



**Conference Report to Accompany
Food, Agriculture, Conservation, and Trade
Act of 1990**

H.R. Rep. No. 101-916 (1990)

Part 7 of 14

Title XIX- Agricultural Promotion (pp. 501-595)

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(1) the Secretary of Agriculture shall issue such regulations as are necessary to carry out subtitles A and C of this Act and the amendments made by such subtitles; and

(2) the Farm Credit Administration shall issue such regulations as are necessary to carry out subtitle B of this Act and the amendments made by such subtitle.

TITLE XIX—AGRICULTURAL PROMOTION

SEC. 1901. SHORT TITLE.

This Act may be cited as the "Agricultural Promotion Programs Act of 1990".

Subtitle A—Pecans

SEC. 1905. SHORT TITLE.

This subtitle may be cited as the "Pecan Promotion and Research Act of 1990".

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

(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 market-place;

(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.

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 inshell 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.

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-shell-

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.

SEC. 1909. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle.

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 paragraph 3 (A), (B), and (C), 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 paragraph (3) (D) and (E) 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-shellors, first handlers, shellors, 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 budg-

ets 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.

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.

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-shellors, 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-shellors, 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.

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.

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.

SEC. 1915. INVESTIGATIONS 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 section 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.

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-shellors, 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-shellors, 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-shellors, and importers, to determine if growers, grower-shellors, 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-shellors, 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.

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-shellors, 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.

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.

Subtitle B—Mushrooms

SEC. 1921. SHORT TITLE.

This subtitle may be cited as the "Mushroom Promotion, Research, and Consumer Information Act of 1990".

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, 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.

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.

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.

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 BUDGET.*—

(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 government 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).

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.

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.

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.

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 section 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 pro-

duction 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.

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.

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.

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.

SEC. 1933. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle.

Subtitle C—Potatoes

SEC. 1935. SHORT TITLE.

This subtitle may be cited as the "Potato Research and Promotion Act Amendments of 1990".

SEC. 1936. FINDINGS AND DECLARATION OF POLICY.

Section 302 of the Potato Research and Promotion Act (7 U.S.C. 2611) is amended—

(1) in the first paragraph—

(A) by inserting "and foreign countries" after "United States" in the first sentence;

(B) by inserting "and imported into the United States from foreign countries" after "United States" in the second sentence; and

(C) by striking the last sentence;

(2) in the second paragraph—

(A) in the first sentence—

(i) by striking ", in a large part,"; and

(ii) by inserting "or foreign" after "channels of interstate"; and

(B) by striking the second sentence; and

(3) in the fourth paragraph—

(A) by inserting "and imported into the United States from foreign countries" after "commercial use"; and

(B) by striking at the end thereof "produced in the United States" and inserting "and potato products".

SEC. 1937. DEFINITIONS.

Section 303 of the Potato Research and Promotion Act (7 U.S.C. 2612) is amended—

(1) in subsection (c)—

(A) by striking "forty-eight contiguous" and inserting "50"; and

(B) by inserting before the period at the end thereof "and grown in foreign countries and imported into the United States"; and

(2) by adding at the end the following new subsection:

"(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."

SEC. 1938. AUTHORITY TO ISSUE A PLAN.

Section 304 of the Potato Research and Promotion Act (7 U.S.C. 2613) is amended—

(1) in the first sentence—

(A) by striking "persons engaged in the handling of potatoes (hereinafter referred to as handlers)" and inserting "handlers and importers"; and

(B) by inserting "or imported" after "potatoes handled"; and

(2) in the third sentence—

(A) by striking "forty-eight contiguous" and inserting "50"; and

(B) by inserting before the period "and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States".

SEC. 1939. NOTICE AND HEARINGS.

Section 305 of the Potato Research and Promotion Act (7 U.S.C. 2614) is amended—

(1) in the first sentence by striking "potato producers" and inserting "interested persons"; and

(2) in the second sentence by striking "by potato producers or by any other interested person or persons, including the Secre-

tary" and inserting "by any interested person, including the Secretary".

SEC. 1940. REQUIRED TERMS IN PLANS.

Section 308 of the Potato Research and Promotion Act (7 U.S.C. 2617) is amended—

(1) in subsection (b)—

(A) by inserting after the first sentence the following: "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.";

(B) after "If producers" by inserting "or importers"; and

(C) in the last sentence by inserting ", or to importer approval when importers are subject to a plan," after "approval";

(2) in subsection (e)—

(A) by striking "one cent" and inserting "2 cents"; and

(B) by inserting ", and importers when importers are subject to a plan," after "producers";

(3) in subsection (f)(1) by inserting in the proviso ", or importer approval when importers are subject to a plan," after "producer approval"; and

(4) by striking subsection (g) and redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively.

SEC. 1941. PERMISSIVE TERMS IN PLANS.

Section 309 of the Potato Research and Promotion Act (7 U.S.C. 2618) is amended by redesignating subsection (g) as subsection (i) and inserting the following new subsections:

"(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 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."

SEC. 1942. ASSESSMENTS.

Section 310 of the Potato Research and Promotion Act (7 U.S.C. 2619) is amended—

(1) in subsection (a) by inserting "(1)" after "(a)" and adding at the end thereof the following new paragraph:

"(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 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.”;

(2) in subsection (b) by inserting “and importers” after “Handlers”; and

(3) in subsection (c)(1) by inserting “or importers” after “handlers”.

SEC. 1943. INVESTIGATION AND POWER TO SUBPOENA.

Section 313 of the Potato Research and Promotion Act (7 U.S.C. 2622) is amended in subsection (a)—

(1) by striking in the first sentence “a handler or any other” and inserting “any”; and

(2) in the last sentence by striking “handler or other”.

SEC. 1944. REQUIREMENT OF REFERENDUM.

Section 314 of the Potato Research and Promotion Act (7 U.S.C. 2623) is amended—

(1) in subsection (a) by adding at the end the following sentence: “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 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.”;

(2) in subsection (b) by striking “two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the potatoes 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” and inserting “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”;

(3) in subsection (c) by inserting “and importers” after “producers”; and

(4) in subsection (d) by inserting “, or any importer or the volume of potatoes imported by such importer,” after “potatoes”.

SEC. 1945. SUSPENSION OR TERMINATION OF PLANS.

Section 315 of the Potato Research and Promotion Act (7 U.S.C. 2624) is amended—

(1) in subsection (b)—

(A) by inserting “, or of the total number of producers and importers when importers are subject to a plan,” after “potato producers” the first time it appears;

(B) by inserting “and importers” after “potato producers” the second time it appears;

(C) by inserting “and import” after “produce”; and

(D) by striking “by the potato producers voting in the referendum” and inserting “and imported by those voting in the referendum”; and

(2) by adding a new subsection (c) to read as follows:

“(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.”.

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 paragraphs (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 period 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

(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.

Subtitle D—Limes

SEC. 1951. SHORT TITLE.

This subtitle may be cited as the “Lime Research, Promotion, and Consumer Information Act of 1990”.

SEC. 1952. FINDINGS, PURPOSES, AND LIMITATIONS.

(a) **FINDINGS.**—Congress finds that—

(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.

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) **LIME.**—The term "lime" means the fruit of a citrus aurantifolia 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.

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 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.

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 sec-

tion and, except as provided in section 1956, no other terms or conditions.

(b) **LIME BOARD.**—Such order shall provide for the establishment of a Lime Board as follows:

(1) **MEMBERSHIP.**—The Board shall be composed of—

(A) 7 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.

(B) **PRODUCERS.**—The 7 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.

(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.**—Members of the Board shall be appointed for a term of 3 years. Of the members first appointed—

(A) 3 members shall be appointed for a term of 1 year;

(B) 4 members shall be appointed for a term of 2 years; and

(C) 4 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) **DE MINIMIS EXCEPTION.**—The following persons are exempt from an assessment under this subsection—

(A) a producer who produces less than 35,000 pounds of limes per year;

(B) a producer-handler who produces and handles less than 35,000 pounds of limes per year; and

(C) an importer who imports less than 35,000 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) **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 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.

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.

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.

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) **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—

(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.

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) **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 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 section 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.

SEC. 1960. INITIAL REFERENDUM.

(a) **REQUIREMENT.**—Not later than 2 years after the date on which the Secretary first issues an order under section 1954(a), 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, 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.

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.

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.

SEC. 1963. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle.

Subtitle E—Soybeans

SEC. 1965. SHORT TITLE.

This subtitle may be cited as the "Soybean Promotion, Research, and Consumer Information Act".

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 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.

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.

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 pub-

lish 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.

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 subpara-

graph (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 Sec-

retary 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 (1)(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) **ROLLCALL 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 (1)(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 (1)(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 requests 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 (1).

(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 (1) (net of any refunds made under paragraph (2) of subsection (1)) 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, implementa-

tion, 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).

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 Act 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.

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 subsection (a), 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.

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.

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.

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(k)(4).

(b) **AMENDMENTS TO ORDERS.**—The provisions of this subtitle applicable to orders shall be applicable to amendments to orders.

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.

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.

Subtitle F—Honey and Wool

CHAPTER 1—HONEY

SEC. 1981. SHORT TITLE.

This chapter may be cited as the “Honey Research, Promotion, and Consumer Information Act Amendments of 1990”.

SEC. 1982. DEFINITIONS.

Section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) is amended—

(1) in paragraph (8)—

(A) by striking “or who acts” and inserting “or acts”; and

(B) by inserting before the period at the end the following: “and who is listed in the import records as the importer of record for such honey or honey products”; and

(2) by adding at the end the following new paragraph:

“(18) The term ‘exporter’ means any person who exports honey or honey products from the United States.”.

SEC. 1983. REQUIRED TERMS IN ORDERS.

Section 7 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606) is amended—

(1) in subsection (c)—

(A) by striking out subparagraph (C) of paragraph (2) and inserting the following new paragraph:

“(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;”.

(B) in the matter following paragraph (2)(E), by striking “nominate an alternate or alternates” and inserting “submit nominations for an alternate”;

(C) at the end of paragraph (2), by adding the following sentence: “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.”; and

(D) in paragraph (4), inserting before the period at the end the following: “, 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”; and

(2) by adding at the end the following new subsection:

“(k) 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.”.

SEC. 1984. ASSESSMENTS.

(a) **ASSESSMENT RATE AND EXEMPTIONS.**—Section 7 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606) is further amended—

(1) in subsection (e)(1) by striking the second and third sentences and inserting the following: “The assessment rate shall

be \$0.01 per pound, with payment to be made in the manner described in section 9." and

(2) by striking paragraph (2) of subsection (e) and inserting the following new paragraph:

"(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 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."

(b) COLLECTION OF ASSESSMENTS; REFUNDS.—Section 9 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4608) is amended—

(1) in subsection (a), by striking "and (e)" and inserting "(e), and (i)";

(2) in subsection (d) to read as follows:

"(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."

(3) in subsection (f), by inserting after "assessments" the following: ", and persons receiving an exemption from assessments under section 7(e)(2).";

(4) in subsection (h)—

(A) by striking "Any" and inserting "(1)(A) Except as otherwise provided in paragraph (2), any";

(B) by striking "to importers" and inserting "an importer";

(C) by striking "from importers" and inserting "from such importer"; and

(D) by adding at the end the following:

"(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."; and

(5) by inserting after subsection (h) the following new subsection:

"(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."

SEC. 1985. FIRST RECONFIRMATION REFERENDUM.

(a) **IN GENERAL.**—Section 13(b) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4612) is amended—

(1) by striking "Five" and inserting "(1) Except as otherwise provided in paragraph (2), five";

(2) by striking "continuation, termination," and inserting "termination"; and

(3) by adding at the end the following new paragraph:

"(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."

(b) **CONFORMING AMENDMENT.**—Section 13(d) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4612) is amended—

- (1) by striking "such order" and inserting "an order";
- (2) by inserting "in which a referendum is conducted under subsection (b) or (c)" after "marketing year"; and
- (3) by striking "of the order".

SEC. 1986. INVESTIGATIONS AND POWER TO SUBPOENA.

The Honey Research, Promotion, and Consumer Information Act is amended by inserting after section 11 (7 U.S.C. 4610) the following new section:

"SEC. 11A. INVESTIGATIONS 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 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.

"(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 section 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."

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.

CHAPTER 2—WOOL

SEC. 1989. PROMOTION PROGRAM.

Section 708 of the National Wool Act of 1954 (7 U.S.C. 1787) is amended by striking "at least two-thirds" wherever it appears and inserting "a majority" and by striking "two-thirds" wherever it appears and inserting "a majority".

Subtitle G—Cotton

SEC. 1990. SHORT TITLE.

This subtitle may be cited as the "Cotton Research and Promotion Act Amendments of 1990".

SEC. 1991. FINDINGS AND DECLARATION OF POLICY.

Section 2 of the Cotton Research and Promotion Act (7 U.S.C. 2101) is amended by—

(1) in the second sentence inserting "and also outside the United States" before the period;

(2) in the third sentence by striking "in large part";

(3) striking the fourth and the sixth sentences of the first paragraph;

(4) striking "The great inroads on the market and uses for United States" and inserting "The great inroads on the market and uses for"; and

(5) in the third paragraph—

(A) striking "harvested" and inserting "marketed"; and

(B) inserting "and on imports of cotton" after "United States" the first time it appears.

SEC. 1992. REQUIRED TERMS IN ORDER; COTTON IMPORTS.

Section 7 of the Cotton Research and Promotion Act (7 U.S.C. 2106) is amended—

(1) in subsection (a)(2) by—

- (A) striking "handler" and inserting "person"; and
- (B) striking "producer";

(2) in subsection (b), in the first sentence, by—

- (A) inserting "(1)" after "shall be composed of"; and
- (B) striking the colon and all that follows through the end of the sentence and inserting the following: ", 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.";

(3) by amending subsection (e) to read as follows:

"(e)(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 an 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 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 title.

"(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)."

SEC. 1993. REQUIREMENTS FOR REFERENDA.

Section 8 of the Cotton Research and Promotion Act (7 U.S.C. 2100) is amended by—

(1) inserting "(a)" before "The Secretary"; and

(2) adding at the end the following new subsections:

"(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 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."

SEC. 1994. SUSPENSION AND TERMINATION OF ORDERS.

Section 9(b) of the Cotton Research and Promotion Act (7 U.S.C. 2108(b)) is amended to read as follows:

"(b) 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 producers 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.”

SEC. 1995. AMENDMENTS TO THE ORDER

Section 10 of the Cotton Research and Promotion Act (7 U.S.C. 2109) is amended to read as follows:

“PROVISIONS APPLICABLE TO AMENDMENTS

“SEC. 10. (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—

“(1) with respect to an amendment referred to in section 8(b) or (8)(c), 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.”

SEC. 1996. PRODUCER REFUNDS.

Section 11 of the Cotton Research and Promotion Act (7 U.S.C. 2110) is amended by—

(1) striking “Notwithstanding any other provision” and inserting “(a) Notwithstanding any other section and except as provided in subsection (b),”; and

(2) adding at the end the following new subsection:

“(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.”

SEC. 1997. DEFINITIONS.

Section 17 of the Cotton Research and Promotion Act (7 U.S.C. 2116) is amended—

(1) in subsection (c)—

(A) by inserting “(1)” after “means”; and

(B) by striking “its seed.” and inserting the following: “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 par-

icipation of imports of cotton in the assessment provisions of this Act.”;

(2) in subsection (d), by inserting after “cottonseed” the following:

“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),”; and

(3) by adding at the end a new subsection to read as follows:

“(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.”.

SEC. 1998. REPORTS.

(a) **IN GENERAL.**—Not later than 1 year after the date on which imports are subject to assessments under this title—

(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 title, 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;

(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 title.

(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.

Subtitle H—Processor-Funded Milk Promotion Program

SEC. 1999A. SHORT TITLE.

This subtitle may be cited as the "Fluid Milk Promotion Act of 1990".

SEC. 1999B. FINDINGS AND DECLARATION OF POLICY.

(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 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;

(7) it is appropriate to finance the cooperative program described in paragraph (6) with self-help assessments paid by the fluid milk processors; and

(8) 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 the 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 and coordinated program of advertising designed to strengthen the position of the dairy industry in the marketplace and to maintain and expand markets and uses for fluid milk products produced in the United States. Nothing in this subtitle shall be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.*

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

(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) **FLUID MILK PROCESSOR.**—The term “fluid milk processor” means any person who processes and markets commercially fluid milk products in consumer-type packages.

(5) **DEPARTMENT.**—The term “Department” means the Department of Agriculture.

(6) **RESEARCH.**—The term “research”—

(A) means market research limited to the support of advertising and promotion efforts, including educational activities; and

(B) does not include research directed to product characteristics such as nutrients; product development including new products; or improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of advertising activities in expanding sales of fluid milk products.

(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.

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.

SEC. 1999E. NOTICE AND COMMENT.

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.

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.

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 his subtitle.

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.

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.

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) **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)) 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.

SEC. 1999K. 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 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.

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) *REFERRAL TO ATTORNEY GENERAL.*—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, 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.

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.

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) 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 all processors;

the order shall become effective as provided in section 1999F(b).

(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.

SEC. 1999G. SUSPENSION OR TERMINATION OF ORDERS.

(a) **TERMINATION OF ORDER.**—Any order effective under this subtitle shall be terminated December 31, 1996. 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 percent or more of the volume of fluid milk products marketed by all processors.

(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 all processors; 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.

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.

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 Represent-

atives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the valuations made under this section no later than January 1, 1995.

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.

Subtitle I—Miscellaneous Provisions

SEC. 1999S. PRODUCER RESEARCH AND PROMOTION BOARD ACCOUNTABILITY.

(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 federally-authorized 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 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.

SEC. 1999T. CONSISTENCY WITH INTERNATIONAL OBLIGATIONS OF THE UNITED STATES.

(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.

TITLE XX—GRAIN QUALITY

SEC. 2001. SHORT TITLE.

This title may be cited as the "Grain Quality Incentives Act of 1990".

SEC. 2002. COMMITTEE ON GRAIN QUALITY AND GRAIN QUALITY COORDINATOR.

(a) ESTABLISHMENT OF COMMITTEE AND COORDINATOR.—

(1) **COMMITTEE.**—The Secretary of Agriculture (hereafter referred to in this title as the "Secretary") shall establish, within the Department of Agriculture, a Committee on Grain Quality (hereafter referred to in this section as the "Committee").

(2) **COORDINATOR.**—The Committee established under paragraph (1) shall be chaired by an individual, appointed by the Secretary, who shall serve as the Grain Quality Coordinator (hereafter referred to in this title as the "Coordinator") and, in consultation with the Committee, carry out the duties described in subsection (b).

(b) **DUTIES.**—The Coordinator shall be responsible for—