

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.

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

**§ 7483. Issuance of orders**

**(a) In general**

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

**(b) Procedure**

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

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

**(2) Notice and comment concerning proposed order**

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

**(3) Issuance of order**

After notice and opportunity for public comment under paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order conforms to this subchapter.

The order shall be issued and become effective not later than 150 days after the date of publication of the proposed order.

**(c) Amendments**

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

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

**§ 7484. Required terms in orders**

**(a) In general**

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

**(b) Establishment and membership of Popcorn Board**

**(1) In general**

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

**(2) Nominations**

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

**(3) Geographical diversity**

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

**(4) Terms**

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

**(5) Compensation and expenses**

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

**(c) Powers and duties of Board**

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

(1) to administer the order in accordance with the terms and provisions of the order;

(2) to issue regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Board to serve on an executive committee;

(4) to propose, receive, evaluate, and approve budgets, plans, and projects of promotion, research, consumer information, and industry information, and to contract with appropriate persons to implement the plans or projects;

(5) to accept and receive voluntary contributions, gifts, and market promotion or similar funds;

(6) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under subsection (f) of this section, only in—

(A) obligations of the United States or an agency of the United States;

(B) general obligations of a State or a political subdivision of a State;

(C) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States;

(7) to receive, investigate, and report to the Secretary complaints of violations of the order; and

(8) to recommend to the Secretary amendments to the order.

**(d) Plans and budgets**

**(1) In general**

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

**(2) Budgets**

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

**(e) Contracts and agreements**

**(1) In general**

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

**(2) Requirements**

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

(A) the contracting party shall develop and submit to the Board a plan or project, together with a budget that shows the estimated costs to be incurred for the plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of each transaction of the party, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

**(3) Processor organizations**

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

**(f) Assessments**

**(1) Processors**

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

**(2) Direct marketers**

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

**(3) Rate**

**(A) In general**

The rate of assessment prescribed in the order shall be a rate established by the Board but not more than \$.08 per hundred-weight of popcorn.

**(B) Adjustment of rate**

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

**(4) Use of assessments**

**(A) In general**

Subject to subparagraphs (B) and (C) and subsection (c)(5) of this section, 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 in-

fluence government action or policy, other than the use of funds by the Board for the development and recommendation to the Secretary of amendments to the order.

**(h) Books and records of Board**

The order shall require the Board to—

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

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

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

**(i) Books and records of processors**

**(1) Maintenance and reporting of information**

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

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

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

**(2) Use of information**

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

**(3) Confidentiality**

**(A) In general**

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

**(B) Disclosure by Secretary**

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

(i) the Secretary considers the information relevant;

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

(iii) the information relates to the order.

**(C) Disclosure to other agency of Federal Government**

**(i) In general**

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

**(ii) Penalty**

A person who knowingly violates this subparagraph shall, on conviction, be sub-

ject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if an officer, employee, or agent of the Board or the Department, shall be removed from office or terminated from employment, as applicable.

**(D) General statements**

Nothing in this paragraph prohibits—

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

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

**(j) Other terms and conditions**

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

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

**§ 7485. Referenda**

**(a) Initial referendum**

**(1) In general**

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

**(2) Approval of order**

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

**(b) Additional referenda**

**(1) In general**

Not earlier than 3 years after the effective date of an order approved under subsection (a) of this section, 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.