

## TITLE 7 Chapter 77 Sections 4601 – 4613 –

### Honey Research, Promotion, and Consumer Information

#### § 4601. Findings and purposes

##### **(a) Findings**

Congress makes the following findings:

**(1)** Honey is produced by many individual producers in every State in the United States.

**(2)** Honey and honey products move in large part in the channels of interstate and foreign commerce, and honey which does not move in such channels directly burdens or affects interstate commerce.

**(3)** In recent years, large quantities of low-cost, imported honey have been brought into the United States, replacing domestic honey in the normal trade channels.

**(4)** The maintenance and expansion of existing honey markets and the development of new or improved markets or uses are vital to the welfare of honey producers and those concerned with marketing, using, and processing honey, along with those engaged in general agricultural endeavors requiring bees for pollinating purposes.

**(5)** The honey production industry within the United States is comprised mainly of small- and medium-sized businesses.

**(6)** The development and implementation of coordinated programs of research, promotion, consumer education, and industry information necessary for the maintenance of markets and the development of new markets have been inadequate.

**(7)** Without cooperative action in providing for and financing such programs, honey producers, honey handlers, wholesalers, and retailers are unable to implement programs of research, promotion, consumer education, and industry information necessary to maintain and improve markets for these products.

**(8)** The ability to develop and maintain purity standards for honey and honey products is critical to maintaining the consumer confidence, safety, and trust that are essential components of any undertaking to maintain and develop markets for honey and honey products.

**(9)** Research directed at improving the cost effectiveness and efficiency of beekeeping, as well as developing better means of dealing with pest and disease problems, is essential to keeping honey and honey product prices competitive and facilitating market growth as well as maintaining the financial well-being of the honey industry.

**(10)** Research involving the quality, safety, and image of honey and honey products and how that quality, safety, and image may be affected during the extraction, processing, packaging, marketing, and other stages of the honey and honey product production and distribution process, is highly important to building and maintaining markets for honey and honey products.

##### **(b) Purposes**

The purposes of this chapter are—

**(1)** to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective, continuous, and nationally coordinated program of promotion, research, consumer education, and industry information designed to—

**(A)** strengthen the position of the honey industry in the marketplace;

**(B)** maintain, develop, and expand domestic and foreign markets and uses for honey and honey products;

**(C)** maintain and improve the competitiveness and efficiency of the honey industry; and

**(D)** sponsor research to develop better means of dealing with pest and disease problems;

**(2)** to maintain and expand the markets for all honey and honey products in a manner that

—

**(A)** is not designed to maintain or expand any individual producer's, importer's, or handler's share of the market; and

**(B)** does not compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name honey or honey products; and

**(3)** to authorize and fund programs that result in government speech promoting government objectives.

**(c) Administration**

Nothing in this chapter—

**(1)** prohibits the sale of various grades of honey;

**(2)** provides for control of honey production;

**(3)** limits the right of the individual honey producer to produce honey; or

**(4)** creates a trade barrier to honey or honey products produced in a foreign country.

## § 4602. Definitions

As used in this chapter:

**(1)** The term "Committee" means the National Honey Nominations Committee provided for under section 4606 (b) of this title.

**(2)** The term "consumer education" means any action to provide information on the usage and care of honey or honey products.

**(3) Department.—** The term "Department" means the Department of Agriculture.

**(4)** The term "exporter" means any person who exports honey or honey products from the United States.

**(5) Handle.—**

**(A) In general.—** The term "handle" means to process, package, sell, transport, purchase, or in any other way place or cause to be placed in commerce, honey or a honey product.

**(B) Inclusion.—** The term "handle" includes selling unprocessed honey that will be consumed or used without further processing or packaging.

**(C) Exclusions.—** The term "handle" does not include—

**(i)** the transportation of unprocessed honey by a producer to a handler;

**(ii)** the transportation by a commercial carrier of honey, whether processed or unprocessed, for a handler or producer; or

**(iii)** the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

**(6)** The term "handler" means any person who handles honey.

**(7)** The term "honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

**(8)** The term "Honey Board" means the board provided for under section 4606 (c) of this title.

**(9) Honey production.—** The term "honey production" means all beekeeping operations related to—

**(A)** managing honey bee colonies to produce honey;

**(B)** harvesting honey from the colonies;

**(C)** extracting honey from the honeycombs; and

**(D)** preparing honey for sale for further processing.

**(10)** The term "honey products" means products produced, in whole or part, from honey.

**(11)** The term "importer" means any person who imports honey or honey products into the United States or acts as an agent, broker, or consignee for any person or nation that

produces honey outside of the United States for sale in the United States and who is listed in the import records as the importer of record for such honey or honey products.

**(12) Industry information.**— The term “industry information” means information or a program that will lead to the development of new markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

**(13)** The term “marketing” means the sale or other disposition in commerce of honey or honey products.

**(14) National honey marketing cooperative.**— The term “national honey marketing cooperative” means a cooperative that markets its products in at least 2 of the following 4 regions of the United States, as determined by the Secretary:

**(A)** The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico.

**(B)** The Mideast.

**(C)** The Midwest.

**(D)** The Pacific, including the States of Alaska and Hawaii.

**(15)** The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

**(16)** The term “producer” means any person who produces honey in the United States for sale in commerce.

**(17)** The term “producer-packer” means any person who is both a producer and handler of honey.

**(18)** The term “promotion” means any action, including paid advertising, pursuant to this chapter, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

**(19) Qualified national organization representing handler interests.**— The term “qualified national organization representing handler interests” means an organization that the Secretary certifies as being eligible to recommend nominations for the Committee handler, handler-importer, alternate handler, and alternate handler-importer members of the Honey Board under section 4606 (b) of this title.

**(20) Qualified national organization representing importer interests.**— The term “qualified national organization representing importer interests” means an organization that the Secretary certifies as being eligible to recommend nominations for the Committee importer, handler-importer, alternate importer, and alternate handler-importer members of the Honey Board under section 4606 (b) of this title.

**(21)** The term “research” means any type of research designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

**(22)** The term “Secretary” means the Secretary of Agriculture.

**(23)** The term “State” means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

**(24)** The term “State association” means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

## § 4603. Honey research, promotion, and consumer information order

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and, from time to time, amend orders and regulations applicable to persons engaged in the production, sale, or handling of honey and honey products in the United States and the importation of honey and honey products into the United States.

## § 4604. Notice and hearing

### **(a) Notice and comment**

In issuing an order under this chapter, an amendment to an order, or a regulation to carry out this chapter, the Secretary shall comply with section 553 of title 5.

### **(b) Formal agency action**

Sections 556 and 557 of that title shall not apply with respect to the issuance of an order, an amendment to an order, or a regulation under this chapter.

### **(c) Proposal of an order**

A proposal for an order may be submitted to the Secretary by any organization or interested person affected by this chapter.

## § 4605. Findings and issuance of order

After notice and opportunity for comment has been provided in accordance with section 4604 (a) of this title, the Secretary shall issue an order, an amendment to an order, or a regulation under this chapter, if the Secretary finds, and specifies in the order, amendment, or regulation, that the issuance of the order, amendment, or regulation will assist in carrying out the purposes of this chapter.

## § 4606. Required terms of order

### **(a) Terms and conditions of order**

Any order issued by the Secretary under this chapter shall contain the terms and conditions described in this section and, except as provided in section 4607 of this title, no others.

### **(b) National Honey Nominations Committee; composition; nominations; terms; Chairman; compensation; meetings; voting**

**(1)** Such order shall provide for the establishment and appointment by the Secretary of a National Honey Nominations Committee which shall consist of not more than one member from each State, from nominations submitted by each State association. If a State association does not submit a nomination, the Secretary may provide for nominations from that State to be made in a different manner, except that if a State which is not one of the top twenty honey-producing States in the United States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

**(2)** Members of the Committee shall serve for three-year terms with no member serving more than two consecutive three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary.

**(3)** The Committee shall select its Chairman by a majority vote.

**(4)** The members of the Committee shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee.

**(5)** The Committee shall nominate the members and alternates of the Honey Board and submit such nominations to the Secretary. In making such nominations, the Committee shall meet annually, except that, when determined by the Chairman, the Committee may conduct its business by mail ballot in lieu of an annual meeting. In order to nominate members to the Honey Board, at least 50 percent of the members from the twenty leading honey producing States must vote. A majority of the National Honey Nominations Committee shall constitute a quorum for voting at an annual meeting. In the case of a mail ballot, votes must be received from a majority of the Committee.

**(c) Honey Board; membership; terms; alternates; compensation; powers; duties**

**(1)** The order described in subsection (a) of this section shall provide for the establishment and appointment by the Secretary of a Honey Board in accordance with this subsection.

**(2)** The membership of the Honey Board shall consist of—

**(A)** 7 members who are honey producers appointed from nominations submitted by the National Honey Nominations Committee, one from each of seven regions of the United States which shall be established by the Secretary on the basis of the production of honey in the different areas of the country;

**(B)** 2 members who are handlers appointed from nominations submitted by the Committee from recommendations made by qualified national organizations representing handler interests;

**(C)** if approved in a referendum conducted under this chapter, 2 members who—

**(i)** are handlers of honey;

**(ii)** during any 3 of the preceding 5 years, were also importers of record of at least 40,000 pounds of honey; and

**(iii)** are appointed from nominations submitted by the Committee from recommendations made by—

**(I)** qualified national organizations representing handler interests or qualified national organizations representing importer interests; or

**(II)** if the Secretary determines that there is not a qualified national organization representing handler interests or a qualified national organization representing importer interests, individual handlers or importers that have paid assessments to the Honey Board on imported honey or honey products;

**(D)** 2 members who are importers appointed from nominations submitted by the Committee from recommendations made by—

**(i)** qualified national organizations representing importer interests; or

**(ii)** if the Secretary determines that there is not a qualified national organization representing importer interests, individual importers that have paid assessments to the Honey Board on imported honey or honey products; and

**(E)** 1 member who is an officer, director, or employee of a national honey marketing cooperative appointed from nominations submitted by the Committee from recommendations made by qualified national honey marketing cooperatives.

**(3) Alternates.—** The Committee shall submit nominations for an alternate for each member of the Honey Board described in paragraph (2). An alternate shall be appointed in the same manner as a member and shall serve when the member is absent from a meeting or is disqualified.

**(4) Reconstitution.—**

**(A) Review.—** If approved in a referendum conducted under this chapter and in accordance with rules issued by the Secretary, the Honey Board shall review, at times determined under subparagraph (E)—

(i) the geographic distribution of the quantities of domestically produced honey assessed under the order; and  
(ii) changes in the annual average percentage of assessments owed by importers under the order relative to assessments owed by producers and handlers of domestic honey, including

—  
(I) whether any changes in assessments owed on imported quantities are owed by importers described in paragraph (5)(B); or

(II) whether such importers are handler-importers described in paragraph (2)(C).

**(B) Recommendations.**— If warranted and in accordance with this subsection, the Honey Board shall recommend to the Secretary—

(i) changes in the regional representation of honey producers established by the Secretary;

(ii) if necessary to reflect any changes in the proportion of domestic and imported honey assessed under the order or the source of assessments on imported honey or honey products, the reallocation of—

(I) handler-importer member positions under paragraph (2)(C) as handler member positions under paragraph (2)(B);

(II) importer member positions under paragraph (2)(D) as handler-importer member positions under paragraph (2)(C); or

(III) handler-importer member positions under paragraph (2)(C) as importer member positions under paragraph (2)(D); or

(iii) if necessary to reflect any changes in the proportion of domestic and imported honey or honey products assessed under the order, the addition of members to the Honey Board under subparagraph (A), (B), (C), or (D) of paragraph (2).

**(C) Scope of review.**— The review required under subparagraph (A) shall be based on data from the 5-year period preceding the year in which the review is conducted.

**(D) Basis for recommendations.**—

(i) **In general.**— Except as provided in subparagraph (F), recommendations made under subparagraph (B) shall be based on—

(I) the 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under subparagraph (A); and

(II) whether any change in the average annual assessments is from the assessments owed by importers described in paragraph (5)(B) or from the assessments owed by handler-importers described in paragraph (2)(C).

(ii) **Proportions.**— The Honey Board shall recommend a reallocation or addition of members pursuant to clause (ii) or (iii) of subparagraph (B) only if 1 or more of the following proportions change by more than 6 percent from the base period proportion determined in accordance with subparagraph (F):

(I) The proportion of assessments owed by handler-importers described in paragraph (2)(C) compared with the proportion of assessments owed by importers described in paragraph (2)(D).

(II) The proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers and handlers.

**(E) Timing of review.**—

(i) **In general.**— The Honey Board shall conduct the reviews required under this paragraph not more than once during each 5-year period.

(ii) **Initial review.**— The Honey Board shall conduct the initial review required under this paragraph prior to the initial continuation referendum conducted under section 4612 (c) of this title following the referendum conducted under section 4613 of this title.

**(F) Base period proportions.**—

(i) **In general.**— The base period proportions for determining the magnitude of change under subparagraph (D) shall be the proportions determined during the prior review conducted under this paragraph.

**(ii) Initial review.**— In the case of the initial review required under subparagraph (E)(ii), the base period proportions shall be the proportions determined by the Honey Board for fiscal year 1996.

**(5) Restrictions on nomination and appointment.**—

**(A) Producer-packers as producers.**— No producer-packer that, during any 3 of the preceding 5 years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in paragraph (2)(A) or as an alternate to such a producer.

**(B) Importers.**— No importer that, during any 3 of the preceding 5 years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Honey Board as an importer described in paragraph (2)(D) or an alternate to such an importer.

**(6) Certification of organizations.**—

**(A) In general.**— The eligibility of an organization to participate in the making of recommendations to the Committee for nomination to the Honey Board to represent handlers or importers under this section shall be certified by the Secretary.

**(B) Eligibility criteria.**— Subject to the other provisions of this paragraph, the Secretary shall certify an organization that the Secretary determines meets the eligibility criteria established by the Secretary under this paragraph.

**(C) Finality.**— An eligibility determination of the Secretary under this paragraph shall be final.

**(D) Basis for certification.**— Certification of an organization under this paragraph shall be based on, in addition to other available information, a factual report submitted by the organization that contains information considered relevant by the Secretary, including—

**(i)** the geographic territory covered by the active membership of the organization;

**(ii)** the nature and size of the active membership of the organization, including the proportion of the total number of active handlers or importers represented by the organization;

**(iii)** evidence of the stability and permanency of the organization;

**(iv)** sources from which the operating funds of the organization are derived;

**(v)** the functions of the organization; and

**(vi)** the ability and willingness of the organization to further the purposes of this chapter.

**(E) Primary considerations.**— A primary consideration in determining the eligibility of an organization under this paragraph shall be whether—

**(i)** the membership of the organization consists primarily of handlers or importers that derive a substantial quantity of their income from sales of honey and honey products; and

**(ii)** the organization has an interest in the marketing of honey and honey products.

**(F) Nonmembers.**— As a condition of certification under this paragraph, an organization shall agree—

**(i)** to notify nonmembers of the organization of Honey Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

**(ii)** to consider the nomination of nonmembers when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Honey Board.

**(7) Minimum percentage of honey producers.**— Notwithstanding any other provision of this subsection, at least 50 percent of the members of the Honey Board shall be honey producers.

**(8)** Members of the Honey Board shall serve for three-year terms with no member serving more than two consecutive three-year terms except that appointments to the Honey Board may be staggered periodically, as determined by the Secretary, to maintain continuity of the Honey Board with respect to all members and with respect to members representing particular groups.<sup>[1]</sup>

**(9)** In the event any member of the Honey Board ceases to be a member of the category of members from which the member was appointed to the Honey Board, such person shall be

automatically replaced by an alternate, except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

**(10)** The members of the Honey Board shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Honey Board.

**(11)** The powers and duties of the Honey Board shall be to—

**(A)** administer any order, issued by the Secretary under this chapter, in accordance with its terms and provisions and consistent with the provisions of this chapter;

**(B)** prescribe rules and regulations to effectuate the terms and provisions of such an order;

**(C)** receive, investigate, and report to the Secretary, accounts of violations of such an order;

**(D)** make recommendations to the Secretary with respect to amendments which should be made to such order; and

**(E)** employ a manager and staff.

**(12) Referendum requirement.—**

**(A) Definition of existing honey board.—** The term “existing Honey Board” means the Honey Board in effect on the date of enactment of this paragraph.

**(B) Conduct of referenda.—** Notwithstanding any other provision of law, subject to subparagraph (C), the order providing for the establishment and operation of the existing Honey Board shall continue in force, until the Secretary first conducts, at the earliest practicable date, but not later than 180 days after the date of enactment of this paragraph, referenda on orders to establish a honey packer-importer board or a United States honey producer board.

**(C) Requirements.—** In conducting referenda under subparagraph (B), and in exercising fiduciary responsibilities in any transition to any 1 or more successor boards, the Secretary shall—

**(i)** conduct a referendum of eligible United States honey producers for the establishment of a marketing board solely for United States honey producers;

**(ii)** conduct a referendum of eligible packers, importers, and handlers of honey for the establishment of a marketing board for packers, importers, and handlers of honey;

**(iii)** notwithstanding the timing of the referenda required under clauses (i) and (ii) or of the establishment of any 1 or more successor boards pursuant to those referenda, ensure that the rights and interests of honey producers, importers, packers, and handlers of honey are equitably protected in any disposition of the assets, facilities, intellectual property, and programs of the existing Honey Board and in the transition to any 1 or more new successor marketing boards;

**(iv)** ensure that the existing Honey Board continues in operation until such time as the Secretary determines that—

**(I)** any 1 or more successor boards, if approved, are operational; and

**(II)** the interests of producers, importers, packers, and handlers of honey can be equitably protected during any remaining period in which a referendum on a successor board or the establishment of such a board is pending; and

**(v)** discontinue collection of assessments under the order establishing the existing Honey Board on the date the Secretary requires that collections commence pursuant to an order approved in a referendum by eligible producers or processors and importers of honey.

**(D) Honey board referendum.—** If 1 or more orders are approved pursuant to paragraph (C)—

**(i)** the Secretary shall not be required to conduct a continuation referendum on the order in existence on the date of enactment of this paragraph; and

**(ii)** that order shall be terminated pursuant to the provisions of the order.

**(d) Budget; administration of order**

The Honey Board shall prepare and submit to the Secretary, for the Secretary’s approval, a budget (on a fiscal period basis) of its anticipated expenses and disbursements in the



administration of the order, including probable costs of research, promotion, and consumer information.

**(e) Assessment; collection; rates; exemption; effect of exemption on referendum voting status**

**(1) In general.**— The Honey Board shall administer collection of the assessment provided for in this subsection, and may accept voluntary contributions from other sources, to finance the expenses described in subsections (d) and (f) of this section.

**(2) Rate.**— Except as provided in paragraph (3), the assessment rate shall be \$0.01 per pound (payable in the manner described in section 4608 of this title), with—

**(A)** in the case of honey produced in the United States, \$0.01 per pound payable by honey producers; and

**(B)** in the case of honey or honey products imported into the United States, \$0.01 per pound payable by honey importers.

**(3) Alternative rate approved in referendum.**— If approved in a referendum conducted under this chapter, the assessment rate shall be \$0.015 per pound (payable in the manner described in section 4608 of this title)—

**(A)** in the case of honey produced in the United States—

**(i)** \$0.0075 per pound payable by—

**(I)** honey producers; and

**(II)** producer-packers on all honey produced by the producer-packers; and

**(ii)** \$0.0075 per pound payable by—

**(I)** handlers; and

**(II)** producer-packers on all honey and honey products handled by the producer-packers, including honey produced by the producer-packers); and

**(B)** in the case of honey and honey products imported into the United States, \$0.015 per pound payable by honey importers, of which \$0.0075 per pound represents the assessment due from the handler to be paid by the importer on behalf of the handler.

**(4)**

**(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) Small quantities.**—

**(i) In general.**— A producer, producer-packer, handler, or importer that produces, imports, or handles during a year less than 6,000 pounds of honey or honey products shall be exempt in that year from payment of an assessment on honey or honey products that the person distributes directly through local retail outlets, as determined by the Secretary, during that year.

**(ii) Inapplicability.**— If a person no longer meets the requirements of clause (i) for an exemption, the person shall—

**(I)** file a report with the Honey Board in the form and manner prescribed by the Honey Board; and

**(II)** pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced, imported, or handled by the person during the year in which the person no longer meets the requirements of clause (i) for an exemption.

**(5)** If a producer, producer-packer handler,<sup>[2]</sup> or importer does not pay any assessments under this chapter due to the applicability to such person of the exemptions from assessments provided in paragraph (4), then such producer, producer-packer handler,<sup>[2]</sup> or importer shall not be considered a producer, handler, or importer for purposes of voting in any referendum conducted under this chapter during the period the person's exemption from all assessments is in effect.

**(f) Funds**

**(1) Use**

Funds collected by the Honey Board shall be used by the Honey Board for financing research, promotion, and consumer information, other expenses as described in subsection (d) of this section, such other expenses for the administration, maintenance, and functioning of the Honey Board as may be authorized by the Secretary, any reserve established under section 4607 (5) of this title, and those administrative costs incurred by the Department of Agriculture pursuant to this chapter after an order has been promulgated under this chapter.

**(2) Research projects**

**(A) In general**

If approved in a referendum conducted under this chapter, the Honey Board shall reserve at least 8 percent of all assessments collected during a year for expenditure on approved research projects designed to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

**(B) Carryover**

If all funds reserved under subparagraph (A) are not allocated to approved research projects in a year, any reserved funds remaining unallocated shall be carried forward for allocation and expenditure under subparagraph (A) in subsequent years.

**(3) Reimbursement**

The Secretary shall be reimbursed from assessments collected by the Honey Board for any expenses incurred for the conduct of referenda.

**(g) False or unwarranted claims or statements**

No promotion funded by the Honey Board under this chapter may make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product.

**(h) Influencing governmental policy or action**

No funds collected by the Honey Board under this chapter may, in any manner, be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this chapter.

**(i) Plans or projects; contracts**

The Honey Board shall develop and submit to the Secretary, for approval, plans for research, promotion, and consumer information. Any such plans or projects must be approved by the Secretary before becoming effective. The Honey Board may enter into contracts or agreements with the approval of the Secretary for the development and carrying out of research, promotion, and consumer information, and for the payment of the cost thereof with funds collected pursuant to this chapter.

**(j) Books and records; reports**

The Honey Board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

**(k) Honey Board; property interests**

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.

## § 4607. Permissive terms and provisions

**(a) In general**

On the recommendation of the Honey Board, and with the approval of the Secretary, an order issued pursuant to this chapter may contain one or more of the following provisions:

**(1)** Providing authority to exempt from the provisions of the order honey used for exporting and providing authority for the Honey Board to require satisfactory safeguards against improper use of such exemption.

**(2)** Providing that in a State with an existing marketing order with respect to honey, the objectives of which the Secretary determines are comparable to the program established under this chapter, there shall be paid to the Honey Board as provided in section 4608 of this title that portion of the national assessment which is above the State assessment, if any, actually paid on such honey.

**(3)** Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

**(4)** Providing that the Honey Board may convene from time to time working groups drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research and marketing programs for honey.

**(5)** Providing for authority to accumulate reserve funds from assessments collected pursuant to this chapter to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years when the production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for one year's operation.

**(6)** Providing for the authority to use funds collected under this chapter with the approval of the Secretary for the development and expansion of honey and honey product sales in foreign markets.

**(7)** Providing for terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such an order.

**(8)** If approved in a referendum conducted under this chapter, providing authority for the development of programs and related rules and regulations that will, with the approval of the Secretary, establish minimum purity standards for honey and honey products that are designed to maintain a positive and wholesome marketing image for honey and honey products.

## **(b) Inspection and monitoring system**

### **(1) Inspection**

Any program, rule, or regulation under subsection (a)(8) of this section may provide for the inspection, by the Secretary, of honey and honey products being sold for domestic consumption in, or for export from, the United States.

### **(2) Monitoring system**

The Honey Board may develop and recommend to the Secretary a system for monitoring the purity of honey and honey products being sold for domestic consumption in, or for export from, the United States, including a system for identifying adulterated honey.

### **(3) Coordination with other Federal agencies**

The Secretary may coordinate, to the maximum extent practicable, with the head of any other Federal agency that has authority to ensure compliance with labeling or other requirements relating to the purity of honey and honey products concerning an enforcement action against any person that does not comply with a rule or regulation issued by any other Federal agency concerning the labeling or purity requirements of honey and honey products.

### **(4) Authority to issue regulations**

The Secretary may issue such rules and regulations as are necessary to carry out this subsection.

## **(c) Voluntary quality assurance program**

### **(1) In general**

In addition to or independent of any program, rule, or regulation under subsection (b) of this section, the Honey Board, with the approval of the Secretary, may establish and carry out a voluntary quality assurance program concerning purity standards for honey and honey products.

### **(2) Components**

The program may include—

**(A)** the establishment of an official Honey Board seal of approval to be displayed on honey and honey products of producers, handlers, and importers that participate in the voluntary program and are found to meet such standards of purity as are established under the program;

**(B)** actions to encourage producers, handlers, and importers to participate in the program;

**(C)** actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

**(D)** periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of producers, handlers, and importers that participate in the voluntary program.

**(3) Display of seal of approval**

To be eligible to display the official seal of approval established under paragraph (2)(A) on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program under this subsection.

**(d) Authority of Secretary**

Notwithstanding any other provision of this chapter, the Secretary shall have the authority to approve or disapprove the establishment of minimum purity standards, the inspection and monitoring system under subsection (b) of this section, and the voluntary quality assurance program under subsection (c) of this section.

## § 4608. Collection of assessments; refunds

**(a) Handlers**

Except as otherwise provided in this section, a first handler of honey shall be responsible, at the time of first purchase—

**(1)** for the collection, and payment to the Honey Board, of the assessment payable by a producer under section 4606 (e)(2)(A) of this title or, if approved in a referendum conducted under this chapter, under section 4606 (e)(3)(A)(i) of this title; and

**(2)** if approved in a referendum conducted under this chapter, for the payment to the Honey Board of an additional assessment payable by the handler under section 4606 (e)(3)(A)(ii) of this title.

**(b) Records**

The first handler shall maintain a separate record on each producer's honey so handled, including honey owned by the handler.

**(c) Importers**

Except as otherwise provided in this section, at the time of entry of honey and honey products into the United States, an importer shall remit to the Honey Board through the United States Customs Service—

**(1)** the assessment on the imported honey and honey products required under section 4606 (e)(2)(B) of this title; or

**(2)** if approved in a referendum conducted under this chapter, the assessment on the imported honey and honey products required under section 4606 (e)(3)(B) of this title, of which the amount payable under section 4606 (e)(3)(A)(ii) of this title represents the assessment due from the handler to be paid by the importer on behalf of the handler.

**(d) Loan and loan deficiency payments; deduction from disbursement of loan funds or loan deficiency payment made to producer**

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 [7 U.S.C. 1421 et seq.], or successor statute, the Secretary shall provide for the assessment to be deducted from the disbursement of any loan funds or from the loan deficiency payment made to the producer and for the amount of such assessment to be forwarded to

the Honey Board. The Secretary shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

**(e) Producer-packers**

Except as otherwise provided in this section, a producer-packer shall be responsible for the collection, and payment to the Honey Board, of—

**(1)** the assessment payable by the producer-packer under section 4606 (e)(2)(A) of this title or, if approved in a referendum conducted under this chapter, under section 4606 (e)(3)(A) (i) of this title on honey produced by the producer-packer;

**(2)** at the time of first purchase, the assessment payable by a producer under section 4606 (e)(2)(A) of this title or, if approved in a referendum conducted under this chapter, under section 4606 (e)(3)(A)(i) of this title on honey purchased by the producer-packer as a first handler; and

**(3)** if approved in a referendum conducted under this chapter, an additional assessment payable by the producer-packer under section 4606 (e)(3)(A)(ii) of this title.

**(f) Inspection; books and records**

**(1) In general**

To make available to the Secretary and the Honey Board such information and data as are necessary to carry out this chapter (including an order or regulation issued under this chapter), a handler, importer, producer, or producer-packer responsible for payment of an assessment under this chapter, and a person receiving an exemption from an assessment under section 4606 (e)(4) of this title, shall—

**(A)** maintain and make available for inspection by the Secretary and the Honey Board such books and records as are required by the order and regulations issued under this chapter; and

**(B)** file reports at the times, in the manner, and having the content prescribed by the order and regulations, which reports shall include the total number of bee colonies maintained, the quantity of honey produced, and the quantity of honey and honey products handled or imported.

**(2) Employee or agent**

To conduct an inspection or review a report of a handler, importer, producer, or producer-packer under paragraph (1), an individual shall be an employee or agent of the Department or the Honey Board, and shall not be a member or alternate member of the Honey Board.

**(3) Confidentiality**

An employee or agent described in paragraph (2) shall be subject to the confidentiality requirements of subsection (g) of this section.

**(g) Confidentiality of information; disclosure**

**(1) In general**

All information obtained under subsection (f) of this section shall be kept confidential by all officers, employees, and agents of the Department or of the Honey Board.

**(2) Disclosure**

Information subject to paragraph (1) may be disclosed—

**(A)** 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, that involves the order with respect to which the information was furnished or acquired; and

**(B)** only if the Secretary determines that the information is relevant to the suit or administrative hearing.

**(3) Exceptions**

Nothing in this subsection prohibits—

**(A)** the issuance of general statements based on the reports of a number of handlers 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 that violates any order issued under this chapter, together with a statement of the particular provisions of the order violated by the person.

**(4) Violation**

Any person that knowingly violates this subsection, on conviction—

**(A)** shall be fined not more than \$1,000, imprisoned not more than 1 year, or both; and

**(B)** if the person is an officer or employee of the Honey Board or the Department, shall be removed from office.

**(h) Administration and remittance**

Administration and remittance of the assessments under this chapter shall be conducted—

**(1)** in the manner prescribed in the order and regulations issued under this chapter; and

**(2)** if approved in a referendum conducted under this chapter, in a manner that ensures that all honey and honey products are assessed a total of, but not more than, \$0.015 per pound, including any producer or importer assessment.

**(i) Liability for assessments**

**(1) Producers**

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.

**(2) Importers**

If the United States Customs Service fails to collect an assessment from an importer or an importer fails to pay an assessment at the time of entry of honey and honey products into the United States under this section, the importer shall be responsible for the remission of the assessment to the Honey Board.

## § 4609. Petition and review

### **(a) Filing of petition; hearing**

#### **(1) In general**

Subject to paragraph (4), a person subject to an order may file a written petition with the Secretary—

**(A)** that states 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)** that requests—

**(i)** a modification of the order, provision, or obligation; or

**(ii)** to be exempted from the order, provision, or obligation.

#### **(2) Hearing**

In accordance with regulations issued by the Secretary, the petitioner shall be given an opportunity for a hearing on the petition.

#### **(3) Ruling**

After the hearing, the Secretary shall make a ruling on the petition that shall be final, if in accordance with law.

#### **(4) Statute of limitations**

A petition filed under this subsection that challenges an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed not later than 2 years after the later of—

**(A)** the effective date of the order, provision, or obligation challenged in the petition; or

**(B)** the date on which the petitioner became subject to the order, provision, or obligation challenged in the petition.

#### **(b) District court; jurisdiction; review; rulings**

The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either

**(1)** to make such ruling as the court shall determine to be in accordance with law, or

**(2)** to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 4610 of this title.

## § 4610. Enforcement

### **(a) District courts; jurisdiction; Attorney General**

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 issued under this chapter. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. Nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of any such order or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing such violations.

**(b) Civil penalties; notice and hearing; review; courts of appeals; cease and desist orders; failure to obey; Attorney General**

**(1)** Any person who violates any provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

**(2)** Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

**(3)** Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2) of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

**(4)** If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

## § 4610a. 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 chapter; 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 chapter, or of any order, rule, or regulation issued under this chapter.

**(b) Power to subpoena**

**(1) Investigations**

For the purpose of an investigation made under subsection (a) of this section, 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 4609 or 4610 of this title, 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) of this section. 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 4609 or 4610 of this title shall be within the judicial district where such person resides or has a principal place of business.

## § 4611. Requirements of referendum

**(a) In general**

For the purpose of ascertaining whether issuance of an order is approved by producers, importers, and in the case of an order assessing handlers, handlers, the Secretary shall conduct a referendum among producers, importers, and, in the case of an order assessing handlers, handlers, not exempt under section 4606 (e)(4) of this title, that, during a representative period determined by the Secretary, have been engaged in the production, importation, or handling of honey or honey products.

**(b) Effectiveness of order**

**(1) In general**

No order issued under this chapter shall be effective unless the Secretary determines that—

**(A)** the order is approved by a majority of the producers, importers, and if covered by the order, handlers, voting in the referendum; and

**(B)** the producers, importers, and handlers comprising the majority produced, imported, and handled not less than 50 percent of the quantity of the honey and honey products produced, imported, and handled during the representative period by the persons voting in the referendum.

**(2) Amendments to orders**

The Secretary may amend an order in accordance with the administrative procedures specified in sections 4604 and 4605 of this title, except that the Secretary may not amend a provision of an order that implements a provision of this chapter that specifically provides for approval in a referendum without the approval provided for in this section.

**(c) Producer-packers and importers**

**(1) In general**

Each producer-packer and each importer shall have 1 vote as a handler as well as 1 vote as a producer or importer (unless exempt under section 4606 (e)(4) of this title) in all referenda concerning orders assessing handlers to the extent that the individual producer-packer or importer owes assessments as a handler.

**(2) Attribution of quantity of honey**

For the purpose of subsection (b)(1)(B) of this section—

**(A)** the quantity of honey or honey products on which the qualifying producer-packer or importer owes assessments as a handler shall be attributed to the person's vote as a handler under paragraph (1); and

**(B)** the quantity of honey or honey products on which the producer-packer or importer owes an assessment as a producer or importer shall be attributed to the person's vote as a producer or importer.

**(d) Confidentiality**

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any producer, importer, or handler of honey or honey products shall be held strictly confidential and shall not be disclosed.

## § 4612. Termination or suspension

**(a) "Person" defined**

In this section, the term "person" means a producer, importer, or handler.

**(b) Authority of Secretary**

If the Secretary finds that an order issued under this chapter, or any provision of the order, obstructs or does not tend to effectuate the purposes of this chapter, the Secretary shall terminate or suspend the operation of the order or provision.

**(c) Periodic referenda**

Except as provided in subsection (d)(3) of this section and section 4613 (g) of this title, on the date that is 5 years after the date on which the Secretary issues an order authorizing the collection of assessments on honey or honey products under this chapter, and every 5 years thereafter, the Secretary shall conduct a referendum to determine if the persons subject to assessment under the order approve continuation of the order in accordance with section 4611 of this title.

**(d) Referenda on request**

**(1) In general**

On the request of the Honey Board or the petition of at least 10 percent of the total number of persons subject to assessment under the order, the Secretary shall conduct a referendum to determine if the persons subject to assessment under the order approve continuation of the order in accordance with section 4611 of this title.

**(2) Limitation**

Referenda conducted under paragraph (1) may not be held more than once every 2 years.

**(3) Effect on periodic referenda**

If a referendum is conducted under this subsection and the Secretary determines that continuation of the order is approved under section 4611 of this title, any referendum otherwise required to be conducted under subsection (c) of this section shall not be held before the date that is 5 years after the date of the referendum conducted under this subsection.

**(e) Timing and requirements for termination or suspension**

**(1) In general**

The Secretary shall terminate or suspend an order at the end of the marketing year during which a referendum is conducted under subsection (c) or (d) of this section if the Secretary determines that continuation of an order is not approved under section 4611 of this title.

**(2) Subsequent referendum**

If the Secretary terminates or suspends an order that assesses the handling of honey and honey products under paragraph (1), the Secretary shall, not later than 90 days after submission of a proposed order by an interested party—

**(A)** propose another order to establish a research, promotion, and consumer information program; and

**(B)** conduct a referendum on the order among persons that would be subject to assessment under the order.

### **(3) Effectiveness of order**

Section 4611 of this title shall apply in determining the effectiveness of the subsequent amended order under paragraph (2).

## **§ 4613. Implementation of amendments made by Agricultural Research, Extension, and Education Reform Act of 1998**

### **(a) Issuance of amended order**

To implement the amendments made to this chapter by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998 (other than subsection (m) of that section), the Secretary shall issue an amended order under section 4603 of this title that reflects those amendments.

### **(b) Proposal of amended order**

Not later than 90 days after June 23, 1998, the Secretary shall publish a proposed order under section 4603 of this title that reflects the amendments made by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998. The Secretary shall provide notice and an opportunity for public comment on the proposed order in accordance with section 4604 of this title.

### **(c) Issuance of amended order**

Not later than 240 days after publication of the proposed order, the Secretary shall issue an order under section 4605 of this title, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order conforms with the amendments made by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998.

### **(d) Referendum on amended order**

#### **(1) Requirement**

##### **(A) In general**

On issuance of an order under section 4605 of this title reflecting the amendments made by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998, the Secretary shall conduct a referendum under this section for the sole purpose of determining whether the order as amended shall become effective.

##### **(B) Individual provisions**

No individual provision of the amended order shall be subject to a separate vote under the referendum.

##### **(2) Eligible voters**

The Secretary shall conduct the referendum among persons subject to assessment under the order that have been producers, producer-packers, importers, or handlers during the 2-calendar-year period that precedes the referendum, which period shall be considered to be the representative period.

##### **(3) Determination of quantity**

###### **(A) In general**

Producer-packers, importers, and handlers shall be allowed to vote as if—

(i) the amended order had been in place during the representative period described in paragraph (2); and

(ii) they had owed the increased assessments provided by the amended order.

###### **(B) Votes and attributed quantity for producer-packers and importers**

The votes and the quantity of honey and honey products attributed to the votes of producer-packers and importers shall be determined in accordance with section 4611 of this title.

###### **(C) Attributed quantity for handlers**

The quantity of honey and honey products attributed to the vote of a handler shall be the quantity handled in the representative period described in paragraph (2) for which the handler would have owed assessments had the amended order been in effect.

**(4) Effectiveness of order**

The amended order shall become effective only if the Secretary determines that the amended order is effective in accordance with section 4611 of this title.

**(e) Continuation of existing order if amended order is rejected**

If adoption of the amended order is not approved—

**(1)** the order issued under section 4603 of this title that is in effect on June 23, 1998, shall continue in full force and effect; and

**(2)** the Secretary may amend the order to ensure the conformity of the order with this chapter (as in effect on the day before June 23, 1998).

**(f) Effect of rejection on subsequent orders**

**(1) In general**

Subject to paragraph (2), if adoption of the amended order is not approved in the referendum required under subsection (d) of this section, the Secretary may issue an amended order that implements some or all of the amendments made to this chapter by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998, or makes other changes to an existing order, in accordance with the administrative procedures specified in sections 4604 and 4605 of this title.

**(2) Approval**

An amendment to an order that implements a provision that is subject to a referendum shall be approved in accordance with section 4611 of this title before becoming effective.

**(g) Effect on periodic referenda**

If the amended order becomes effective, any referendum otherwise required to be conducted under section 4612 (c) of this title shall not be held before the date that is 5 years after the date of the referendum conducted under this section.