
Title V

Agricultural Promotion

Bruce H. Wright*

Title V authorizes the Secretary to establish an orderly process for developing, financing, and carrying out a program of generic promotion, research, and information for commodities. Under this new program, interested parties can petition USDA to establish an industry-financed promotion program for a commodity without first obtaining specific authorization from Congress, as previously required. This title also requires an independent evaluation of each generic agricultural promotion program's effectiveness, including existing programs, not less than every 5 years. Title V also provides specific authorization for three new commodity promotion programs (popcorn, canola and rapeseed, and kiwifruit).

The promotion programs covered by this title, and similar previous promotion legislation, are "generic" in the sense that the objective is to expand and otherwise promote markets and industry-wide developments for

specific commodities—without reference to specific producers or brand names.

Generic research and promotion programs of the past have been commonly known as checkoff, or self-help, programs because they are funded, with a few exceptions, by deductions or "checkoffs" from private commodity transactions. Producers, processors, and importers pay the assessments and control their check-off programs by referenda voting.

Past enabling legislation for a commodity (including those three embedded in title V of the 1996 Act) provided guidelines for, and authorizes, the Secretary to issue an order based on proposals submitted by industry representatives. Final orders were then issued that reflected comments on published proposed regulations needed to establish the commodity order. The order for each program authorizes a board of directors to run the program, says who will be subject to assessments at specified rates, and provides rules for how the program can be revised or terminated.

*The author is an agricultural economist with the Commercial Agriculture Division, Economic Research Service, USDA.

Subtitle A

Commodity Promotion and Evaluation

This subtitle provides a statement of findings of Congress and definitions regarding the rationale for and purposes of generic commodity promotion and research programs. The findings were, for example that:

- It is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs established under commodity promotion laws; and
- Generic commodity promotion programs are of particular benefit to small producers who often lack the resources or market power to advertise on their own and who are otherwise often unable to benefit from the economies of scale available in promotion and advertising; and
- Periodic independent evaluation of the effectiveness of these generic commodity promotion programs are important, because they will assist Congress and the Secretary in ensuring that the objectives of the programs are met.

Subtitle B

Issuance of Orders for Promotion, Research, and Information Activities Regarding Agricultural Commodities, also cited as the Commodity Promotion, Research, and Information Act of 1996 (CPRI Act)

Purpose of CPRI Act

The purpose of the CPRI Act is to authorize the Secretary to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of generic promotion, research, and information for agricultural commodities. This program is designed to:

- (1) Strengthen the position of agricultural commodity industries in the marketplace;
- (2) Maintain and expand existing domestic and foreign markets and uses for agricultural commodities;
- (3) Develop new markets and uses for agricultural commodities; or
- (4) Assist producers in meeting their conservation objectives.

The Secretary may issue and amend from time to time orders applicable to producers, first handlers, other appropriate persons in the marketing chain, and importers, if imports are subject to assessment.

Issuing Orders

A proposed order for an agricultural commodity may be initiated by the Secretary, submitted by an association of producers of the agricultural commodity, or submitted by any other person that may be affected by the issuance of an order.

If the Secretary determines that a proposed order is consistent with and will achieve the purpose of the CPRI Act, the Secretary shall publish the proposed order in the Federal Register and give due notice and

opportunity for public comment on the proposed order. The Secretary shall issue final orders after considering public comments. In most cases, the final order shall be issued and become effective not later than 9 months after the date of publication of the initial proposed order that was the basis for the final order.

In general, each order shall contain terms and conditions defining: establishment of the board that will carry out the program, board membership, reapportionment of board membership, meeting and vacancy notice, term of office, compensation, powers and duties of the board, prohibited board activities, activities and budgets, contracts and agreements, board records, periodic evaluation, and books and records of persons covered by records.

A board is prohibited from: engaging in any action that would be a conflict of interest; using funds collected by the board to engage in any action to influence legislation or governmental action or policy, other than recommending to the Secretary amendments to the order; and advertising activities that may be false, misleading, or disparaging to another agricultural commodity.

The Secretary has authority to exempt small quantities of commodity production or imports if covered, and to authorize use of different payment and reporting schedules, reserve funds, credits, and assessment of imports.

Assessments

When an issued order is in effect, assessments shall be paid to the board by first handlers of commodities produced and marketed in the United States, and by importers (if covered) of the imported commodity. First handlers or importers are limited to one assess-

ment for each agricultural commodity. The board shall recommend to the Secretary one or more assessment rates for approval. If approved, the rates shall take effect. An order may provide that an assessment rate not increase unless approved by a referendum.

Referenda

Four types of referenda are available: initial referendum, required referenda, subsequent referenda, and other referenda.

- (1) **Initial Referendum.** To determine whether the persons to be covered by an order favor the order going into effect, the order may provide for the Secretary to conduct an initial referendum among persons to be subject to an assessment. This referendum may be held among persons engaged in the production or handling of the commodity or the importation of the commodity, during a representative period determined by the Secretary.
- (2) **Required Referenda.** To determine whether the persons covered by an order favor the continuation, suspension, or termination of the order, the Secretary shall conduct a required referendum. The referendum shall be held among persons subject to the assessment engaged in the production or handling of the commodity or the importation of the commodity, during a representative period determined by the Secretary. This referendum shall be held within 3 years of the starting date of the assessments. If an initial referendum was held, this required referenda is exempt.

- (3) **Subsequent Referenda.** To determine if persons favor the continuance, suspension, or termination of the order, the Secretary shall conduct a subsequent referenda: not later than 7 years after assessments begin, at the request of the board, or at the request of 10 percent or more of eligible persons subject to the assessment.
- (4) **Other Referenda.** The Secretary may conduct at any time a referendum to determine whether continuation, suspension, or termination of the order is favored by persons subject to assessments.

An order may provide for its approval in a referendum by: a majority of persons voting, persons voting for approval who represent a majority of the volume of the agricultural commodity, or a majority of persons voting for approval who also represent a majority of the volume of the agricultural commodity.

Suspension, Termination, and Review

The Secretary shall suspend or terminate an order or provision of an order if it does not achieve the purpose of the CPRI Act of 1996 or it is not favored by persons voting in a referendum. Within 2 years of the effective date of an order, a person subject to an order may file a petition with the Secretary. After a hearing, the Secretary shall make a final ruling. The district court of the United States has jurisdiction to review a final decision, if a complaint for that purpose is filed within 20 days after the date of entry of the final ruling.

Subtitle C

The Canola and Rapeseed Research, Promotion, and Consumer Information Act

Title V mandates that the Secretary shall issue one or more orders applicable to producers and first handlers of canola, rapeseed, or canola or rapeseed products. The order shall be national in scope and shall be administered by a National Canola and Rapeseed Board of 15 members: including 11 producers—one from each of 6 regions that produce canola or rapeseed, 5 from the regions allocated according to production in each region (no more than 4 producer members can be from the same State) and 4 industry members (including at least 1 manufacturer and at least 1 merchant). The board shall have the power to meet to make recommendations for assessment rates, and to develop programs or projects for the conduct of research, promotion, industry information, and consumer information.

The program would be funded via a two-tier structure of assessments of 4 cents per hundredweight of canola or rapeseed produced and marketed in non-qualified States and 2 cents per hundredweight in States that have qualified State organizations. The assessment rate may be increased on recommendation by the Board to a rate not exceeding 10 cents per hundredweight of canola or rapeseed produced and marketed (in a State in which there is a qualified State canola and rapeseed board, the maximum assessment is 8 cents per hundredweight of canola or rapeseed produced and marketed). The assessment can be increased above 10 cents per hundredweight only if the increase is approved in a referendum by a majority vote.

Subtitle D

The National Kiwifruit Research, Promotion, and Consumer Information Act

Title V mandates that the Secretary shall issue an order applicable to producers, handlers, and importers of kiwifruit. The purpose is to enable domestic producers, importers, and foreign exporters of fresh kiwifruit to develop, finance, and carry out a nationally coordinated program of research, promotion, and consumer information.

The program would be administered by a National Kiwifruit Board of 11 members; 6 representing producers who are not exempt from assessments, 4 representing importers or foreign exporters who are not exempt from assessments, and 1 representing the general public.

The Secretary shall appoint members (and alternates) representing producers nominated by producers, importers nominated by importers, and a public member nominated by other Board members. Terms of members of the board are for 3 years and a member is limited to two consecutive 3-year terms, except that of members first appointed.

An assessment, up to 10 cents per 7-pound tray of kiwifruit, must be recommended by two-thirds vote of the Board and approved by the Secretary. It is to be collected from the first-handler or importer. Exemptions are provided for those who produce less than 500 pounds per year, for those who import less than 10,000 per year, for producers who sell directly to consumers, and for production or imports that are for processing.

An up-front referendum would be held during the 60-day period preceding the proposed effective date of the order. Continuance referenda are also required. To pass, a referendum must be favored by not less than a majority of the producers and importers voting in the referendum representing more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

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

Subtitle E

The Popcorn Promotion, Research, and Consumer Information Act

The Secretary shall issue 1 or more orders applicable to processors of popcorn. The order shall be applicable to all popcorn production and marketing in the United States. The purpose is to maintain and expand the markets for all popcorn products through enabling processors to develop, finance, and carry out a nationally coordinated program of research, promotion, and consumer information.

The program would be administered by a 4-to 9-member Popcorn Board composed of processors appointed by the Secretary from nominations submitted by processors that represent a geographical distribution of popcorn production throughout the United States. As defined by the 1996 Act, processors are those who process and distribute more than 4 million pounds of popcorn in the market per year.

An assessment rate of up to 8 cents per hundredweight of popcorn must be set by the Board with the approval of the Secretary. Exempt from assessment are processors who process and distribute less than 4 million pounds of popcorn in the market year.

An up-front referendum to be held within the 60-day period immediately preceding the effective date of the order is required. To pass, a referendum must be favored by not less than a majority of the processors voting in the referendum, if the majority processed more than 50 percent of the popcorn processed during the representative period by all of the processors voting in the referendum. In addition, a continuance referendum may be held no earlier than 3 years after the effective date of an order, on the request of the Board, or at the request of 40 percent or more of the processors.