

Outline and Text of Proposed Order for Research and Promotion Programs

- General
- Board
- Programs, Plans, and Projects
- Expenses and Assessments
- Reports, Books, and Records
- Referendum Procedures
- Miscellaneous

General

Definitions: Examples of definitions that will be needed to carry out the provisions of the order are: fiscal period, board, handler, producer, processor, importer, market or marketing, research, promotion, industry information, consumer information, the commodity covered, plans, projects, and programs.

Board

Name and composition of the board: The industry has flexibility in determining the number of members and what segment(s) of the industry they would represent. **If imports are assessed, importers must have equitable representation on the board.** Indicate if there would be alternates for the members or a public member and whether members would serve at-large or represent regions, districts, or states.

Term of office: The term of office is usually 3 years, except for the initial terms of 2, 3 and 4 years to provide for staggered terms of office. Thereafter, one third of the board will be appointed each year. Each member and alternate may serve only two consecutive terms in office. The term of office may be on a calendar year or fiscal year basis or begin at anytime during the year as appropriate for the industry.

Nomination Procedures: Nominations may be made at meetings in the production area, regionally, or state by state, or by mail ballot. Two nominees must be submitted to the Secretary of Agriculture for each position on the board. Whereas nominees to serve as industry members are usually elected by their peers, nominees for public member positions are usually nominated by the board after it has been appointed.

Procedures for reapportionment of board membership: **At least once every five years, the board must review the geographical distribution of U.S. production on the commodity and, if the program covers imports, the quantity or value of the imports of the commodity.** If warranted, membership on the board must be changed to reflect changes in the geographical distribution of domestic production and the quantity or value of imports. This is accomplished by notice and comment rulemaking.

Powers and duties: These are standard and include administering the order in accordance with its terms and conditions; collecting assessments; developing and recommending to the Secretary of Agriculture bylaws and rules; meeting, organizing, and selecting officers and committee; providing the Secretary with advance notice of meetings; employing staff; conducting generic promotion, research, and consumer and industry information activities; preparing and submitting to the Secretary rate of assessment and an annual budget and marketing plan; entering into contracts as necessary; keeping records; receiving, investigating, and reporting to the Secretary violations of the order; and recommending to the Secretary amendments to the order. In addition, each board is required to finance an independent evaluation of its program's effectiveness at least once every 5 years.

Meeting Procedures: This includes matters such as quorum requirements and voting procedures.

Programs, Plans, and Projects

Types of Research and Promotion Activities which may be conducted: It is in this section that the industry describes the types of activities that may be conducted under the program. The authority may be broad or include specific requirements, such as requiring expenditures on domestic and export promotions to be proportionate to the amount of assessments collected on domestic and export shipments or restrictions on production research. The statute prohibits (1) any action that could be a conflict of interest; (2) using funds collected by the board for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order; and (3) any advertising that may be false, misleading or disparaging to another agriculture commodity.

Requirements for Contractors: This section requires each contractor to comply with all provisions of the statute and the order. It may also contain individual program-specific requirements.

Expenses and Assessments

Assessment Rate and Procedures: This section sets the assessment rate or a maximum assessment rate as well as provisions for raising and lowering the rate. If imports are assessed, the assessment must be comparable to the domestic assessment. The rate may be based on a unit of the commodity or value. If the order specifies a delayed referendum, the assessment rate may not be raised between the time the program is implemented and the initial referendum. There may be no more than one assessment levied on a first handler or importer with respect to any agricultural commodity. This section also prescribes how and when covered entities are to remit their assessments.

Different Payment and Reporting Schedules (optional): The order may authorize the board to grant different payment and reporting schedules to recognize differences in marketing practices and procedures used in different production and importing areas.

Exemptions (options): If the order authorizes exemptions from assessments, it should also provide safeguards for ensuring that exemption provisions are not abused.

Credit for State Assessments (optional): The order may authorize credits of assessments for those individuals who contribute to other similar generic research, promotion, and information programs at the state, regional, or local level.

Credit for Branded Activities by Cooperatives (optional): The Secretary may permit a farmer cooperative that engages in branded activities to receive an annual credit. The cost of the branded activities could be deducted from the amount of any assessments that would otherwise be required to be paid to the national promotion board by the producer members of the cooperative.

Penalties for not Paying Assessments: The order should provide that individuals not paying assessments on time are subject to late payment penalties and interest.

Provisions for Safeguarding Industry Funds and Establishing Reserves: This section of the order prescribes investment policies and parameters for reserve funds.

Escrow Account and Refund Procedures if a Delayed Referendum is Proposed: If the order contemplates a delayed referendum, the board must establish an escrow account to hold 10 percent of assessments collected between the date the order becomes effective and the date of the referendum. Assessment payers must be allowed to apply for a refund of the assessments they paid under the program. Refunds will be made from the escrow account if the industry votes to discontinue the program. If the escrow account does not contain adequate funds to pay refunds of 100 percent, the board shall refund assessments to the requestors on a prorated basis.

Reimbursement of Government Costs: This includes costs incurred by USDA from the date the order is requested, including start-up on referendum costs, plus U.S. Customs Service costs if imports are assessed.

Limitation on Spending: Each year beginning three years after the board is established, the board's annual administrative expenses (except for reimbursements to the government) may not exceed 15 percent of its income for the year.

Prohibited Activities: No funds may be used for any promotion, research, and information activities that are false, misleading, or disparaging to another agricultural commodity. A board member, employee, or agent may not engage in any action that would be a conflict of interest; use funds collected for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order.

Reports, Books, and Records

Description of Reporting Forms and When They Should be Filed

Record Keeping Requirements: Each covered entity must keep records as required by this section.

Confidentiality Requirements: All information collected under the auspices of the order must be kept confidential by all officers, employees, and agents of USDA and the board, except for the issuance of general statements.

Referendum Procedures

Up-front or Delayed Referendum: The order may provide for a referendum to be held prior to implementation or it may be delayed. If the industry requests a delayed referendum, the referendum must be held within three years after assessment collections begin under the program.

Who Will Vote: Those who pay assessments would vote in referenda. If imports are assessed, importers must be allowed to vote in referenda.

How Referendum will be Conducted: The industry has the options of advance registration and/or voting by mail or in-person.

Requirements for Passage: An order may provide for its approval (1) by a majority of those voting; (2) by persons voting who represent a majority of the volume of the commodity voted in the referendum; or (3) both.

Periodic Continuance Referenda (optional): The order may provide that USDA conduct a referendum periodically (e.g., every 5 or 6 years) to determine if the industry wants the program to continue.

Miscellaneous

Right of the Secretary: This is a standard section, and it states that all activities of the board shall be submitted to the Secretary for approval.

Suspension and Termination Procedures: This section describes the steps to terminate a program, including the appointment by the Secretary of trustees from among the board members and the disposition of residual funds not required to pay the necessary expenses of liquidation.

Amendment Procedures: This is a general section stating that amendments to the order may be recommended from time to time by the board or any interested person affected by the program, including the Secretary.

Personal Liability of Board Members and Staff: This section explains that no member or employee of the board shall be held personally responsible, either individually or jointly, to any person for errors in judgment, mistakes, or other acts or failures to act, except for acts of dishonesty or willful misconduct.

Statement on Patents, Copyrights, Inventions, Publications, and Product Formulations:
Any patents, copyrights, publications, or product formulation developed through the use of funds received by the board under the order shall be the property of the United States Government. Royalties and other income from the rental, sale, leasing, franchising, or other uses of patents, copyrights, inventions, publications, or product formulations belong to the board.