of such order is not approved by a majority of the producers and importers voting in the referendum, the Secretary shall terminate **)** (A) collection of assessments under the order not later than 6 months after the date of such determination; and

(B) the order in an orderly manner as soon as practicable after the date of such determination.

(c) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred in connection with a referendum conducted under this section or section 1623.

(d) A referendum shall be conducted in such manner as prescribed by the Secretary.

(e) A referendum to amend the initial order shall be conducted pursuant to this section. (7 U.S.C. 4811.)

SUSPENSION AND TERMINATION OF ORDERS

SEC. 1623. (a) If after the initial referendum provided for in section 1622(a) the Secretary determines that an order, or a provision of the order, obstructs or does not tend to effectuate the declared policy of this subtitle, the Secretary shall terminate or suspend the operation of such order or provision.

(b)(1)(A) Except as provided in paragraph (2), after the initial referendum provided for in section 1622(a), on the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period, as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the termination or suspension of the order.

(B) The Secretary shall **)**

(i) suspend or terminate collection of assessments under the order not later than 6 months after the date the Secretary determines that suspension or termination of the order is favored by a majority of the producers and importers voting in the referendum; and

(ii) terminate the order in an orderly manner as soon as practicable after the date of such determination.

(2) Except with respect to a referendum required to be conducted under section 1622, the Secretary shall not be required by paragraph (1) to conduct more than one referendum under this subtitle in a 2-year period.

(c) The termination or suspension of an order, or a provision of an order, shall not be considered an order within the meaning of this subtitle. (7 U.S.C. 4812.)

REFUNDS

SEC. 1624. (a) Notwithstanding any other provision of this subtitle, prior to the approval of the continuation of an order pursuant to the referendum required under section 1622(a), any person shall have the right to demand and receive from the Board a refund of an assessment collected under section 1620 if such person **)**

(1) is responsible for paying such assessment; and

(2) does not support the program established under this subtitle.

(b) Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid.

(c) Such refund shall be made not later than 30 days after demand is received therefore on submission of proof satisfactory to the Board that the producer, person, or importer **)**

(1) paid the assessment for which refund is sought; and

(2) did not collect such assessment from another producer, person, or importer. (7 U.S.C. 4813.)

PETITION AND REVIEW

SEC. 1625. (a)(1) A person subject to an order may file with the Secretary a petition **)**

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

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

(2) Such person shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) After such hearing, the Secretary shall make a determination granting or denying such petition.

(b)(1) A district court of the United States in the district in which such person resides or does business shall have jurisdiction to review such determination if a complaint for such purpose is filed not later than 20 days after the date such person receives notice of such determination.

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

(3) If a court determines that such determination is not in accordance with law, the court shall remand such proceedings to the Secretary with directions to **)** (A) make such ruling as the court shall determine to be in accordance with law; or

(B) take such further proceedings as, in the opinion of the court, the law requires. (7 U.S.C. 4814.)

ENFORCEMENT

SEC. 1626. (a)(1) A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating an order, rule, or regulation issued under this subtitle.

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

(b)(1)(A) A person who willfully violates an order, rule, or regulation issued by the Secretary under this subtitle may be assessed **)**

(i) a civil penalty by the Secretary of not more than $1,000 for each such violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order, an additional penalty equal to the amount of such assessment.

(B) Each such violation shall be a separate offense.

(C) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from violating such order, rule, or regulation.

(D) No penalty may be assessed or cease-and-desist order issued unless the Secretary gives such person notice and opportunity for a hearing on the record with respect to such violation.

(E) An order issued under this paragraph by the Secretary shall be final and conclusive unless such person files an appeal from such order with the appropriate United States court of appeals not later than 30 days after such person receives notice of such order.

(2)(A) A person against whom an order is issued under paragraph (1) may obtain review of such order in the court of appeals of the United States for the circuit in which such person resides or does business, or in the United States Court of Appeals for the District of Columbia Circuit, by **)**

(i) filing a notice of appeal in such court not later than 30 days after the date of such order; and

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

(B) The Secretary shall file promptly in such court a certified copy of the record on which such violation was found.

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

(3)(A) A person who fails to obey a valid cease-and-desist order issued under paragraph (1) by the Secretary, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not more than $500 for each offense.

(B) Each day during which such failure continues shall be considered a separate violation of such order.

(4)(A) If a person fails to pay a valid civil penalty imposed under this subsection by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in an appropriate district court of the United States.

(B) In such action, the validity and appropriateness of the order imposing such civil penalty shall not be subject to review.

(c) The remedies provided in subsections (a) and (b) shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 4815.)

INVESTIGATIONS

SEC. 1627. (a) The Secretary may make such investigations as the Secretary considers necessary **)**

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

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

(b)(1) For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry.

(2) Such attendance of witnesses and the production of such records may be required from any place in the United States.

(c)(1) In the case of contumacy, or refusal to obey a subpoena, by a person, the Secretary may invoke the aid of a court of the United States with jurisdiction over such investigation or proceeding, or where such person resides or does business, in requiring the attendance and testimony of such person and the production of such records.

(2) The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation.

(3) A failure to obey an order issued under this section by the court may be punished by the court as a contempt thereof.

(4) Process in such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found. (7 U.S.C. 4816.)

PREEMPTION

SEC. 1628. (a) This subtitle is intended to occupy the field of **)**

(1) promotion and consumer education involving pork and pork products; and

(2) obtaining funds therefor from pork producers.

(b) The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from this subtitle may not be imposed by a State.

(c) This section shall apply only during a period beginning on the date of the commencement of the collection of assessments under section 1620 and ending on the date of the termination of the collection of assessments under section 1622(a)(3) or 1622(b)(1)(B). (7 U.S.C. 4817.)

ADMINISTRATIVE PROVISION

SEC. 1629. The provisions of this subtitle applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 4818.)

AUTHORIZATION FOR APPROPRIATIONS

SEC. 1630. (a) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out this subtitle, subject to reimbursement from the Board under section 1620(c)(3)(B)(iv).

(b) Sums appropriated to carry out this subtitle shall not be available for payment of an expense or expenditure incurred by the Board in administering an order. (7 U.S.C. 4819.)

EFFECTIVE DATE

SEC. 1631. This subtitle shall become effective on January 1, 1986. (7 U.S.C. 4801 note.)

SHEEP PROMOTION, RESEARCH, AND INFORMATION ACT OF 1994 [1]

(7 U.S.C. 7101 - 7111)

To enable producers and feeders of sheep and importers of sheep and sheep products to develop, finance, and carry out a nationally coordinated program for sheep and sheep product promotion, research, and information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sheep Promotion, Research, and Information Act of 1994". (7 U.S.C. 7101 note.)

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS. **)** Congress finds that **)**

(1) sheep and sheep products are important goods;

(2) the production of sheep and sheep products play a significant role in the economy of the United States in that sheep and sheep products are produced throughout the United States and used by millions of people throughout the United States and foreign countries;

(3) sheep and sheep products must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of sheep products;

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

(5) there exist established State organizations conducting sheep and sheep product promotion, research, and industry and consumer education programs that are invaluable to the efforts of promoting the consumption of sheep and sheep products;

(6) the cooperative development, financing, and implementation of a coordinated national program of sheep and sheep product promotion,

[1] Pub. L. 103-407, 108 Stat. 4210, Oct. 22, 1994.

research, consumer information, education, and industry information are necessary to maintain and expand existing markets and develop new markets for sheep and sheep products; and

(7) sheep and sheep products move in interstate and foreign commerce, and sheep and sheep products that do not move in such channels of commerce directly burden or affect interstate commerce in sheep and sheep products.

(b) POLICY.-It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for developing, financing (through adequate assessments on sheep and sheep products produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research, consumer information, education, and industry information designed to **)**

(1) strengthen the position of the sheep and sheep product industry in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for sheep and sheep products; and

(3) develop new markets and uses for sheep and sheep products.

(c) CONSTRUCTION. **)** Nothing in this Act provides for the control of production, or otherwise limits, the right of any person to produce sheep or sheep products. (7 U.S.C. 7101.)

SEC. 3. DEFINITIONS.

As used in this Act (unless the context clearly requires otherwise):

(1) BOARD. **)** The term "Board" means the National Sheep Promotion, Research, and Information Board established under section 5(b).

(2) CARBONIZED WOOL. **)** The term "carbonized wool" means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

(3) CONSUMER INFORMATION.-The term "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

(4) CUSTOMS SERVICE. **)** The term "Customs Service" means United States Customs Service of the Department of the Treasury.

(5) DEGREASED WOOL. **)** The term "degreased wool" means wool from which the bulk of impurities has been removed by processing.

(6) DEPARTMENT. **)** The term "Department" means the United States Department of Agriculture.

(7) EDUCATION.) The term "education" means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

(8) EXECUTIVE COMMITTEE.) The term "Executive Committee" means the Executive Committee established under section 5(g).

(9) EXPORTER.) The term "exporter" means any person who exports domestic live sheep or greasy wool from the United States.

(10) FEEDER.) The term "feeder" means a person who feeds lambs until the lambs reach slaughter weight.

(11) GREASY WOOL.) The term "greasy wool" means wool that has not been washed or otherwise cleaned.

(12) HANDLER.) The term "handler" means any person who purchases and markets greasy wool.

(13) IMPORTER.) The term "importer" means any person who imports sheep or sheep products into the United States.

(14) INDUSTRY INFORMATION.) The term "industry information" means information and programs that will lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

(15) ORDER.) The term "order" means a sheep and wool promotion, research, education, and information order issued under section 4.

(16) PERSON.-The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(17) PROCESSOR.) The term "processor" means any person who slaughters sheep or processes greasy wool into degreased wool.

(18) PRODUCER.) The term "producer" means any person, other than a feeder, who owns or acquires ownership of sheep.

(19) PRODUCER INFORMATION.) The term "producer information" means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

(20) PROMOTION.) The term "promotion" means any action(including paid advertising) to advance the image and desirability of sheep or sheep products to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

(21) PULLED WOOL.-The term "pulled wool" means wool that is pulled from the skin of a slaughtered sheep.

(22) QUALIFIED STATE SHEEP BOARD.) The term "qualified State sheep board" means a sheep and wool promotion entity that)

(A) is authorized by State statute or is otherwise organized and operating within a State;

(B) receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

(C) is recognized by the Board as the sheep and wool promotion entity within the State;except that not more than 1 qualified State sheep board shall exist in any State at any 1 time.

(23) RAW WOOL.) The term "raw wool" means greasy wool, pulled wool, degreased wool, or carbonized wool.

(24) RESEARCH.) The term "research" means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

(25) SECRETARY.-The term "Secretary" means the Secretary of Agriculture.

(26) SHEEP.) The term "sheep" means ovine animals of any age, including lambs.

(27) SHEEP PRODUCTS.) The term "sheep products" means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

(28) STATE.) The term "State" means each of the 50 States.

(29) UNIT.) The term "unit" means each State, group of States,or class designation that is represented on the Board.

(30) UNITED STATES.) The term "United States" means the 50 States and the District of Columbia.

(31) WOOL.) The term "wool" means the fiber from the fleece of a sheep.

(32) WOOL PRODUCTS.) The term "wool products" means products produced, in whole or in part, from wool and products containing wool fiber. (7 U.S.C. 7102.)

SEC. 4. ISSUANCE AND AMENDMENT OF ORDERS.

(a) IN GENERAL.) Subject to subsection (b), the Secretary shall issue orders under this Act applicable to producers, feeders, importers, handlers, and purchasers of sheep and sheep products. Any order shall be national in scope. Not more than 1 order shall be in effect under this Act at any 1 time. (b) PROCEDURE.)

(1) PROPOSAL OR REQUEST FOR ISSUANCE.) The Secretary may propose the issuance of an order under this Act, or an association of producers 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), the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) ISSUANCE OF ORDERS.) 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, that includes provisions necessary to ensure that the order is in conformity with this Act. The order shall be issued not later than 180 days following publication of the proposed order.

(4) REFERENDUM.) The order shall go into effect only if the order is approved by producers, feeders, and importers in a referendum conducted under section 6.

(c) AMENDMENTS.) The Secretary, from time to time, may amend any order issued under this Act. (7 U.S.C. 7103.)

SEC. 5. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.) An order issued under this Act shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF BOARD.)

(1) IN GENERAL.) The order shall provide for the establishment of, and appointment of members to, a National Sheep Promotion, Research, and Information Board to administer the order. Members of the Board shall be appointed by the Secretary from nominations provided in accordance with this subsection. The cumulative number of seats on the Board shall be 120 and shall be apportioned as follows:

(A) PRODUCERS.) Producers shall be appointed to the Board to represent States, with each State represented by the following number of members:

Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2

Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5

(B) FEEDERS.—The feeder sheep industry shall be represented on the Board by 10 members.

(C) IMPORTERS.—Importers shall be represented on the Board by 25 members.

(D) ALTERNATES.-The order shall provide that a unit represented by only 1 member may have an alternate member appointed to ensure representation at meetings of the Board.

(2) NOMINATIONS.—

(A) PRODUCERS.—The Secretary shall appoint producers to represent units established under paragraph (1)(A) from nominations submitted by eligible organizations certified under subsection (c)(3). An eligible organization may submit only nominations from the membership of the organization for the unit in which the organization is located. To be represented on the Board, each eligible organization shall submit to the Secretary at least 1.5 nominations for each appointment to the Board for which the unit is entitled to representation, as determined under paragraph (1)(A). If a unit is entitled to 1 appointment on the Board, the unit shall submit at least 2 nominations for the appointment.

(B) FEEDERS.—The Secretary shall appoint representatives of the feeder sheep industry to seats established under paragraph (1)(B) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which the feeder sheep industry is entitled to representation, as determined under paragraph (1)(B).

(C) IMPORTERS.—The Secretary shall appoint importers to seats established under paragraph (1)(C) from nominations submitted by qualified organizations that represent importers, as determined by the Secretary. To be represented on the Board, importers shall provide at least 1.5 nominations for each appointment to the Board for which importers are entitled to representation, as determined under paragraph (1)(C).

(c) METHOD FOR OBTAINING NOMINATIONS.—

(1) INITIALLY ESTABLISHED BOARD.—

(A) PRODUCER NOMINATIONS.—The Secretary shall solicit nominations for each seat on the initially established Board to which a unit is entitled to representation from eligible organizations certified under paragraph (3). If no such organization exists in the unit, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(B) FEEDER AND IMPORTER NOMINATIONS.—The Secretary shall solicit nominations for each seat for which feeders or importers are entitled to representation from organizations that represent feeders and importers, respectively. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether--

(i) the active membership of the organization includes a significant number of feeders or importers in relation to the total membership of the organization;

(ii) there is evidence of stability and permanency of the organization; and

(iii) the organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(2) SUBSEQUENT APPOINTMENT. **)**

(A) PRODUCER NOMINATIONS. **)** The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under paragraph (3) shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(B) FEEDER AND IMPORTER NOMINATIONS. **)** The solicitation of feeder and importer nominations for seats on the Board shall be made by the Secretary in accordance with paragraph (1)(B).

(3) CERTIFICATION OF ORGANIZATIONS. **)**

(A) IN GENERAL. **)** The eligibility of any organization to represent producers, and to participate in the making of nominations to represent producers under this section, shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this paragraph. An eligibility determination of the Secretary under this paragraph shall be final.

(B) BASIS FOR CERTIFICATION. **)** Certification under this paragraph shall be based, in addition to other available information, on a factual report submitted by the organization, that shall contain information considered relevant and specified by the Secretary, including **)**

(i) the geographic territory covered by the active membership of the organization;

(ii) the nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(iii) evidence of stability and permanency of the organization;

(iv) sources from which the operating funds of the organization are derived;

(v) the functions of the organization; and

(vi) the ability and willingness of the organization to further the aims and objectives of this Act.

(C) PRIMARY CONSIDERATIONS. **)** A primary consideration in determining the eligibility of an organization under this paragraph shall be whether **)**

(i) the membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(ii) an interest of the organization is in the production of sheep.

(d) ADMINISTRATION. **)**

(1) TERMS. **)** Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than 2 consecutive 3-year terms, except that an elected officer of the Board shall not be subject to this sentence while the officer holds office.

(2) COMPENSATION. **)** A Board member shall serve without compensation, but shall be reimbursed for the reasonable expenses of the member incurred in performing the duties of the Board.

(3) MEETINGS. **)** The order shall provide for at least an annual meeting of the Board and such additional meetings of the Board as may be required.

(e) POWERS AND DUTIES OF THE BOARD. **)** The order shall define the powers and duties of the Board and shall include the power and duty **)**

(1) to elect officers of the Board, including a Chairperson, Vice Chairperson, and Secretary;

(2) to administer the order in accordance with the terms and provisions of the order;

(3) to recommend regulations to effectuate the terms and provisions of the order;

(4) to elect members of the Board to serve on the Executive Committee;

(5) to approve or reject budgets submitted by the Executive Committee;

(6) on approval, to submit the budgets to the Secretary for the approval or disapproval of the Secretary;

(7) to contract with entities, if necessary, to carry out plans or projects in accordance with this Act;

(8) to conduct programs of promotion, research, consumer information, education, industry information, and producer information;

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

(10) to recommend to the Secretary amendments to the order;

(11) to provide the Secretary with prior notice of meetings of the Board to permit the Secretary, or a designated representative, to attend the meetings;

(12) to provide, not less than annually, a report to producers, feeders, and importers accounting for funds expended by the Board and

describing programs carried out under this Act, and to make the report available to the public on request;

(13) to establish 7 regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of producers and sheep production;

(14) to employ or retain necessary staff; and

(15) to invest funds in accordance with subsection (k).

(f) BUDGETS. **)**

(1) IN GENERAL. **)** The order shall provide that the Board shall review budgets submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. On approval by the Board, the Board shall submit the budget to the Secretary for the approval of the Secretary.

(2)LIMITATION. **)** No expenditure of funds may be made by the Board unless the expenditure is authorized under a budget or budget amendment approved by the Secretary.

(g) EXECUTIVE COMMITTEE. **)**

(1) ESTABLISHMENT. **)** The order shall establish an Executive Committee to administer the terms and provisions of the order, as provided in this subsection, under the direction of the Board and consistent with the policies determined by the Board.

(2) MEMBERSHIP. **)** The Executive Committee shall be composed of 14 members, of which **)**

(A) 11 members shall be elected by the Board on an annual basis, of which **)**

(i) 7 members shall represent producers, with 1 member representing each of the regions established in the order;

(ii) 1 member shall represent feeders; and

(iii) 3 members shall represent importers; and

(B) 3 members shall be the Chairperson, Vice Chairperson, and Secretary of the Board.

(3) POWERS AND DUTIES. **)**

(A) PLANS OR PROJECTS. **)** The Executive Committee shall develop plans or projects of promotion, research, consumer information, education, industry information, and producer information, which shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until the plans or projects are approved by the Secretary.

(B) BUDGETS. **)** The Executive Committee shall be responsible for developing and submitting to the Board, for the approval of the Board, budgets, on a fiscal year basis, of the anticipated expenses and disbursements of the Board, including probable costs of

promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove a budget submitted by the Executive Committee, and, if approved, shall submit the budget to the Secretary for the approval of the Secretary.

(4) TERMS.) A term of appointment to the Executive Committee shall be for 1 year.

(5) CHAIRPERSON.) The Chairperson of the Board shall serve as Chairperson of the Executive Committee.

(6) QUORUM.) A quorum of the Executive Committee shall consist of 8 members.

(h) EXPENSES, CONTRACTS, AND AGREEMENTS.)

(1) EXPENSES.) The order shall provide that the Board shall be responsible for all expenses of the Board and the Executive Committee.

(2) CONTRACTS AND AGREEMENTS.-A contract or agreement entered into by the Board under subsection (e)(7) shall provide that)

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

(B) the plan or project, and the contract or agreement, shall not become effective until the plan or project has been approved by the Secretary; and

(C) the contracting party shall)

(i) keep accurate records of all of the transactions of the party;

(ii) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(iii) make periodic reports to the Board of activities conducted; and

(iv) make such other reports as the Board or the Secretary may require.

(i) ASSESSMENTS.)

(1) SHEEP PURCHASES.)

(A) IN GENERAL.) The order shall provide that each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall, in the manner prescribed by the order, collect an assessment from the producer or feeder on each sheep sold by the producer or feeder.

(B) PROCESSING.) Any person purchasing sheep for processing shall collect the assessment from the seller and remit the assessment to the Board in the manner prescribed by the order.

(C) RATE.)

(i) IN GENERAL.) Except as provided in clause (ii), the rate of assessment under this paragraph shall be 1 cent per pound of live sheep sold.

(ii) EXCEPTION.) The rate of assessment under this paragraph may be raised or lowered not more than 15/100 of a cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this paragraph shall not exceed 2.5 cents per pound of live sheep sold.

(2) WOOL PURCHASES.)

(A) IN GENERAL.) The order shall provide that each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall, in the manner prescribed by the order, collect an assessment on each pound of greasy wool sold.

(B) PROCESSING.) Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board in the manner prescribed by the order.

(C) RATE.)

(i) IN GENERAL.) Except as provided in clause (ii), the rate of assessment under this paragraph shall be 2 cents per pound of greasy wool.

(ii) EXCEPTION.) The rate of assessment under this paragraph may be raised or lowered not more than 2/10 of a cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this paragraph shall not exceed 4 cents per pound of greasy wool.

(3) DIRECT PROCESSING.) The order shall provide that any person processing or causing to be processed sheep or sheep products of that person's own production and marketing shall)

(A) pay an assessment on the sheep or sheep products at the time of sale at a rate equivalent to the rate provided for in paragraph (1) or (2), as appropriate; and

(B) remit the assessment to the Board in the manner prescribed by the order.

(4) EXPORTS.) The order shall provide that any person exporting live sheep or greasy wool shall)

(A) pay the assessment on the sheep or greasy wool at the time of export at a rate equivalent to the rate provided for in paragraph (1) or (2), as appropriate; and

(B) remit the assessment to the Board in the manner prescribed by the order.

(5) IMPORTS.)

(A) IN GENERAL.—The order shall provide that any person importing sheep or sheep product, and any person importing wool or products containing wool, into the United States shall pay an assessment to the Board in the manner prescribed by the order, except that this paragraph shall not apply to raw wool that is imported into the United States.

(B) COLLECTION.—The Customs Service shall collect the assessment required under this paragraph and remit the assessment to the Secretary for disbursement to the Board.

(C) RATE FOR SHEEP AND SHEEP PRODUCTS.—

(i) IN GENERAL.—Except as provided in subparagraph (B), the rate of assessment under this paragraph for sheep and sheep products shall be—

(I) in the case of a live sheep, 1 cent per pound; and

(II) in the case of a sheep product, the equivalent of 1 cent per pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry.

(ii) EXCEPTION.—The rate of assessment under this subparagraph may be raised or lowered not more than 15/100 cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this subparagraph shall not exceed 2.5 cents per pound.

(D) RATE FOR WOOL AND WOOL PRODUCTS.—

(i) IN GENERAL.—Except as provided in clause (ii), the rate of assessment under this paragraph for wool and products containing wool, shall be 2 cents per pound of degreased wool or the equivalent of degreased wool.

(ii) EXCEPTION.—The rate of assessment under this subparagraph may be raised or lowered not more than 2/10 cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this subparagraph shall not exceed 4 cents per pound of degreased wool or the equivalent of degreased wool.

(6) QUALIFIED STATE SHEEP BOARDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the order shall provide that 20 percent of the total assessments collected by the Board on the marketing of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the qualified State sheep board of the State.

(B) EXCEPTION.—No qualified State sheep board shall receive less than $2,500 under subparagraph (A) in any year.

(7) DE MINIMIS IMPORTS.—The Secretary may issue regulations that—

(A) exclude certain imported materials or products that contain de minimis content levels of sheep or sheep products; and

(B) waive the assessment due on the materials or products.

(8) USE OF ASSESSMENTS.—

(A) IN GENERAL.—The order shall provide that assessments received by the Board shall be used by the Board for the payment of expenses incurred in administering the order, with authorization for a reasonable reserve.

(B) REIMBURSEMENT OF SECRETARY.—The Secretary shall be reimbursed for costs incurred in implementing and administering the order.

(j) BOOKS AND RECORDS OF BOARD.—

(1) IN GENERAL.—The order shall require the Board to—

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

(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) AUDIT.—The Board shall cause books and records of the Board related to the order to be audited by an independent auditor at the end of each fiscal year. The Board shall submit a report of the audit to the Secretary.

(k) INVESTMENT OF FUNDS.—

(1) IN GENERAL.—The order shall provide that the Board may invest, pending disbursement, funds the Board receives under the order, only in—

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

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

(C) any 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.

(2) USE OF INCOME.—Income from any investment under paragraph (1) may be used for any purpose for which the invested funds may be used.

(l) PROHIBITION ON USE OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) EXCEPTIONS.) Paragraph (1) shall not apply to)

(A) the development and recommendation to the Secretary of amendments to the order; or

(B) the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information,education, industry information, or producer information activities under the order.

(3) FALSE OR MISLEADING CLAIMS.) A plan or project conducted under this Act shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(m) BOOKS AND RECORDS.)

(1) IN GENERAL.) The order shall require that each person making payment to a producer, feeder, or handler for sheep or sheep products, each importer and exporter of sheep or sheep products, and each person marketing sheep products of the person's own production to maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) USE OF INFORMATION.)

(A) IN GENERAL.) Information from the records or reports shall be made available to the Secretary for the administration or enforcement of this Act, or any order or regulation issued under this Act.

(B) OTHER INFORMATION.) The Secretary shall authorize the use under this Act of information regarding persons paying producers, feeders, importers, handlers, or processors that is accumulated under a law or regulation other than this Act or a regulation issued under this Act.

(3) CONFIDENTIALITY.)

(A) IN GENERAL.) Except as otherwise provided in this Act, all information obtained under paragraph (1) or (2) shall be kept confidential by all officers and employees 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;

(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; and

(iii) the information relates to this Act.

(C) GENERAL STATEMENTS.) Nothing in this paragraph prohibits)

(i) the issuance of general statements, based on the reports, of the number of persons subject to an order or statistical data collected from the persons, which 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) ADMINISTRATION.**)** No information obtained under this Act may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this Act or any investigatory or enforcement action necessary for the implementation of this Act.

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

(n) OTHER TERMS AND CONDITIONS.**)** The order shall provide such terms and conditions, not inconsistent with this section, as are necessary to carry out the order, including provisions for the assessment of a penalty for the late payment of an assessment due under the order. (7 U.S.C. 7104.)

SEC. 6. REFERENDA.

(a) INITIAL REFERENDUM.**)**

(1) IN GENERAL.**)** Following the issuance of an order under section 4, the Secretary shall conduct a referendum among producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, or importation of sheep or sheep products for the purpose of ascertaining whether the order shall go into effect.

(2) APPROVAL OF ORDER.**)** The order shall become effective only if the Secretary determines that the order has been approved by not less than a majority of the producers, feeders, and importers voting in the referendum or at least 2/3 of the production represented by persons voting in the referendum.

(b) ADDITIONAL REFERENDA.**)**

(1) IN GENERAL.**)** After the initial referendum, on the request of a representative group comprising 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, importation, or processing of sheep or sheep products, the Secretary shall conduct a referendum of producers, feeders, and

importers to determine whether the producers, feeders, and importers favor the termination or suspension of the order.

(2) SUSPENSION OR TERMINATION.) If the Secretary determines that suspension or termination of the order is favored by a majority of the producers, feeders, and importers voting in the referendum or at least 2/3 of the production represented by the persons voting in the referendum, the Secretary shall suspend or terminate)

(A) collection of assessments under the order not later than 180 days after the determination; and

(B) the order in an orderly manner as soon as practicable after the determination.

(c) PROCEDURES.)

(1) REIMBURSEMENT.)

(A) IN GENERAL.) Except as provided in subparagraph (B),the Board shall reimburse the Secretary for any expenses incurred by the Secretary in connection with the conduct of any referendum under this section.

(B) FEDERAL EMPLOYEE SALARIES.) The Board shall not be required to reimburse the Secretary for the salaries of Federal employees under subparagraph (A) if the Secretary determines that the reimbursement would be overly burdensome and costly.

(2) DATE.) Each referendum under this section shall be conducted on a date established by the Secretary, under a procedure by which producers, feeders, and importers intending to vote in the referendum shall certify that the producers, feeders, and importers were engaged in the production, feeding, or importation of sheep or sheep products during the representative period and, on the same day, shall be provided an opportunity to vote in the referendum.

(3) PLACE.) Referenda under this section shall be conducted at locations determined by the Secretary. Absentee mail ballots shall be furnished by the Secretary on request made in person, by mail, or by telephone.

(4) ALLOCATION OF PRODUCTION.) The Secretary shall determine a method of allocating, by a pro rata percentage of annual projected or actual assessments from importers, the volume of production represented by importers in referenda conducted pursuant to this section. (7 U.S.C. 7105.)

SEC. 7. PETITION AND REVIEW.

(a) PETITION.)

(1) IN GENERAL.) A person subject to an order issued under this Act 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) HEARINGS.) The petitioner shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) RULING.) After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final if the ruling is in accordance with 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 the ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling by the Secretary under subsection (a)(3).

(2) PROCESS.) Service of process in a proceeding may be conducted on the Secretary by delivering a copy of the complaint to the Secretary, under such rules or regulations as are considered necessary by the Secretary to facilitate the service of process.

(3) REMANDS.) If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions)

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

(B) to take such further action as, in the opinion of the court, the law requires. (7 U.S.C. 7106.)

SEC. 8. ENFORCEMENT.

(a) JURISDICTION.) Each district court 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 Act.

(b) REFERRAL TO ATTORNEY GENERAL.) A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this Act, if the Secretary believes that the administration and enforcement of this Act 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 section 7.

(c) CIVIL PENALTIES AND ORDERS.)

(1) CIVIL PENALTIES.—A person who willfully violates an order or regulation issued by the Secretary under this Act may be assessed by the Secretary—

(A) a civil penalty of not more than $1,000 for each such violation; and

(B) in the case of a willful failure to pay, collect, or remit an assessment as required by the order, an additional penalty equal to the amount of the assessment.

(2) SEPARATE OFFENSE.—Each violation shall be a separate offense.

(3) CEASE-AND-DESIST ORDERS.—In addition to, or in lieu of, the civil penalty, the Secretary may issue an order requiring the person to cease and desist from 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), not later than 30 days after the person receives notice of the order.

(d) REVIEW BY COURT OF APPEALS.—

(1) IN GENERAL.—A person against whom an order is issued under subsection (c) may obtain review of the order by—

(A) filing, not later than 30 days after the date 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 promptly in 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.

(e) FAILURE TO OBEY 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 more than $500 for each offense. Each day during which

the failure continues shall be considered to be a separate violation of the order.

(f) FAILURE TO PAY PENALTIES.) If a person fails to pay a valid 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. (7 U.S.C. 7107.)

SEC. 9. 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 Act; or

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

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

(c) AID OF COURTS.) In the case of contumacy by, or refusal to obey a subpoena 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. The court may issue an order requiring the person to appear before the Secretary to produce records 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. (7 U.S.C. 7108.)

SEC. 10. ADMINISTRATIVE PROVISIONS.

(a) CONSTRUCTION.) Nothing in this Act preempts or supersedes any other program relating to sheep promotion, research, or information organized and operated under the laws of the United States or any State.

(b) AMENDMENTS TO ORDERS.) The provisions of this Act applicable to an order shall be applicable to amendments to the order, except that the Secretary is not required to conduct a referendum on a proposed amendment to an order. (7 U.S.C. 7109.)

SEC. 11. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this Act. (7 U.S.C. 7110.)

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.) There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this Act.

(b) ADMINISTRATIVE EXPENSES.) Funds appropriated under subsection (a) shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any order issued under this Act. (7 U.S.C. 7111.)

SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT [1]

(7 U.S.C. 6301-6311)

SEC. 1965. SHORT TITLE.

This subtitle may be cited as the "Soybean Promotion, Research, and Consumer Information Act". (7 U.S.C. 6301 note.)

SEC. 1966. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.) Congress finds that)

(1) soybeans are an important source of nutritious foods that are a valuable part of the human diet and are an important feedstuff for the livestock industry;

(2) the production of soybeans plays a significant role in the economy of the United States in that soybeans are produced by thousands of soybean producers, processed by numerous processing entities, and soybeans and soybean products produced in the United States are consumed by people and livestock throughout the United States and foreign countries;

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

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

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

(6) the cooperative development, financing, and implementation of a coordinated national program of soybean promotion, research, consumer information, and industry information are necessary to

[1] Title XIX, Subtitle E, of Pub. L. 101-624, 104 Stat. 3881, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat. 1883, Dec. 13, 1991.

maintain and expand existing markets and develop new markets for soybeans and soybean products; and

(7) soybeans and soybean products move in interstate and foreign commerce, and soybeans and soybean products that do not move in such channels of commerce directly burden or affect interstate commerce in soybeans and soybean products.

(b) POLICY.**)** Congress declares that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing through assessments on domestically-produced soybeans, and implementing a program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybeans and soybean products.

(c) CONSTRUCTION.**)** Nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual producers to produce soybeans. (7 U.S.C. 6301.)

SEC. 1967. DEFINITIONS.

As used in this subtitle:

(1) BOARD.**)** The term "Board" means the United Soybean Board established under section 1969(b).

(2) COMMERCE.**)** The term "commerce" includes interstate, foreign, and intrastate commerce.

(3) COMMITTEE.**)** The term "Committee" means the Soybean Program Coordinating Committee established under section 1969(g).

(4) CONSUMER INFORMATION.**)** The term "consumer information" means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

(5) DEPARTMENT.**)** The term "Department" means the Department of Agriculture.

(6) FIRST PURCHASER.**)** The term "first purchaser" means**)**

(A) except as provided in subparagraph (B), any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(B) the Commodity Credit Corporation, in any case in which soybeans are pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation.

(7) INDUSTRY INFORMATION.—The term "industry information" means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

(8) MARKETING.—The term "marketing" means the sale or other disposition of soybeans or soybean products in any channel of commerce.

(9) NET MARKET PRICE.—The term "net market price" means—

(A) except as provided in subparagraph (B), the sales price or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary; or

(B) for soybeans pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation, the principal amount of the loan.

(10) ORDER.—The term "order" means an order issued under section 1968.

(11) PERSON.—The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(12) PRODUCER.—The term "producer" means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

(13) PROMOTION.—The term "promotion" means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or others information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

(14) QUALIFIED STATE SOYBEAN BOARD.—The term "qualified State soybean board" means a State soybean promotion entity that is authorized by State law. If no such entity exists in a State, the term "qualified State soybean board" means a soybean producer-governed entity—

(A) that is organized and operating within a State;

(B) that receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs; and

(C) that meets criteria established by the Board as approved by the Secretary relating to the qualifications of such entity to perform duties under the order and is recognized by the Board as the soybean promotion and research entity within the State.

(15) RESEARCH.) The term "research" means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

(16) SECRETARY.) The term "Secretary" means the Secretary of Agriculture.

(17) SOYBEAN PRODUCTS.) The term "soybean products" means products produced in whole or in part from soybeans or soybean by-products.

(18) SOYBEANS.) The term "soybeans" means all varieties of Glycine max or Glycine soya.

(19) STATE.) The terms "State" and "United States" consist of the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico. (7 U.S.C. 6302.)

SEC. 1968. ISSUANCE AND AMENDMENT OF ORDERS.

(a) IN GENERAL.) To effectuate the declared policy of section 1966(b), the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this subtitle applicable to producers and first purchasers of soybeans. Any such order shall be national in scope, and not more than one order shall be in effect under this subtitle at any one time.

(b) PROCEDURE.)

(1) PROPOSAL OR REQUEST FOR ISSUANCE.) The Secretary may propose the issuance of an order under this subtitle, or an association of soybean producers or any other person that would be affected by an order issued pursuant to this subtitle may request the issuance of, and submit a proposal for, such an order.

(2) NOTICE AND COMMENT CONCERNING PROPOSED ORDER.) Not later than 30 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 under this subtitle. Such order shall be issued and become effective not later than 180 days following publication of the proposed order.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any order issued under this section. The provisions of this subtitle applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 6303.)

SEC. 1969. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—Any order issued under this subtitle shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF THE UNITED SOYBEAN BOARD.—

(1) IN GENERAL.—The order shall provide for the establishment of, and appointment of members to, a United Soybean Board to administer the order. Members of the Board shall be soybean producers appointed by the Secretary, on a geographic basis, from State or combined units, as provided in this subsection. The cumulative number of seats on the Board shall be the total number of seats to which all the units are entitled.

(2) SEATS.—The Secretary shall establish State units and combined units and seats on the Board for such units, as follows:

(A) STATE UNITS.—Except as provided in subparagraph (B), each State shall be considered as a unit.

(B) COMBINED UNITS.—A State in which average annual soybean production is less than 3,000,000 bushels shall be grouped with other States into a combined unit. To the extent practicable, each State with average annual soybean production of less than 3,000,000 bushels shall be grouped with other States with average annual soybean production of less than 3,000,000 bushels into a combined unit, in a manner prescribed in the order, and each combined unit shall consist of geographically contiguous States. To the extent practicable, each combined unit shall have an average annual production of soybeans of at least 3,000,000 bushels.

(C) NUMBER OF SEATS PER UNIT.—Subject to subparagraph (F), each unit, as established under subparagraph (A) or (B)—

(i) if its average annual soybean production is less than 15,000,000 bushels, shall be entitled to one seat on the Board;

(ii) if its average annual soybean production is 15,000,000 bushels or more but less than 70,000,000 bushels, shall be entitled to 2 seats on the Board;

(iii) if its average annual soybean production is 70,000,000 bushels or more but less than 200,000,000 bushels, shall be entitled to 3 seats on the Board; and

(iv) if its average annual soybean production is 200,000,000 bushels or more, shall be entitled to 4 seats on the Board.

(D) DETERMINATION OF AVERAGE ANNUAL SOYBEAN PRODUCTION.—For purposes of subparagraphs (A), (B), (C), and (F), the Secretary shall determine average annual soybean production applicable to a crop year by using the average of the 5 previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest.

(E) REAPPORTIONMENT OF SEATS.—At the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, the Secretary, if necessary, shall adjust any unit to conform with subparagraphs (A) and (B). If the Secretary makes such an adjustment, the Secretary shall reapportion the seats on the Board to conform with subparagraph (C) and any modifications made under subparagraph (F). If payment of refunds following the initial referendum conducted under section 1970(a) is authorized by producers, in making such adjustments, the Secretary shall exclude, from each State's annual soybean production, those bushels of soybeans on which such refunds are paid.

(F) ADJUSTMENT OF LEVELS OF PRODUCTION.—At the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, the Board may recommend to the Secretary, to the extent it determines appropriate, changes in the levels of production used in subparagraphs (A), (B), and (C) to determine per-unit representation on the Board. The Secretary may amend the order to make such changes in levels of production used to determine per-unit representation. Any such amendment to the order shall not be subject to a referendum of producers. A unit may not, as a result of any modification under this subparagraph, lose Board seats to which it is entitled at the time the order is initially issued unless its average annual production, as determined under subparagraph (D), declines below the levels required for representation, as specified in subparagraphs (A), (B), and (C).

(3) NOMINATIONS.—

(A) IN GENERAL.—The Secretary shall appoint soybean producers to seats established under paragraph (2) from

nominations submitted by each unit. Each unit shall submit to the Secretary at least two nominations for each appointment to the Board to which the unit is entitled, as determined under paragraph (2).

(B) METHOD FOR OBTAINING NOMINATIONS.—

(i) INITIALLY-ESTABLISHED BOARD.—

(I) STATE UNITS.—The Secretary shall solicit nominations for each seat on the initially-established Board to which a State unit is entitled from the State soybean board in the State that submits satisfactory evidence to the Secretary that such board meets the criteria of subparagraph (A) or (B) of section 1967(14). If no such organization exists in the unit, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(II) COMBINED UNITS.—The Secretary shall solicit nominations for each seat on the initially-established Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any State soybean board operating in the unit that submits to the Secretary satisfactory evidence that such board meets the criteria described in subparagraph (A) or (B) of section 1967(14).

(ii) SUBSEQUENT APPOINTMENT.—

(I) STATE UNITS.—Nominations for each subsequent appointment to a seat on the Board to which a State unit is entitled shall be made by the qualified State soybean board in the unit. If no such organization exists in the unit, the Secretary shall solicit nominations for such appointment in such manner as the Secretary determines appropriate.

(II) COMBINED UNITS.—The Secretary shall solicit nominations for each subsequent appointment to the Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any qualified State soybean board operating in the unit.

(iii) REJECTION.—The Secretary may reject any nomination submitted by a unit under this paragraph. If there are insufficient nominations from which to appoint members to the Board as a result of the Secretary rejecting the nominations submitted by a unit, the unit shall submit additional nominations, as provided in this paragraph.

(4) TERMS.—Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially-established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than three consecutive 3-year terms.

(5) COMPENSATION.—Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

(6) TEMPORARY APPOINTMENTS.—

(A) APPOINTMENT.—Notwithstanding paragraphs (1) through (5), the Secretary, under procedures established by the Secretary, shall appoint to the initially-established Board up to three temporary members to serve in addition to the members appointed as otherwise provided in this subsection, as the Secretary determines appropriate for transition purposes under the criteria set out in subparagraph (B). Each such temporary member shall be appointed for a single term not to exceed 3 years.

(B) REPRESENTATION OF CERTAIN STATES.—The Secretary shall make temporary appointments to the initially-established Board to ensure, to the extent practicable, that each State with a State soybean board that, prior to the date of enactment of this Act, was contributing State soybean promotion and research assessment funds to national soybean promotion and research efforts has representation on the initially-established Board that reflects the relative contributions of such State to the national soybean promotion and research effort.

(7) MEETINGS.—The order shall provide for at least one meeting of the Board annually and specify the circumstances under which additional special meetings of the Board may be held.

(c) POWERS AND DUTIES OF THE BOARD.—The order shall define the powers and duties of the Board and shall include the power and duty—

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

(2) to make regulations to effectuate the terms and provisions of the order;

(3) if the Board exercises its authority to establish the Committee described in subsection (g) **)**

(A) to elect members of the Board to serve on the Committee; and

(B) if the Board assigns to the Committee the power to develop and submit budgets as provided for in subsection (h)(1), to approve, modify, or reject budgets submitted by the Committee;

(4) to submit budgets to the Secretary for the approval or disapproval of the Secretary;

(5) to contract with appropriate persons to implement plans or projects;

(6) to contract with qualified State soybean boards to implement programs in their States;

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

(8) to recommend to the Secretary amendments to the order;

(9) to provide the Secretary with prior notice of meetings of the Board and meetings of committees of the Board to permit the Secretary, or a designated representative, to attend such meetings; and

(10) to provide not less than annually a report to producers accounting for funds and describing programs implemented, and such reports shall be made available to the public on request.

(d) BOARD VOTING PROCEDURES. **)**

(1) IN GENERAL. **)** The order shall establish procedures for the conduct of voting by the Board, as provided in this subsection. On or after the end of the 3-year period beginning on the effective date of the order, the Board may recommend to the Secretary changes in the voting procedures of the Board and the Secretary may amend the order to make such changes. Such changes shall not be subject to a referendum of producers.

(2) NUMBER OF VOTES PER MEMBER. **)** Each member of the Board shall be entitled, in any vote conducted by the Board, to cast the number of votes determined under the following rules:

(A) IN GENERAL. **)** Each member shall be entitled to cast one vote unless a roll call vote is conducted. On a roll call vote, each member shall be entitled to cast such additional votes as are assigned to the member under subparagraph (B).

(B) ADDITIONAL VOTES. **)** The additional votes that each member is assigned for roll call votes shall be computed as follows:

(i) ASSESSMENT LEVEL. **)** Except as provided in clause (ii), each unit shall be allotted one vote for each

percent, or portion of a percent, of the total amount of assessments remitted to the Board that was remitted from the unit (net of any refunds made under subsection (l)(2)), on the average, during each of the 3 previous fiscal years of the Board.

(ii) FIRST THREE FISCAL YEARS. **)**

(I) FIRST FISCAL YEAR. **)** During the first fiscal year of the Board, each unit shall be allotted one vote for each percent, or portion of a percent, of the total production of soybeans in the United States that was produced in the unit, on the average, during each of the 3 immediately preceding crop years.

(II) SECOND AND THIRD FISCAL YEARS. **)** The order shall provide appropriate adjustments of the procedure for the allotment of votes under clause (i) to apply to allotments of votes during the second and third fiscal years of the Board.

(iii) DIVISION OF VOTES WITHIN UNITS. **)** A unit's total votes under clause (i) or (ii) shall be divided equally among all the members present and voting representing that unit. The procedures established by the order shall provide for the equitable disposition of fractional votes assigned to a member under such division of a unit's vote.

(3) MOTIONS. **)**

(A) IN GENERAL. **)** Except as provided in subparagraph (B), a motion shall carry if approved by a simple majority of members of the Board casting votes.

(B) ROLL CALL VOTES. **)** Any member of the Board may call for a roll call vote on any motion. Except as otherwise provided in the bylaws adopted by the Board, whenever a roll call vote is conducted, the motion shall carry only if it is approved by a simple majority of all votes cast and a simple majority of all units voting (with the vote of each unit determined by a simple majority of all votes cast by members in that unit).

(4) COMMITTEE VOTES. **)** In any vote conducted by a committee of the Board, each member of the committee shall have one vote.

(5) PROXIES. **)** A member may not cast votes by proxy.

(e) BUDGETS. **)**

(1) IN GENERAL. **)** The order shall provide that the Board shall develop budgets on a fiscal year basis of anticipated expenses and disbursements under the order, including probable costs of

administration and promotion, research, consumer information, and industry information projects. The Board shall submit such budgets or any substantial modification thereof to the Secretary for the Secretary's approval.

(2) LIMITATION.—No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or modification approved by the Secretary.

(f) PLANS AND PROJECTS.—The order shall provide that the Board shall review or, on its own initiative, develop plans or projects of promotion, research, consumer information, and industry information, to be paid for with funds received by the Board. Such plans or projects shall not become effective until approved by the Secretary.

(g) SOYBEAN PROGRAM COORDINATING COMMITTEE.—

(1) ESTABLISHMENT.—The order may authorize the Board to establish a Soybean Program Coordinating Committee to assist in the administration of the order, as provided in this subsection.

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Committee shall be composed of members such that—

(i) not less than two-thirds of the Committee shall be members of the Board, including—

(I) the Chairperson and Treasurer of the Board; and

(II) additional members of the Board elected by the Board; and

(ii) not more than one-third of the Committee shall be producers elected by the national, nonprofit soybean producer-governed organization that conducts activities on behalf of State soybean boards and that, on the date of the enactment of this Act, conducts activities to promote soybeans and soybean products as a cooperator with the Foreign Agricultural Service of the Department.

(B) CERTIFICATION.—To serve on the Committee, each producer elected by the national, nonprofit soybean producer-governed organization shall be certified by the Secretary as a producer who is duly elected by such organization as a representative to the Committee.

(3) TERMS.—Terms of appointment to the Committee shall be for 1 year. No person may serve on the Committee for more than 6 consecutive terms.

(4) COMPENSATION.—Committee members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing duties for the Committee.

(5) CHAIRPERSON.) The Chairperson of the Board shall serve as Chairperson of the Committee.

(6) QUORUM.) A quorum of the Committee shall consist of the number of members of the Committee equal to three-fourths of the total membership of the Committee.

(h) POWERS AND DUTIES OF THE COMMITTEE.) The order shall define the powers and duties that the Board may assign to the Committee, which may include the following:

(1) BUDGETS.) The Board may assign to the Committee the power to develop and submit to the Board, for approval, budgets on a fiscal year basis, as provided for in subsection (e). The Board shall review and approve, reject, modify, or substitute a budget proposed by the Committee, and submit budgets to the Secretary for the Secretary's approval under subsection (e).

(2) PLANS AND PROJECTS.) The Board may assign to the Committee the power to review, or on its own initiative develop, plans or projects for promotion, research, consumer information, and industry information activities, to be paid for with funds received by the Board as provided for in subsection (f). Each such plan or project shall be presented to the Board for approval.

(3) VOTING.) A recommendation to be presented to the Board relating to proposed budgets or proposed plans and projects shall require the concurring vote of at least two-thirds of the members present at a meeting of the Committee.

(i) ADMINISTRATION.)

(1) EXPENSES.) The order shall provide that the Board shall be responsible for all expenses of the Board.

(2) STAFF.)

(A) IN GENERAL.) The order shall provide that the Board may establish an administrative staff or facilities of its own or contract for the use of the staff and facilities of national, nonprofit, producer-governed organizations that represent producers of soybeans.

(B) LIMITATION ON SALARIES.) If the Board establishes an administrative staff of its own, the Board is authorized to expend for administrative staff salaries and benefits an amount not to exceed one percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under subsection (l)(2), for that fiscal year.

(C) REIMBURSEMENT OF ORGANIZATION.) If the staff of national, nonprofit, producer-governed organizations that represent producers of soybeans are used by the Board, the staff of such organizations shall not receive compensation directly from the Board, but such organizations shall be

reimbursed for the reasonable expenses of their staffs, including salaries, incurred in performing staff duties on behalf of, and authorized by, the Board.

(3) LIMITATION ON ADMINISTRATIVE COSTS.—The order shall provide that costs incurred by the Board in administering the order (including the cost of staff but not including administrative costs incurred by the Secretary) during any fiscal year shall not exceed 5 percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under subsection (l)(2), for that fiscal year.

(j) CONTRACTS AND AGREEMENTS.—

(1) AUTHORITY.—To ensure coordination and efficient use of funds, the order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of the activities authorized by this subtitle with national, nonprofit, producer-governed organizations that represent producers of soybeans, and for the payment thereof with funds received by the Board under the order.

(2) COORDINATION.—To enhance coordination, the Board, when entering into contracts or agreements for the implementation and carrying out of activities authorized by this subtitle, shall ensure that all plans or projects implemented for consumer information, industry information, promotion, or research are each implemented by a single entity. There shall not be in force, at any one time, more than one contract or agreement for implementation of plans or projects for consumer information, for industry information, for promotion, or for research, except that, upon approval of the Secretary, the Board may contract with qualified State soybean boards to implement plans or projects within their respective States.

(3) TERMS.—Any contract or agreement entered into under this subsection shall provide that—

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

(B) the plan or project shall not become effective until it has been approved by the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(4) COMMUNICATIONS TO PRODUCERS.) The order may provide that)

(A) the Board may enter into contracts or agreements with qualified State soybean boards that apply therefor and agree to the terms thereof, for the implementation of plans or projects to coordinate and facilitate communications to producers regarding the conduct of activities under the order and for the payment of the costs of the plans or projects with funds received by the Board under the order; and

(B) to facilitate the funding of plans or projects described in subparagraph (A), if the order does not authorize the payment of refunds, the Board shall allocate for such funding each year an amount not less than the cumulative amount of all producer contributions to qualified State soybean boards during the previous year that the State boards were unable to retain, and forwarded to the Board, because producers received refunds on such State contributions, as determined by the Board based on information submitted by the qualified State soybean boards.

(5) APPORTIONMENT OF FUNDS TO QUALIFIED STATE SOYBEAN BOARDS.)

(A) IN GENERAL.) In using the funds allocated each year under paragraph (4)(B) for payment of the costs of contracts or agreements described in paragraph (4)(A), subject to subparagraph (B), the Board shall apportion such allocated funds among States so that each qualified State soybean board receives an amount equal to the amount of such allocated funds attributable to refunds in the State during the previous year, as determined by the Board based on information submitted by the qualified State soybean boards.

(B) EXCEPTION.) The Board shall not be required to apportion funds to a qualified State soybean board, as provided in subparagraph (A), if)

(i) the qualified State soybean board has not entered into a contract or agreement with the Board for the implementation of plans or projects described in paragraph (4)(A); or

(ii) the amount to be apportioned to the qualified State soybean board is less than the cost to the Board of overseeing the use of such apportionment during the year involved, and the contract or agreement shall so provide.

(k) BOOKS AND RECORDS OF THE 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.

The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year and a report of such audit to be submitted to the Secretary. The Secretary shall make such report available to the public upon request.

(l) ASSESSMENTS.—

(1) IN GENERAL.—

(A) FIRST PURCHASERS.—

(i) COLLECTION.—The order shall provide that each first purchaser of soybeans from a producer shall collect, in the manner prescribed by the order, an assessment from the producer and remit the assessment to the Board. The Board shall use qualified State soybean boards to collect such assessments in States in which such boards operate.

(ii) RATE.—The rate of assessment prescribed by the order shall be one-half of 1 percent of the net market price of soybeans sold by the producer to the first purchaser.

(iii) ONE ASSESSMENT.—No more than one assessment shall be made on any soybeans.

(B) DIRECT PROCESSING.—The order shall provide that any person processing soybeans of that person's own production and marketing such soybeans or soybean products made from such soybeans shall remit to the Board or the qualified State soybean board, in the manner prescribed by the order, an assessment established at a rate equivalent to the rate provided for in subparagraph (A)(ii).

(2) REFUNDS.—

(A) REFUNDS PRIOR TO INITIAL REFERENDUM.—

(i) IN GENERAL.—The order shall provide that, during the period prior to the approval of the continuation of the initial order in the referendum provided for in section 1970(a), as determined by the Secretary, each producer shall have the right to demand and receive from the Board a refund of any assessment collected from such producer if—

(I) such producer is responsible for paying the assessment; and

(II) such producer does not support the programs, projects, or activities implemented under the order.

(ii) BY BOARD.—During the period referred to in clause (i), refunds shall be provided equally from the Board and, where applicable, the qualified State soybean board, as determined by the Secretary.

(B) ADMINISTRATION.—Subject to subparagraph (C)(i), any demand by a producer for a refund of an assessment under this paragraph shall be made in accordance with regulations, on a form, and within the time period (not to exceed 90 days) prescribed by the Board.

(C) SUBMISSION OF REFUND DEMANDS.—

(i) IN GENERAL.—In each State in which a qualified State soybean board collects assessments, as provided in paragraph (1)(A)(i), producers shall submit demands for refunds of assessments to the qualified State soybean board. Such board shall provide notice to producers, in a manner prescribed by the Board, of their right to such refunds, and shall process such submissions under procedures established by State law applicable to refunds of assessments on soybeans, except that if no refunds are allowed under State law, such submissions shall be processed under procedures established under this paragraph.

(ii) NO QUALIFIED STATE SOYBEAN BOARD.—In each State in which there is no qualified State soybean board, producers shall submit demands for refunds of assessments directly to the Board.

(D) TIME LIMIT FOR MAKING REFUND.—Subject to subparagraph (C)(i), each refund to a producer of an assessment under this paragraph shall be made as soon as practicable, but in no event more than 60 days, after submission of proof satisfactory to the qualified State soybean board or the Board that the producer paid the assessment for which refund is demanded.

(E) ORDER NOT FAVORED.—If the Secretary determines that producers do not favor the continuation of the order in the referendum provided for in section 1970(a), refunds shall be made under this paragraph on collected assessments until such collections are terminated, as provided in section 1970(a).

(F) REFUNDS AFTER THE INITIAL REFERENDUM.—

(i) IN GENERAL.—The order shall contain provisions relating to refunds after the approval of the order in the initial referendum under section 1970(a) as required in this subparagraph.

(ii) AVAILABILITY.—Effective for the period beginning on the date the Secretary determines the result of the initial referendum under section 1970(a) and ending on a date (not later than 18 months thereafter) established by the Secretary, the qualified State soybean board and, where no qualified State soybean board exists, the Board shall make refunds available to soybean producers at the end of the fiscal year from escrowed funds, as provided for in clause (vii). Such refunds shall be made available, under the procedures specified in subparagraphs (A) through (D) to the extent not inconsistent with this subparagraph, to producers who have requested refunds during such period.

(iii) POLL.—Not later than the end of the period provided for in clause (ii), the Secretary shall conduct a poll of soybean producers, using the procedures provided for in section 1970(b)(3), to determine if producers support the conduct of a referendum on the continuance of the payment of refunds under the order.

(iv) REFERENDUM.—If the Secretary determines, based on the poll conducted under clause (iii), that the conduct of a referendum is supported by at least 20 percent of the producers (not in excess of one-fifth of which may be producers in any one State) who, during a representative period, have been engaged in the production of soybeans, the Secretary shall conduct a referendum among all such producers for the purpose of determining whether such producers favor the continuation of the payment of refunds under the order. Such referendum shall be conducted, under the procedures provided for in section 1970, not later than 1 year after the Secretary determines, based on the poll, that the referendum is required.

(v) CONTINUED REFUNDS.—If the Secretary conducts a referendum under clause (iv), the qualified State soybean board and, where no qualified State soybean board exists, the Board shall continue to make refunds available to producers as provided for in clause (ii)

during the period prior to the conduct of the referendum, which shall be payable at the end of the period from the escrowed funds, as provided in clause (vii).

(vi) CONTINUATION OR CESSATION OF REFUNDS.—If the Secretary determines, in the referendum conducted under clause (iv), that continuation of the payment of refunds is favored by a majority of the producers voting in such referendum, the qualified State soybean board and, where no qualified State soybean board exists, the Board shall continue to make refunds available to producers as provided for in clause (ii) for each 1-year period that follows until such time as soybean producers approve an amendment to the order to eliminate such refunds. Such refunds shall be payable at the end of each such 1-year period from escrowed funds, as provided in clause (vii). If the Secretary determines in the referendum that continuation of such refunds is not favored by a majority of producers voting in the referendum, the right to such refunds shall cease immediately.

(vii) ESCROW ACCOUNTS.—

(I) ESTABLISHMENT.—The qualified State soybean board and, for producers in States where no qualified State soybean board exists, the Board shall establish escrow accounts to be used to pay refunds under clause (ii) and, if necessary, clauses (v) and (vi).

(II) SEPARATE ACCOUNTS.—The qualified State soybean board and, where no qualified State soybean board exists, the Board shall establish separate escrow accounts for each State from which producer assessments are collected for the purpose of making refunds under clauses (ii), (v), and (vi), respectively.

(III) DEPOSITS.—The qualified State soybean board and, where no qualified State soybean board exists, the Board shall deposit into its escrow account for refunds under clause (ii), (v), or (vi), as appropriate, 10 percent of the total assessment collected by the qualified State soybean board and, where no qualified State soybean board exists, the Board (including the assessment provided under paragraph (2) and

contributions by producers to qualified State soybean boards under paragraph (4)), during the time period involved.

(IV) REFUNDS MADE FROM ESCROW ACCOUNT.—Refunds requested by producers from a State under clause (ii) (or if refunds are available under clause (v) or (vi)) during the time period involved shall be made from the escrow account that is applicable to that clause for such State.

(V) PRORATION.—If the funds deposited in a State account established under subclause (I) for purposes described under clauses (ii), (v), and (vi) are not sufficient to honor all requests for refunds made by producers from that State during the time period involved, the qualified State soybean board and, where no qualified State soybean board exists, the Board shall prorate the amount of such refunds from the State's account among all producers from that State that request refunds.

(VI) SURPLUS FUNDS.—Any funds not refunded to producers in a State under this clause shall be divided equally between the Board and the qualified State soybean board of such State. Such funds shall be used to carry out programs under this subtitle.

(VII) REFUND PERIOD.—In applying this clause to refunds under clause (vi), each annual refund period shall be treated separately.

(3) USE.—The assessments (net of any refunds under paragraph (2)) shall be used for—

(A) payment of the expenses incurred in implementation and administration of the order;

(B) the establishment of a reasonable reserve; and

(C) reimbursement to the Secretary of administrative costs incurred by the Secretary to implement and administer the order, other than one-half of the cost incurred for the referendum conducted under paragraph (2)(F).

(4) CREDIT FOR CONTRIBUTIONS TO QUALIFIED STATE SOYBEAN BOARDS.—A producer who can establish that such producer is contributing to a qualified State soybean board shall receive credit, in determining the assessment due to the Board from such producer, for contributions to the qualified State soybean board of up to

one-quarter of 1 percent of the net market price of soybeans or the equivalent thereof. For purposes of this subtitle, there shall be only one qualified State soybean board in each State. A producer may receive a credit under this paragraph only if the contribution is to the qualified State soybean board in the State in which the soybeans are produced, except that the Board, with the approval of the Secretary, may authorize exceptions to such State-of-origin rule as are appropriate to ensure effective coordination of collection procedures among States.

(5) SINGLE PROCESS OF ASSESSMENT.—The procedures in the order for the collection of assessments shall ensure, to the extent practicable, that such soybeans are subject to a single process of assessment under the order.

(m) CREDIT FOR CERTAIN COSTS TO STATES.—The order shall provide that the Board may provide a credit to each qualified State soybean board of an amount not to exceed one-half of any fees paid to State governmental agencies or first purchasers for collection of the assessments if the payment of such fees by the qualified State soybean board is required by State law enacted prior to the date of enactment of this Act, except that the Board may not provide a credit to any qualified State soybean board of an amount that exceeds 2.5 percent of the amount of assessments collected and remitted to the Board under subsection (l).

(n) MINIMUM LEVEL OF ASSESSMENTS TO STATES.—

(1) PRE-REFERENDUM PERIOD.—The order shall contain provisions to ensure that, during the period prior to the conduct of the referendum provided for in section 1970(a), each qualified State soybean board receives annually an amount of funds equal to the average amount that the State board collected from assessments during each of the State board's fiscal years 1984 through 1988 (excluding the year in which such collections were the highest and the year in which such collections were the lowest), as determined by the Secretary and subject to paragraph (3).

(2) POST-REFERENDUM PERIOD.—The order shall provide, effective after the conduct of the referendum provided for in section 1970(a), subject to paragraph (3), that the Board annually shall provide a credit to each qualified State soybean board of an amount by which—

(A) the amount equal to 1 cent times the average number of bushels of soybeans produced in the State during each of the preceding 5 years (excluding the year in which the production is the highest and the year in which the production is the lowest); exceeds

(B) the total amount collected by the qualified State soybean board from assessments on producers minus the

amount of assessments remitted to the Board during such year under subsection (l).

(3) LIMITATION.) The total amount of credits under paragraph (1) or (2) and assessments retained by the qualified State soybean board for a year may not exceed the total amount of assessments collected in that State under subsection (l) (net of any refunds made under paragraph (2) of subsection (l)) in that year.

(o) INVESTMENT OF FUNDS.)

(1) IN GENERAL.) The order shall provide that the Board, with the approval of the Secretary, may invest assessment funds collected by the Board under the order, pending their disbursement, only in)

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any 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.

(2) INCOME.) Income from any such investment may be used for any purpose for which the invested funds may be used.

(p) PROHIBITION ON USE OF FUNDS TO INFLUENCE GOVERNMENTAL ACTION.)

(1) IN GENERAL.) Except as otherwise provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or governmental action or policy.

(2) EXCEPTIONS.) Paragraph (1) shall not apply to)

(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 soybeans or soybean products directly to a foreign government or political subdivision thereof.

(q) BOOKS AND RECORDS OF FIRST PURCHASERS AND CERTAIN PRODUCERS.) (1) RECORDKEEPING.)

(A) IN GENERAL.) The order shall require that each first purchaser of soybeans and any person processing soybeans of that person's own production maintain and make available for inspection by the Board or the Secretary such books and records as may be required by the order and file reports at the

time, in the manner, and having the content prescribed by the order. The order shall exempt small producers processing soybeans of their own production from such recordkeeping and reporting requirements if they are not required to pay assessments under the order.

(B) DEFINITION OF SMALL PRODUCER.—The order shall define the term "small producer" as such term is used in subparagraph (A).

(2) USE OF INFORMATION.—

(A) IN GENERAL.—Information maintained under paragraph (1) shall be made available to the Secretary as is appropriate for the administration or enforcement of this subtitle, or any order or regulation issued under this subtitle.

(B) OTHER INFORMATION.—The Secretary shall authorize the use under this subtitle of information regarding first purchasers that is accumulated under a law or regulation other than this subtitle or regulations under this subtitle.

(3) CONFIDENTIALITY.—

(A) IN GENERAL.—Except as otherwise provided in this subtitle, commercial or financial information that is obtained under paragraph (1) or (2) and that is privileged or confidential shall be kept confidential by all officers and employees of the Department, members of the Board, and agents of the Board.

(B) PERMITTED USES.—Information obtained under the authority of this subtitle shall be made available to any agency or officer of the Federal Government for—

(i) the implementation of this subtitle;

(ii) any investigatory or enforcement action necessary for the implementation of this subtitle; or

(iii) any civil or criminal law enforcement activity if the activity is authorized by law.

(C) OTHER EXCEPTIONS.—Nothing in subparagraph (A) may be deemed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to an order or statistical data collected therefrom, which 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, together with a statement of the particular provisions of the order violated by such person.

(4) PENALTY.—Any person who willfully violates the provisions of this subsection, upon conviction, shall be subject to a fine of not

more than $1,000, or to imprisonment for not more than one year, or both, and, if a member or an agent of the Board or an officer or employee of the Department, shall be removed from office.

(r) INCIDENTAL TERMS AND CONDITIONS.**)** The order shall provide terms and conditions, not inconsistent with the provisions of this subtitle, as necessary to effectuate the provisions of the order, including provisions for the assessment of a penalty for each late payment of assessments under subsection (l). (7 U.S.C. 6304.)

SEC. 1970. REFERENDA.

(a) INITIAL REFERENDUM.**)**

(1) REQUIREMENT.**)** Not earlier than 18 months or later than 36 months following issuance of an order under section 1968, the Secretary shall conduct a referendum among producers who, during a representative period as determined by the Secretary, have been engaged in the production of soybeans for the purpose of ascertaining whether the order then in effect shall be continued.

(2) ADVANCE NOTICE.**)** The Secretary shall, to the extent practicable, provide broad public notice in advance of any referendum. Any such notice shall be provided without advertising expenses by means of newspapers, county newsletters, the electronic media, and press releases, through the use of notices posted in State and county Extension Service offices and county Agricultural Stabilization and Conservation Service offices, and by other appropriate means specified in the order. Such notice shall include information on when the referendum will be held, registration and voting requirements, rules regarding absentee voting, and other pertinent facts.

(3) APPROVAL OF ORDER.**)** Such order shall be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum.

(4) DISAPPROVAL OF ORDER.**)** If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary shall terminate collection of assessments under the order within 6 months after the referendum and shall terminate the order in an orderly manner as soon as practicable.

(b) ADDITIONAL REFERENDA.**)**

(1) IN GENERAL.**)**

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

(B) REPRESENTATIVE GROUP OF PRODUCERS.—An additional referendum on an order shall be conducted if requested by 10 percent or more of the producers who during a representative period have been engaged in the production of soybeans, of which group of requesting producers not in excess of one-fifth may be producers in any one State, as determined by the Secretary.

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

(2) DISAPPROVAL OF ORDER.—If the Secretary determines, in any referendum conducted under paragraph (1), that suspension or termination of the order is favored by a majority of the producers voting in the referendum, the Secretary shall suspend or terminate, as appropriate, collection of assessments under the order within 6 months after such determination and shall suspend or terminate the order, as appropriate, in an orderly manner as soon as practicable after such determination.

(3) OPPORTUNITY TO REQUEST ADDITIONAL REFERENDA.—

(A) IN GENERAL.—To facilitate the periodic determination as to whether producers favor the conduct of an additional referendum under this subsection, the Secretary, 5 years after the conduct of a referendum under this subtitle and every 5 years thereafter, shall provide soybean producers an opportunity to request an additional referendum, as provided in this paragraph.

(B) METHOD OF MAKING REQUEST.—

(i) IN-PERSON REQUESTS.—To carry out subparagraph (A), the Secretary shall establish a procedure under which producers may request a reconfirmation referendum in person at county extension offices or county Agricultural Stabilization and Conservation Service offices during a period established by the Secretary, or as provided in clause (ii).

(ii) MAIL-IN REQUESTS.—In lieu of making such requests in person, producers may make requests by mail. Mail-in requests shall be postmarked no later than the end of the period established under clause (i) for in-person requests. To facilitate such submission of requests by mail, the Secretary may make mail-in request forms available to producers.

(C) NOTIFICATIONS.—The Secretary shall publish a notice in the Federal Register, and the Board shall provide written notification to producers, not later than 60 days prior to the end of the period established under subparagraph (B)(i) for in-person requests, of the producers' opportunity to request the additional referendum. Such notifications shall explain the producers' rights to, and the procedure specified in this subsection for, the conduct of an additional referendum, the purpose of the referendum, and the date and method by which producers may act to request the additional referenda under this paragraph. The Secretary shall take such other actions as the Secretary determines are necessary to ensure that producers are made aware of the opportunity to request an additional referendum on the order.

(D) ACTION BY SECRETARY.—As soon as practicable following the submission of requests for a reconsideration referendum, the Secretary shall determine whether a sufficient number of producers have requested an additional referendum, and take other steps to conduct an additional referendum, as are required under paragraph (1).

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

(c) PROCEDURES.—

(1) REIMBURSEMENT OF SECRETARY.—The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of any activity required under this section, except for the salaries of Government employees associated with the conduct of a referendum under subsections (a) and (b).

(2) DATE.—Each referendum shall be conducted for a reasonable period of time not to exceed 3 days, established by the Secretary, under a procedure whereby producers intending to vote in the referendum shall certify that they were engaged in the production of soybeans during the representative period and, at the same time, shall be provided an opportunity to vote in the referendum.

(3) PLACE.—Referenda shall be conducted at county extension offices and provision shall be made for absentee mail ballots to be provided on request. Absentee mail ballots shall be furnished by the Secretary on request made in person, by mail, or by telephone. (7 U.S.C. 6305.)

SEC. 1971. PETITION AND REVIEW.

(a) PETITION. **)**

(1) IN GENERAL. **)** A person subject to an order issued under this subtitle 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) HEARINGS. **)** The petitioner shall be given the opportunity for a hearing on a petition filed under paragraph (1), in accordance with regulations issued by the Secretary.

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

(b) REVIEW. **)**

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

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

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

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

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

(4) ENFORCEMENT. **)** The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 1972. (7 U.S.C. 6306.)

SEC. 1972. ENFORCEMENT.

(a) JURISDICTION.**)** The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.**)** A civil action authorized to be commenced under this section shall be referred to the Attorney General for

appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subtitle, if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by providing a suitable written notice or warning to the person who committed such violation or by administrative action under section 1971.

(c) CIVIL PENALTIES AND ORDERS.**)**

(1) CIVIL PENALTIES.**)** Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subtitle, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulations, may be assessed**)**

(A) a civil penalty by the Secretary of not more than $1,000 for each such violation; and

(B) in the case of a willful failure to pay, collect, or remit an assessment as required by the order or regulation, an additional penalty equal to the amount of such assessment.

Each violation shall be a separate offense.

(2) CEASE-AND-DESIST ORDERS.**)** In addition to, or in lieu of, a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing any such violation.

(3) NOTICE AND HEARING.**)** No penalty shall be assessed or cease-and-desist order issued by the Secretary under this subsection unless the person against whom the penalty is assessed or the order is issued is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) FINALITY.**)** The order of the Secretary assessing a penalty or imposing a cease-and-desist order under this subsection shall be final and conclusive unless the affected person files an appeal of the Secretary's order with the appropriate district court of the United States in accordance with subsection (d).

(d) REVIEW BY DISTRICT COURT.**)**

(1) COMMENCEMENT OF ACTION.**)** Any person who has been determined to be in violation of this subtitle, or against whom a civil

penalty has been assessed or a cease-and-desist order issued under subsection (c), may obtain review of the penalty or order by **)**

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

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

(ii) the United States District Court for the District of Columbia; and (B) simultaneously sending a copy of the notice by certified mail to the Secretary.

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

(3) STANDARD OF REVIEW. **)** A finding of the Secretary under this section shall be set aside only if such finding is found to be unsupported by substantial evidence.

(e) FAILURE TO OBEY ORDERS. **)** Any person who fails to obey a cease-and-desist order issued under this section after such order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than $5,000 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) FAILURE TO PAY PENALTIES. **)** If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court in which the person resides or conducts business. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) ADDITIONAL REMEDIES. **)** The remedies provided in this subtitle shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 6307.)

SEC. 1973. 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 subtitle; and

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

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

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

(2) ADMINISTRATIVE HEARINGS.—For the purpose of an administrative hearing held under section 1971 or 1972, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring such person to comply with such a subpoena.

(d) CONTEMPT.—Any failure to obey an order of the court under this section may be punished by such court as a contempt thereof.

(e) PROCESS.—Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) HEARING SITE.—The site of any hearings held under section 1971 or 1972 shall be within the judicial district where such person resides or has a principal place of business. (7 U.S.C. 6308.)

SEC. 1974. ADMINISTRATIVE PROVISIONS.

(a) CONSTRUCTION.—Except as provided in subsection (b), nothing in this subtitle may be construed to—

(1) preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State; or

(2) authorize the withholding of any information from Congress.

(b) STATE LAWS.—

(1) REFERENDA ON QUALIFIED STATE SOYBEAN BOARDS.—To ensure the proper administration of this subtitle, no State may

conduct a referendum relating to the continuation or termination of a qualified State soybean board or State soybean assessment **)**

(A) during the period beginning on the date an order is issued under section 1968 and ending 18 months after the referendum on such order is conducted under section 1970(a); or

(B) if such order is approved under the referendum conducted under section 1970(a) by a majority of producers voting in such State, such State law shall be suspended for an additional 36 months.

(2) EXCEPTION. **)** Paragraph (1) shall not be construed to apply to **)**

(A) a State referendum concerning the approval of modifications to a State soybean promotion program that does not involve termination of the qualified State soybean board or State soybean assessment; and

(B) any State referendum regarding a State soybean promotion program that is originated by soybean producers.

(3) ASSESSMENTS COLLECTED BY QUALIFIED STATE SOYBEAN BOARDS. **)** To ensure adequate funding of the operations of qualified State soybean boards under this subtitle, whenever an order is in effect under this subtitle, no State law or regulation that limits the rate of assessment that the qualified State soybean board in that State may collect from producers on soybeans produced in such State, or that has the effect of limiting such rate, may be applied to prohibit such State board from collecting, and expending for authorized purposes, assessments from producers of up to the full amount of the credit authorized for producer contributions to qualified State soybean boards under section 1969(l)(4).

(c) AMENDMENTS TO ORDERS. **)** The provisions of this subtitle applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 6309.)

SEC. 1975. SUSPENSION OR TERMINATION OF ORDERS.

The Secretary shall, whenever the Secretary finds that the order or any provision of the order obstructs or does not tend to effectuate the declared policy of this subtitle, terminate or suspend the operation of such order or provision. The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subtitle. (7 U.S.C. 6310.)

SEC. 1976. AUTHORIZATION OF APPROPRIATIONS; REGULATIONS.

(a) IN GENERAL. **)** There are authorized to be appropriated for each fiscal year such funds as are necessary to carry out this subtitle.

(b) ADMINISTRATIVE EXPENSES. **)** Funds appropriated under subsection (a) shall not be available for payment of the expenses or expenditures of the Board or the Committee in administering any provision of any order issued under this subtitle.

(c) REGULATIONS. **)** The Secretary may issue such regulations as are necessary to carry out this subtitle, including regulations relating to the assessment of late payment charges. (7 U.S.C. 6311.)

WHEAT AND WHEAT FOODS RESEARCH AND NUTRITION EDUCATION ACT [1]

(7 U.S.C. 3401-3417)

SHORT TITLE

SEC. 1701. This title may be cited as the "Wheat and Wheat Foods Research and Nutrition Education Act". (7 U.S.C. 3401 note.)

FINDINGS AND DECLARATION OF POLICY

SEC. 1702. (a) Wheat is basic to the American diet and the American economy. It is grown by thousands of farmers and consumed, in various forms by millions of people in the United States.

(b) The size of the American wheat crop and how it is marketed and ultimately consumed determines whether many Americans receive adequate nourishment. Wheat has a strong impact on the Nation's well-being. Additional research on the optimal use of wheat products can improve the American diet. Consumer education about the nutritional value and economic use of wheat products can enhance the national welfare.

(c) It has long been recognized that it is in the national interest to have a regular, adequate, and high quality wheat supply. It would be extremely difficult, without an effective coordinated research and nutrition education effort, to accomplish this objective. A programed effort of research and nutrition education is of great importance to wheat producers, processors, end product manufacturers, and consumers.

(d) It is the purpose of this title and in the public interest to authorize and enable the creation of an orderly procedure, adequately financed through an assessment, for the development and initiation of an effective and continuous coordinated program of research and nutrition education, designed to improve and enhance the quality, and make the most efficient use, of American wheat, processed wheat, and wheat end products to ensure an adequate diet for the people of the United States. The maximum rate of assessment authorized hereunder represents an infinitesimal proportion of the overall cost of manufacturing wheat end products. Therefore, such assessment will not significantly affect the retail prices of

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[1] Pub. L. 95-113, 91 Stat. 1031-1040, Sept. 29, 1977. The wheat research and promotion program carried out pursuant to Pub. L. 91-430, 84 Stat. 8985-886, Sept. 26, 1970, terminated June 1977 upon disbursement of all funds which were originally obtained by sale of export marketing certificates. The Wheat and Wheat Foods Research and Nutrition Education order issued pursuant to Pub. L. 95-113 was terminated Nov. 1, 1986.

those products. Furthermore, any price effect will be more than offset by the increased efficiency in end product manufacture and increased consumer acceptance, due to nutritional improvements in wheat products, which may be expected to follow from adoption of a plan under this title. Nothing in this title shall be construed to provide for control of production or otherwise limit the right of individual wheat producers to produce wheat. (7 U.S.C. 3401.)

DEFINITIONS

SEC. 1703. For the purposes of this title:

(a) The term "wheat" means all classes of wheat grains grown in the United States.

(b) The term "processed wheat" means the wheat-derived content of any substance (such as cake mix or flour) produced for use as an ingredient of an end product by changing wheat grown within the United States in form or character by any mechanical, chemical, or other means.

(c) The term "end product" means any product which contains processed wheat as an ingredient and which is intended, as produced, for consumption as human food, notwithstanding any additional incidental preparation which may be necessary by the ultimate consumer.

(d) The term "wheat producer" means any person who grows wheat within the United States for market.

(e) The term "processor" means any person who commercially produces processed wheat within the United States.

(f) The term "end product manufacturer" means any person who commercially produces an end product within the United States, but such term shall not include such persons to the extent that they produce end products on the premises where such end products are to be consumed by an ultimate consumer, including, but not limited to, hotels, restaurants, and institutions, nor shall such term include persons who produce end products for their own personal, family, or household use.

(g) The term "research" means any type of research to advance the nutritional quality, marketability, production, or other qualities of wheat, processed wheat, or end products.

(h) The term "nutrition education" means any action to disseminate to the public information resulting from research concerning the economic value or nutritional benefits of wheat, processed wheat, and end products.

(i) The term "Council" means the Wheat Industry Council established pursuant to section 1706 of this title.

(j) The term "Department" means the United States Department of Agriculture. (k) The term "Secretary" means the Secretary of Agriculture of the United States.

(l) The term "person" means any individual, partnership, corporation, association, or other entity.

(m) The term "United States" means the several States and the District of Columbia, including any territory or possession. (7 U.S.C. 3402.)

ISSUANCE OF ORDERS

SEC. 1704. (a) Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title, the Secretary shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and proposal for an order submitted by an organization certified pursuant to section 1714 of this title, or by any interested person affected by the provisions of this title, including the Secretary.

(b) After notice and opportunity for hearing as provided in section 1704(a) of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, upon the evidence introduced at such hearing that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this title. (7 U.S.C. 3403.)

PERMISSIVE TERMS IN ORDERS

SEC. 1705. Any order issued pursuant to this title shall contain one or more of the following terms and conditions, and, except as provided in section 1706 of this title, no others:

(a) providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for nutrition education, both within the United States and in international markets with respect to wheat, processed wheat, and end products, and for the disbursement of necessary funds for such purposes: *Provided*, That in carrying out any such plan or project, no reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against wheat, processed wheat, and end products of other persons: *Provided further*, That no such plans or projects shall make use of unfair or deceptive acts or practices in behalf of wheat, processed wheat, and end products or unfair or deceptive acts or practices with respect to quality, value, or use of any competing product;

(b) providing for the establishment and conduct of research or studies with respect to sale, distribution, marketing, utilization, or production of wheat, processed wheat, and end products and the creation of new products thereof to the end that the marketing and utilization of wheat, processed wheat, and end products may be encouraged, expanded,

improved, or made more acceptable, and for the disbursement of necessary funds for such purposes;

(c) providing that processors, distributors of processed wheat, and end product manufacturers shall maintain and make available for inspection by the Secretary or the Council such books and records as may be required by any order issued pursuant to this title and for the filing of reports by such persons at the time, in the manner, and having the content prescribed by the order, to the end that information shall be made available to the Council and to the Secretary which are appropriate or necessary to the effectuation, administration, or enforcement of this title, or of any order or regulation issued pursuant to this title: *Provided*, That all information so obtained shall be kept confidential by all officers and employees of the Department, the Council, and by all officers and employees of contracting agencies having access to such information, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Council during any specific period, or (3) the publication by direction of the Secretary of the name of any person who has been adjudged to have violated any order, together with a statement of the particular provisions of the order violated by such person. Any such officer or employee of the Department, the Council, or a contracting agency violating the provisions of this clause shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and if an officer or employee of the Council or Department shall be removed from office;

(d) providing for exemption of specified end products, or types or categories thereof, from the assessments required to be paid under section 1706 of this title under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder; and

(e) terms and conditions incidental to and not inconsistent with the terms and conditions specified in this title and necessary to effectuate the other provisions of such order. (7 U.S.C. 3404.)

REQUIRED TERMS IN ORDERS

SEC. 1706. Any order issued pursuant to this title shall contain such terms and conditions as to provide **)**

(a) for the establishment and appointment by the Secretary of a Wheat Industry Council which shall consist of not more than twenty members and alternates therefor, and for the definition of its powers and duties which shall include only the powers enumerated in this section, and shall specifically include the powers to (1) administer such order in accordance with its terms and provisions, (2) make rules and regulations to effectuate the terms and provisions of such order, (3) receive, investigate, and report to the Secretary complaints of violations of such order, and (4) recommend to the Secretary amendments to such order. The term of an appointment to the Council shall be for two years with no member serving more than three consecutive terms, except that initial appointments shall be proportionately for two-year and three-year terms;

(b) that the Council and alternates therefor shall be composed of wheat producers or representatives of wheat producers, processors or representatives of processors, end product manufacturers or representatives of end product manufacturers, and consumers or representatives of consumers appointed by the Secretary from nominations submitted by eligible organizations or associations certified pursuant to section 1714 of this title, or, if the Secretary determines that a substantial number of wheat producers, processors, end product manufacturers, or consumers are not members of, or their interests are not represented by any such eligible organizations or associations then from nominations made by such wheat producers, processors, end product manufacturers, and consumers in the manner authorized by the Secretary, so that the representation of wheat producers, processors, end product manufacturers, and consumers on the Council shall be equal: Provided, That in making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of wheat producers, processors, end product manufacturers, and consumers throughout the United States;

(c) that the Council shall, subject to the provisions of clause (g) of this section, develop and submit to the Secretary for approval any research plans or projects and nutrition education plans or projects resulting from research, and that any such plan or project must be approved by the Secretary before becoming effective;

(d) that the Council shall, subject to the provisions of clause (g) of this section, submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of research and nutrition education projects;

(e) that, except as provided in sections 1705(d) and 1707 of this title, each end product manufacturer shall pay to the Council, pursuant to regulations issued under the order, an assessment based on the number of

hundredweights of processed wheat purchased, including intra-company transfers of processed wheat, for use in the manufacture of end products, from processors, distributors, or (in the case of intra-company transfers) related companies or divisions of the same company. Such assessment shall be used for such expenses and expenditures defined above, including provisions for a reasonable reserve, and any referendum and administrative costs incurred by the Secretary and the Council under this title, as the Secretary finds are reasonable and likely to be incurred under the order during any period specified by the Secretary. The circumstances under which such a purchase or intra-company transfer will be deemed to have occurred will be prescribed by the Secretary in the order. Such assessment shall be calculated and set aside on the books and records of the end product manufacturer at the time of each purchase or intra-company transfer of processed wheat, and shall be remitted to the Council in the manner prescribed by the order. In order to enable end product manufacturers to calculate the amount of processed wheat they have purchased, persons selling or transferring processed wheat in combination with other ingredients to such end product manufacturers for use in the manufacture of end products, shall disclose to such end product manufacturers, as prescribed by the Secretary in the order, the amount or proportion of processed wheat contained in such products. The rate of assessment shall not exceed five cents per hundredweight of processed wheat purchased or transferred. The Secretary may maintain a suit against any person subject to such assessment for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy;

(f) that the Council shall maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time, to the Secretary as the Secretary may prescribe, and for appropriate accounting by the Council, with respect to the receipt and disbursement of all funds entrusted to it;

(g) that the Council, with the approval of the Secretary, may enter into contracts or agreements for the development and conduct of the activities authorized under the order pursuant to terms and conditions specified in clauses (a) and (b) of section 1705 of this title and for the payment of the cost thereof with funds collected through the assessments pursuant to the order. Any such contract or agreement shall provide that the contractors shall develop and submit to the Council a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon the approval of the Secretary, and further, shall provide that the contracting party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted and an

accounting for funds received and expended, and such other reports as the Secretary may require;

(h) that the Council, with the approval of the Secretary, may invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under this title in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(i) that no funds collected by the Council under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by clause (a)(4) of this section; and

(j) that the Council members, and alternates therefor, shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Council. (7 U.S.C. 3405.)

EXEMPTION

SEC. 1707. Any end product manufacturer who is a retail baker shall be exempt from the provisions of this title. For the purposes of this section, the term "retail baker" shall be deemed to include all end product manufacturers who sell end products directly to the ultimate consumer: *Provided,* That such term shall not include any end product manufacturer who derives less than 10 per centum of gross end product sales revenues from sales to ultimate consumers or who derives 10 per centum or more of gross food or food products sales revenues from the sale of such products manufactured or produced by others. (7 U.S.C. 3406.)

REQUIREMENT OF REFERENDUM

SEC. 1708. The Secretary shall conduct a referendum as soon as practicable among end product manufacturers not exempt hereunder who, during a representative period preceding the date of the referendum, as determined by the Secretary, have been engaged in the manufacture of end products, for the purpose of ascertaining whether the issuance of an order is approved or favored by such manufacturers. Qualified end product manufacturers may register with the Secretary by mail to vote in such referendum during a period ending not less than thirty days prior to the date of the referendum. Within ten days thereafter, the Secretary shall determine which end product manufacturers are eligible to vote in such referendum and cause to be published the list of such eligible voters. The Secretary shall issue ballots to all such persons who have so registered and

been declared eligible to vote. No order issued pursuant to this title shall be effective unless the Secretary determines (1) that votes were cast by at least 50 per centum of such registered end product manufacturers, and (2) that the issuance of such order is approved or favored by not less than two-thirds of the end product manufacturers voting in such referendum or by a majority of the end product manufacturers voting in such referendum if such majority manufactured end products containing not less than two-thirds of the total processed wheat contained in all end products manufactured by those voting in the referendum, during the representative period defined by the Secretary: *Provided*, That at the time of the registration provided under this section each end product manufacturer so registering shall certify to the Secretary the amount of processed wheat contained in the end products manufactured by such end product manufacturer during such representative period. The Secretary shall be reimbursed from assessments collected by the Council for any expenses incurred for the conduct of the referendum. Eligible voter lists and ballots cast in the referendum shall be retained by the Secretary for a period of not less than twelve months after they are cast for audit and recount in the event the results of the referendum are challenged and either the Secretary or the courts determine a recount and retabulation of results is appropriate. (7 U.S.C. 3407.)

REFUND

SEC. 1709. (a) Subsequent to the approval by the Secretary of the annual budget of the Council or amendments thereto, a summary of such budget or amendments thereto, including a brief general description of the proposed research and nutrition education programs contemplated therein, shall be published in the Federal Register. All end product manufacturers not exempt hereunder shall have sixty days from the date of such publication within which to elect, under such conditions as the Secretary may prescribe, by so indicating to the Council in writing, by registered or certified mail, to reserve the right to seek refunds under subsection (b) of this section. Only those end product manufacturers who make such an election, under the described procedure, shall be eligible for refunds of assessments paid during the one-year period immediately following the expiration of such sixty-day period.

(b) Notwithstanding any other provision of this title, any end product manufacturer who has been subject to and has paid an assessment, but who has reserved the right, under subsection (a) of this section, to seek a refund, and who is not in favor of supporting the programs as provided for herein, shall have the right to demand and receive from the Council a refund of such assessment: *Provided*, That such demand shall be made by such end product manufacturer in accordance with regulations, and on a

form and within a time period, prescribed by the Council and approved by the Secretary and upon submission of proof satisfactory to the Council that the end product manufacturer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand is received therefor. (7 U.S.C. 3408.)

PETITION AND REVIEW

SEC. 1710. (a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or for an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering a copy of the complaint to the Secretary. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. (7 U.S.C. 3409.)

ENFORCEMENT

SEC. 1711. (a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order or regulation made or issued pursuant to this title. Any civil action authorized to be brought under this title shall be referred to the Attorney General for appropriate action: PROVIDED, That nothing in this title shall be construed as requiring the Secretary to refer to the Attorney General minor violations of this title whenever the Secretary believes that the administration and enforcement of the program would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Any end product manufacturer or other person who willfully violates any provision of any order issued by the Secretary under this title, or who willfully fails or refuses to remit any assessment or fee duly

required thereunder, shall be liable to a penalty of not more than $1,000 for each such offense which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(c) The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, the remedies otherwise provided at law or in equity. (7 U.S.C. 3410.)

SUSPENSION AND TERMINATION OF ORDERS

SEC. 1712. (a) The Secretary shall, whenever he finds that any order issued under this title, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of end product manufacturers subject to the order, to determine whether such manufacturers favor the termination or suspension of the order, and the Secretary shall suspend or terminate such order within six months after the Secretary determines that suspension or termination of the order is approved or favored by a majority of the end product manufacturers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the manufacture of end products or by end product manufacturers who produced end products containing more than 50 per centum of the total processed wheat contained in all end products manufactured during such period by the end product manufacturers voting in the referendum.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this title. (7 U.S.C. 3411.)

INVESTIGATIONS: POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS: AID OF COURTS

SEC. 1713. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this title or to determine whether any person subject to the provisions of this title has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this title, or of any order, or rule or regulation issued under this title. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production

of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever such person may be found. (7 U.S.C. 3412.)

CERTIFICATION OF ORGANIZATIONS

SEC. 1714. The eligibility of any organization to represent wheat producers, processors, end product manufacturers, or consumers to request the issuance of an order under section 1704(a) of this title and to participate in the making of nominations under section 1706(b) of this title, shall be certified by the Secretary. The Secretary shall certify any organization which the Secretary finds to be eligible under this section and the Secretary's determination as to eligibility shall be final. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) geographic territory covered by the organization's active membership,

(b) nature and size of the organization's active membership, including, in the case of an organization other than a consumer organization, the proportion of the total number of active wheat producers, processors, or end product manufacturers represented by the organization,

(c) evidence of stability and permanency of the organization,

(d) sources from which the organization's operating funds are derived,

(e) functions of the organization, and

(f) the organization's ability and willingness to further the aims and objectives of this title: *Provided*, That the primary consideration in determining the eligibility of an organization, other than a consumer organization, shall be whether its membership consists primarily of wheat producers, processors, or end product manufacturers who produce a substantial volume of wheat, processed wheat, or end products, respectively, and whether the organization is based on a primary or overriding interest in the production, processing, or end manufacture of

wheat or wheat products, and the nutritional attributes thereof: *Provided further*, That the primary consideration in determining the eligibility of a consumer organization shall be whether (1) a principal purpose of the organization is to promote consumer interests, consumer research, or consumer education, (2) such organization has a broadly representative constituency of consumers, with active membership participation on a regular basis, and (3) the organization has demonstrated to the Secretary's satisfaction its commitment to the achievement of the objectives of this title. (7 U.S.C. 3413.)

EFFECT ON OTHER PROGRAMS

SEC. 1715. Nothing in this title shall be construed to preempt or interfere with the workings of any other program relating to wheat or wheat foods research or nutrition education organized and operating under the laws of the United States or any State. (7 U.S.C. 3414.)

REGULATIONS

SEC. 1716. The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this title. (7 U.S.C. 3415.)

PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 1717. The provisions of this title applicable to orders shall be applicable to amendments to orders. (7 U.S.C. 3416.)

SEPARABILITY

SEC. 1718. If any provision of this title or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 3401 note.)

AUTHORIZATION

SEC. 1719. There are hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this title. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Council in administering any provisions of any order issued pursuant to the terms of this title. (7 U.S.C. 3417.)

WOOL STANDARDS ACT [1]

AN ACT To authorize the appropriation for use by the Secretary of Agriculture of certain funds for wool standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated for expenditure by the Secretary of Agriculture, for the purposes hereinafter stated, all funds heretofore or hereafter collected by suit, or otherwise, pursuant to appropriations for the completion of the work of the domestic wool section of the War Industries Board, and for enforcing Government regulations for handling the wool clip of 1918 as established by the wool division of said board, pursuant to the Executive order dated December 31, 1918, transferring such work to the Bureau of Markets, now a part of the Bureau of Agricultural Economics of the Department of Agriculture, and for continuing as far as practicable the distribution among the growers of the wool clip of 1918 of all sums heretofore or hereafter collected or recovered with or without suit by the Government from all persons, firms, or corporations which handled any part of the wool clip of 1918, which he finds it impracticable to distribute among said growers, provided that not to exceed $50,000 may be expended in any fiscal year. (7 U.S.C. 415b.)

SEC. 2. Said funds may be used for the purpose of acquiring and diffusing among the people of the United States useful information relative to the standardization, grading, preparation for market, marketing, utilization, transportation, handling, and distribution of wool, and of approved methods and practices relative thereto, including the demonstration and promotion of the use of grades for wool in accordance with standards therefor which the Secretary of Agriculture is hereby authorized to establish. Said funds may be used for the grading of wool, and for such grading or other service rendered hereunder reasonable fees may be charged, and provided further that hereafter reasonable charges may be made for practical forms of grades for wool. (7 U.S.C. 415c.)

SEC. 3. The Secretary of Agriculture may make such rules and regulations as he deems advisable for carrying out any of the provisions of this Act. All receipts hereunder shall be deposited in the Treasury to the credit of miscellaneous receipts. (7 U.S.C. 415d.)

[1] Act of May 17, 1928, 45 Stat. 593-594.

Subpart G. Tobacco; Naval Stores

THE TOBACCO INSPECTION ACT [1]

(7 U.S.C. 511-511q)

AN ACT To establish and promote the use of standards of classification for tobacco, to provide and maintain an official tobacco inspection service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act **)**

(a) "Person" includes partnerships, associations, and corporations, as well as individuals.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Inspector" means any person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(d) "Sampler" means any person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco,

(e) "Weigher" means any person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(f) "Tobacco" means tobacco in its unmanufactured form.

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[1] Approved August 23, 1935, 49 Stat. 731. Sec. 1108 of Pub. L. 97-98, 95 Stat. 1266, Dec. 22, 1981, amended section 320 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314f) to read:

"Sec. 320. (a) Notwithstanding any other provision of law, effective with respect to the 1982 and subsequent crops of tobacco, any kind of tobacco for which marketing quotas are not in effect that is produced in an area where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that area. If marketing quotas are in effect in an area for more than one kind of quota tobacco, nonquota tobacco produced in the area shall be subject to the quota for the kind of quota tobacco produced in the area having the highest price support under the Agricultural Act of 1949.

"(b) Subsection (a) of this section shall not apply to **)**

"(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced in a quota area on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect;

"(2) cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

"(3) cigar-wrapper (type 61) tobacco when it is nonquota tobacco and produced in Connecticut and Massachusetts, and cigar-wrapper (type 62) tobacco when it is nonquota tobacco and produced in Georgia and Florida; and

"(4) tobacco produced in a quota area that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined through the application of the standards issued by the Secretary for the inspection and identification of tobacco".

(g) "Auction market" means a market or place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(h) Words in the singular form shall be deemed to import the plural form when necessary.

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations. (7 U.S.C. 511.)

SEC. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices, received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein. (7 U.S.C. 511a.)

SEC. 3. That the Secretary is authorized to investigate the sorting, handling, conditioning, inspection, and marketing of tobacco from time to time, and to establish standards for tobacco by which its type, grade, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, and shall

become effective immediately or upon a date specified by the Secretary: *Provided*, That the Secretary may issue tentative standards for tobacco prior to the establishment of official standards therefor, and he may modify any standards established under authority of this Act whenever, in his judgment, such action is advisable. (7 U.S.C. 511b.)

SEC. 4. That the Secretary is authorized to demonstrate the official standards; to prepare and distribute, upon request, samples, illustrations, or sets thereof; and to make reasonable charges therefor: *Provided*, That in no event shall charges be in excess of the cost of said samples, illustrations, and services so rendered. (7 U.S.C. 511c.)

SEC. 5.[2] That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the

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[2] Pub. L. 99-272, 100 Stat. 99, Apr. 7, 1986, provided that:

"Sec. 1110. Review of Tobacco Grading System and Disaster Crop Designation.

(a) STUDY. **)** (1)(A) The Secretary of Agriculture shall conduct a comprehensive study of the methods and procedures for grading tobacco marketed in the United States.

(B) In carrying out such study, the Secretary shall evaluate, among other things **)**

(i) the extent to which grades assigned to tobacco accurately reflect the quality of such tobacco;

(ii) the extent to which the number of grades of tobacco affects the operation of the grading system; and

(iii) the competence and independence of tobacco graders.

(2) The Secretary shall also study the feasibility and desirability of **)**

(A) providing for a grade that would be used to designate tobacco that is of such poor quality as a result of a natural disaster as to affect substantially the marketability of such tobacco; and

(B) establishing a price support level, if any, for such tobacco that may be adjusted by the Secretary as necessary to facilitate the sale of such tobacco and protect the no net cost funds or accounts.

(b) REPORT. **)** (1) Not later than 120 days after the date of enactment of this subtitle, the Secretary of Agriculture shall report the results of the studies required under subsection (a), together with any recommendations for necessary legislation, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) As soon as practicable after submission of the report required under paragraph (1), but not later than the opening of the marketing season for the 1986 crop of Flue-cured tobacco, the Secretary shall implement any recommendations made in such report that may be implemented by the Secretary under existing authority."

purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided*, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. The Secretary shall by regulation fix and collect fees and charges for inspection and certification, the establishment of standards, and other services under this section at designated auction markets. The fees and charges authorized by this section shall, as nearly as practicable, cover the costs of the services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The fees and charges, late payment penalties, and interest earned from the investment of such funds when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing services under this Act. Any funds realized from the collection of fees or charges authorized under this section and section 6 and credited to the current appropriation account incurring the cost of services provided under this section and section 6, late payment penalties, and interest earned from the investment of such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any income realized from this activity may be used to pay the expenses of the Secretary of Agriculture incident to providing services under this Act or reinvested in the manner authorized in the preceding sentence. The fees and charges authorized in this section shall be assessed against the warehouse operator, irrespective of ownership or interest in the tobacco, and shall be collected by the warehouse operator from the sellers of the tobacco. The inspection and related services under this section shall be suspended or denied if the warehouse operator fails to collect or otherwise pay the fees and charges

imposed under this section. Tobacco inspection or certification services provided to designated auction markets shall take precedence over such services, other than reinspection, requested under the authority contained in section 6 of this Act or any other provision of law. In accordance with the Federal Advisory Committee Act, the Secretary shall establish a national advisory committee of tobacco producers, and advisory subcommittees for each major kind of tobacco, to advise the Secretary with regard to the level of inspection and related services and the fees and charges therefor. The advisory committee and subcommittees established under this section shall be of permanent duration. The committees shall meet at the call of the Secretary.[3] (7 U.S.C. 511d.)

SEC. 6. That the Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, whether operating in one or more jurisdictions, is authorized to employ and/or license competent persons as samplers to take official samples of tobacco, or as weighers to weigh and certify the weight of tobacco, or as inspectors of tobacco to determine and certify, upon the request of the owner or other financially interested persons, the type, grade, weight, condition, and/or such other facts as the Secretary may deem necessary.

The Secretary shall fix and collect such fees or charges in the administration of this section as will cover, as nearly as practicable, the costs of the services provided, including administrative and supervisory costs. Such fees and charges shall be credited to the account referred to in section 5 of this Act.[4] Fees or charges collected under an agreement with a State, municipality, or person, or by an individual licensed to inspect or weigh or sample tobacco under this Act, may be disposed of in accordance with the terms of such agreement or license. Charges for expenses for travel and subsistence incurred by inspectors or weighers or samplers employed by the Secretary when required to be paid by the applicant for service, may be credited to the appropriation, or any other funds authorized in this Act from which they were paid.

This section is intended merely to provide for the furnishing of services upon request of the owner or other person financially interested in tobacco to be sampled, inspected, or weighed and shall not be construed otherwise. (7 U.S.C. 511e.)

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[3] Pub. L. 97-35, 95 Stat. 374-375, Aug. 13, 1981, authorized the Secretary, effective Oct. 1, 1981, to fix and collect fees for inspection and certification, establishment of standards, and related services at designated auction markets; and to establish a national advisory committee of tobacco producers. Pub. L. 99-272, 100 Stat. 99; 100, Apr. 7, 1986, authorized the investment of fees and charges collected in insured or fully collateralized, interest bearing, accounts.

[4] Pub. L. 97-35, 95 Stat. 375, amended the first sentence of the second paragraph to credit fees and charges to the account that incurs the costs, effective Oct. 1, 1981.

SEC. 7. That the Secretary shall provide for such reinspection or appeal inspection of tobacco as he may deem necessary for the confirmation or reversal of certificates issued under this Act. Each inspection certificate issued under this Act, unless invalidated or superseded in accordance with the regulations of the Secretary, shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained. (7 U.S.C. 511f.)

SEC. 8. That warehousemen shall provide space on warehouse tickets or other tags or labels used by them for showing the grade of the lot covered thereby as determined by an authorized tobacco inspector under this Act. The Secretary may prescribe, by regulation, the form in which such certification of grade shall be shown, and may require that a copy of such warehouse ticket, tag, or label shall be furnished to the Secretary. (7 U.S.C. 511g.)

SEC. 9. That the Secretary is authorized to collect, publish, and distribute, by telegraph, mail, or otherwise without cost to the grower, timely information on the market supply and demand, location, disposition, quality, condition, and market prices for tobacco. (7 U.S.C. 511h.)

SEC. 10. It shall be unlawful **)**

(a) For any person to use the words "United States", "Government", or "Federal", or any abbreviation thereof, in, or in connection with, any statement relating to the grade of tobacco when such grade is not, in fact, one of the grades for tobacco according to the standards of the United States.

(b) For any person falsely to make, issue, alter, forge, or counterfeit, or aid, cause, procure, or assist in or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate, stamp, tag, seal, label, or other writing purporting to be issued or authorized under this Act.

(c) For any person, not an authorized inspector under this Act, to issue a certificate or report stating the type, grade, size, or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this Act, unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States.

(d) For any person employed, designated, or licensed by the Secretary as an inspector, sampler, or weigher of tobacco under this Act knowingly to inspect, sample, or weigh improperly, or to issue any false certificate under this Act, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler or weigher.

(e) For any person improperly to influence or to attempt improperly to influence or forcibly to assault, resist, impede, or interfere with any inspector, sampler, weigher, or other person employed, designated, or licensed by the Secretary in the execution of his duties under this Act: *Provided, however*, That nothing herein shall operate to prevent the owner of tobacco from appealing or protesting, in accordance with regulations of the Secretary, the grade certified for his tobacco.

(f) For any person falsely to present or otherwise indicate that he is authorized by the Secretary to inspect, sample, or weigh tobacco under this Act.

(g) For any person to substitute, or attempt to substitute, following inspection or sampling or weighing under this Act, other tobacco for tobacco actually inspected or sampled or weighed, or in the case of tobacco inspected in auction warehouses for any person not so authorized by the Secretary to remove any certificate of grade from any lot of tobacco prior to the sale of such lot.

(h) For any person falsely to represent that tobacco has been inspected, sampled, or weighed under this Act; or knowingly to have made any false representation concerning tobacco inspected under this Act; or knowing that tobacco is to be offered for inspection or sampling under this Act to load, pack, or arrange such tobacco in such manner as knowingly to conceal foreign matter or tobacco of inferior grade, quality, or condition; or for any person knowing that tobacco has been so loaded, packed or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling.

(i) For any person willfully to alter an official sample of tobacco by removing or plucking leaves or otherwise, or for any person knowing that an official sample of tobacco has been so altered, thereafter to represent such samples as an official sample. (7 U.S.C. 511i.)

SEC. 11. The Secretary is authorized to publish the facts regarding any violation of this Act. (7 U.S.C. 511j.)

SEC. 12. That any person violating any provision of sections 5 and 10 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than one year, or both. (7 U.S.C. 511k.)

SEC. 13. In construing and enforcing the provisions of this Act; the act, omission, or failure of any agent, officer, or other person acting for or employed by an association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act,

omission, or failure of the association, partnership, corporation, or firm, as well as that of the person. (7 U.S.C. 511l.)

SEC. 14. That the Secretary is authorized to make such rules and regulations and hold such hearings as he may deem necessary to effectuate the purposes of this Act and may cooperate with any other Department or agency of the Government; any State, territory, district, or possession, or department, agency, or political subdivision thereof; purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of businessmen or trade organizations; or any person, whether operating in one or more jurisdictions in carrying on the work herein authorized; and he shall have the power to appoint, suspend, remove, and fix the compensation of all officers, employees, and licensees not in conflict with existing law, except that inspectors and supervisors employed hereunder on a seasonal basis and working for periods of six months or less during any twelve-month period may be appointed without reference to the provisions of the Classification Act of 1923, as amended. The Secretary is authorized to make such expenditures for rent outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publications, furniture, stationery, office and laboratory equipment, travel, tobacco for use in preparing and demonstrating standards, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this Act. (7 U.S.C. 511m.)

SEC. 15. That in carrying on the work herein authorized, the Secretary, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpenas, examine witnesses, and require the production of books, records, accounts, memoranda, and papers. Upon refusal by any person to appear, testify, or produce books, records, accounts, memoranda, and papers in response to a subpena, the proper United States district court shall have power to compel obedience thereto. (7 U.S.C. 511n.)

SEC. 16. That if any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 511o.)

SEC. 17. That any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this Act may with like force and effect be executed by such officer or officers, agent or agents, of the Department of Agriculture as the Secretary may designate for the purpose. (7 U.S.C. 511p.)

SEC. 18. That this Act may be cited as "The Tobacco Inspection Act."
(7 U.S.C. 511q.)

TOBACCO ADJUSTMENT ACT OF 1983 [1]

(7 U.S.C. 511r)

SEC. 213. (a) Notwithstanding any other provision of law **)**

(1) All tobacco offered for importation into the United States, except tobacco described in paragraph (2), shall be inspected, insofar as practicable, for grade and quality as tobacco marketed through a warehouse in the United States is inspected for grade and quality.

(2) Cigar tobacco and oriental tobacco (both as provided for in Schedule 1, Part 13, Tariff Schedules of the United States) offered for importation into the United States shall be accompanied by a certification by the importer, in such form as the Secretary of Agriculture may prescribe, stating the kind and type of such tobacco, and, in the case of cigar tobacco, that such tobacco will be used solely in the manufacture or production of cigars.

(b) The Secretary of Agriculture shall establish grade and quality standards for the purposes of subsection (a)(1) that are, insofar as practicable, the same as those applicable to tobacco marketed through a warehouse in the United States.

(c) Any tobacco described in subsection (a)(2) that is not accompanied by the certification required by that subsection shall not be permitted entry into the United States. The provisions of section 1001 of title 18, United States Code, shall be applicable with respect to any certification made by an importer under such subsection.

(d)[2] The Secretary of Agriculture shall enforce the provisions of subsection (a) at the point of entry of tobacco offered for importation into the United States. The Secretary shall by regulation fix and collect from the importer fees and charges for inspection under subsection (a)(1) and subsection (e) which shall, as nearly as practicable, cover the costs of such services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations, and which shall be comparable to fees and charges fixed and collected for services provided in connection with tobacco produced in the United States. The fees and charges, when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year

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[1] Section 213 of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1149, Nov. 29, 1983; as amended by Pub. L. 99-198, 99 Stat. 1498, 1501, Dec. 23, 1985.

[2] As amended by Pub. L. 101-508, 104 Stat. 1388-11, Nov. 5, 1990; and Pub. L. 101-624, 104 Stat. 4073, Nov. 28, 1990, which authorized the investment of fees. Sec. 1106(c) of Pub. L. 103-66, 107 Stat. 323, Aug. 10, 1993, added the phrase at the end of the second sentence, requiring that imported tobacco fees be comparable to fees charged for domestic tobacco services.

limitation to pay the expenses of the Secretary incident to providing services under subsection (a)(1), subsection (e), and subsection (f). Any fees collected, late payment penalties, and interest earned shall be credited to the account referred to in this section and may be invested by the Secretary of Agriculture in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary of Agriculture, by the Secretary of the Treasury in United States Government debt instruments. Fees and charges, including late payment penalties, and interest earned from the investment of such funds shall be credited to the account referred to in this section.

(e) Notwithstanding any other provision of law:

(1)(A) All flue-cured or burley tobacco offered for importation into the United States shall be accompanied by a certification by the importer, in such form as the Secretary of Agriculture shall prescribe, that the tobacco does not contain any prohibited residue of any pesticide that has been cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.). Any flue-cured or burley tobacco that is not accompanied by such certification shall be inspected by the Secretary at the point of entry to determine whether that tobacco meets the pesticide residue requirements. Subsection (d) of this section shall apply with respect to fees and charges imposed to cover the costs of such inspection.

(B) Any tobacco that is determined by the Secretary not to meet the pesticide residue requirements shall not be permitted entry into the United States.

(C) The customs fraud provisions under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), and criminal fraud provisions under section 1001 of title 18, United States Code, shall apply with respect to the certification requirement in subparagraph (A).

(2) The Secretary shall by regulation provide for pesticide residue standards with respect to pesticides that are cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.), that shall apply to flue-cured and burley tobacco, whether domestically produced or imported.

(3) The Secretary, to such extent and at such times as the Secretary determines appropriate, shall sample and test flue-cured and burley tobacco offered for importation or for sale in the United States to determine whether it conforms with the pesticide residue requirements. The Secretary shall by regulation impose fees and charges for such inspections.

(4) If the Secretary determines, as a result of tests conducted under paragraph (3), that certain flue-cured or burley tobacco offered for

importation does not meet the requirements of this subsection, then such tobacco shall not be permitted entry into the United States.

(5)(A) Subject to subparagraph (B), if the Secretary determines that domestically produced flue-cured or burley tobacco does not meet the requirements of this section, such tobacco may not be moved in commerce among the States and shall be destroyed by the Secretary.

(B) This paragraph shall apply only to tobacco produced after the date of enactment of this provision that receives price support under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

(f)(1) The certification required under subsection (e)(1) of this section shall also include the identification of any and all end users of such tobacco of which the importer has knowledge. Any flue-cured or burley tobacco permitted entry into the United States must be accompanied by a written identification of any and all end users of such tobacco. In cases in which the importer has no knowledge of the identity of an end user, the importer shall identify any and all purchasers to whom the importer expects to transfer such imported tobacco. The importer shall file with the Department of Agriculture an amended statement if, at any time after the time of entry of such tobacco imports, the importer has knowledge of any additional purchaser or end user. In those cases in which the importer has not identified all end users of such imported tobacco, the Secretary of Agriculture shall take all steps available to ascertain the identity of any and all such end users, including requesting such information from purchasers of such imported tobacco. Domestic purchasers of imported tobacco shall be required to supply any relevant information to the Department of Agriculture upon demand under this subsection.

(2) The Secretary shall provide to the Senate Committee on Agriculture, Nutrition, and Forestry, and the House Committee on Agriculture, on or before April 1, 1986, a report on the implementation of this authority to identify each end user and purchaser of imported tobacco. Such report shall identify the end users and purchasers of imported tobacco and the quantity, in pounds, bought by such end user or purchaser, as well as all steps taken by the Department of Agriculture to ascertain such identities. The Secretary shall provide an additional report, beginning November 15, 1986, and annual reports thereafter, on the implementation of this authority.

(3) As used in this subsection, the term “end user of imported tobacco” means **)**

(A) a domestic manufacturer of cigarettes or other tobacco products;

(B) any entity that mixes, blends, processes, alters in any manner, or stores, imported tobacco for export; and

(C) any other individual that the Secretary may identify as making use of imported tobacco for the production of tobacco products.

(4)[3] Subsection (d) shall apply with respect to fees and charges imposed to cover the costs of such end user identification, certification, and reporting activities. (7 U.S.C. 511r.)

SEC. 214. Repealed.[4]

[3] Paragraph (4) added by Pub. L. 101-508, 104 Stat. 1388-12, Nov. 5, 1990.

[4] Section 214 added by Pub. L. 101-624, 104 Stat. 3699, Nov. 28, 1990. Authority to administer this section was delegated to the Foreign Agricultural Service, USDA. Sec. 262 of Pub. L. 104-127, 110 Stat. 973, Apr. 4, 1996, repealed Section 214 (7 U.S.C. 509) relating to reporting requirements for tobacco exports.

TOBACCO STATISTICS [1]

(7 U.S.C. 501-508)

AN ACT To provide for the collection and publication of statistics of tobacco by the Department of Agriculture

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,[2] That the Secretary of Agriculture be, and he is hereby, authorized and directed to collect and publish statistics of the quantity of leaf tobacco in all forms in the United States, and Puerto Rico, owned by or in the possession of dealers, manufacturers, quasi-manufacturers, growers' cooperative associations, warehousemen, brokers, holders, or owners, other than the original growers of tobacco. The statistics shall show the quantity of tobacco in such detail as to types, groups of grades, and such other subdivisions as to quality, color, and/or grade for particular types, as the Secretary of Agriculture shall deem to be practical and necessary for the purposes of this Act, shall be summarized as of January 1, April 1, July 1 and October 1 of each year, and an annual report on tobacco statistics shall be issued: *Provided*, That the Secretary of Agriculture shall not be required to collect statistics of leaf tobacco from any manufacturer of tobacco who, in the first three quarters of the preceding calendar year, according to the returns of the Commissioner of Internal Revenue or the record of the Treasurer of Puerto Rico, manufactured less than thirty-five thousand pounds of tobacco, or from any manufacturer of cigars who, during the first three quarters of the preceding calendar year, manufactured less than one hundred and eight-five thousand cigars, or from any manufacturer of cigarettes who, during the first three quarters of the preceding year, manufactured less than seven hundred and fifty thousand cigarettes: *And provided further*, That the Secretary of Agriculture may omit the collection of statistics from any dealer, manufacturer, growers' cooperative association, warehouseman, broker, holder, or owner who does not own and/or have in stock, in the aggregate, fifty thousand pounds or more of leaf tobacco on the date as of which the reports are made. For the purposes of this Act, any tobacco which has deteriorated on account of age or other causes to the extent that it is not merchantable or is unsuitable for use in manufacturing tobacco products shall be classified with other nondescript tobacco and reported in the "N" group of the type to which it belongs. (7 U.S.C. 501.)

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[1] Act of January 14, 1929, 49 Stat. 1079.

[2] Section as amended by Act of July 14, 1932, 47 Stat. 662; and Act of August 27, 1935, 49 Stat. 893.

SEC. 2.[3] The Secretary of Agriculture shall establish standards for the classification of leaf tobacco, and he is authorized to demonstrate such standards, to prepare and distribute samples thereof, and to make reasonable charges therefor. He shall specify the types, groups of grades, qualities, colors, and/or grades, which shall be included in the returns required by this Act. The Secretary of Agriculture shall prepare appropriate blanks upon which the returns shall be made, shall, upon request, furnish copies to persons who are required by this Act to make returns, and such returns shall show the types, groups of grades, qualities, colors, and/or grades and such other information as the Secretary may require. (7 U.S.C. 502.)

SEC. 3.[4] It shall be the duty of every dealer, manufacturer, quasi-manufacturer, growers' cooperative association, warehouseman, broker, holder, or owner, other than the original grower, except such persons as are excluded by the proviso to section 1 of this Act, to furnish within fifteen days after January 1, April 1, July 1, and October 1 of each year, completely and correctly, to the best of his knowledge, a report of the quantity of leaf tobacco on hand, segregated in accordance with the blanks furnished by the Secretary of Agriculture. Any person, firm, association, or corporation required by this Act to furnish a report, and any officer, agent, or employee thereof who shall refuse or willfully neglect to furnish any of the information required by this Act, or shall willfully give answers that are false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $300 or more than $1,000, or imprisoned not more than one year, or both. (7 U.S.C. 503.)

SEC. 4. The word "person" as used in this Act shall be held to embrace also any partnership, corporation, association, or other legal entity. (7 U.S.C. 504.)

SEC. 5.[5] The Secretary of Agriculture shall have access to the tobacco records of the Commissioner of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining lists of the persons subject to this Act and for the purpose of aiding the collection of the information herein required, and the Commissioner of Internal Revenue and the several collectors of internal revenue shall cooperate with the Secretary of Agriculture in effectuating the provisions of this Act. (7 U.S.C. 505.)

SEC. 6. The returns herein provided for shall be made under oath before a collector or deputy collector of internal revenue, a postmaster, assistant

[3] Section as amended by Act of August 27, 1935, 49 Stat. 894.
[4] Section as amended by Act of July 14, 1932, 47 Stat. 663.
[5] Section as amended by Act of august 27, 1935, 49 Stat. 894.

postmaster, or anyone authorized to administer oaths by State or Federal law. (7 U.S.C. 506.)

SEC. 7. That the information furnished under the provisions of this Act shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary of Agriculture whereby the data furnished by any particular establishment can be identified, nor shall the Secretary of Agriculture permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports. (7 U.S.C.507.)

SEC. 8. The Act approved April 30, 1912, providing for the collection of tobacco statistics by the Bureau of the Census is hereby repealed.

SEC. 9. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby. (7 U.S.C. 508.)

THE NAVAL STORES ACT [1]

(7 U.S.C. 91-99)

AN ACT Establishing standard grades of naval stores, preventing deception in transactions in naval stores, regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for convenience of reference, this Act may be designated and cited as "The Naval Stores Act." (7 U.S.C. 91.)

SEC. 2. That, when used in this Act **)**

(a) "Naval Stores" means spirits of turpentine and rosin.

(b) "Spirits of turpentine" includes gum spirits of turpentine and wood turpentine.

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

(d) "Wood turpentine" includes steam distilled wood turpentine and destructively distilled wood turpentine.

(e) "Steam distilled wood turpentine" means wood turpentine distilled with steam from the oleoresin within or extracted from the wood.

(f) "Destructively distilled wood turpentine" means wood turpentine obtained in the destructive distillation of the wood.

(g) "Rosin" includes gum rosin and wood rosin.

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

(i) "Wood rosin" means rosin remaining after the distillation of steam distilled wood turpentine.

(j) "Package" means any container of naval stores, and includes barrel, tank, tank car, or other receptacle.

(k) "Person" includes partnerships, associations, and corporations, as well as individuals.

(l) The term "commerce" means commerce between any States, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia. (7 U.S.C. 92.)

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[1] March 3, 1923, 42 Stat. 1435.

SEC. 3. That for the purposes of this Act the kinds of spirits of turpentine defined in subdivisions (c), (e), and (f) of section 2 hereof and the rosin types heretofore prepared and recommended under existing laws, by or under authority of the Secretary of Agriculture, are hereby made the standards for naval stores until otherwise prescribed as hereinafter provided. The Secretary of Agriculture is authorized to establish and promulgation standards for naval stores for which no standards are herein provided, after at least three months' notice of the proposed standard shall have been given to the trade, so far as practicable, and due hearings or reasonable opportunities to be heard shall have been afforded those favoring or opposing the same. No such standard shall become effective until after three months from the date of the promulgation thereof. Any standard made by this Act or established and promulgated by the Secretary of Agriculture in accordance therewith may be modified by said Secretary whenever, for reasons and causes deemed by him sufficient, the interests of the trade shall so require, after at least six months' notice of the proposed modifications shall have been given to the trade, so far as practicable, and due hearings or reasonable opportunities to be heard shall have been afforded those favoring or opposing the same; and no such modification so made shall become effective until after six months from the date when made.

The various grades of rosin, from highest to lowest, shall be designated, unless and until changed, as hereinbefore provided, by the following letters, respectively: X, WW, WG, N, M, K, I, H, G, F, E, D, and B, together with the designation "gum rosin" or "wood rosin,"as the case may be.

The standards herein made and authorized to be made shall be known as the "Official Naval Stores Standards of the United States," and may be referred to by the abbreviated expression "United States Standards," and shall be the standards by which all naval stores in commerce shall be graded and described. (7 U.S.C. 93.)

SEC. 4.[2] That the Secretary of Agriculture shall provide, if practicable, any interested person with duplicates of the official naval stores standards of the United States upon request accompanied by tender of satisfactory security for the return thereof, under such regulations as he may prescribe. The Secretary of Agriculture shall examine, if practicable, upon request of any interested person, any naval stores and shall analyze, classify, or grade the same under such regulations as he may prescribe. He shall furnish a certificate showing the analysis, classification, or grade of such naval stores, which certificate shall be prima facie evidence of the analysis, classification, or grade of such naval stores and of the contents

[2] Section as amended by Pub. L. 97-35, 95 Stat. 376, Aug. 13, 1981.

of any package from which the same may have been taken, as well as of the correctness of such analysis, classification, or grade and shall be admissible as such in any court. (7 U.S.C. 94.)

SEC. 5. That the following acts are hereby declared injurious to commerce in naval stores and are hereby prohibited and made unlawful:

(a) The sale in commerce of any naval stores, or of any thing offered as such, except under or by reference to United States standards.

(b) The sale of any naval stores under or by reference to United States standards which is other than what it is represented to be.

(c) The use in commerce of the word "turpentine" or the word "rosin," singly or with any other word or words, or of any compound, derivative, or imitation of either such word, or of any misleading word, or of any word, combination of words, letter or combination of letters, provided herein or by the Secretary of Agriculture to be used to designate naval stores of any kind or grade, in selling, offering for sale, advertising, or shipping anything other than naval stores of the United States standards. (d) The use in commerce of any false, misleading, or deceitful means or practice in the sale of naval stores or of anything offered as such. (7 U.S.C. 95.)

SEC. 6. That any person willfully violating any provision of section 5 of this Act shall on conviction, be punished for each offense by a fine not exceeding $5,000 or by imprisonment for not exceeding one year, or both. (7 U.S.C. 96.)

SEC. 7. That the Secretary of Agriculture is hereby authorized to purchase from time to time in open market samples of spirits of turpentine and of anything offered for sale as such for the purpose of analysis, classification, or grading and of detecting any violation of this Act. He shall report to the Department of Justice for appropriate action any violation of this Act coming to his knowledge. He is also authorized to publish from time to time results of any analysis, classification, or grading of spirits of turpentine and of anything offered for sale as such made by him under any provision of this Act. (7 U.S.C. 97.)

SEC. 8.[3] (a) The Secretary of Agriculture shall fix and cause to be collected fees and charges for the establishment of standards under section 3 of this Act and for examinations, analyses, classifications, and other services under section 4 of this Act which shall cover, as nearly as practicable, the costs of providing such services and standards as the

[3] Pub. L. 97-35, 95 Stat. 376, authorized the Secretary, effective Oct. 1, 1981, to fix and collect fees for establishing standards, examination, analyses, classifications and other services.

Secretary shall deem necessary, including administrative and supervisory costs. Such fees and charges, when collected, shall be credited to the current appropriation account that incurs such costs and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services and standards under this Act. Fees and charges shall be assessed and collected from processors and warehousers of naval stores, and inspection and related services shall be suspended or denied to any such processor or warehouser upon failure to timely pay the fees and charges assessed.

(b) There are hereby authorized to be appropriated such sums as may be necessary for the enforcement and administration of this Act. (7 U.S.C. 98.)

SEC. 9. That if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 99.)

SEC. 10. That this Act shall become effective at the expiration of ninety days next after the date of its approval. (7 U.S.C. 91 note.)

TURPENTINE AND ROSIN STATISTICS [1]

(7 U.S.C. 2248)

AN ACT Providing for the publication of statistics relating to spirits of turpentine and rosin

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized and directed to collect and/or compile and publish annually, and at such other times, and in such form and on such date or dates as he shall prescribe, statistics and essential information relating to spirits of turpentine and rosin produced, held, and used in the domestic and foreign commerce of the United States. (7 U.S.C. 2248.)[2]

[1] August 15, 1935, 49 Stat. 653.
[2] Formerly 5 U.S.C. 556(b).

Subpart H. Plant Variety; Pesticide Data and Records; Laboratory Accreditation

PLANT VARIETY PROTECTION ACT [1]

(7 U.S.C. 2321-2331, 2351-2357, 2371-2372, 2401-2404, 2421-2427, 2441-2443, 2461-2463; 2481-2486, 2501-2504, 2531-2532, 2541-2545, 2561-2570, 2581-2583)

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

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TITLE I) PLANT VARIETY PROTECTION OFFICE

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[1] Pub. L. 91-577, Dec. 24, 1970, 84 Stat. 1542-1559.

CHAPTER 1.) ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.[2]

There is hereby established in the Department of Agriculture an office to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act. (7 U.S.C. 2321.)

SEC. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated. (7 U.S.C. 2322.)

SEC. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act. (7 U.S.C. 2323.)

SEC. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office. (7 U.S.C. 2324.)

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[2] Sec. 1 of Pub. L. 96-574, Dec. 22, 1980, 94 Stat. 3350, substituted "an office" for "a bureau". Section 1 of Pub. L. 103-349, 108 Stat. 3136, Oct. 6, 1994 reads:

"SECTION 1. SHORT TITLE; REFERENCES.

"(a) SHORT TITLE.) This Act may be cited as the "Plant Variety Protection Act Amendments of 1994".

"(b) REFERENCES TO PLANT VARIETY PROTECTION ACT.) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)." (7 U.S.C. 2321 note.)

SEC. 5. Repealed.[3]

SEC. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board. (7 U.S.C. 2326.)

SEC. 7. Plant Variety Protection Board.

(a)[4] APPOINTMENT **)** The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or the designee of the Secretary shall act as chairperson of the Board without voting rights except in the case of ties.

(b) FUNCTIONS OF BOARD **)** The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) COMPENSATION OF BOARD **)** The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses. (7 U.S.C. 2327.)

SEC. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection

[3] Sec. 2 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, repealed Section 5 (7 U.S.C. 2325) which required employees to obtain surety bonds.

[4] As amended by Sec. 13(a) of Pub. L. 103-349, 108 Stat. 3142, Oct. 6, 1994, to eliminate gender specific language.

Office to aid the examiners[5] in the discharge of their duties. (7 U.S.C. 2328.)

SEC. 9. Register of Protected Plant Varieties.[6]

The Secretary shall maintain a register of descriptions of United States protected plant varieties. (7 U.S.C. 2329.)

SEC. 10. Publications.

(a)[7] The Secretary may publish, or cause to be published, in such format as the Secretary shall determine to be suitable, the following:

(1) The descriptions of plant varieties protected including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b)[8] The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of plant breeding.

(c)[9] The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of descriptions, drawings, and photographs of United States protected plant varieties for copies of

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[5] Section 3 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, struck the word "officer" and inserted in lieu thereof the word "examiners".

[6] Section 4 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, substituted "descriptions" for "published specifications", and deleted provisions requiring maintenance of a file for other information.

[7] Sec. 5 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, substituted "descriptions of plant varieties protected" for "specifications for plant variety protection" in paragraph (1); and Sec. 13(b) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, eliminated gender-specific language.

[8] Section 6 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, repealed former subsection (b) which related to photolithography and lithography. Section 7 of Pub. L. 96-574 redesignated former subsection (c) as (b), and substituted "plant breeding" for "the useful arts".

[9] Section 8 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, redesignated former subsection (d) as (c), and substituted "descriptions" for "specifications" in the second sentence.

descriptions, drawings, and photographs of applications and protected plant varieties of foreign countries. (7 U.S.C. 2330.)

SEC. 11. Copies for Public Libraries.

The Secretary may supply printed copies of descriptions,[10] drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public. (7 U.S.C. 2331.)

CHAPTER 2.) LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

SEC. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day. (7 U.S.C. 2351.)

SEC. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office. (7 U.S.C. 2352.)

SEC. 23. Testimony in Plant Variety Protection Office Cases.[11]

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, the person shall have like power. (7 U.S.C. 2353.)

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[10] Section 9 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, substituted "descriptions" for "specifications".

[11] Section as amended by Sec. 13 of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, to eliminate gender-specific language.

SEC. 24. Subpoenas, Witnesses.[12]

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding the witness to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless the fees and traveling expenses of the witness in going to, and returning from, one day's attendance at the place of examination, are paid or tendered the witness at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary. (7 U.S.C. 2354.)

SEC. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided
a properly executed document is submitted within such time as may be prescribed. (7 U.S.C. 2355.)

SEC. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties

[12] *Ibid.*

before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct. (7 U.S.C. 2356.)

SEC. 27. Unauthorized Practice.[13]

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that the person acted only on behalf of any employer by whom the person was regularly employed. (7 U.S.C. 2357.)

CHAPTER 3.) PLANT VARIETY PROTECTION FEES

SEC. 31. Plant Variety Protection Fees.[14]

(a) IN GENERAL.) The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this Act.

(b) LATE PAYMENT PENALTY.) On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of title 31, United States Code.

(c) DISPOSITION OF FUNDS.) Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this Act. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

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[13] *Ibid.*

[14] Section as amended by Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980. Pub. L. 100-203, 101 Stat. 1330-28, Dec. 22, 1987, generally amended the section, including the authority to invest the funds collected.

(d) ACTIONS FOR NONPAYMENT.—The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this Act against any person obligated for payment of such charges under this Act in any United States district court or other United States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act. (7 U.S.C. 2371.)

SEC. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required. (7 U.S.C. 2372.)

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

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CHAPTER 4.—PROTECTABILITY OF PLANT VARIETIES

SEC. 41. Definitions and Rules of Construction. [15]

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[15] As amended by Sec. 2 of Pub. L. 103-349, 108 Stat. 3136, Oct. 6, 1994. Sections 14 and 15 of Pub. L. 103-349, 108 Stat. 3144 read:

"SEC. 14. TRANSITIONAL PROVISIONS.

"(a) IN GENERAL.—Except as provided in this section, any variety for which a certificate of plant variety protection has been issued prior to the effective date of this Act, and any variety for which an application is pending on the effective date of this Act, shall continue to be governed by the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as in effect on the day before the effective date of this Act.

"(b) APPLICATIONS REFILED.—

"(1) IN GENERAL.—An applicant may refile a pending application on or after the effective date of this Act.

"(2) EFFECT OF REFILING.—If a pending application is refiled on or after the effective date of this Act—

"(A) eligibility for protection and the terms of protection shall be

(continued...)

(a) DEFINITIONS.) As used in this Act:

(1) BASIC SEED.) The term "basic seed" means the seed planted to produce certified or commercial seed.

(2) BREEDER.) The term "breeder" means the person who directs the final breeding creating a variety or who discovers and develops a variety. If the actions are conducted by an agent on behalf of a principal, the principal, rather than the agent, shall be considered the breeder. The term does not include a person who redevelops or rediscovers a variety the existence of which is publicly known or a matter of common knowledge.

(3) ESSENTIALLY DERIVED VARIETY.)

(A) IN GENERAL.) The term "essentially derived variety" means a variety that)

(i) is predominantly derived from another variety (referred to in this paragraph as the `initial variety') or from a variety that is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(ii) is clearly distinguishable from the initial variety; and

(iii) except for differences that result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(...continued)

governed by the Plant Variety Protection Act, as amended by this Act; and

"(B) for purposes of section 42 of the Plant Variety Protection Act, as amended by section 3 of this Act, the date of filing shall be the date of filing of the original application.

"(c) LABELING.)

"(1) IN GENERAL.) To obtain the protection provided to an owner of a protected variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) (as amended by this Act), a notice given by an owner concerning the variety under section 127 of the Plant Variety Protection Act (7 U.S.C. 2567) shall state that the variety is protected under such Act (as amended by this Act).

"(2) SANCTIONS.) Any person that makes a false or misleading statement or claim, or uses a false or misleading label, concerning protection described in paragraph (1) shall be subject to the sanctions described in section 128 of the Plant Variety Protection Act (7 U.S.C. 2568).

"SEC. 15. EFFECTIVE DATE.

"This Act and the amendments made by this Act [amending sections 2327, 2330, 2353, 2354, 2357, 2401, 2402, 2404, 2422, 2423, 2424, 2425, 2442, 2461, 2462, 2463, 2482, 2483, 2486, 2501, 2504, 2532, 2541, 2542, 2543, 2561, 2566, 2567, 2568, and 2570 and repealing sections 2463, 2502, and 2503] shall become effective 180 days after the date of enactment of this Act." (7 U.S.C. 2401 note.)

(B) METHODS.—An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, transformation by genetic engineering, or other method.

(4) KIND.—The term "kind" means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, or radish.

(5) SEED.—The term "seed", with respect to a tuber propagated variety, means the tuber or the part of the tuber used for propagation.

(6) SEXUALLY REPRODUCED.—The term "sexually reproduced" includes any production of a variety by seed, but does not include the production of a variety by tuber propagation.

(7) TUBER PROPAGATED.—The term "tuber propagated" means propagated by a tuber or a part of a tuber.

(8) UNITED STATES.—The terms "United States" and "this country" mean the United States, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(9) VARIETY.—The term "variety" means a plant grouping within a single botanical taxon of the lowest known rank, that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

(b) RULES OF CONSTRUCTION.—For the purposes of this Act:

(1) SALE OR DISPOSITION FOR NONREPRODUCTIVE PURPOSES.—The sale or disposition, for other than reproductive purposes, of harvested material produced as a result of experimentation or testing of a variety to ascertain the characteristics of the variety, or as a by-product of increasing a variety, shall not be considered to be a sale or disposition for purposes of exploitation of the variety.

(2) SALE OR DISPOSITION FOR REPRODUCTIVE PURPOSES.—The sale or disposition of a variety for reproductive purposes shall not be considered to be a sale or disposition for the purposes of exploitation of the variety if the sale or disposition is done as an integral part of a program of experimentation or testing to ascertain the characteristics of the variety, or to increase the variety on behalf of the breeder or the successor in interest of the breeder.

(3) SALE OR DISPOSITION OF HYBRID SEED.—The sale or disposition of hybrid seed shall be considered to be a sale or disposition of

harvested material of the varieties from which the seed was produced.

(4) APPLICATION FOR PROTECTION OR ENTERING INTO A REGISTER OF VARIETIES.) The filing of an application for the protection or for the entering of a variety in an official register of varieties, in any country, shall be considered to render the variety a matter of common knowledge from the date of the application, if the application leads to the granting of protection or to the entering of the variety in the official register of varieties, as the case may be.

(5) DISTINCTNESS.) The distinctness of one variety from another may be based on one or more identifiable morphological, physiological, or other characteristics (including any characteristics evidenced by processing or product characteristics, such as milling and baking characteristics in the case of wheat) with respect to which a difference in genealogy may contribute evidence.

(6) PUBLICLY KNOWN VARIETIES.)

(A) IN GENERAL.) A variety that is adequately described by a publication reasonably considered to be a part of the public technical knowledge in the United States shall be considered to be publicly known and a matter of common knowledge.

(B) DESCRIPTION.) A description that meets the requirements of subparagraph (A) shall include a disclosure of the principal characteristics by which a variety is distinguished.

(C) OTHER MEANS.) A variety may become publicly known and a matter of common knowledge by other means. (7 U.S.C. 2401.)

SEC. 42. Right to Plant Variety Protection; Plant Varieties Protectable.[16]

(a) IN GENERAL.) The breeder of any sexually reproduced or tuber propagated plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in interest of the breeder, shall be entitled to plant variety protection for the variety, subject to the conditions and requirements of this Act, if the variety is)

(1) new, in the sense that, on the date of filing of the application for plant variety protection, propagating or harvested material of the variety has not been sold or otherwise disposed of to other persons, by or with the consent of the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety)

[16] As amended by Sec. 3 of Pub. L. 103-349, 108 Stat. 3138, Oct. 6, 1994. Further amended by Sec. 913(a) of Pub. L. 104-127, 110 Stat. 1186, Apr. 4, 1996, which authorized the Secretary to waive the 4-year limitation for a period ending 1 year after April 4, 1996, for a tuber propagated plant variety.

(A) in the United States, more than 1 year prior to the date of filing; or

(B) in any area outside of the United States)

(i) more than 4 years prior to the date of filing, except that in the case of a tuber propagated plant variety the Secretary may waive the 4-year limitation for a period ending 1 year after the date of enactment of the Federal Agriculture Improvement and Reform Act of 1996; or

(ii) in the case of a tree or vine, more than 6 years prior to the date of filing;

(2) distinct, in the sense that the variety is clearly distinguishable from any other variety the existence of which is publicly known or a matter of common knowledge at the time of the filing of the application;

(3) uniform, in the sense that any variations are describable, predictable, and commercially acceptable; and

(4) stable, in the sense that the variety, when reproduced, will remain unchanged with regard to the essential and distinctive characteristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) MULTIPLE APPLICANTS.)

(1) IN GENERAL.) If 2 or more applicants submit applications on the same effective filing date for varieties that cannot be clearly distinguished from one another, but that fulfill all other requirements of subsection (a), the applicant who first complies with all requirements of this Act shall be entitled to a certificate of plant variety protection, to the exclusion of any other applicant.

(2) REQUIREMENTS COMPLETED ON SAME DATE.)

(A) IN GENERAL.) Except as provided in subparagraph (B), if 2 or more applicants comply with all requirements for protection on the same date, a certificate shall be issued for each variety.

(B) VARIETIES INDISTINGUISHABLE.) If the varieties that are the subject of the applications cannot be distinguished in any manner, a single certificate shall be issued jointly to the applicants. (7 U.S.C. 2402.)

SEC. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by

said foreign state to nationals of the United States for the same genus and species. (7 U.S.C. 2403.)

SEC. 44. Public Interest in Wide Usage.[17]

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when the Secretary determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court. (7 U.S.C. 2404.)

CHAPTER 5.) APPLICATIONS; FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

SEC. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary. (7 U.S.C. 2421.)

SEC. 52. Content of Application. [18]

An application for a certificate recognizing plant variety rights shall contain:

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[17] As amended by Sec. 13(f) of Pub. L. 103-349, 108 Stat. 3143, Oct 6, 1994, to eliminate gender-specific language.

[18] Sec. 4 of Pub. L. 103-349, 108 Stat. 3139, Oct. 6, 1994, added "The variety shall be named in accordance with the regulations issued by the Secretary." to the end of paragraph (1); struck "novelty", and inserted "distinctiveness, uniformity, and stability" in paragraph (2); redesignated former paragraphs (3) and (4) as paragraphs (4) and (5), respectively; added a new paragraph (3); and inserted "(including any propagating material)" after "basic seed" in redesignated paragraph (4).

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued. The variety shall be named in accordance with regulations issued by the Secretary.

(2) A description of the variety setting forth its distinctiveness, uniformity, and stability and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A statement of the basis of the claim of the applicant that the variety is new.

(4) A declaration that a viable sample of basic seed (including any propagating material) necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. [19]

(5) A statement of the basis of applicant's ownership. (7 U.S.C. 2422.)

SEC. 53. Joint Breeders.[20]

(a) When two or more persons are the breeders, one person (or the successor of the person) may apply, naming the others.

(b) The Secretary, after such notice as the Secretary may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application. (7 U.S.C. 2423.)

SEC. 54. Death or Incapacity of Breeder.[21]

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon

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[19] Section 11 of Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, deleted provision relating to adding of declaration by amendment.

[20] As amended by Sec. 13 of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, to eliminate gender-specific language.

[21] *Ibid.*

compliance with the requirements and on the same terms and conditions applicable to the breeder or the successor in interest of the breeder. (7 U.S.C. 2424.)

SEC. 55. Benefit of Earlier Filing Date.[22]

(a)(1) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed, not including the date on which the application is filed in the foreign country.

(2) No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in the application filed in the United States or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(3)(A) An applicant entitled to a right of priority under this subsection shall be allowed to furnish any necessary information, document, or material required for the purpose of the examination of the application during **)**

(i) the 2-year period beginning on the date of the expiration of the period of priority; or

(ii) if the first application is rejected or withdrawn, an appropriate period after the rejection or withdrawal, to be determined by the Secretary.

(B) An event occurring within the period of priority (such as the filing of another application or use of the variety that is the subject of the first application) shall not constitute a ground for rejecting the application or give rise to any third party right.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the

[22] Sec. 5 of Pub. L. 103-349, 108 Stat. 3139, Oct. 6, 1994, redesignated the first and second sentences of Sec. (a) as paragraphs (1) and (2), respectively; added ", not including the date on which the application is filed in the foreign country" at the end of paragraph (1); and added a new paragraph (3). Sec. 13(i) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, eliminated gender-specific language.

United States by or on behalf of the same person, or by the predecessor in title of the person, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application. (7 U.S.C. 2425.)

SEC. 56. Confidential Status of Application.[23]

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies, the name of the applicant, and whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed. (7 U.S.C. 2426.)

SEC. 57. Publication. [24]

The Secretary may establish regulations for the publication of information regarding any pending application when publication is requested by the owner. (7 U.S.C. 2427.)

CHAPTER 6.) EXAMINATION, RESPONSE TIME, INITIAL APPEALS

SEC. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of

[23] Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, added provision relating to the name of the applicant and whether the variety is to be sold by variety name only.

[24] Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, added "information regarding" following "publication of".

allowance of plant variety protection therefor as hereinafter provided. (7 U.S.C. 2441.)

SEC. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b)[25] For taking appropriate action after the mailing to an applicant of an action other than allowance, the applicant shall be allowed at least 30 days, and not more than 180 days, or such other time as the Secretary shall set in the refusal, or such time as the Secretary may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary. (7 U.S.C. 2442.)

SEC. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal. (7 U.S.C. 2443.)

CHAPTER 7.) APPEALS TO COURTS AND OTHER REVIEW

SEC. 71. Appeals.[26]

From the decisions made under sections 44, 63, 91, and 128 appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal. (7 U.S.C. 2461.)

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[25] Sec. 6 of Pub. L. 103-349, 108 Stat. 3140, Oct. 6, 1994, struck "six months" and inserted "at least 30 days, and not more than 180 days", and struck "in exceptional circumstances" before "shall set in the refusal,"; and Sec. 13(j) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, eliminated gender-specific language.

[26] As amended by Pub. L. 97-164, 96 Stat. 45, April 2, 1982, to provide the Court of Appeals for the Federal Circuit with exclusive jurisdiction over appeals. *See* footnote 51. Section further amended by Sec. 8(d)(1) of Pub. L. 103-349, 108 Stat. 3141, Oct. 6, 1994, to strike "92," after "91".

SEC. 72. Civil Action Against Secretary.[27]

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for the variety as specified in the application as the facts of the case may appear, on compliance with the requirements of this Act. (7 U.S.C. 2462.)

SEC. 73. Repealed.[28]

CHAPTER 8.) CERTIFICATES OF PLANT VARIETY PROTECTION

SEC. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52 (3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted. (7 U.S.C. 2481.)

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[27] As amended by Sec. 13(k) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, to eliminate gender-specific language.

[28] Sec. 8(c)(2) of Pub. L. 103-349, 108 Stat. 3141, Oct. 6, 1994, repealed Sec. 73 (7 U.S.C. 2463), relating to appeal or civil action in contested cases. Prior to repeal, subsection (b) of Sec. 73 was transferred to Sec. 92 (7 U.S.C. 2504) by Sec. 8(c)(1) of Pub. L. 103-349, 108 Stat. 3140, Oct. 6, 1994.

SEC. 82. How Issued.[29]

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have the signature of the Secretary placed thereon, and shall be recorded in the Plant Variety Protection Office. (7 U.S.C. 2482.)

SEC. 83. Contents and Term of Plant Variety Protection.[30]

(a)(1) Every certificate of plant variety protection shall certify that the breeder (or the successor in interest of the breeder), has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act.

(2) If the owner so elects, the certificate shall **)**

(A) specify that seed of the variety shall be sold in the United States only as a class of certified seed; and

(B) if so specified, conform to the number of generations designated by the owner.

(3) An owner may waive a right provided under this subsection, other than a right that is elected by the owner under paragraph (2)(A).

(4) The Secretary may at the discretion of the Secretary permit such election or waiver to be made after certificating and amend the certificate accordingly, without retroactive effect.

(b)[31] TERM. **)**

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[29] As amended by Sec. 13 (l) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, to eliminate gender-specific language.

[30] Pub. L. 96-574, 94 Stat. 3350, Dec. 22, 1980, substituted "eighteen" for "seventeen" in subsection (b). Sec. 7 of Pub. L. 103-349, 108 Stat. 3140, Oct. 6, 1994, designated first through fourth sentences of subsection (a) as paragraphs (1) through (4), respectively, revised paragraphs (2) and (3) (as so designated); substituted "20" for "eighteen" and added protection for a tree or vine for a 25 year term in subsection (b); and substituted "repository, or requiring the submission of a different name for the variety, except that" for "repository: *Provided, however*, That" in subsection (c). Sec. 13(m) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, eliminated gender-specific language.

[31] As amended by Sec. 913(b) of Pub. L. 104-127, 110 Stat. 1186, Apr. 4, 1996, which limited the term of protection for a tuber propagated variety to a total of 20 years, including the time protected in another country. Sec. 913(b)(3) erroneously referred to paragraph (2) of Sec. 83(b). Section 913(b)(3) reads:

"(b) TERM OF PROTECTION. **)** Section 83(b) of the Plant Variety Protection Act (7 U.S.C. 2483(b) is amended **)**

"(3) in paragraph (2) (as so designated), by striking `except that, in the case' and inserting the following: `except that **)**

(continued...)

(1) IN GENERAL.—Except as provided in paragraph (2), the term of plant variety protection shall expire 20 years from the date of issue of the certificate in the United States, except that—

(A) in the case of a tuber propagated plant variety subject to a waiver granted under section 42(a)(1)(B)(i), the term of the plant variety protection shall expire 20 years after the date of the original grant of the plant breeder's rights to the variety outside the United States; and

(B) in the case of a tree or vine, the term of the plant variety protection shall expire 25 years from the date of issue of the certificate.

(2) EXCEPTIONS.—If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certificating, relating to replenishing seed in a public repository, or requiring the submission of a different name for the variety, except that this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and the last owner fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary. (7 U.S.C. 2483.)

SEC. 84. Correction of Plant Variety Protection Office Mistake.[32]

Whenever a mistake in a certificate of plant variety protection incurred through the fault of the Plant Variety Protection Office is clearly disclosed by the records of the Office, the Secretary may issue, without charge, a corrected certificate of plant variety protection, stating the fact and nature of such mistake. Such certificate of plant variety protection shall have the same effect and operation in law as if the same had been originally issued in such corrected form. (7 U.S.C. 2484.)

SEC. 85. Correction of Applicant's Mistake.[33]

(...continued)

`(A) in the case of a tuber . . .;'."

The intent was to refer to paragraph (1) and the language in the text reflects that intent.

[32] Pub. L. 96-574, 94 Stat. 3350-3351, Dec. 22, 1980, authorized issuance of a corrected certificate instead of a certificate of correction.

[33] Pub. L. 96-574, 94 Stat. 3351, Dec. 22, 1980, provided for reissuance of a corrected

(continued...)

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a corrected certificate if the correction could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law as if the same had been originally issued in such corrected form. (7 U.S.C. 2485.)

SEC. 86. Correction of Named Breeder.[34]

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by the Secretary or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights the person otherwise would have had. (7 U.S.C. 2486.)

CHAPTER 9.) REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

SEC. 91. Reexamination After Issue.[35]

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation

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(...continued)
certificate when a correction is necessary through a mistake not the fault of the Plant Variety Protection Office.

[34] As amended by Sec. 13(n) of Pub. L. 103-349, 108 Stat. 3143, Oct. 6, 1994, to eliminate gender-specific language.

[35] Amended by Sec. 13(o) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, to eliminate gender-specific language.

of the plant variety certificate thereon and notice thereof shall be endorsed on copies of the description[36] of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as the Secretary shall establish. (7 U.S.C. 2501.)

SEC. 92. Repealed.[37]

SEC. 93. Repealed. [38]

SEC. 92. Interfering Plant Variety Protection.[39]

(a) The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but the Secretary shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety

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[36] Pub. L. 96-574, 94 Stat. 3351, Dec. 22, 1980, struck "specification" and inserted in lieu thereof "description".

[37] *See* footnote 39.

[38] *Ibid.*

[39] Sec. 8 of Pub. L. 103-349, 108 Stat. 3140, Oct. 6, 1994, repealed Section 92 (7 U.S.C. 2502), relating to priority contests, and Section 93 (7 U.S.C. 2503), relating to effect of adverse final judgment or of non-action; redesignated existing Section 94 (7 U.S.C. 2504) as Sec. 92; struck at the end of subsection (a) of redesignated Sec. 92 "The provisions of section 73(b) of this title shall apply to actions brought under this section ."; and added subsection (b) which was formerly subsection (b) of Sec. 73 (7 U.S.C. 2463(b)). Sec. 13(p) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, amended subsection (b) to eliminate gender-specific language.

protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this Act. (7 U.S.C. 2504.)

TITLE III) PLANT VARIETY PROTECTION AND RIGHTS

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CHAPTER 10.) OWNERSHIP AND ASSIGNMENT

SEC. 101. Ownership and Assignment.

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgment thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage. (7 U.S.C. 2531.)

SEC. 102. Ownership During Testing.[40]

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible or tuber propagable plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible or tuber propagable plant material available to the public, as by sale thereof. (7 U.S.C. 2532.)

CHAPTER 11.) INFRINGEMENT OF PLANT VARIETY PROTECTION

SEC. 111. Infringement of Plant Variety Protection. [41]

(a) Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a protected variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a protected plant variety with the notice under section 127:

(1) sell or market the protected variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

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[40] Sec. 8(d)(2) of Pub. L. 103-349, 108 Stat. 3141, Oct. 6, 1994, inserted "or tuber propagable" after "sexually reproducible" each place it appears.

[41] Section 3 of Pub. L. 102-560, 106 Stat. 4231, Oct. 28, 1992, designated former section as subsection (a) and added subsection (b). Sec. 4 of Pub. L. 102-560, 106 Stat. 4232, Oct. 28, 1992, provided that the amendments made by this Act [amending Sec. 111 and adding Sec. 130] shall take effect with respect to violations that occur on or after the date of enactment of this Act (Oct. 28, 1992). (7 U.S.C. 2541 note.) Sec. 9 of Pub. L. 103-349, 108 Stat. 3141, Oct. 6, 1994, replaced "novel variety" with "protected variety"; added marketing as an act that requires authority of the breeder; struck the word "novel" before the word "variety" in paragraphs (2) through (9), as redesignated; included tuber propagation as a step in marketing; redesignated paragraphs (7) and (8) as paragraphs (9) and (10), respectively; added new paragraphs (7) and (8) in subsection (a); redesignated subsection (b) as subsection (f); and added new subsections (b) through (e). Further amended by Sec. 13(q) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, to eliminate gender-specific language.

(2) import the variety into, or export it from, the United States;

(3) sexually multiply, or propagate by a tuber or a part of a tuber, the variety as a step in marketing (for growing purposes) the variety;

(4) use the variety in producing (as distinguished from developing) a hybrid or different variety therefrom;

(5) use seed which had been marked "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" [42] or progeny thereof to propagate the variety;

(6) dispense the variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received;

(7) condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 113;

(8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);

(9) perform any of the foregoing acts even in instances in which the variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

(10) instigate or actively induce performance of any of the foregoing acts.

(b)(1) Subject to paragraph (2), the owner of a protected variety may authorize the use of the variety under this section subject to conditions and limitations specified by the owner.

(2) In the case of a contract between a seed producer and the owner of a protected variety of lawn, turf, or forage grass seed, or alfalfa or clover seed for the production of seed of the protected variety, the producer shall be deemed to be authorized by the owner to sell such seed and to use the variety if **)**

(A) the producer has fulfilled the terms of the contract;

(B) the owner refuses to take delivery of the seed or refuses to pay any amounts due under the contract within 30 days of the payment date specified in the contract; and

(C) after the expiration of the period specified in subparagraph (B), the producer notifies the owner of the producer's intent to sell the seed and unless the owner fails to pay the amounts due under the contract and take delivery of the seed within 30 days of such notification. For the purposes of this paragraph, the term "owner" shall include any licensee of the owner.

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[42] Section 19(a) of Pub. L. 96-574, 94 Stat. 3351, Dec. 22, 1980, struck "propagation prohibited" and inserted in lieu thereof "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited".

(3) Paragraph (2) shall apply to contracts entered into with respect to plant varieties protected under this Act (7 U.S.C. 2321 et seq.) as in effect on the day before the effective date of this provision as well as plant varieties protected under this Act as amended by the Plant Variety Protection Act Amendments of 1994.

(4) Nothing in this subsection shall affect any other rights or remedies of producers or owners that may exist under other Federal or State laws.

(c) This section shall apply equally to **)**

(1) any variety that is essentially derived from a protected variety, unless the protected variety is an essentially derived variety;

(2) any variety that is not clearly distinguishable from a protected variety;

(3) any variety whose production requires the repeated use of a protected variety; and

(4) harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided under this Act with respect to the propagating material.

(d) It shall not be an infringement of the rights of the owner of a variety to perform any act concerning propagating material of any kind, or harvested material, including entire plants and parts of plants, of a protected variety that is sold or otherwise marketed with the consent of the owner in the United States, unless the act involves further propagation of the variety or involves an export of material of the variety, that enables the propagation of the variety, into a country that does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption purposes.

(e) It shall not be an infringement of the rights of the owner of a variety to perform any act done privately and for noncommercial purposes.

(f) As used in this section, the term "perform without authority" includes performance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity. (7 U.S.C. 2541.)

SEC. 112. Grandfather Clause.[43]

Nothing in this Act shall abridge the right of any person, or the successor in interest of the person, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection. (7 U.S.C. 2542.)

SEC. 113. Right To Save Seed; Crop Exemption.[44]

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed produced by the person from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on the farm of the person, or for sale as provided in this section. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that the actions of the purchaser constitute an infringement. (7 U.S.C. 2543.)

SEC. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act. (7 U.S.C. 2544.)

SEC. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act. (7 U.S.C. 2545.)

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[43] As amended by Sec. 13(r) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, to eliminate gender-specific language.

[44] As amended by Sec. 10 of Pub. L. 103-349, 108 Stat. 3142, Oct. 6, 1994, which struck the proviso that allowed the sell of "saved seed" to other persons; and by Sec. 13(s) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, which eliminated gender-specific language.

CHAPTER 12.) REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

SEC. 121. Remedy for Infringement of Plant Variety Protection.[45]

An owner shall have remedy by civil action for infringement of plant variety protection under section 111. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety. (7 U.S.C. 2561.)

SEC. 122. Presumption of Validity; Defenses.

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act. (7 U.S.C. 2562.)

SEC. 123. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable. (7 U.S.C. 2563.)

SEC. 124. Damages.

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

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[45] As amended by Sec. 13(t) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, to eliminate gender-specific language.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages. (7 U.S.C. 2564.)

SEC. 125. Attorney Fees.

The court in exceptional cases may award reasonable attorney fees to the prevailing party. (7 U.S.C. 2565.)

SEC. 126. Time Limitation on Damages.[46]

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that the claim has been denied shall not be counted as part of the period referred to in the preceding paragraph. (7 U.S.C. 2566.)

SEC. 127. Limitation of Damages; Marking and Notice.[47]

Owners may give notice to the public by physically associating with or affixing to the container of seed of a variety or by fixing to the variety, a label containing either the words "Unauthorized Propagation Prohibited" or the words "Unauthorized Seed Multiplication Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the variety is distributed by authorization of the owner and is

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[46] As amended by Sec. 13(u) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, to eliminate gender-specific language.

[47] Section 19(b) of Pub. L. 96-574, 94 Stat. 3351, Dec. 22, 1980, struck the phrase "the words `Propagation Prohibited"' and inserted in lieu thereof the phrase "either the words `Unauthorized Propagation Prohibited' or the words `Unauthorized Seed Multiplication Prohibited"'. Sec. 11 of Pub. L. 103-349, 108 Stat. 3142, Oct. 6, 1994, struck "novel" before "variety" each place it appeared.

received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice. (7 U.S.C. 2567.)

SEC. 128. False Marking; Cease and Desist Orders.[48]

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material or tuber or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of either the phrase "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this Act, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use of the name of a variety for which a certificate of protection has been issued under this Act is required under State law.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the

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[48] Pub. L. 96-574, 94 Stat. 3352, Dec. 22, 1980, added the word "either" following the words "Use of", and struck "propagation prohibited" and inserted in lieu thereof the words "`Unauthorized Propagation Prohibited' or `Unauthorized Seed Multiplication Prohibited'", and stuck the phrase "a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed" in paragraph (3). Sec. 12 of Pub. L. 103-349, 108 Stat. 3142, Oct. 6, 1994, inserted "or tuber or parts of tubers" after "plant material" in subsection (a); and added new paragraph (4) in subsection (a). Sec. 13(v) of Pub. L. 103-349, 108 Stat. 3144, eliminated gender-specific language.

purpose of deceiving the public, shall be fined not more than $10,000 and not less than $500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action. (7 U.S.C. 2568.)

SEC. 129. Nonresident Proprietors; Service and Notice.

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court. (7 U.S.C. 2569.)

SEC. 130. Liability of States, Instrumentalities of States, and State Officials for Infringement of Plant Variety Protection.[49]

(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of plant variety protection under section 111, or for any other violation under this title.

(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such

[49] Sec. 3(b) of Pub. L. 102-560, 106 Stat. 4231, Oct. 28, 1992, added Sec. 130; and Sec. 4 of Pub. L. 102-560, 106 Stat. 4232, Oct. 28, 1992, provided that the section would be effective with respect to violations that occur on or after the date of enactment. Sec. 13(w) of Pub. L. 103-349, 108 Stat. 3144, Oct. 6, 1994, eliminated gender-specific language.

remedies include damages, interest, costs, and treble damages under section 124, and attorney fees under section 125. (7 U.S.C. 2570.)

CHAPTER 13.) INTENT AND SEVERABILITY

SEC. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon. (7 U.S.C. 2581.)

SEC. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances. (7 U.S.C. 2582.)

CHAPTER 14.) TEMPORARY PROVISION AND RELATED ENACTMENTS; EXEMPTED PLANTS; MISCELLANEOUS

SEC. 141. Effective Date.

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation. (7 U.S.C. 2321.)

SEC. 142. Amendment of Federal Seed Act.[50] (7 U.S.C. 1551.)

SEC. 143. Amendment of Judicial Code.[51] (28 U.S.C. 1545.)

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[50] This section amends the Federal Seed Act (53 Stat. 1275) by adding at the end thereof a new Title V, Section 501, dealing with the sale of uncertified seed of protected variety. *See* the Federal Seed Act (7 U.S.C. 1551).

[51] This section amended Title 28 of the United States Code, entitled Judicial Code and Judiciary, by adding a new Section 1545, which gave nonexclusive jurisdiction of appeals to the Court of Customs and Patent Appeals. Section 1545 was repealed by Pub. L. 97-164, 96 Stat. 41, April 2, 1982.

Pub. L. 97-164, 96 Stat. 37-38, April 2, 1982, amended title 28 of the United States Code by adding a new section 1295, which reads in part:

"Sec. 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

"(a) The United States Court of Appeals for the Federal Circuit shall have exclusive

(continued...)

SEC. 144. Repealed.[52]

SEC. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act". (7 U.S.C. 2321 note.)

(...continued)

jurisdiction--

"(8) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);".

[52] Pub. L. 96-574, 94 Stat. 3352, Dec. 22, 1980, repealed Section 144 (7 U.S.C. 2583) which exempted okra, celery, peppers, tomatoes, carrots, and cucumbers from provisions of the Act.

PESTICIDE RECORDKEEPING [1]

(7 U.S.C. 136i-1)

SEC. 1491. Pesticide Recordkeeping.

(a) REQUIREMENTS.) (1) The Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency, shall require certified applicators of restricted use pesticides (of the type described under section 3(d)(1)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(d)(1)(C))) to maintain records comparable to records maintained by commercial applicators of pesticides in each State. If there is no State requirement for the maintenance of records, such applicator shall maintain records that contain the product name, amount, approximate date of application, and location of application of each such pesticide used for a 2-year period after such use.

(2) Within 30 days of a pesticide application, a commercial certified applicator shall provide a copy of records maintained under paragraph (1) to the person for whom such application was provided.

(b) ACCESS.) Records maintained under subsection (a) shall be made available to any Federal or State agency that deals with pesticide use or any health or environmental issue related to the use of pesticides, on the request of such agency. Each such Federal agency shall conduct surveys and record the data from individual applicators to facilitate statistical analysis for environmental and agronomic purposes, but in no case may a government agency release data, including the location from which the data was derived, that would directly or indirectly reveal the identity of individual producers. In the case of Federal agencies, such access to records maintained under subsection (a) shall be through the Secretary of Agriculture, or the Secretary's designee. State agency requests for access to records maintained under subsection (a) shall be through the lead State agency so designated by the State.

(c) HEALTH CARE PERSONNEL.) When a health professional determines that pesticide information maintained under this section is necessary to provide medical treatment or first aid to an individual who may have been exposed to pesticides for which the information is maintained, upon request persons required to maintain records under subsection (a) shall promptly provide record and available label information to that health professional. In the case of an emergency, such record information shall be provided immediately.

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[1] Pub. L. 101-624, Sec. 1491, 104 Stat. 3627, Nov. 28, 1990; as amended by Sec. 100b(d) of Pub. L. 102-237, 105 Stat. 1896, Dec. 13, 1991.

(d) PENALTY. **)** The Secretary of Agriculture shall be responsible for the enforcement of subsections (a), (b), and (c). A violation of such subsection shall **)**

(1) in the case of the first offense, be subject to a fine of not more than $500; and

(2) in the case of subsequent offenses, be subject to a fine of not less than $1,000 for each violation, except that the penalty shall be less than $1,000 if the Secretary determines that the person made a good faith effort to comply with such subsection.

(e) FEDERAL OR STATE PROVISIONS. **)** The requirements of this section shall not affect provisions of other Federal or State laws.

(f) SURVEYS AND REPORTS. **)** The Secretary of Agriculture and the Administrator of the Environmental Protection Agency, shall survey the records maintained under subsection (a) to develop and maintain a data base that is sufficient to enable the Secretary and the Administrator to publish annual comprehensive reports concerning agricultural and nonagricultural pesticide use. The Secretary and Administrator shall enter into a memorandum of understanding to define their respective responsibilities under this subsection in order to avoid duplication of effort. Such reports shall be transmitted to Congress not later than April 1 of each year.

(g) REGULATIONS. **)** The Secretary of Agriculture and the Administrator of the Environmental Protection Agency shall promulgate regulations on their respective areas of responsibility implementing this section within 180 days after the date of the enactment of this Act. (7 U.S.C. 136i-1.)

DATA COLLECTION

PESTICIDE DATA PROGRAM

(21 U.S.C. 346a note)

SEC. 301. DATA COLLECTION ACTIVITIES TO ASSURE THE HEALTH OF INFANTS AND CHILDREN.

(a) * * *
(b) * * *
(c)[1] RESIDUE DATA COLLECTION. **)** The Secretary of Agriculture shall ensure that the residue data collection activities conducted by the Department of Agriculture in cooperation with the Environmental Protection Agency and the Department of Health and Human Services, provide for the improved data collection of pesticide residues, including guidelines for the use of comparable analytical and standardized reporting methods, and the increased sampling of foods most likely consumed by infants and children.

[1] Title III, Sec. 301(c), of the Food Quality Protection Act of 1996, Pub. L.104-170, 110 Stat. 1512, Aug. 3, 1996. The Agricultural Marketing Service utilizes the authority of subsection (c) to carryout the Pesticide Data Program.

NATIONAL LABORATORY ACCREDITATION PROGRAM [1]

(7 U.S.C. 138-138i)

SEC. 1321. Definitions.

As used in this subtitle:

(1) AGRICULTURAL PRODUCT.**)** The term "agricultural product" means any fresh fruit or vegetable or any commodity or product derived from livestock or fowl, that is marketed in the United States for human consumption.

(2) CERTIFICATE.**)** The term "certificate" means a certificate of accreditation issued under this subtitle.

(3) LABORATORY.**)** The term "laboratory" means any facility or vehicle that is owned by an individual or a public or private entity and is equipped and operated for the purpose of carrying out pesticide residue analysis on agricultural products for commercial purposes.

(4) PESTICIDE.**)** The term "pesticide" means any substance that alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)).

(5) SECRETARY.**)** The term "Secretary" means the Secretary of Agriculture. (7 U.S.C. 138.)

SEC. 1322. National Laboratory Accreditation Program.

(a) ESTABLISHMENT OF PROGRAM.**)** The Secretary shall administer a National Laboratory Accreditation Program under which laboratories that request accreditation and conduct residue testing of agricultural products, or that make claims to the public or buyers of agricultural products concerning chemical residue levels on agricultural products, shall be determined to meet certain minimum quality and reliability standards.

(b) STANDARDS.**)** The Secretary of Health and Human Services, after consultation with the Secretary and the Administrator of the Environmental Protection Agency, shall establish, through regulations, standards for the National Laboratory Accreditation program that shall include**)**

(1) standards applicable to laboratories;

(2) qualifications for directors and other personnel; and

(3) standards and procedures for quality assurance programs.

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[1] Pub. L. 101-624, Title XIII, Subtitle B, 104 Stat. 3562, Nov. 28, 1990.

(c) ACCREDITING BODIES.**)** The Secretary of Health and Human Services shall approve State agencies or private, nonprofit entities as accrediting bodies to act on behalf of such Secretary in implementing the certification and quality assurance programs in accordance with the requirements of this section. In making such approvals the Secretary of Health and Human Services shall **)**

(1) oversee and review the performance of any accrediting body acting on behalf of the Secretary to ensure that such accrediting body is in compliance with the requirements of the certification program under this section; and

(2) have the right to obtain from an accrediting body acting on behalf of the Secretary and from any laboratory that may be certified by such a body all records and materials that may be necessary for the oversight and review required by paragraph (1).

(d) REQUIREMENTS.**)** To be accredited under this subtitle, a laboratory shall **)**

(1) prepare and submit an application for accreditation to the Secretary; and

(2) comply with such terms and conditions as are determined necessary by the Secretary and the Secretary of Health and Human Services.

(e) EXCEPTIONS.**)** This subtitle shall not apply to **)**

(1) a laboratory operated by a government agency;

(2) a laboratory operated by a corporation that only performs analysis of residues on agricultural products for such corporation or any wholly owned subsidiary of such corporation and does not make claims to the public or buyers based on such analysis;

(3) a laboratory operated by a partnership that only performs analysis of residues on agricultural products for the partners of such partnership and does not make claims to the public or buyers based on such analysis; or

(4) a laboratory not operated for commercial purposes that performs pesticide chemical residue analysis on agricultural products for research or quality control for the internal use of a person who is initiating the analysis. (7 U.S.C. 138a.)

SEC. 1323. Accreditation.

(a) IN GENERAL.**)** The Secretary shall issue certificates of accreditation to laboratories that meet the requirements of this subtitle, as determined by the Secretary.

(b) REQUIREMENTS FOR ACCREDITATION.**)** To receive accreditation under this subtitle, a laboratory shall prepare and submit an application for

accreditation to the Secretary and shall complete such required tests, and meet such standards as established under section 1322.

(c) FAILURE TO MEET ACCREDITATION STANDARDS.) The Secretary shall deny an application for accreditation or shall revoke any existing accreditation with respect to any laboratory that fails to meet the requirements for accreditation under this subtitle.

(d) LIMITED ACCREDITATION.) The Secretary may issue certificates of accreditation to laboratories that are limited to specific fields of testing. (7 U.S.C. 138b.)

SEC. 1324. Samples.

(a) PERFORMANCE EVALUATION SAMPLES.)

(1) PROVIDED BY SECRETARY.) The Secretary shall ensure that performance evaluation samples are provided to any laboratory that has applied for accreditation under this subtitle.

(2) ANALYSIS BY LABORATORY.) A laboratory described in paragraph (1) shall analyze such performance evaluation samples and submit the results of such analysis to the Secretary, as provided for in section 1322.

(3) TESTING METHODS.) Samples shall be tested by the laboratory according to methods specifically approved for such purpose by alternate methods of demonstrated adequacy or equivalence, as determined in regulations established under this subtitle.

(b) RESULTS OF TESTING.)

(1) SUBMISSION OF RESULTS.) The laboratory shall submit the results of the tests conducted under subsection (a) to the Secretary on forms provided by the Secretary, on or before the date determined by the Secretary.

(2) EVALUATION OF TESTS.) The Secretary shall evaluate the results of such tests achieved by the laboratory and shall determine whether such laboratory is capable of undertaking an accurate analysis of chemical residues in agricultural products.

(c) REVIEW OF ACCREDITATION.) The Secretary shall ensure that performance evaluation samples for analysis are provided to laboratories accredited under this subtitle not less than two times a year. (7 U.S.C. 138c.)

SEC. 1325. Application.

(a) CONTENTS OF APPLICATION.) An application for accreditation under this subtitle shall be prepared and submitted to the Secretary and shall include)

(1) the name and address of the laboratory;

(2) the name and address of the owners and managers of such laboratory;

(3) a statement concerning the type of analysis the laboratory intends to conduct;

(4) a brief history of the laboratory and its previous operations; and

(5) such other information as may be required by the Secretary.

(b) RESTRICTIONS ON SUBMISSION OF APPLICATION.**)** A laboratory that has been denied, or has lost, accreditation under this subtitle shall not reapply for accreditation until the expiration of at least 6 months after such denial or loss of accreditation. Corrective actions taken by the laboratory to address deficiencies upon which the denial or loss of accreditation was based must accompany the reapplication. (7 U.S.C. 138d.)

SEC. 1326. Reporting.

(a) IN GENERAL.**)** Each laboratory or individual that performs, brokers, or otherwise arranges for the performance of a pesticide chemical analysis of food shall prepare and submit a report, simultaneously to the Secretary, the Secretary of Health and Human Services, and to the owner of such food, that shall contain any finding of pesticide chemical residues in such food**)**

(1) for which no chemical residue tolerance or exemption has been established;

(2) that is in excess of residue tolerances; or

(3) for which the chemical residue tolerance has been revoked or the chemical residue is otherwise not permitted by the Environmental Protection Agency.

(b) TIMING OF REPORT.**)** A laboratory shall submit the report required under subsection (a) to the Secretary, the Secretary of Health and Human Services, and the owner of such food as soon as practicable after the completion of the analysis of such food.

(c) GUIDELINES.**)** The Secretary shall adopt standardized reporting guidelines to be applied to laboratories under this section and shall provide such guidelines to laboratories accredited under this subtitle, as well as other sources of information regarding applicable pesticide chemical tolerances. (7 U.S.C. 138e.)

SEC. 1327. Fees.[2]

(a) IN GENERAL.**)** At the time than an application for accreditation is received by the Secretary and annually thereafter, a laboratory seeking

[2] Section as amended by Pub. L. 102-237, 105 Stat. 1904, Dec. 13, 1991.

accreditation by the Secretary under the authority of this subtitle, the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), or the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) shall pay to the Secretary a nonrefundable accreditation fee. All fees collected by the Secretary shall be credited to the account from which the expenses of the laboratory accreditation program are paid and, subject to subsection (e), shall be available immediately and remain available until expended to pay the expenses of the laboratory accreditation program.

(b) AMOUNT OF FEE.**)** The fee required under this section shall be established by the Secretary in an amount that will offset the cost of the laboratory accreditation programs administered by the Secretary under the statutory authorities set forth in subsection (a).

(c) REIMBURSEMENT OF EXPENSES.**)** Each laboratory that is accredited under a statutory authority set forth in subsection (a) or that has applied for accreditation under such authority shall reimburse the Secretary for reasonable travel and other expenses necessary to perform onsite inspections of the laboratory.

(d) ADJUSTMENT OF FEES.**)** The Secretary may, on an annual basis, adjust the fees imposed under this section as necessary to support the full costs of the laboratory accreditation programs carried out under the statutory authorities set forth in subsection (a).

(e) APPROPRIATIONS PREREQUISITE.**)** No fees collected under this section may be used to offset the cost of laboratory accreditation without appropriations made under subsection (f).

(f) AUTHORIZATION OF APPROPRIATIONS.**)** There are authorized to be appropriated each fiscal year such sums as may be necessary for laboratory accreditation services under this section. (7 U.S.C. 138f.)

SEC. 1328. Public Disclosure.

The results of the evaluations of laboratories conducted by the Secretary under this subtitle shall be made available to the Secretary of Health and Human Services and to the public on request. (7 U.S.C. 138g.)

SEC. 1329. Regulations.

The Secretary shall promulgate regulations to carry out this subtitle. (7 U.S.C. 138h.)

SEC. 1330. Effect of Other Laws.

Nothing in this subtitle shall alter the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). (7 U.S.C. 138i.)

Subpart I. Transportation; Organic

INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS ACT [1]

(7 U.S.C. 4401-4406)

To authorize the Secretary of Agriculture to implement the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Carriage of Perishable Foodstuffs Act".

FINDINGS AND PURPOSE

SEC. 2. Congress hereby finds and declares that **)**

(1) the United States, as a member of the Economic Commission for Europe of the United Nations, participated in development by that Commission of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage;

(2) the agreement requires that equipment involved in the international carriage of perishable foodstuffs be inspected, tested, and certified to specified standards;

(3) this Act will make it possible for equipment in the United States to be inspected, tested, and certified in accordance with the agreement and the standards specified therein; and

(4) this Act will improve the conditions for the movement of perishable foodstuffs in international carriage in equipment owned or operated by United States firms, which will serve to protect existing trade and promote expansion of trade in perishable foodstuffs, and will improve the sale of United States manufactured equipment for use in international carriage. (7 U.S.C. 4401.)

DEFINITIONS

SEC. 3. As used in this Act **)**

[1] Pub. L. 97-325, 96 Stat. 1603, Oct. 1982.

(1) The term “agreement” means the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage, and the annexes and the appendices thereto, done at Geneva, September 1, 1970, under the auspices of the Economic Commission for Europe of the United Nations.

(2) The term “contracting party” means any country that is eligible under article 9 of the agreement and that has complied with the terms of such article.

(3) The term “equipment” means the special transport equipment that complies with the definitions and standards set forth in annex 1 to the agreement, including, but not limited to, railway cars, trucks, trailers, semitrailers, and intermodal freight containers that are insulated only, or insulated and equipped with a refrigerating, mechanically refrigerating, or heating appliance.

(4) The term “perishable foodstuffs” means quick deep-frozen and frozen food products listed in annex 2 and food products listed in annex 3 to the agreement.

(5) The term “international carriage” means transportation of perishable foodstuffs if such foodstuffs are loaded in equipment or the equipment containing them is loaded onto a rail or road vehicle, in the territory of any country and such foodstuffs are, or the equipment containing them is, unloaded in the territory of another country that is a contracting party, where such transportation is by **)**

(A) rail,

(B) road,

(C) any combination of rail and road, or

(D) any sea crossing of less than one hundred and fifty kilometers, if preceded or followed by one or more land journeys as referred to in clauses (A), (B), and (C) of this paragraph, and the perishable foodstuffs are shipped in the same equipment used for such land journeys without trans-loading of such foodstuffs.

In the case of any transportation that involves one or more sea crossings other than as specified in clause (D) of this paragraph, each land journey shall be considered separately.

(6) The term “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States. (7 U.S.C. 4402.)

DUTIES OF THE SECRETARY OF AGRICULTURE

SEC. 4. The Secretary of Agriculture of the United States shall be the competent authority to implement the agreement. To ensure compliance with the standards specified in the agreement, the Secretary of Agriculture may ❩

(1) designate appropriate organizations to inspect or test equipment, or both;

(2) issue certificates of compliance in accordance with annex 1, appendix 1, paragraph 4 of the agreement;

(3) prescribe such regulations as may be necessary to implement the agreement and administer this Act, including, but not limited to, provision for suspending or denying the designation of any organization to inspect or test equipment and for denying the issuance of certificates of compliance as may be necessary to ensure compliance with the provisions of this Act and the regulations issued thereunder;

(4) make periodic onsite inspections of facilities and procedures used by those seeking certificates of compliance and by organizations designated to test or inspect equipment under this Act;

(5) require submission of reports by those seeking certificates of compliance and by organizations designated to test or inspect equipment under this Act;

(6) require maintenance of records by those seeking certificates of compliance and by organizations designated to test or inspect equipment under this Act, such records to be made available to the Secretary upon request;

(7) inform contracting parties, through the Secretary of State of the United States, of all general measures taken in connection with the implementation of the agreement; and

(8) take such other action as may be considered appropriate to implement the agreement and administer this Act. (7 U.S.C. 4403.)

DUTIES OF THE SECRETARY OF STATE

SEC. 5. The Secretary of State, with the concurrence of the Secretary of Agriculture, may take such action as may be considered appropriate to assert and protect the rights of the United States under the agreement. (7 U.S.C. 4404.)

FEES FOR TESTING, INSPECTION OR CERTIFICATION

SEC. 6. (a) Any organization, designated by the Secretary of Agriculture to test or inspect equipment may establish reasonable fees to cover the

costs of such testing or inspection. Such fees shall be payable directly to the organization by those seeking inspection or testing.

(b) The Secretary of Agriculture may, effective October 1, 1982, fix and cause to be collected reasonable fees to cover, as nearly as practicable, the costs to the Department of Agriculture incurred in connection with the issuance of certificates of compliance as provided under section 4(2) of this Act. All fees collected shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary of Agriculture incident to the issuance of certificates of compliance under this Act. (7 U.S.C. 4405.)

AUTHORIZATION FOR APPROPRIATIONS

SEC. 7. There are authorized to be appropriated to the Secretary of Agriculture for the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, such sums as are necessary to carry out the provisions of this Act, but not to exceed $100,000 in any fiscal year. (7 U.S.C. 4406.)

TRANSPORTATION PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT OF 1938 [1]

(7 U.S.C. 1291)

TITLE II

ADJUSTMENTS IN FREIGHT RATES FOR FARM PRODUCTS

SEC. 201. (a) The Secretary of Agriculture is authorized to make complaint to the Surface Transportation Board with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Board. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Board shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Board shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Board and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Board's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

(c) For the purposes of this section, the Surface Transportation Board is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Surface Transportation Board with respect to rates, charges, tariffs, and practices relating to the transportation of farm products. (7 U.S.C. 1291.)

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[1] Approved Feb. 16, 1938, 52 Stat. 36. Amended by Sec. 311 of Pub. L. 104-88, 109 Stat. 948, Dec. 29, 1995.

RURAL DEVELOPMENT ACT OF 1972 [1]

(7 U.S.C. 2204b)

SEC. 607. (c) RURAL DEVELOPMENT STRATEGY. **)** (1) The Secretary shall prepare a comprehensive rural development strategy based on the needs, goals, objectives, plans, and recommendations of local communities, substate areas, States, and multistate regions, which is designed to **)**

(A) maximize the effectiveness, increase the responsiveness, and improve the delivery of Federal programs to rural areas;

(B) increase the coordination of Federal programs with the development needs, objectives, and resources of local communities, substate areas, States, and multistate regions; and

(C) achieve the most effective combinations of Federal, State, and local resources to meet the needs of rural areas for orderly growth and development.

(2) The rural development strategy shall take into account the need to **)**

(A) improve the economic well-being of all rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(B) improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(C) improve State and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for State and local officials, particularly in small rural communities;

(D) strengthen the family farm system; and

(E) maintain and protect the environment and natural resources of rural areas.

(3) The rural development strategy developed under this subsection shall be for the fiscal year ending September 30, 1982, and updated for each fiscal year thereafter.

(4) The Secretary shall hold public hearings and receive such suggestions and recommendations as the Secretary deems appropriate

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[1] Pub. L. 96-355, 94 Stat. 1171, Sept. 24, 1980.

during the preparation of rural development strategy and the annual updates to the strategy.

(5) The rural development strategy and the annual updates to the strategy shall be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry by January 31 of the calendar year immediately preceding the beginning of the appropriate fiscal year.

(6) The rural development strategy and each annual update of the strategy shall contain an analysis of the budget recommendations of the President for the fiscal year following the transmittal of the strategy or update of the strategy and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and the rural development strategy developed under this subsection. Each annual update shall also contain a detailed statement of the findings and conclusions of the Secretary regarding the implementation during the preceding fiscal year of the rural development strategy, including any revisions of the strategy, any recommended legislation to improve the rural development effort of the Federal Government, and an evaluation of and recommendations regarding the rural development information system required under section 306(a)(12) of the Consolidated Farm and Rural Development Act.

ORGANIC FOODS PRODUCTION ACT OF 1990 [1]

(7 U.S.C. 6501-6522)

SEC. 2101. Short Title.

This title may be cited as the "Organic Foods Production Act of 1990". (7 U.S.C. 6501 note.)

SEC. 2102. Purposes.

It is the purpose of this title **)**

(1) to establish national standards governing the marketing of certain agricultural products as organically produced products;

(2) to assure consumers that organically produced products meet a consistent standard; and

(3) to facilitate interstate commerce in fresh and processed food that is organically produced. (7 U.S.C. 6501.)

SEC. 2103. Definitions.

As used in this title:

(1) AGRICULTURAL PRODUCT. **)** The term "agricultural product" means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.

(2) BOTANICAL PESTICIDES. **)** The term "botanical pesticides" means natural pesticides derived from plants.

(3) CERTIFYING AGENT. **)** The term "certifying agent" means the chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, and any person (including private entities) who is accredited by the Secretary as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation in accordance with this title.

(4) CERTIFIED ORGANIC FARM. **)** The term "certified organic farm" means a farm, or portion of a farm, or site where agricultural products or livestock are produced, that is certified by the certifying agent

[1] Pub. L. 101-624, Title XXI, 104 Stat. 3935, Nov. 28, 1990; as amended by Pub. L. 102-237, 105 Stat. 1893, Dec. 13, 1991.

under this title as utilizing a system of organic farming as described by this title.

(5) CERTIFIED ORGANIC HANDLING OPERATION.) The term "certified organic handling operation" means any operation, or portion of any handling operation, that is certified by the certifying agent under this title as utilizing a system of organic handling as described under this title.

(6) CROP YEAR.) The term "crop year" means the normal growing season for a crop as determined by the Secretary.

(7) GOVERNING STATE OFFICIAL.) The term "governing State official" means the chief executive official of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, who administers an organic certification program under this title.

(8) HANDLE.) The term "handle" means to sell, process or package agricultural products.

(9) HANDLER.) The term "handler" means any person engaged in the business of handling agricultural products, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(10) HANDLING OPERATION.) The term "handling operation" means any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that)

(A) receives or otherwise acquires agricultural products; and

(B) processes, packages, or stores such products.

(11) LIVESTOCK.) The term "livestock" means any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life.

(12) NATIONAL LIST.) The term "national list" means a list of approved and prohibited substances as provided for in section 2118.

(13) ORGANIC PLAN.) The term "organic plan" means a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this title including crop rotation and other practices as required under this title.

(14) ORGANICALLY PRODUCED.) The term "organically produced" means an agricultural product that is produced and handled in accordance with this title.

(15) PERSON.) The term "person" means an individual, group of individuals, corporation, association, organization, cooperative, or other entity.

(16) PESTICIDE.—The term "pesticide" means any substance which alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(17) PROCESSING.—The term "processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

(18) PRODUCER.—The term "producer" means a person who engages in the business of growing or producing food or feed.

(19) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(20) STATE ORGANIC CERTIFICATION PROGRAM.—The term "State organic certification program" means a program that meets the requirements of section 2107, is approved by the Secretary, and that is designed to ensure that a product that is sold or labeled as "organically produced" under this title is produced and handled using organic methods.

(21) SYNTHETIC.—The term "synthetic" means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. (7 U.S.C. 6502.)

SEC. 2104. National Organic Production Program.

(a) IN GENERAL.—The Secretary shall establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this title.

(b) STATE PROGRAM.—In establishing the program under subsection (a), the Secretary shall permit each State to implement a State organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this title.

(c) CONSULTATION.—In developing the program under subsection (a), and the National List under section 2118, the Secretary shall consult with the National Organic Standards Board established under section 2119.

(d) CERTIFICATION.—The Secretary shall implement the program established under subsection (a) through certifying agents. Such certifying agents may certify a farm or handling operation that meets the requirements of this title and the requirements of the organic certification

program of the State (if applicable) as an organically certified farm or handling operation. (7 U.S.C. 6503.)

SEC. 2105. National Standards for Organic Production.

To be sold or labeled as an organically produced agricultural product under this title, an agricultural product shall **)**

(1) have been produced and handled without the use of synthetic chemicals, except as otherwise provided in this title;

(2) except as otherwise provided in this title and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products; and

(3) be produced and handled in compliance with an organic plan agreed to by the producer and handler of such product and the certifying agent. (7 U.S.C. 6504.)

SEC. 2106. Compliance Requirements.

(a) DOMESTIC PRODUCTS. **)**

(1) IN GENERAL. **)** On or after October 1, 1993 **)**

(A) a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this title; and

(B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this title.

(2) USDA STANDARDS AND SEAL. **)** A label affixed, or other market information provided, in accordance with paragraph (1) may indicate that the agricultural product meets Department of Agriculture standards for organic production and may incorporate the Department of Agriculture seal.

(b) IMPORTED PRODUCTS. **)** Imported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of this title.

(c) EXEMPTIONS FOR PROCESSED FOOD. **)** Subsection (a) shall not apply to agricultural products that **)**

(1) contain at least 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the

Secretary of Health and Human Services, has determined to permit the word "organic" to be used on the principal display panel of such products only for the purpose of describing the organically produced ingredients; or

(2) contain less than 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the Secretary of Health and Human Services, has determined to permit the word "organic" to appear on the ingredient listing panel to describe those ingredients that are organically produced in accordance with this title.

(d) SMALL FARMER EXEMPTION.) Subsection (a)(1) shall not apply to persons who sell no more than $5,000 annually in value of agricultural products. (7 U.S.C. 6505.)

SEC. 2107. General Requirements.

(a) IN GENERAL.) A program established under this title shall)

(1) provide that an agricultural product to be sold or labeled as organically produced must)

(A) be produced only on certified organic farms and handled only through certified organic handling operations in accordance with this title; and

(B) be produced and handled in accordance with such program;

(2) require that producers and handlers desiring to participate under such program establish an organic plan under section 2114;

(3) provide for procedures that allow producers and handlers to appeal an adverse administrative determination under this title;

(4) require each certified organic farm or each certified organic handling operation to certify to the Secretary, the governing State official (if applicable), and the certifying agent on an annual basis, that such farm or handler has not produced or handled any agricultural product sold or labeled as organically produced except in accordance with this title;

(5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this title;

(6) require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of

applicable laws relating to food safety, to report such violation to the appropriate health agencies;

(7) provide for appropriate and adequate enforcement procedures, as determined by the Secretary to be necessary and consistent with this title;

(8) protect against conflict-of-interest as specified under section 2116(h);

(9) provide for public access to certification documents and laboratory analyses that pertain to certification;

(10) provide for the collection of reasonable fees from producers, certifying agents and handlers who participate in such program; and

(11) require such other terms and conditions as may be determined by the Secretary to be necessary.

(b) DISCRETIONARY REQUIREMENTS.) An organic certification program established under this title may)

(1) provide for the certification of an entire farm or handling operation or specific fields of a farm or parts of a handling operation if)

(A) in the case of a farm or field, the area to be certified has distinct, defined boundaries and buffer zones separating the land being operated through the use of organic methods from land that is not being operated through the use of such methods;

(B) the operators of such farm or handling operation maintain records of all organic operations separate from records relating to other operations and make such records available at all times for inspection by the Secretary, the certifying agent, and the governing State official; and

(C) appropriate physical facilities, machinery, and management practices are established to prevent the possibility of a mixing of organic and nonorganic products or a penetration of prohibited chemicals or other substances on the certified area; and

(2) provide for reasonable exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(c) STATE PROGRAM.) A State organic certification program approved under this title may contain additional guidelines governing the production or handling of products sold or labeled as organically produced in such State as required in section 2108. (7 U.S.C. 6506.)

SEC. 2108. State Organic Certification Program.

(a) IN GENERAL.—The governing State official may prepare and submit a plan for the establishment of a State organic certification program to the Secretary for approval. A State organic certification program must meet the requirements of this title to be approved by the Secretary.

(b) ADDITIONAL REQUIREMENTS.—

(1) AUTHORITY.—A State organic certification program established under subsection (a) may contain more restrictive requirements governing the organic certification of farms and handling operations and the production and handling of agricultural products that are to be sold or labeled as organically produced under this title than are contained in the program established by the Secretary.

(2) CONTENT.—Any additional requirements established under paragraph (1) shall—

(A) further the purposes of this title;

(B) not be inconsistent with this title;

(C) not be discriminatory towards agricultural commodities organically produced in other States in accordance with this title; and

(D) not become effective until approved by the Secretary.

(c) REVIEW AND OTHER DETERMINATIONS.—

(1) SUBSEQUENT REVIEW.—The Secretary shall review State organic certification programs not less than once during each 5-year period following the date of the approval of such programs.

(2) CHANGES IN PROGRAM.—The governing State official, prior to implementing any substantive change to programs approved under this subsection, shall submit such change to the Secretary for approval.

(3) TIME FOR DETERMINATION.—The Secretary shall make a determination concerning any plan, proposed change to a program, or a review of a program not later than 6 months after receipt of such plan, such proposed change, or the initiation of such review. (7 U.S.C. 6507.)

SEC. 2109. Prohibited Crop Production Practices and Materials.

(a) SEED, SEEDLINGS AND PLANTING PRACTICES.—For a farm to be certified under this title, producers on such farm shall not apply materials to, or engage in practices on, seeds or seedlings that are contrary to, or inconsistent with, the applicable organic certification program.

(b) SOIL AMENDMENTS.—For a farm to be certified under this title, producers on such farm shall not—

(1) use any fertilizers containing synthetic ingredients or any commercially blended fertilizers containing materials prohibited under this title or under the applicable State organic certification program; or

(2) use as a source of nitrogen: phosphorous, lime, potash, or any materials that are inconsistent with the applicable organic certification program.

(c) CROP MANAGEMENT.—For a farm to be certified under this title, producers on such farm shall not—

(1) use natural poisons such as arsenic or lead salts that have long-term effects and persist in the environment, as determined by the applicable governing State official or the Secretary;

(2) use plastic mulches, unless such mulches are removed at the end of each growing or harvest season; or

(3) use transplants that are treated with any synthetic or prohibited material. (7 U.S.C. 6508.)

SEC. 2110. Animal Production Practices and Materials.

(a) IN GENERAL.—Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this title.

(b) BREEDER STOCK.—Breeder stock may be purchased from any source if such stock is not in the last third of gestation.

(c) PRACTICES.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm—

(1) shall feed such livestock organically produced feed that meets the requirements of this title;

(2) shall not use the following feed—

(A) plastic pellets for roughage;

(B) manure refeeding; or

(C) feed formulas containing urea; and

(3) shall not use growth promoters and hormones on such livestock, whether implanted, ingested, or injected, including antibiotics and synthetic trace elements used to stimulate growth or production of such livestock.

(d) HEALTH CARE.—

(1) PROHIBITED PRACTICES.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall not—

(A) use subtherapeutic doses of antibiotics;

(B) use synthetic internal parasiticides on a routine basis; or

(C) administer medication, other than vaccinations, in the absence of illness.

(2) STANDARDS.—The National Organic Standards Board shall recommend to the Secretary standards in addition to those in

paragraph (1) for the care of livestock to ensure that such livestock is organically produced.

(e) ADDITIONAL GUIDELINES.—

(1) POULTRY.—With the exception of day old poultry, all poultry from which meat or eggs will be sold or labeled as organically produced shall be raised and handled in accordance with this title prior to and during the period in which such meat or eggs are sold.

(2) DAIRY LIVESTOCK.—A dairy animal from which milk or milk products will be sold or labeled as organically produced shall be raised and handled in accordance with this title for not less than the 12-month period immediately prior to the sale of such milk and milk products.

(f) LIVESTOCK IDENTIFICATION.—

(1) IN GENERAL.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall keep adequate records and maintain a detailed, verifiable audit trail so that each animal (or in the case of poultry, each flock) can be traced back to such farm.

(2) RECORDS.—In order to carry out paragraph (1), each producer shall keep accurate records on each animal (or in the case of poultry, each flock) including—

(A) amounts and sources of all medications administered; and

(B) all feeds and feed supplements bought and fed.

(g) NOTICE AND PUBLIC COMMENT.—The Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section. (7 U.S.C. 6509.)

SEC. 2111. Handling.

(a) IN GENERAL.—For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title—

(1) add any synthetic ingredient during the processing or any postharvest handling of the product;

(2) add any ingredient known to contain levels of nitrates, heavy metals, or toxic residues in excess of those permitted by the applicable organic certification program;

(3) add any sulfites, nitrates, or nitrites;

(4) add any ingredients that are not organically produced in accordance with this title and the applicable organic certification program, unless such ingredients are included on the National List and represent not more than 5 percent of the weight of the total finished product (excluding salt and water);

(5) use any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, or fumigants;

(6) use any bag or container that had previously been in contact with any substance in such a manner as to compromise the organic quality of such product; or

(7) use, in such product water that does not meet all Safe Drinking Water Act requirements.

(b) MEAT.—For a farm or handling operation to be organically certified under this title, producers on such farm or persons on such handling operation shall ensure that organically produced meat does not come in contact with nonorganically produced meat. (7 U.S.C. 6510.)

SEC. 2112. Additional Guidelines.

(a) IN GENERAL.—The Secretary, the applicable governing State official, and the certifying agent shall utilize a system of residue testing to test products sold or labeled as organically produced under this title to assist in the enforcement of this title.

(b) PREHARVEST TESTING.—The Secretary, the applicable governing State official, or the certifying agent may require preharvest tissue testing of any crop grown on soil suspected of harboring contaminants.

(c) COMPLIANCE REVIEW.—

(1) INSPECTION.—If the Secretary, the applicable governing State official, or the certifying agent determines that an agricultural product sold or labeled as organically produced under this title contains any detectable pesticide or other non-organic residue or prohibited natural substance the Secretary, the applicable governing State official, or the certifying agent shall conduct an investigation to determine if the organic certification program has been violated, and may require the producer or handler of such product to prove that any prohibited substance was not applied to such product.

(2) REMOVAL OF ORGANIC LABEL.—If, as determined by the Secretary, the applicable governing State official, or the certifying agent, the investigation conducted under paragraph (1) indicates that the residue is—

(A) the result of intentional application of a prohibited substance; or

(B) present at levels that are greater than unavoidable residual environmental contamination as prescribed by the Secretary or the applicable governing State official in consultation with the appropriate environmental regulatory agencies;

such agricultural product shall not be sold or labeled as organically produced under this title.

(d) RECORDKEEPING REQUIREMENTS.) Producers who operate a certified organic farm or handling operation under this title shall maintain records for 5 years concerning the production or handling of agricultural products sold or labeled as organically produced under this title, including)

(1) a detailed history of substances applied to fields or agricultural products; and

(2) the names and addresses of persons who applied such substances, the dates, the rate, and method of application of such substances. (7 U.S.C. 6511.)

SEC. 2113. Other Production and Handling Practices.

If a production or handling practice is not prohibited or otherwise restricted under this title, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program. (7 U.S.C. 6512.)

SEC. 2114. Organic Plan.

(a) IN GENERAL.) A producer or handler seeking certification under this title shall submit an organic plan to the certifying agent and the State organic certification program (if applicable), and such plan shall be reviewed by the certifying agent who shall determine if such plan meets the requirements of the programs.

(b) CROP PRODUCTION FARM PLAN.)

(1) SOIL FERTILITY.) An organic plan shall contain provisions designed to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring.

(2) MANURING.)

(A) INCLUSION IN ORGANIC PLAN.) An organic plan shall contain terms and conditions that regulate the application of manure to crops.

(B) APPLICATION OF MANURE.) Such organic plan may provide for the application of raw manure only to)

(i) any green manure crop;

(ii) any perennial crop;

(iii) any crop not for human consumption; and

(iv) any crop for human consumption, if such crop is harvested after a reasonable period of time determined by the certifying agent to ensure the safety of such crop, after the most recent application of raw manure, but in no event shall such period be less than 60 days after such application.

(C) CONTAMINATION BY MANURE.) Such organic plan shall prohibit raw manure from being applied to any crop in a way that

significantly contributes to water contamination by nitrates or bacteria.

(c) LIVESTOCK PLAN.) An organic livestock plan shall contain provisions designed to foster the organic production of livestock consistent with the purposes of this title.

(d) MIXED CROP LIVESTOCK PRODUCTION.) An organic plan may encompass both the crop production and livestock production requirements in subsections (b) and (c) if both activities are conducted by the same producer.

(e) HANDLING PLAN.) An organic handling plan shall contain provisions designed to ensure that agricultural products that are sold or labeled as organically produced are produced and handled in a manner that is consistent with the purposes of this title.

(f) MANAGEMENT OF WILD CROPS.) An organic plan for the harvesting of wild crops shall)

(1) designate the area from which the wild crop will be gathered or harvested;

(2) include a 3 year history of the management of the area showing that no prohibited substances have been applied;

(3) include a plan for the harvesting or gathering of the wild crops assuring that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop; and

(4) include provisions that no prohibited substances will be applied by the producer.

(g) LIMITATION ON CONTENT OF PLAN.) An organic plan shall not include any production or handling practices that are inconsistent with this title. (7 U.S.C. 6513.)

SEC. 2115. Accreditation Program.

(a) IN GENERAL.) The Secretary shall establish and implement a program to accredit a governing State official, and any private person, that meets the requirements of this section as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation.

(b) REQUIREMENTS.) To be accredited as a certifying agent under this section, a governing State official or private person shall)

(1) prepare and submit, to the Secretary, an application for such accreditation;

(2) have sufficient expertise in organic farming and handling techniques as determined by the Secretary; and

(3) comply with the requirements of this section and section 2116.

(c) DURATION OF DESIGNATION.—An accreditation made under this section shall be for a period of not to exceed 5 years, as determined appropriate by the Secretary, and may be renewed. (7 U.S.C. 6514.)

SEC. 2116. Requirements of Certifying Agents.

(a) ABILITY TO IMPLEMENT REQUIREMENTS.—To be accredited as a certifying agent under section 2115, a governing State official or a person shall be able to fully implement the applicable organic certification program established under this title.

(b) INSPECTORS.—Any certifying agent shall employ a sufficient number of inspectors to implement the applicable organic certification program established under this title, as determined by the Secretary.

(c) RECORDKEEPING.—

(1) MAINTENANCE OF RECORDS.—Any certifying agent shall maintain all records concerning its activities under this title for a period of not less than 10 years.

(2) ACCESS FOR SECRETARY.—Any certifying agent shall allow representatives of the Secretary and the governing State official access to any and all records concerning the certifying agent's activities under this title.

(3) TRANSFERENCE OF RECORDS.—If any private person that was certified under this title is dissolved or loses its accreditation, all records or copies of records concerning such person's activities under this title shall be transferred to the Secretary and made available to the applicable governing State official.

(d) AGREEMENT.—Any certifying agent shall enter into an agreement with the Secretary under which such agent shall—

(1) agree to carry out the provisions of this title; and

(2) agree to such other terms and conditions as the Secretary determines appropriate.

(e) PRIVATE CERTIFYING AGENT AGREEMENT.—Any certifying agent that is a private person shall, in addition to the agreement required in subsection (d)—

(1) agree to hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of this title; and

(2) furnish reasonable security, in an amount determined by the Secretary, for the purpose of protecting the rights of participants in the applicable organic certification program established under this title.

(f) COMPLIANCE WITH PROGRAM.—Any certifying agent shall fully comply with the terms and conditions of the applicable organic certification program implemented under this title.

(g) CONFIDENTIALITY.—Except as provided in section 2107(a)(9), any certifying agent shall maintain strict confidentiality with respect to its

clients under the applicable organic certification program and may not disclose to third parties (with the exception of the Secretary or the applicable governing State official) any business related information concerning such client obtained while implementing this title.

(h) CONFLICT OF INTEREST.) Any certifying agent shall not)

(1) carry out any inspections of any operation in which such certifying agent, or employee of such certifying agent has, or has had, a commercial interest, including the provision of consultancy services;

(2) accept payment, gifts, or favors of any kind from the business inspected other than prescribed fees; or

(3) provide advice concerning organic practices or techniques for a fee, other than fees established under such program.

(i) ADMINISTRATOR.) A certifying agent that is a private person shall nominate the individual who controls the day-to-day operation of the agent.

(j) LOSS OF ACCREDITATION.)

(1) NONCOMPLIANCE.) If the Secretary or the governing State official (if applicable) determines that a certifying agent is not properly adhering to the provisions of this title, the Secretary or such governing State official may suspend such certifying agent's accreditation.

(2) EFFECT ON CERTIFIED OPERATIONS.) If the accreditation of a certifying agent is suspended under paragraph (1), the Secretary or the governing State official (if applicable) shall promptly determine whether farming or handling operations certified by such certifying agent may retain their organic certification. (7 U.S.C. 6515.)

SEC. 2117. Peer Review of Certifying Agents.

(a) PEER REVIEW.) In determining whether to approve an application for accreditation submitted under section 2115, the Secretary shall consider a report concerning such applicant that shall be prepared by a peer review panel established under subsection (b).

(b) PEER REVIEW PANEL.) To assist the Secretary in evaluating applications under section 2115, the Secretary may establish a panel of not less than three persons who have expertise in organic farming and handling methods, to evaluate the State governing official or private person that is seeking accreditation as a certifying agent under such section. Not less than two members of such panel shall be persons who are not employees of the Department of Agriculture or of the applicable State government. (7 U.S.C. 6516.)

SEC. 2118. National List.

(a) IN GENERAL.**)** The Secretary shall establish a National List of approved and prohibited substances that shall be included in the standards for organic production and handling established under this title in order for such products to be sold or labeled as organically produced under this title.

(b) CONTENT OF LIST.**)** The list established under subsection (a) shall contain an itemization, by specific use or application, of each synthetic substance permitted under subsection (c)(1) or each natural substance prohibited under subsection (c)(2).

(c) GUIDELINES FOR PROHIBITIONS OR EXEMPTIONS.**)**

(1) EXEMPTION FOR PROHIBITED SUBSTANCES.**)** The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if**)**

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances**)**

(i) would not be harmful to human health or the environment;

(ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products; and

(iii) is consistent with organic farming and handling;

(B) the substance**)**

(i) is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers;

(ii) is used in production and contains synthetic inert ingredients that are not classified by the Administrator of the Environmental Protection Agency as inerts of toxicological concern; or

(iii) is used in handling and is non-synthetic but is not organically produced; and

(C) the specific exemption is developed using the procedures described in subsection (d).

(2) PROHIBITION ON THE USE OF SPECIFIC NATURAL SUBSTANCES.**)** The National List may prohibit the use of specific

natural substances in an organic farming or handling operation that are otherwise allowed under this title only if **)**

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances **)**

(i) would be harmful to human health or the environment; and

(ii) is inconsistent with organic farming or handling, and the purposes of this title; and

(B) the specific prohibition is developed using the procedures specified in subsection (d).

(d) PROCEDURE FOR ESTABLISHING NATIONAL LIST. **)**

(1) IN GENERAL. **)** The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board.

(2) NO ADDITIONS. **)** The Secretary may not include exemptions for the use of specific synthetic substances in the National List other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

(3) PROHIBITED SUBSTANCES. **)** In no instance shall the National List include any substance, the presence of which in food has been prohibited by Federal regulatory action.

(4) NOTICE AND COMMENT. **)** Before establishing the National List or before making any amendments to the National List, the Secretary shall publish the Proposed National List or any Proposed Amendments to the National List in the Federal Register and seek public comment on such proposals. The Secretary shall include in such Notice any changes to such proposed list or amendments recommended by the Secretary.

(5) PUBLICATION OF NATIONAL LIST. **)** After evaluating all comments received concerning the Proposed National List or Proposed Amendments to the National List, the Secretary shall publish the final National List in the Federal Register, along with a discussion of comments received.

(e) SUNSET PROVISION. **)** No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition. (7 U.S.C. 6517.)

SEC. 2119. National Organic Standards Board.

(a) IN GENERAL.**)** The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 et seq.)) (hereafter referred to in this section as the "Board") to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this title.

(b) COMPOSITION OF BOARD.**)** The Board shall be composed of 15 members, of which **)**

(1) four shall be individuals who own or operate an organic farming operation;

(2) two shall be individuals who own or operate an organic handling operation;

(3) one shall be an individual who owns or operates a retail establishment with significant trade in organic products;

(4) three shall be individuals with expertise in areas of environmental protection and resource conservation;

(5) three shall be individuals who represent public interest or consumer interest groups;

(6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and

(7) one shall be an individual who is a certifying agent as identified under section 2116.

(c) APPOINTMENT.**)** Not later than 180 days after the date of enactment of this title, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) (and under subsection (b)(7) at an appropriate date after the certification of individuals as certifying agents under section 2116) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

(d) TERM.**)** A member of the Board shall serve for a term of 5 years, except that the Secretary shall appoint the original members of the Board for staggered terms. A member cannot serve consecutive terms unless such member served an original term that was less than 5 years.

(e) MEETINGS.**)** The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

(f) COMPENSATION AND EXPENSES.**)** A member of the Board shall serve without compensation. While away from their homes or regular places of business on the business of the Board, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(g) CHAIRPERSON.**)** The Board shall select a Chairperson for the Board.

(h) QUORUM.—A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

(i) DECISIVE VOTES.—Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

(j) OTHER TERMS AND CONDITIONS.—The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this title, as determined appropriate by the Secretary.

(k) RESPONSIBILITIES OF THE BOARD.—

(1) IN GENERAL.—The Board shall provide recommendations to the Secretary regarding the implementation of this title.

(2) NATIONAL LIST.—The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 2118.

(3) TECHNICAL ADVISORY PANELS.—The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.

(4) SPECIAL REVIEW OF BOTANICAL PESTICIDES.—The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.

(5) PRODUCT RESIDUE TESTING.—The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

(6) EMERGENCY SPRAY PROGRAMS.—The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(l) REQUIREMENTS.—In establishing the proposed National List or proposed amendments to the National List, the Board shall—

(1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

(2) work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients

and determine whether such substances contain inert materials that are synthetically produced; and

(3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.

(m) EVALUATION. **)** In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider **)**

(1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) the effect of the substance on human health;

(5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) the alternatives to using the substance in terms of practices or other available materials; and

(7) its compatibility with a system of sustainable agriculture.

(n) PETITIONS. **)** The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.

(o) CONFIDENTIALITY. **)** Any confidential business information obtained by the Board in carrying out this section shall not be released to the public. (7 U.S.C. 6518.)

SEC. 2120. Violations of Title.

(a) MISUSE OF LABEL. **)** Any person who knowingly sells or labels a product as organic, except in accordance with this title, shall be subject to a civil penalty of not more than $10,000.

(b) FALSE STATEMENT. **)** Any person who makes a false statement under this title to the Secretary, a governing State official, or a certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

(c) INELIGIBILITY. **)**

(1) IN GENERAL. **)** Except as provided in paragraph (2), any person who **)**

(A) makes a false statement;

(B) attempts to have a label indicating that an agricultural product is organically produced affixed to such product that such person knows, or should have reason to know, to have been produced or handled in a manner that is not in accordance with this title; or

(C) otherwise violates the purposes of the applicable organic certification program as determined by the Secretary; after notice and an opportunity to be heard, shall not be eligible, for a period of 5 years from the date of such occurrence, to receive certification under this title with respect to any farm or handling operation in which such person has an interest.

(2) WAIVER.—Notwithstanding paragraph (1), the Secretary may reduce or eliminate the period of ineligibility referred to in such paragraph if the Secretary determines that such modification or waiver is in the best interests of the applicable organic certification program established under this title.

(d) REPORTING OF VIOLATIONS.—A certifying agent shall immediately report any violations of this title to the Secretary or the governing State official (if applicable).

(e) VIOLATIONS BY CERTIFYING AGENT.—A certifying agent that is a private person that violates the provisions of this title or that falsely or negligently certifies any farming or handling operation that does not meet the terms and conditions of the applicable organic certification program as an organic operation, as determined by the Secretary or the governing State official (if applicable) shall, after notice and an opportunity to be heard—

(1) lose its accreditation as a certifying agent under this title; and

(2) be ineligible to be accredited as a certifying agent under this title for a period of not less than 3 years subsequent to the date of such determination.

(f) EFFECT OF OTHER LAWS.—Nothing in this title shall alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) concerning meat, poultry and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.). (7 U.S.C. 6519.)

SEC. 2121. Administrative Appeal.

(a) EXPEDITED APPEALS PROCEDURE.) The Secretary shall establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that)

(1) adversely affects such person; or

(2) is inconsistent with the organic certification program established under this title.

(b) APPEAL OF FINAL DECISION.) A final decision of the Secretary under subsection (a) may be appealed to the United States district court for the district in which such person is located. (7 U.S.C. 6520.)

SEC. 2122. Administration.

(a) REGULATIONS.) Not later than 540 days after the date of enactment of this title, the Secretary shall issue proposed regulations to carry out this title.

(b) ASSISTANCE TO STATE.)

(1) TECHNICAL AND OTHER ASSISTANCE.) The Secretary shall provide technical, administrative, and Extension Service assistance to assist States in the implementation of an organic certification program under this title.

(2) FINANCIAL ASSISTANCE.) The Secretary may provide financial assistance to any State that implements an organic certification program under this title. (7 U.S.C. 6521.)

SEC. 2123. Authorization of Appropriations.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title. (7 U.S.C. 6522.)

PART III
COMMODITY PURCHASES AND DONATIONS

Subpart A. Section 32 and Related Statutes

Section 32 of Public Law No. 320, Seventy-Fourth Congress [1]

SEC. 32. There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year.[2] Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low-income groups as determined by the Secretary of Agriculture; and (3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final.

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[1] The Act of August 24, 1935, 49 Stat. 750, 774. Although this section has been amended a number of times, the purposes of sec. 32 **)** through payments or indemnities to encourage the exportation and domestic consumption of agricultural commodities and products and to reestablish farmers' purchasing power in connection with the normal production of agricultural commodities **)** remain basically as originally enacted. Authority to encourage consumption of agricultural commodities and products by their utilization among persons in low-income groups was added by amendment of clause (2) in 1939 (53 Stat. 975). Later amendments are noted below. Sec. 32 funds may be used (1) to purchase agricultural commodities and products and to donate them for relief purposes under the Act of June 28, 1937, and (2) to donate commodities to schools for utilization in feeding programs under the National School Lunch Act and the Child Nutrition Act of 1966."

[2] Section 205 of the Agricultural Act of 1956 authorized the appropriation for each fiscal year, beginning with the fiscal year ending June 30, 1957, of $500,000,000 to enable the Secretary of Agriculture to further carry out the provisions of Section 32, subject to all provisions of law relating to the expenditure of funds appropriated by such section, except that up to 50 percent of the $500,000,000 may be devoted during any fiscal year to any one agricultural commodity or the products thereof.

The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section.[3] Notwithstanding any other provision of this section, the amount that may be devoted, during any fiscal year after June 30, 1939, to any one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year. The sums appropriated under this section shall be devoted principally to perishable non-basic agricultural commodities (other than those receiving price support under title II of the Agricultural Act of 1949)[4] and their products.[5] The sums appropriated under this section shall, notwithstanding the provisions of any other law, continue to remain available for the purposes of this section until expended; but any excess of the amount remaining unexpended at the end of any fiscal year over $300,000,000 shall, in the same manner as though it had been appropriated for the service of such fiscal year, be subject to the provisions of section 3690 of the Revised Statutes (U.S.C., title 31, sec. 712), and section 5 of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-five and for other purposes" (U.S.C., title 31, sec. 714).[6] A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.[7] (7 U.S.C. 612c.)

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[3] For the administration of Section 32, not to exceed 4% of the total amount available for such section in any fiscal year may be used for that purpose under the limitation contained in section 392(b) of the Agricultural Act of 1938, as amended.

[4] The clause within the parentheses was substituted for "other than those designated in title 11 of the Agricultural Act of 1949" by sec. 5 of the Act of January 30, 1954, 68 Stat. 4.

[5] This sentence was added by sec. 411 of the Agricultural Act of 1949, 63 Stat. 1057.

[6] This sentence was added by sec. 301 of the Agricultural Act of 1948, July 3, 1948, 62 Stat. 1257. See sec. 392(b) of the Agricultural Adjustment Act of 1938, as amended, for limitations on administrative expenses.

[7] This sentence was added by Sec. 1561 of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1589, Dec. 23, 1985.

COMMODITY DISTRIBUTION REFORM ACT

Qualification for Purchase of Commodities [8]

(1) OFFERS FOR EQUAL OR LESS POUNDAGE.—Subject to compliance by the Secretary with surplus removal responsibilities under other provisions of law, the Secretary may not refuse any offer in response to an invitation to bid with respect to a contract for the purchase of entitlement commodities (provided in standard order sizes) solely on the basis that such offer provides less than the total amount of poundage for a destination specified in such invitation.

(2) OTHER QUALIFICATIONS.—The Secretary may not enter into a contract for the purchase of entitlement commodities unless the Secretary considers the previous history and current patterns of the bidding party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption. (7 U.S.C. 612c note.)

SEAFOOD SAFETY [9]

SECTION 2001. SEAFOOD SAFETY.

Notwithstanding any other provision of law, any domestic fish or fish product produced in compliance with food safety standards or procedures accepted by the Food and Drug Administration as satisfying the requirements of the "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fish Products" (published by the Food and Drug Administration as a final regulation in the Federal Register of December 18, 1995), shall be deemed to have met any inspection requirements of the Department of Agriculture or other Federal agency for any Federal commodity purchase program, including the program authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) except that the Department of Agriculture or other Federal agency may utilize lot inspection to establish a reasonable degree of certainty that fish or fish products purchased under a Federal commodity purchase program, including the program authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), meet Federal product specifications.

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[8] Section 3(c) of Pub. L. 100-237, 101 Stat. 1736, Jan. 8, 1988, the Commodity Distribution Reform Act and WIC Amendments of 1987.

[9] Sec. 2001 of Pub. L. 104-134, Omnibus Consolidated Rescissions and Appropriations Act of 1996, 110 Stat. 1321-312, Apr. 26, 1996.

ACT OF AUGUST 11, 1939 (FISHERY PRODUCTS) [10]

To authorize the Federal Surplus Commodities Corporation to purchase and distribute surplus products of the fishing industry.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any part of the funds not to exceed $1,500,000 per year, transferred by the Secretary of Agriculture to the Federal Surplus Commodities Corporation[11] created under and to carry out the provisions of section 32 of the Act of August 24, 1935 (49 Stat. 774), as amended, may also be used by such Corporation for the purpose of diverting surplus fishery products (including fish, shellfish, mollusks, and crustacea) from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief channels: *Provided*, That none of the funds made available to the Federal Surplus Commodities Corporation under this Act shall be used to purchase any of the commodities designated in the Act which may have been produced in any foreign country. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this Act. (15 U.S.C. 713c-2.)

SEC. 2.[12] (a) DEFINITIONS. **)** As used in this section **)**

(1) The term "person" means **)**

(A) any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands;

(B) any fishery development foundation or other private nonprofit corporation located in Alaska; and

(C) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private nonprofit corporation not located in Alaska), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802) and for purposes of applying such section 2 with respect to this section **)**

(i) the term "State" as used therein includes any State referred to in paragraph (3),

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[10] 53 Stat. 1411.

[11] *See* footnote 10.

[12] Section as amended by the Acts of July 1, 1954, 68 Stat. 376; Aug. 8, 1956, 70 Stat. 1124; Pub. L. 89-341, 79 Stat. 1311, Nov. 8, 1965; Pub. L. 96-561, 94 Stat. 3287, Dec. 22, 1980; Pub. L. 97-424, 96 Stat. 2164, Jan. 6, 1983; and by Pub. L. 99-659, 100 Stat. 3721, Nov. 14, 1986; Pub. L. 101-627, 104 Stat. 4463, Nov. 28, 1990; and Pub. L. 102-567, Sec. 703, 106 Stat. 4319, Oct. 29, 1992.

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity or, in the case of a nonprofit entity, exercise control in the entity that is determined by the Secretary to be the equivalent of such ownership, and

(iii) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting the ownership and control requirements referred to in clause (ii).

(2) The term "Secretary" means the Secretary of Commerce.

(3) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(4) The term "United States fishery" means any fishery, including any tuna fishery, that is, or may be, engaged in by citizens or nationals of the United States or citizens of the Northern Mariana Islands.

(5) The term "citizen of the Northern Mariana Islands" means)

(A) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

(b) FUND.) (1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957,[13] from moneys made available to carry out provisions of section 32 of such Act of August 24, 1935, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof,

[13] Sec. 12(a) of the Act of Aug. 8, 1956 (70 Stat. 1124, 15 U.S.C. 713c-3 note) provides: "The authorization for the transfer of certain funds from the Secretary of Agriculture to the Secretary of the Interior and their maintenance in a separate fund as contained in section 2(a) of the Act of Aug. 11, 1939, as amended July 1, 1954 (68 Stat. 376), shall be continued for the year ending June 30, 1957, and each year thereafter." Pursuant to Reorganization Plan No. 4 of 1970, 84 Stat. 2090, transmitted July 9, 1970, effective Oct. 3, 1970 (5 U.S.C., App.) these funds are being transferred to the Secretary of Commerce rather than to the Secretary of Interior.

including processed and manufactured products), which shall be maintained in a separate fund only for **)**

(A) use by the Secretary **)**

(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c);

(ii) to implement the national fisheries research and development program provided for under subsection (d); and

(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 314 of the Magnuson Fishery Conservation and Management Act.

(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) of the Fish and Seafood Promotion Act of 1986.

(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) $750,000 in fiscal year 1987, $3,000,000 in each of fiscal years 1988 and 1989, and $2,000,000 in each fiscal years 1990 and 1991.

(c) FISHERIES RESEARCH AND DEVELOPMENT PROJECTS. **)** (1) The Secretary shall make grants from the fund established under subsection (b) to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

(2) The Secretary shall **)**

(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (A)) in which the application was received.

(3) No application for a grant under this subsection may be approved unless the Secretary **)**

(A) is satisfied that the applicant has the requisite technical and financial capability to carry out the project; and

(B) evaluates the proposed project as to **)**

(i) soundness of design;

(ii) the possibilities of securing productive results,

(iii) minimization of duplication with other fisheries research and development projects,

(iv) the organization and management of the project,

(v) methods proposed for monitoring and evaluating the success or failure of the project, and

(vi) such other criteria as the Secretary may require.

(4) Each grant made under this subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary of the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

(C) The recipient of the grant must submit to the Secretary periodic project status reports.

(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in-kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

(d) NATIONAL FISHERIES RESEARCH AND DEVELOPMENT PROGRAM. **)** (1) The Secretary shall carry out a national program of research and development addressed to such aspects of United States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures), if not adequately covered by projects assisted under subsection (c), as the Secretary deems appropriate.

(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing **)** (A) the

fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

(B) a description of all pending projects assisted under subsection (c) or carried out under paragraph (1), in addition to **)**

(i) a list of those applications approved and those disapproved under subsection (c), and the total amount of grants made, for the current fiscal year, and

(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) during the current fiscal year; and

(C) an assessment of each project assisted under subsection (c) or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and the project contributed to fishery development.

(e) ALLOCATION OF FUND MONEYS. **)** (1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) or any other provision of law with respect to that fiscal year, shall be allocated as follows:

(A) the Secretary shall use no less than 60 per centum of such moneys to make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c) of this section; and

(B) the Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine fisheries Service which are directly related to development of the United States fisheries pursuant to subsection (d) of this section.

(2) The Secretary shall, consistent with the number of meritorious applications received with respect to any fiscal year, obligate or expend all of the moneys in the fund described in paragraph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in accordance with this section without fiscal year limitation,

except that the Secretary shall not obligate such moneys at a rate less than that necessary to prevent the balance of moneys in the fund from exceeding $3,000,000 at the end of any fiscal year. (15 U.S.C. 713c-3.)

SECTION 404 OF THE AGRICULTURAL ACT OF 1949

Utilization of Commodity Credit Corporation

SEC. 404. The Secretary, in carrying out programs under section 32 of Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended, and section 6 of the National School Lunch Act, may utilize the services and facilities of the Commodity Credit Corporation (including but not limited to procurement by contract), and make advance payments to it. (7 U.S.C. 1424.)

AGRICULTURAL ACT OF 1956

Appropriation to Supplement Section 32 Funds

SEC. 205. There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1957, the sum of $500,000,000 to enable the Secretary of Agriculture to further carry out the provisions of section 32, Public Law 320, Seventy-fourth Congress as amended (7 U.S.C. 612c), subject to all provisions of law relating to the expenditure of funds appropriated by such action, except that up to 50 per centum of such $500,000,000 may be devoted during any fiscal year to any one agricultural commodity or the products thereof. (7 U.S.C. 1855.)

ADMINISTRATIVE EXPENSES

Section 392(b) of the Agricultural Adjustment Act of 1938,[14] As Amended

(b) In the administration of this title and sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the aggregate amount expended in any fiscal year, beginning with the fiscal year ending June 30, 1942, for administrative expenses in the District of Columbia, including regional offices, and in the several States (not including the expenses of county and local committees) shall not exceed 3 per centum of the total amount available for such fiscal year for carrying out the purposes of this title and such Act, unless otherwise provided by

[14] Approved February 16, 1938, 52 Stat. 69.

appropriation or other law. In the administration of section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes," approved August 24, 1935 (49 Stat. 774), as amended, and the Agricultural Marketing Agreement Act of 1937, as amended, and those sections of the Agricultural Adjustment Act (of 1933), as amended, which were reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended,[15] the aggregate amount expended in any fiscal year, beginning with the fiscal year ending June 30, 1942, for administrative expenses in the District of Columbia, including regional offices, and in the several States (not including the expenses of county and local committees) shall not exceed 4 per centum of the total amount available for such fiscal year for carrying out the purposes of said Acts, unless otherwise provided by appropriation or other law.[16] In the event any administrative expenses of any county or local committee are deducted in any fiscal year, beginning with the fiscal year ending June 30, 1939, from Soil Conservation Act payments, parity payments, or loans, each farmer receiving benefits under such provisions shall be apprised of the amount or percentage deducted from such benefit payment or loan on account of such administrative expenses. The names and addresses of the members and employees of any county or local committee, and the amount of such compensation received by each of them, shall be posted annually in a conspicuous place in the area within which they are employed. (7 U.S.C. 1392(b).)

APPROPRIATION AND APPORTIONMENT OF FUNDS

(31 U.S.C. 1341(a), 1342, 1351, 1511-1519) [17]

§ 1341. Limitations on expending and obligating amounts

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not **)**

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

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[15] Act of January 31, 1942, 56 Stat. 41, added "Agricultural Marketing Agreement Act of 1937, as amended, and those sections of the Agricultural Adjustment Act (of 1933), as amended, which were reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended."

[16] Act of August 3, 1956, 70 Stat. 1034, added "unless otherwise provided by appropriation or other law."

[17] Codified by Pub. L. 97-258, 96 Stat. 923, 926, 928, Sept. 13, 1982. Formerly 31 U.S.C. 665, R.S. § 3679. Amended by Pub. L. 101-508, 104 Stat. 1388-621, Nov. 5, 1990.

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. (31 U.S.C. 1341(a).)

§ 1342. Limitation on voluntary services [18]

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property. (31 U.S.C. 1342.)

§ 1351. Reports on violations

If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken. (31 U.S.C. 1351.)

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[18] Section as amended by Pub. L. 101-508, 104 Stat. 1388-621, Nov. 5, 1990. Sec. 310 of Pub. L. 104-92, 110 Stat. 20, Jan. 6, 1996, states: "(a) In General.) Section 1342 of title 31, United States Code, is amended for the period December 15, 1995 through January 26, 1996)

"(1) by inserting after the first sentence `All officers and employees of the united States Government or the District of Columbia government shall be deemed to be performing services relating to emergencies involving the safety of human life or the protection of property.'

"(2) by striking out the last sentence."

§ 1511. Definition and application

(a) In this subchapter, "appropriations" means **)**

(1) appropriated amounts;

(2) funds; and

(3) authority to make obligations by contract before appropriations.

(b) This chapter does not apply to **)**

(1) amounts (except amounts for administrative expenses) available **)**

(A) for price support and surplus removal of agricultural commodities; and

(B) under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c);

(2) a corporation getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government; and

(3) the Senate, the House of Representatives, a committee of Congress, a member, officer, employee, or office of either House of Congress, or the Office of the Architect of the Capitol or an officer or employee of that Office. (31 U.S.C. 1511.)

§ 1512. Apportionment and reserves

(a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

(b)(1) An appropriation subject to apportionment is apportioned by **)**

(A) months, calendar quarters, operating seasons, or other time periods;

(B) activities, functions, projects, or objects; or

(C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

(2) The official designated in section 1513 of this title to make apportionments shall apportion an appropriation under paragraph (1) of this subsection as the official considers appropriate. Except as specified by the official, an amount apportioned is available for obligation under the terms of the appropriation on a cumulative basis unless reapportioned.

(c)(1) In apportioning or reapportioning an appropriation, a reserve may be established only **)**

(A) to provide for contingencies;

(B) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(C) as specifically provided by law.

(2) A reserve established under this subsection may be changed as necessary to carry out the scope and objectives of the appropriation concerned. When an official designated in section 1513 of this title to make apportionments decides that an amount reserved will not be required to carry out the objectives and scope of the appropriation concerned, the official shall recommend the rescission of the amount in the way provided in chapter 11 of this title for appropriation requests. Reserves established under this section shall be reported to Congress as provided in the Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.).

(d) An apportionment or a reapportionment shall be reviewed at least 4 times a year by the official designated in section 1513 of this title to make apportionments. (31 U.S.C. 1512.)

§ 1513. Officials controlling apportionments

(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government that is required to be apportioned under section 1512 of this title shall apportion the appropriation in writing. An appropriation shall be apportioned not later than the later of the following:

(1) 30 days before the beginning of the fiscal year for which the appropriation is available; or

(2) 30 days after the date of enactment of the law by which the appropriation is made available.

(b)(1) The President shall apportion in writing an appropriation available to an executive agency (except the Commission) that is required to be apportioned under section 1512 of this title. The head of each executive agency to which the appropriation is available shall submit to the President information required for the apportionment in the form and the way and at the time specified by the President. The information shall be submitted not later than the later of the following:

(A) 40 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 15 days after the date of enactment of the law by which the appropriation is made available.

(2) The President shall notify the head of the executive agency of the action taken in apportioning the appropriation under paragraph (1) of this subsection not later than the later of the following:

(A) 20 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 30 days after the date of enactment of the law by which the appropriation is made available.

(c) By the first day of each fiscal year, the head of each executive department of the United States Government shall apportion among the major organizational units of the department the maximum amount to be expended by each unit during the fiscal year out of each contingent fund appropriated for the entire year for the department. Each amount may be changed during the fiscal year only by written direction of the head of the department. The direction shall state the reasons for the change.

(d) An appropriation apportioned under this subchapter may be divided and subdivided administratively within the limits of the apportionment.

(e) This section does not affect the initiation and operation of agricultural price support programs. (31 U.S.C. 1513.)

§ 1514. Administrative division of apportionments

(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to **)**

(1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reapportionments of the appropriation; and

(2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reapportionment.

(b) To have a simplified system for administratively dividing appropriations, the head of each executive agency (except the Commission) shall work toward the objective of financing each operating unit, at the highest practical level, from not more than one administrative division for each appropriation affecting the unit. (31 U.S.C. 1514.)

§ 1515. Authorized apportionments necessitating deficiency or supplemental appropriations

(a)[19] An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates the need for a deficiency or supplemental appropriation to the extent necessary to permit

[19] As amended by Pub. L. 100-202, 101 Stat. 1329-433, Dec. 22, 1987.

payment of such pay increases as may be granted pursuant to law to civilian officers and employees (including prevailing rate employees whose pay is fixed and adjusted under subchapter IV of chapter 53 of title 5) and to retired and active military personnel. (b)(1) Except as provided in subsection (a) of this section, an official may make, and the head of an executive agency may request, an apportionment under section 1512 of this title that would indicate a necessity for a deficiency or supplemental appropriation only when the official or agency head decides that the action is required because of **)**

(A) a law enacted after submission to Congress of the estimates for an appropriation that requires an expenditure beyond administrative control; or

(B) an emergency involving the safety of human life, the protection of property, or the immediate welfare of individuals when an appropriation that would allow the United States Government to pay, or contribute to, amounts required to be paid to individuals in specific amounts fixed by law or under formulas prescribed by law, is insufficient.

(2) If an official making an apportionment decides that an apportionment would indicate a necessity for a deficiency or supplemental appropriation, the official shall submit immediately a detailed report of the facts to Congress. The report shall be referred to in submitting a proposed deficiency or supplemental appropriation. (31 U.S.C. 1515.)

§ 1516. Exemptions

An official designated in section 1513 of this title to make apportionments may exempt from apportionment **)**

(1) a trust fund or working fund if an expenditure from the fund has no significant effect on the financial operations of the United States Government;

(2) a working capital fund or a revolving fund established for intragovernmental operations;

(3) receipts from industrial and power operations available under law; and

(4) appropriations made specifically for **)**

(A) interest on, or retirement of, the public debt;

(B) payment of claims, judgments, refunds, and drawbacks;

(C) items the President decides are of a confidential nature;

(D) payment under a law requiring payment of the total amount of the appropriation to a designated payee; and

(E) grants to the States under the Social Security Act (42 U.S.C. 301 et seq.). (31 U.S.C. 1516.)

§ 1517. Prohibited obligations and expenditures

(a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding **)**

(1) an apportionment; or

(2) the amount permitted by regulations prescribed under section 1514(a) of this title.

(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken. (31 U.S.C. 1517.)

§ 1518. Adverse personnel actions

An officer or employee of the United States Government or of the District of Columbia government violating section 1517(a) of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office. (31 U.S.C. 1518.)

§ 1519. Criminal penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1517(a) of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both. (31 U.S.C. 1519.)

Subpart B. Donations

AGRICULTURAL ACT OF 1949

Disposition of Commodities to Prevent Waste

SEC. 416.[1] (a) In order to prevent the waste of commodities whether in private stocks or [2] acquired through price-support operations by the Commodity Credit Corporation before they can be disposed of in normal domestic channels without impairment of the price-support program or sold abroad at competitive world prices, the Commodity Credit Corporation is authorized, on such terms and under such regulations as the Secretary may deem in the public interest: (1) upon application, to make such commodities available to any Federal agency for use in making payment for commodities not produced in the United States; (2) to barter or exchange such commodities for strategic or other materials as authorized by law; (3) in the case of food commodities to donate such commodities to the Bureau of Indian Affairs and to such State, Federal, or private agency or agencies as may be designated by the proper State or Federal authority and approved by the Secretary, for use in the United States in nonprofit school-lunch programs,[3] in nonprofit summer camps for

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[1] The provisions of this section were substituted for the previous provisions by sec. 302 of the Agricultural Trade Development and Assistance Act of 1954, 68 Stat. 458. See sec. 9 of the Act of September 6, 1958, 72 Stat. 1792, providing for distribution of commodities under sec. 416 to overseas areas under the jurisdiction or administration of the United States.

The Food for Peace Act of 1966, Pub. L. 89-808, 80 Stat. 1538, November 11, 1966, deleted all references to foreign donations from section 416. Such deletions were effective January 1, 1967.

The Agriculture Act of 1970, P.L. 91-524, 84 Stat. 1378, stated that references in Section 416 to the terms "support price", "level of support", and "level of price support", shall be considered to apply as well to the level of loan and purchases for upland cotton under this Act

Pub. L. 98-258, 98 Stat. 137, Apr. 10, 1984, amended Sec. 416 by adding subsections (b) and (c) and by redesignating the original Sec. 416 as subsection (a), and by substituting the word "subsection" for "section" wherever appearing in text.

Pub. L. 104-127, 110 Stat, 974, Apr. 4, 1996, deleted subsection (c) relating to a two-year pilot program of ultra-high temperature processed fluid milk.

Subsection (d), which established pilot program for barter of agricultural commodities for strategic materials not produced in sufficient amounts domestically and for which national stockpile or reserve goals are unmet, added by Pub. L. 99-198, 99 Stat. 1486, Dec. 23, 1985, was deleted by Pub. L. 104-127, 110 Stat. 974, Apr. 4, 1996.

[2] The words "whether in private stocks or" were added by the Act of July 24, 1959, 73 Stat. 250.

[3] See Act of September 13, 1960, 74 Stat. 899 authorizing the use of surplus foods for training home economics students.

children,[4] in the assistance of needy persons, and in charitable institutions, including hospitals and facilities, to the extent that they serve needy persons (including infants and children).[5] In the case of (3) the Secretary shall obtain such assurance as he deems necessary that the recipients thereof will not diminish their normal expenditures for food by reason of such donation. In order to facilitate the appropriate disposal of such commodities, the Secretary may from time to time estimate and announce the quantity of such commodities which he anticipates will become available for distribution under (3). The Commodity Credit Corporation may pay, with respect to commodities disposed of under this subsection, reprocessing, packaging, transporting, handling, and other charges accruing up to the time of their delivery to a Federal agency or to the designated State or private agency. In addition, in the case of food commodities disposed of under this subsection, the Commodity Credit Corporation may pay the cost of processing such commodities into a form suitable for home or institutional use, such processing to be accomplished through private trade facilities to the greatest extent possible.[6] For the purpose of this subsection the terms "State" and "United States" include the District of Columbia and any Territory or possession of the United States.

Dairy products acquired by the Commodity Credit Corporation through price support operations may, insofar as they can be used in the United States in nonprofit school lunch and other nonprofit child feeding programs, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served, be donated for any such use prior to any other use or disposition.[7] Notwithstanding any other provision of law, such dairy products may be donated for distribution to needy households in the United States and to meet the needs of persons receiving nutrition assistance under the Older Americans Act of 1965.[8]

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[4] The words "in nonprofit summer camps for children," were added by the Act of July 2, 1958, 72 Stat. 286.

[5] The words "hospitals and facilities, to the extent that they serve needy persons (including infants and children)" were substituted for "hospitals, to the extent that needy persons are served" by Pub. L. 101-624, 104 Stat. 3807, Nov. 28, 1990.

[6] This sentence added by the Agricultural Act of 1956, 70 Stat. 203, May 28, 1956.

[7] This sentence added by Act of April 17, 1970, Pub. L. 91-233, 84 Stat. 199. The sentence relating to supplemental security income was deleted by Pub. L. 95-113, 91 Stat. 979, Sept. 29, 1977.

[8] The last two sentences relating to donations of dairy products to needy persons outside the United States was added by Pub. L. 97-253, 96 Stat. 766, Sept. 8, 1982. These two sentences were deleted by Pub. L. 99-198, 99 Stat. 1467, Dec. 23, 1985.

(b)[9] (1) The Secretary, subject to the requirements of paragraph (10), may furnish eligible commodities for carrying out programs of assistance in developing countries and friendly countries under Titles II and III of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985, as approved by the Secretary, and for such purposes as are approved by the Secretary. To ensure that the furnishing of commodities under this subsection is coordinated with and complements other United States foreign assistance, assistance under this subsection shall be coordinated through the mechanism designated by the President to coordinate assistance under the Agricultural Trade Development and Assistance Act of 1954.

(2) As used in this subsection, the term "eligible commodities" means **)**

(A) dairy products, wheat, rice feed grains, and oilseeds acquired by the Commodity Credit Corporation through price support operations, and the products thereof, that the Secretary determines meet the criteria specified in subsection (a); and

(B) such other edible agricultural commodities as may be acquired by the Secretary or the Commodity Credit Corporation in the normal course of operations and that are available for disposition under this subsection, except that no such commodities may be acquired for the purpose of their use under this subsection.

(3)(A) Commodities may not be made available for disposition under this subsection in amounts that (i) will, in any way, reduce the amounts of commodities that traditionally are made available through donations to domestic feeding programs or agencies, or (ii) will prevent the Secretary from fulfilling any agreement entered into by the Secretary under a payment-in-kind program under this Act or other Acts administered by the Secretary.

(B)(i) The requirements of section 403(a) of the Agricultural Trade Development and Assistance Act of 1954 shall apply with respect to commodities furnished under this subsection. Commodities may not be furnished for disposition to any country under this subsection except on determinations by the Secretary that **)**

(I) the receiving country has the absorptive capacity to use the commodities efficiently and effectively; and

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[9] Pub. L. 99-83, 99 Stat. 271, Aug. 8, 1985, added applicability to rice acquired by the CCC through price support. Pub. L. 99-198, 99 Stat. 1467, Dec. 23, 1985, amended subsection (b) and broaden the term "eligible commodities." Subsection (b) further amended by Pub. L. 99-260, 100 Stat. 55, March 20, 1986; Pub. L. 100-203, 101 Stat. 1330-28, Dec. 22, 1987; Pub. L. 100-277, 102 Stat. 67, Apr. 4, 1988; Pub. L. 100-418, 102 Stat. 1337, Aug. 23, 1988; Pub. L. 101-513, 104 Stat. 2032, Nov. 5, 1990; Pub. L. 101-624, 104 Stat. 3662, 3702, 3807, Nov. 28, 1990; Pub. L. 102-289, 106 Stat. 176, May 20, 1992; Pub. L. 103-306, 108 Stat. 1654, Aug. 23, 1994; and Pub. L. 104-127, 110 Stat. 974, Apr. 4, 1996.

(II) such disposition of the commodities will not interfere with usual marketings of the United States, nor disrupt world prices of agricultural commodities and normal patterns of commercial trade with developing countries.

(ii) The requirement for safeguarding usual marketings of the United States shall not be used to prevent the furnishing under this subsection of any eligible commodity for use in countries that **)**

(I) have not traditionally purchased the commodity from the United States; or

(II) do not have adequate financial resources to acquire the commodity from the United States through commercial sources or through concessional sales arrangements.

(C) The Secretary shall take reasonable precautions to ensure that **)**

(i) commodities furnished under this subsection will not displace or interfere with sales that otherwise might be made; and

(ii) sales or barter under paragraph (7) will not unduly disrupt world prices of agricultural commodities nor normal patterns of commercial trade with friendly countries.

(D) If eligible commodities are made available under this subsection to a friendly country, nonprofit and voluntary agencies and cooperatives shall also be eligible to receive commodities for food aid programs in the country.

(4) Agreements may be entered into under this subsection to provide eligible commodities in installments over an extended period of time. In agreements with recipients of eligible commodities under this subsection (including nonprofit and voluntary agencies or cooperatives), subject to the availability of commodities each fiscal year, the Secretary, on request, shall approve multiyear agreements to make agricultural commodities available for distribution or sale by the recipients if the agreements otherwise meet the requirements of this subsection.

(5)(A) Section 406 of the Agricultural Trade Development and Assistance Act of 1954 shall apply to the commodities furnished under this subsection.

(B) The Commodity Credit Corporation may pay the processing and domestic handling costs incurred, as authorized under this subsection, in the form of eligible commodities, as defined in paragraph (2)(A), if the Secretary determines that such in-kind payment will not disrupt domestic markets.

(6) The cost of commodities furnished under this subsection, and expenses incurred under section 406 of the Agricultural Trade Development and Assistance Act of 1954 in connection with those commodities, shall be in addition to the level of assistance programmed under that Act and shall not be considered expenditures for international affairs and finance.

(7) Eligible commodities furnished under this subsection may be sold or bartered only with the approval of the Secretary and solely as follows:

(A) Sales and barter that are incidental to the donation of the commodities or products.

(B) Sales and barter to finance the distribution, handling, and processing costs of the donated commodities or products in the importing country or in a country through which such commodities or products must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people.

(C) Sales and barter of commodities and products furnished to intergovernmental agencies or organizations, insofar as they are consistent with normal programming procedures in the distribution of commodities by those agencies or organizations.

(D)(i) Sales of commodities and products furnished to nonprofit and voluntary agencies, or cooperatives, for food assistance under agreements that provide for the use, by the agency or cooperative, of foreign currency proceeds generated from such sale of commodities or products for the purposes established in clause (ii) of this subparagraph.

(ii) Foreign currencies generated from partial or full sales or barter of commodities by a nonprofit and voluntary agency or cooperative shall be used **)**

(I) to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under this section; and

(II) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities.

In addition, foreign currency proceeds generated in Poland may also be used by governmental and nongovernmental agencies or cooperative for eligible activities approved by the joint commission established pursuant to section 2226 of the American Aid to Poland Act of 1988 and by the United States chief of diplomatic mission in Poland that would improve the quality of life of the Polish people and would strengthen and support the activities of governmental or private, non-governmental independent institutions in Poland. Activities eligible under the preceding sentence include **)**

(I) any project undertaken in Poland under the auspices of the Charitable Commission of the Polish Catholic Episcopate for the benefit of handicapped or orphaned children;

(II) any project for the reconstruction, renovation, or maintenance of the Research Center on Jewish History and Culture of the Jagiellonian University of Krakow, Poland,

established for the study of events related to the Holocaust in Poland;

(III) any other project or activity which strengthens and supports private and independent sectors of the Polish economy, especially independent farming and agriculture; and

(IV) the Polish Catholic Episcopate's Rural Water Supply Foundation.

(iii) Except as otherwise provided in clause (v), such agreements, taken together for each fiscal year, shall provide for sales of commodities and products for foreign currency proceeds in amounts that are, in the aggregate, not less than 10 percent of the aggregate value of all commodities and products furnished, or the minimum tonnage required, whichever is greater, for carrying out programs of assistance under this subsection in such fiscal year. The minimum allocation requirements of this clause apply with respect to commodities and products made available under this subsection for carrying out programs of assistance under Title II and III of the Agricultural Trade Development and Assistance Act of 1954, and not with respect to commodities and products made available to carry out the Food for Progress Act of 1985.

(iv) Foreign currency proceeds generated from the sale of commodities or products under this subparagraph shall be expended within the country of origin within a reasonable length of time, as determined by the Secretary, except that the Secretary may permit the use of proceeds in a country other than the country of origin **)**

(I) as necessary to expedite the transportation of commodities and products furnished under this subsection; or

(II) if the proceeds are generated in a currency generally accepted in the other country.

(v) The provisions of clause (iii) of this subparagraph establishing minimum annual allocations for sales and use of proceeds shall not apply to the extent that there have not been sufficient requests for such sales and use of proceeds nor to the extent required under paragraph (3).

(E) Sales and barter to cover expenses incurred under paragraph (5)(a).

(F) The provisions of sections 403(i) and 407(c) of the Agricultural Trade Development and Assistance Act of 1954 shall apply to donations, sales and barters of eligible commodities under this subsection.

The Secretary may approve the use of proceeds or services realized from the sale or barter of a commodity furnished under this subsection by a nonprofit voluntary agency, cooperative, or intergovernmental agency or

organization to meet administrative expenses incurred in connection with activities undertaken under this subsection.

(8)(A) To the maximum extent practicable, expedited procedures shall be used in the implementation of this subsection.

(B) The Secretary shall be responsible for regulations governing sales and barter, and the use of foreign currency proceeds, under paragraph (7) of this subsection that will provide reasonable safeguards to prevent the occurrence of abuses in the conduct of activities provided for in paragraph (7).

(9)(A) Each recipient of commodities and products approved for sale or barter under paragraph (7) shall report to the Secretary information with respect to the items required to be included in the Secretary's report pursuant to clauses (i) through (iv) of subparagraph (B). Reports pursuant to this subparagraph shall be submitted in accordance with regulations of the Secretary. Such regulations shall require at least one report annually, to be submitted not later than December 31 following the end of the fiscal year in which the commodities and products are received; except that a report shall not be required with respect to fiscal year 1985.

(B) Not later than February 15, 1987, and annually thereafter, the Secretary shall report to the Congress on sales and barter, and use of foreign currency proceeds, under paragraph (7) during the preceding fiscal year. Such report shall include information on **)**

(i) the quantity of commodities furnished for such sale or barter;

(ii) the amount of funds (including dollar equivalents for foreign currencies) and value of services generated from such sales and barter in such fiscal year;

(iii) how such funds and services were used;

(iv) the amount of foreign currency proceeds that were used under agreements under subparagraph (D) of paragraph (7) in such fiscal year, and the percentage of the quantity of all commodities and products furnished under this subsection in such fiscal year such use represented;

(v) the Secretary's best estimate of the amount of foreign currency proceeds that will be used, under agreements under subparagraph (D) of paragraph (7), in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that such estimated use represents of the quantity of all commodities and products that the Secretary estimates will be furnished under this subsection in each such fiscal year;

(vi) the effectiveness of such sales, barter, and use during such fiscal year in facilitating the distribution of commodities and products under this subsection;

(vii) the extent to which sales, barter, or uses **)**

(I) displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made,

(II) affect usual marketings of the United States,

(III) disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries, or

(IV) discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed under this subsection; and

(viii) the Secretary's recommendations, if any, for changes to improve the conduct of sales, barter, or use activities under paragraph (7).

(7 U.S.C. 1431.)

AGRICULTURAL ACT OF 1954

Domestic Disposal of Dairy Products

SEC. 204.[10] (c) In order to prevent the accumulation of excessive inventories of dairy products the Secretary of Agriculture shall undertake domestic disposal programs under authorities granted in the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, as amended, or as otherwise authorized by law. (7 U.S.C. 1446c.)

FOOD AND AGRICULTURE ACT OF 1965

Purchase of Dairy Products

SEC. 709.[11] The Secretary of Agriculture is hereby authorized to use funds of the Commodity Credit Corporation to purchase sufficient supplies of dairy products at market prices to meet the requirements of any programs for the schools (other than fluid milk in the case of schools), domestic relief distribution, community action, and such other programs as are authorized by law, when there are insufficient stocks of dairy products in the hands of Commodity Credit Corporation available for these purposes. (7 U.S.C. 1446a-1.)

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[10] Act of Aug. 28, 1954, 68 Stat. 900.

[11] Pub. L. 89-321, 79 Stat. 1212, Nov. 3, 1965; amended by Pub. L. 89-808, 80 Stat. 1538, Nov. 11, 1966.

AGRICULTURE AND CONSUMER PROTECTION ACT OF 1973

Purchase of Commodities

SEC. 4.[12] (a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1991 through 2002 purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, (including hospitals and facilities caring for needy infants and children) supplemental feeding programs serving women, infants, and children or elderly persons, or both, wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or the Emergency Food Assistance Act of 1983 whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds,

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[12] Pub. L. 93-86, 87 Stat. 249, Aug. 10, 1973, as amended by Pub. L. 93-347, 88 Stat. 340, July 12, 1974; Pub. L. 94-273, 90 Stat. 375, Apr. 21, 1976; Pub. L. 95-113, 91 Stat. 980, Sept. 29, 1977; Pub. L. 97-98 95 Stat. 1292, Dec. 22, 1981; Pub. L. 98-8, Sec. 207, 97 Stat. 36, Mar. 24, 1983; Pub. L. 98-92, Sec. 3, 97 Stat. 612, Sept. 2, 1983; Pub. L 99-198, 99 Stat. 1590, Dec. 23, 1985. Subsection 4(c) added by Pub. L. 97-98, 95 Stat. 1293. Section further amended by Pub. L. 101-624, 104 Stat. 3807, Nov. 28, 1990; and Pub. L. 104-127, 110 Stat. 1028, Apr. 4, 1996.

assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprison for not more than one year, or both. (7 U.S.C. 612c note.)

AGRICULTURAL ACT OF 1949

Transfer of Dairy Products to the Military and Veterans Hospitals

SEC. 202.[13] As a means of increasing the utilization of dairy products (including for purposes of this section, milk) upon the certification by the Secretary of Veterans Affairs or by the Secretary of the Army, acting for the military departments under the Department of Defense's Single Service Purchase Assignment for Subsistence, or their duly authorized representatives that the usual quantities of dairy products have been purchased in the normal channels of trade)

(a) The Commodity Credit Corporation until December 31, 1995 [14] shall make available to the Secretary of Veterans Affairs at warehouses where dairy products are stored, such dairy products acquired under price-support programs as the Secretary of Veterans Affairs certifies that he requires in order to provide butter and cheese and other dairy products as a part of the ration in hospitals under his jurisdiction. The Secretary of Veterans Affairs shall report every six months[15] to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House and the Secretary of Agriculture the amount of dairy products used under this subsection.

(b) The Commodity Credit Corporation until December 31, 1995,[16] shall make available to the Secretary of the Army, at warehouses where dairy

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[13] Sec. 202 added by Sec. 204(d) of the Agricultural Act of 1954, 68 Stat. 900. As amended by Pub. L. 102-54, 105 Stat. 274, June 13, 1991; Pub. L. 102-237, 105 Stat. 1838, Dec. 13, 1991; and Pub. L. 103-437, 108 Stat. 4582, Nov. 2, 1994.

[14] Act of Apr. 2, 1956, 70 Stat. 87, substituted “1958” for “1956”. Pub. L. 85-835, 72 Stat. 996, Aug. 8, 1961, substituted “1961” for “1958”. Pub. L. 87-128, 75 Stat. 319, Aug. 8, 1961, substituted “1964” for “1961”. Pub. L. 88-529, 78 Stat. 736, Aug. 31, 1964, substituted “1967” for “1964”. Pub. L. 90-140, 81 Stat. 464, Nov. 16, 1967, substituted “1970” for “1967”. Pub. L. 91-524, 84 Stat. 1361, Nov. 30, 1970, substituted “1973” for “1970”. Pub. L. 93-86, 87 Stat. 223, Aug. 10, 1973, substituted “1977” for “1973”. Pub. L. 95-113, 91 Stat. 920, Dec. 22, 1981, substituted “1981” for “1977”. Pub. L. 97-98, 95 Stat. 1220, Dec. 22, 1981, substituted “1985” for “1981”. Pub. L. 99-198, 99 Stat. 1377, Dec. 23, 1985, substituted "1990" for “1985”. Pub. L. 101-624, 104 Stat. 3380, Nov. 28, 1990, substituted “1995” for “1990”.

[15] The words “every six months” were substituted for “monthly” by the Act of June 25, 1962, 76 Stat. 109.

[16] *See* footnote 14.

products are stored, such dairy products acquired under price-support programs as the Secretary of the Army or his duly authorized representative certifies can be utilized in order to provide additional butter and cheese and other dairy products as a part of the ration (1) of the Army, Navy, Air Force, or Coast Guard, (2) in hospitals under the jurisdiction of the Department of Defense, and (3) of cadets and mid-shipment at, and other personnel assigned to, the United States Merchant Marine Academy. The Secretary of the Army shall report every six months to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House and the Secretary of Agriculture the amount of dairy products used under this subsection.

(c) Dairy products made available under this section shall be made available without charge, except that the Secretary of the Army or the Secretary of Veterans Affairs shall pay the Commodity Credit Corporation the costs of packaging incurred in making such products so available.

(d) The obligation of the Commodity Credit Corporation to make dairy products available pursuant to the above shall be limited to dairy products acquired by the Corporation through price-support operations and not disposed of under provisions (1) and (2) of section 416 of this Act, as amended. (7 U.S.C. 1446a.)

ACT OF SEPTEMBER 13, 1960, AS AMENDED [17]

Surplus Foods for Home Economics Courses

To authorize the Commodity Credit Corporation to donate dairy products and other agricultural commodities for use in home economics courses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That schools receiving surplus foods pursuant to clause (3) of section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) are authorized to use such foods in training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. (7 U.S.C. 1431 note.)

[17] Pub. L. 86-756, 74 Stat. 899, Sept. 13, 1960, as amended by Pub. L. 87-179, 75 Stat. 411, Aug. 30, 1961.

ACT OF AUGUST 19, 1958, AS AMENDED [18]

Donations of Processed Grain Food Products

Authorizing Commodity Credit Corporation to purchase flour and cornmeal and donating same for certain domestic and foreign purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at any time Commodity Credit Corporation has any grain available for donation pursuant to clause (3) or (4) of section 416 of the Agricultural Act of 1949, as amended, section 210 of the Agricultural Act of 1956, or title II of the Agricultural Trade Development and Assistance Act, as amended, the Corporation, in lieu of processing all or any part of such grain into human food products, may purchase such processed food products in quantities not to exceed the equivalent of the respective grain available for donation on the date of such purchase and donate such processed food products pursuant to clause (3) or (4) of such section 416, and to such section 210, and make such processed food products available to the President pursuant to such title II, and may sell, without regard to the provisions of section 407 of the Agricultural Act of 1949, as amended, a quantity of the grain equivalent to the processed food products so purchased: *Provided*, That no food product purchased pursuant to the authority contained herein shall constitute less than 50 per centum by weight of the grain from which processed (except that this limitation does not apply in the case of the protein byproduct resulting from the production of fuel alcohol from agricultural commodities), or contain any additive other than for normal vitamin enrichment, preservative, and bleaching purposes. (7 U.S.C. 1431 note.)

AGRICULTURAL ACT OF 1956

Donations to Penal and Correctional Institutions

SEC. 210.[19] Notwithstanding any other limitations as to the disposal of surplus commodities acquired through price support operations, the Commodity Credit Corporation is authorized on such terms and under such regulations as the Secretary of Agriculture may deem in the public interest, and upon application, to donate food commodities acquired through price support operations to Federal penal and correctional

[18] Pub. L. 85-683, 72 Stat. 635, Aug. 19, 1958, as amended by Pub. L. 88-550, 78 Stat. 755, Aug. 31, 1964; and Pub. L. 97-98, 95 Stat. 1280, Dec. 22, 1981.

[19] Act of May 28, 1956, 70 Stat. 202.

institutions, and to State correctional institutions for minors, other than those in which food service is provided for inmates on a fee, contract, or concession basis. (7 U.S.C. 1859.)

AGRICULTURAL ACT OF 1958

Cotton for Colleges

SEC. 505.[20] Commodity Credit Corporation is authorized, on such terms as the Secretary of Agriculture may approve, to donate cotton acquired through its price support operations to educational institutions for use in the training of students in the processing and manufacture of cotton into textiles. (7 U.S.C. 1431a.)

ACT OF SEPTEMBER 21, 1959

Enrichment of and Sanitary Containers for Cornmeal, Grits, Rice, and White Flour Distribution

SEC. 201.[21] (a) In order to insure the nutritional value of cornmeal, grits, rice, and white flour when such foods are made available for distribution under section 416(a) of the Agricultural Act of 1949 or for distribution to schools under the National School Lunch Act or any other Act, such foods shall be enriched so as to meet the standards for enriched cornmeal, enriched corn grits, enriched rice, or enriched flour, as the case may be, prescribed in regulations promulgated under the Federal Food, Drug, and Cosmetic Act; and in order to protect the nutritional value and sanitary quality of such enriched foods during transportation and storage such foods shall be packaged in sanitary containers. For convenience and ease in handling, the weight of any sanitary container when filled shall not exceed fifty pounds unless a larger container is requested by the recipient agency.[22] Nothing in this section shall prohibit the distribution of fortified parboiled rice which is substantially equal in nutritional value to that of enriched rice.[23]

(b) The term "sanitary container" means any container of such material and construction as (1) will not permit the infiltration of foreign matter into the contents of such container under ordinary conditions of shipping and handling, and (2) will not, for a period of at least one year,

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[20] Pub.L. 85-835, 72 Stat. 996, Aug. 28, 1958.

[21] Pub. L. 86-341, 73 Stat. 610, Sept. 21, 1959.

[22] Clause beginning with "unless" added by Pub. L. 87-803, 76 Stat. 910, Oct. 11, 1962.

[23] This sentence and all other references to rice in sec. 201(a) were added by the Act of Oct. 11, 1962, 76 Stat. 910.

disintegrate so as to contaminate the contents of the container, necessitating the washing of the contents prior to use. (7 U.S.C. 1431c.)

ACT OF SEPTEMBER 6, 1958

Donations to Areas Under U.S. Jurisdiction

SEC. 9.[24] Notwithstanding any other provision of law those areas under the jurisdiction or administration of the United States are authorized to receive from the Department of Agriculture for distribution on the same basis as domestic distribution in any State, Territory, or possession of the United States, without exchange of funds, such surplus commodities as may be available pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), and section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). (7 U.S.C. 1431b).

[24] Pub. L. 85-931, 72 Stat. 1792, Sept. 6, 1958; amended by Pub. L. 87-703, 76 Stat. 611, Sept. 27, 1962; and Pub. L. 89-808, 80 Stat. 1538, Nov. 11, 1966, which was effective Jan. 1, 1967.

PART IV: MISCELLANEOUS

CIVIL RIGHTS ACT OF 1964

(42 U.S.C. 2000d-2000d-4)

* * * * * * *

TITLE VI [1]) NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. 2000d.)

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved

[1] Pub. L. 88-352, approved July 2, 1964, 78 Stat. 252-253.

a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report. (42 U.S.C. 2000d-1.)

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section. (42 U.S.C. 2000d-2.)

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment. (42 U.S.C. 2000d-3.)

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. (42 U.S.C. 2000d-4.)

ORGANIZED CRIME CONTROL ACT OF 1970 [1]

(18 U.S.C. 6001-6005)

TITLE II) GENERAL IMMUNITY

SEC. 201. (a) Title 18, United States Code, is amended by adding immediately after part IV the following new part:

PART V - IMMUNITY OF WITNESSES

CHAPTER 601) IMMUNITY OF WITNESSES

SEC.
6001. Definitions.
6002. Immunity generally.
6003. Court and grand jury proceedings.
6004. Certain administrative proceedings.
6005. Congressional proceedings.

6001. Definitions [2]

As used in this chapter)

(1) "agency of the United State" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Nuclear Regulatory Commission, the Board of Governors of the Federal Reserve System, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Surface Transportation Board, the National Labor Relations Board, the National Transportation

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[1] Pub. L. 91-452, 84 Stat. 926-928. The Organized Crime Control Act repealed several statutory authorities relating to immunity of witnesses which were formerly included in this Compilation) subsection (f) of section 17 of U.S. Grain Standards Act; subsection (f) of section 13 of the Perishable Agricultural Commodities Act; subsection (b) of section 16 of Cotton Research and Promotion Act; the seventh paragraph of section 9 of the Federal Trade Commission Act; sections 4874 and 7493 of the Internal Revenue Code of 1954; and subsection (i) of section 409 of Communications Act of 1934. Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994, added chapter headings.

[2] As amended by Pub. L. 95-405, 92 Stat. 877, Sept. 30, 1978; Pub. L. 95-598, 92 Stat. 2678, Nov. 6, 1978; Pub. L. 96-417, 94 Stat. 1744, Oct. 10, 1980; Pub. L. 97-164, 96 Stat. 50, Apr. 2, 1982; Pub. L. 102-550, 106 Stat. 4069, Oct. 28, 1992; Pub. L. 103-272, 108 Stat. 1361, July 5, 1994; Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994; Pub. L. 103-337, Sec. 924(d)(1)(B), 108 Stat. 2832, Oct. 5, 1994; and Pub. L. 104-88, 109 Stat. 943, Dec. 29, 1995.

Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) "other information" includes any book, paper, document, record, recording, or other material;

(3) "proceeding before an agency of the United States" means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

(4) "court of the United States" means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, a United States bankruptcy court established under chapter 6, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court,[3] the Tax Court of the United States, the Court of International Trade, and the Court of Appeals for the Armed Forces. (18 U.S.C. 6001.)

6002. Immunity generally [4]

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to **)**

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two

Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. (18 U.S.C. 6002.)

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[3] Sec. 902(b) of Pub. L. 102-572, 106 Stat. 4516, Oct. 29, 1992, provided that references to United States Claims Court deemed to refer to United States Court of Federal Claims.

[4] As amended by Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994.

6003. Court and grand jury proceedings [5]

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General or any designated Assistant Attorney General or Deputy Assistant Attorney General, request an order under subsection (a) of this section when in his judgment **)**

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. (18 U.S.C. 6003.)

6004. Certain administrative proceedings [6]

(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment **)**

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. (18 U.S.C. 6004.)

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[5] As amended by Pub. L. 100-690, 102 Stat. 4396, Nov. 18, 1988; and Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994.

[6] As amended by Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994.

6005. Congressional proceedings [7]

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that **)**

(1) in the case of a proceeding before or ancillary to either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

(2) in the case of a proceeding before or ancillary to a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order;

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following:

Immunity of Witnesses 6001

(18 U.S.C. 6005.)

[7] As amended by Pub. L. 103-322, 108 Stat. 2146, Sept. 13, 1994; Sec. 5 of Pub. L. 104-292, 110 Stat. 3460, Oct. 11, 1996; and Sec. 605(o) of Pub. L. 104-294, 110 Stat. 3510, Oct. 11, 1996.

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