



Craig Shackelford
Agricultural Marketing
Specialist



Research and Promotion Division





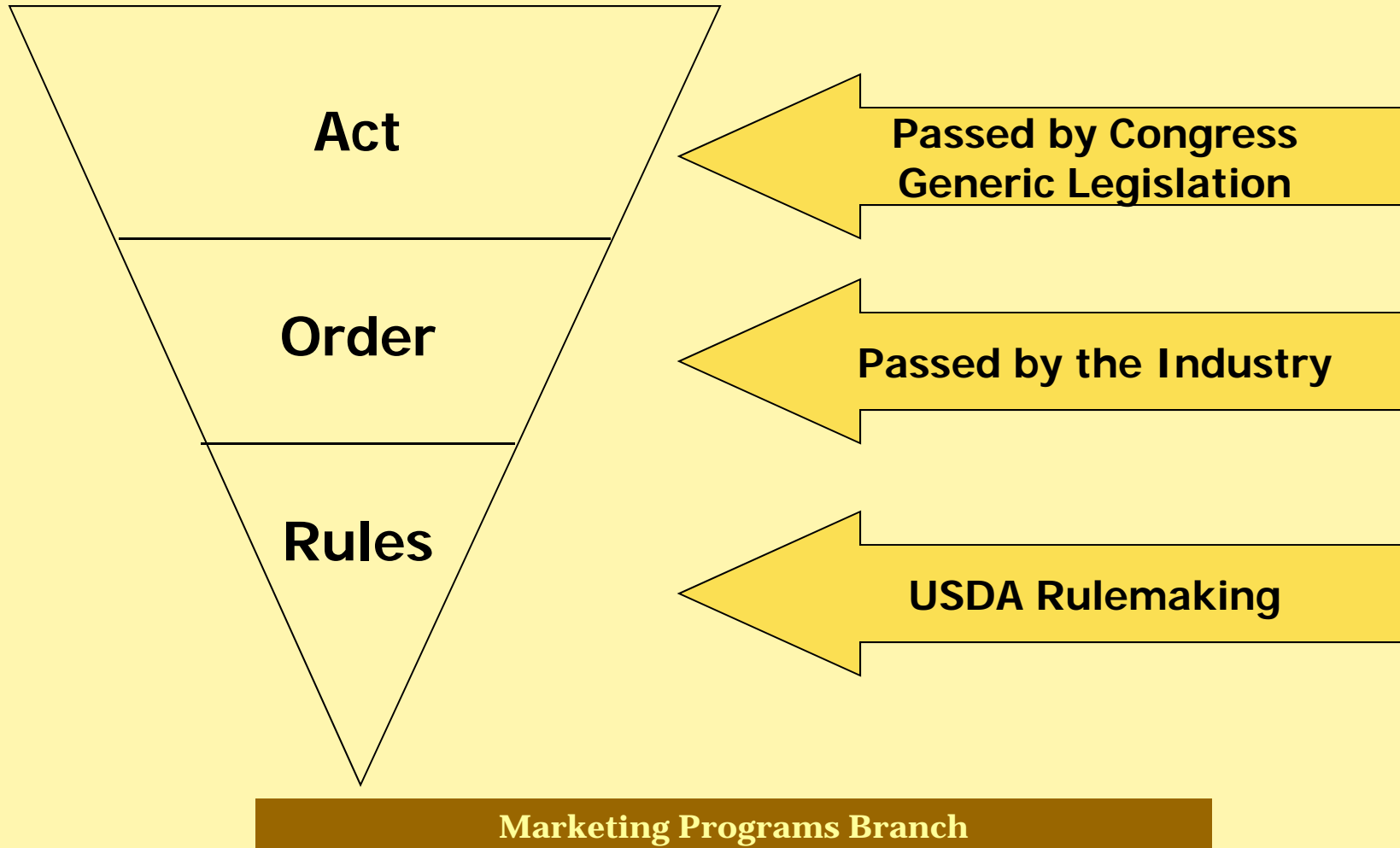
Checkoff Programs

- 19 R&P Programs under USDA-AMS' purview.
- Livestock, Poultry & Seed Program oversees Six programs: *Beef, Lamb, Pork, Soybeans & Sorghum, and Eggs*

Research and Promotion Programs



Legislative Authority



SEC. 512. FINDINGS AND PURPOSE

- Paragraphs A 4,5,and 6 and B of Findings require "generic" promotion
- Generic promotion complements branded promotion
- Strengthen the market position of commodities; maintain and expand domestic and foreign markets; develop new markets and uses; and assist producers in meeting their conservation objectives

SEC. 513. DEFINITIONS

- “Commodity means” . . .livestock and the products of livestock. . .
- “Conflict of Interest” means a situation in which a member or employee of a board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a board for anything of economic value

SEC. 513. DEFINITIONS

- ``first handler" means the first person who buys or takes possession of an agricultural commodity from a producer for marketing. If a producer markets the agricultural commodity directly to consumers, the producer shall be considered to be the first handler with respect to the agricultural commodity produced by the producer

SEC. 513. DEFINITIONS

- “information” means information and programs that are designed to increase (A) efficiency in processing and (B) the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of agricultural commodities on a national or international basis

SEC. 513. DEFINITIONS

- “promotion” means any action taken by a board under an order, including paid advertising, to present a favorable image of an agricultural commodity to the public to improve the competitive position of the agricultural commodity in the marketplace and to stimulate sales of the agricultural commodity



SEC. 513. DEFINITIONS

- “research” means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of an agricultural commodity.

SEC. 514. ISSUANCE OF ORDERS

- Orders are national in scope
- Order development follows notice and comment rulemaking conventions
- Orders may be prepared by (1) USDA, (2) an industry association, or (3) any person that may be affected by the order

SEC. 514. ISSUANCE OF ORDERS

- **EFFECTIVE DATE**— If the Secretary determines that the final order developed with respect to an agricultural commodity is consistent with and will effectuate the purpose of this subtitle, the Secretary shall issue the final order
- Except in the case of an order for which an **initial referendum** is conducted under section 518(a), the final order shall be issued and become effective not later than **270 days** after the date of publication of the proposed order that was the basis for the final order

SEC. 518. REFERENDA - IMPLEMENTATION

- **OPTIONAL** Up-front referenda.
 - Post a bond or other collateral to cover the cost of the referendum.
 - Before the assessment provision of the order goes into effect.
- **REQUIRED** Delayed referenda
 - Not later than 3 years after assessment first begin
 - for continuation, suspension, or termination

SEC. 518. REFERENDA – SUBSEQUENT

- Required one time not later than 7 years after assessments first begin under the order
- At any time upon request of the board established under the order
- At the request of 10 percent or more of the number of persons eligible



SEC. 518. REFERENDA OTHER CONSIDERATIONS


- An order may provide for its approval in a referendum—
 - by a majority of those persons voting;
 - by persons voting for approval who represent a majority of the volume of the agricultural commodity; or
 - by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity

SEC. 518. REFERENDA – OTHER CONSIDERATIONS

- The board established under an order shall reimburse the Secretary for any referendum related expenses
- Referendum procedures may allow voters to vote by mail ballot or in person
- Not later than 30 days before a referendum, the Secretary shall notify industry of the referendum date and procedures

SEC. 515. REQUIRED TERMS OF THE ORDER

- A Board of Directors **shall** be established
- Producers, first handlers, and others, including importers may serve as board members
- The number of members is established in the order based on industry input
- The Secretary appoints the Board from industry nominations
- Alternate members **may** be appointed
- 1 or more public members **may** be appointed



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 515. REQUIRED TERMS OF THE ORDER

- GEOGRAPHICAL REPRESENTATION - the composition of each board shall reflect the geographical distribution of production or value of the agricultural commodity.
- REAPPORTIONMENT OF BOARD MEMBERSHIP - at least once in each 5-year period, but not more frequently than once in each 3-year period, each board shall—
 - review the geographical distribution of the production and the quantity or value of the agricultural commodity imported into the United States; and
 - if warranted, recommend to the Secretary the reapportionment of the board membership to reflect changes in the geographical distribution of the production of the agricultural commodity and the quantity or value of the imported agricultural commodity

SEC. 515. REQUIRED TERMS OF THE ORDER

- Board members each serve a 3-year term, except that the members initially appointed to a board shall serve terms of not more than 2, 3, and 4 years
- Board members may serve not more than 2 consecutive terms
- Each Board member shall continue to serve until a successor is appointed by the Secretary
- A vacancy arising before the expiration of a term shall be filled in a manner provided for in the order
- Board members and any alternates of a board shall serve without compensation

SEC. 515. REQUIRED TERMS OF THE ORDER

POWERS AND DUTIES OF A BOARD - Each order shall specify the powers and duties of the board including

- to administer the order in accordance with its terms and conditions and to collect assessments;
- to develop and recommend to the Secretary for approval bylaws and rules as may be necessary to administer the order, including activities to be carried out under the order;
- to meet, organize, and select a chairperson, other officers, and committees and subcommittees, as the board determines to be appropriate;

SEC. 515. REQUIRED TERMS OF THE ORDER

POWERS AND DUTIES OF A BOARD

- to employ persons, other than the members, to assist the board in carrying out its duties
- develop and carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order

SEC. 515. REQUIRED TERMS OF THE ORDER

POWERS AND DUTIES OF A BOARD

To prepare and submit for the approval of the Secretary, before the beginning of each fiscal year

- rates of assessment
- annual budget of the anticipated expenses to be incurred in the administration of the order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the board

SEC. 515. REQUIRED TERMS OF THE ORDER

POWERS AND DUTIES OF A BOARD

- to borrow funds necessary for the startup of the order;
- to enter into contracts or agreements to develop and carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order
- to pay the costs of the activities with assessments collected under section 517, earnings from invested assessments, and other funds

SEC. 515. REQUIRED TERMS OF THE ORDER

POWERS AND DUTIES OF A BOARD

- to keep records that accurately reflect the actions and transactions of the board, to keep and report minutes of each meeting of the board to the Secretary, and to furnish the Secretary with any information or records the Secretary requests
- to receive, investigate, and report to the Secretary complaints of violations of the order
- to recommend to the Secretary such amendments to the order as the board considers appropriate

SEC. 515. REQUIRED TERMS OF THE ORDER

PROHIBITED ACTIVITIES - A board shall prohibit its members, employees, and agents from engaging in:

- any action that would be a conflict of interest
- using funds collected under the order for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order
- any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or misleading or disparaging to another agricultural commodity

SEC. 515. REQUIRED TERMS OF THE ORDER ACTIVITIES AND BUDGETS

- Secretary approves plans for promotion, research, or information anticipated annual expenses and disbursements
- budgets submitted before the beginning of a fiscal year and as frequently as necessary
- the Secretary shall be reimbursed for all expenses incurred in the supervision of the order, including all referenda costs

SEC. 515. REQUIRED TERMS OF THE ORDER ACTIVITIES AND BUDGETS

- Expenses shall be paid using assessments collected, earnings obtained from assessments, and other income of the board
- beginning 3 or more years after establishment, the board may not expend for administration (except for reimbursements to the Secretary), an amount that exceeds 15 percent of assessment and other income received by the board for the fiscal year

SEC. 515. REQUIRED TERMS OF THE ORDER CONTRACTS AND AGREEMENTS

- with the approval of the Secretary, enter into contracts and agreements with producer associations or other entities to carry out generic promotion, research, and information activities, including
- pay the cost of generic promotion, research, and information activities using assessments collected, earnings obtained from assessments, and other income of the board

SEC. 515. REQUIRED TERMS OF THE ORDER CONTRACTS AND AGREEMENTS

- Each contractor shall—
- develop and submit to the board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity
- keep accurate records of all of its transactions relating to the contract or agreement
- account for funds received and expended in connection with the contract or agreement

SEC. 515. REQUIRED TERMS OF THE ORDER CONTRACTS AND AGREEMENTS

- Each contractor shall—
- make periodic reports to the board of activities conducted under the contract or agreement; and
- make such other reports as the board or the Secretary considers relevant



SEC. 515. REQUIRED TERMS OF THE ORDER

- **RECORDS OF BOARD** - Each board shall-
- maintain such records as the Secretary may require and to make the records available to the Secretary for inspection and audit
- submit to the Secretary, at any time, any information the Secretary may request
- account for the receipt and disbursement of all funds in the possession, or under the control, of the board

SEC. 515. REQUIRED TERMS OF THE ORDER

AUDITS - Each order shall require the board to have -

- records audited by an independent auditor at the end of each fiscal year
- a report of the audit submitted directly to the Secretary



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 515. REQUIRED TERMS OF THE ORDER

- **PERIODIC EVALUATION** - Each order shall require the board to provide for the independent evaluation of all generic promotion, research, and information activities undertaken under the order

SEC. 515. REQUIRED TERMS OF THE ORDER BOOKS AND RECORDS OF PERSONS COVERED BY ORDER -

Producers, first handlers and others shall -

- maintain records sufficient to ensure compliance
- submit any information required by the board
- make the records available to employees or agents of the board or the Department

SEC. 515. REQUIRED TERMS OF THE ORDER

CONFIDENTIALITY and disclosure -

- all information obtained for compliance or as part of a referendum shall be kept confidential
- Information may be disclosed only if -
 - the Secretary considers the information relevant; and the information is revealed in a judicial or administrative hearing on the request of the Secretary or to which the Secretary or any officer of the Department is a party

SEC. 515. REQUIRED TERMS OF THE ORDER

EXCEPTIONS -

- issuance of statements relating to a number of persons if the statements do not identify any person
- publication of the name of any person in violation and the particular provisions of the order violated
- **PENALTY** - Any person who willfully violates the order shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both

SEC. 516. PERMISSIVE TERMS IN ORDERS

EXEMPTIONS - An order **may** contain

- For de minimus quantity of an agricultural commodity
- authority for the board to require satisfactory safeguards against improper use of the exemption from assessment



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 516. PERMISSIVE TERMS IN ORDERS

DIFFERENT PAYMENT AND REPORTING

SCHEDULES - *may* contain authority for the board established under the order to designate different payment and reporting schedules to recognize differences in agricultural commodity industry marketing practices and procedures used in different production and importing areas

SEC. 516. PERMISSIVE TERMS IN ORDERS

RESERVE FUNDS - An order **may** contain

- Reserve funds from assessments
- to permit **effective** and **continuous coordinated** programs of research, promotion, and information in years when the yield from assessments may be reduced

SEC. 516. PERMISSIVE TERMS IN ORDERS

RESERVE FUNDS - An order **may** contain
reserve may not exceed the greatest **aggregate**
amount of the anticipated disbursements specified in
budgets approved under section 515(e) by the
Secretary for any 2 fiscal years



SEC. 516. PERMISSIVE TERMS IN ORDERS

- 2 CREDITS- An order **may** contain
- **GENERIC ACTIVITIES**
 - State, regional, and local programs
- **SPECIFIC BRANDED ACTIVITIES**
 - Coop credit from assessments
 - A farmer cooperative may elect to voluntarily waive the credit

SEC. 516. PERMISSIVE TERMS IN ORDERS

ASSESSMENT OF IMPORTS –

- The order may contain authority to assess imported agricultural commodities, or products of such agricultural commodities, at a rate comparable to the domestic rate



SEC. 516. PERMISSIVE TERMS IN ORDERS

OTHER AUTHORITY - An order **may** contain

- Authority to take any other action that is not inconsistent with the purpose of the Generic Act
- And is necessary to administer the order



SEC. 517. Assessments

ASSESSMENTS ARE AUTHORIZED

“with respect to the agricultural commodity produced and marketed”

- first handlers
- importers



SEC. 517. Assessments

- Assessments **shall** be remitted to the board
- Process prescribed by the order.
- **LIMITATION ON ASSESSMENTS** - Not more than 1 assessment may be levied on a first handler or importer

SEC. 517. Assessments

- ASSESSMENT RATES - The board **shall** recommend to the Secretary 1 or more rates of assessment to be levied
- Rates approved by the Secretary
- An order **may** provide that an assessment rate may not be increased unless approved by a referendum

SEC. 517. Assessments

LATE-PAYMENT AND INTEREST CHARGES

- Late-payment and interest charges may be levied on each person subject to an order who fails to remit an assessment
- The rate for the charges shall be specified by the Secretary (in regulation)

SEC. 517. Assessments

- INVESTMENT OF ASSESSMENTS - Pending budgeted disbursement , assessments may be invested in -
- Obligations of the United States
- General obligations of any State, or local gov
- Interest-bearing accounts or certificates of deposit
- Funds must be insured by Federal Reserve System
- Obligations fully guaranteed as to principal and interest by the United States

SEC. 517. Assessments

REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT

- persons subject to an order shall be eligible to demand a refund of assessments collected during a start-up period
- During the period beginning on the effective date of an order and ending on the date the Secretary announces the results of a referendum, the board shall establish and maintain an escrow account to be used to refund assessments

SEC. 517. Assessments

REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT

- **FORM OF DEMAND** - The demand for a refund shall be made at such time and in such form as specified by the order
- **(5) PAYMENT OF REFUND** - A person entitled to a refund shall be paid promptly after the board receives satisfactory proof that the assessment for which the refund is demanded was paid on behalf of the person who makes the demand

SEC. 517. Assessments

REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT

PRORATION - If the funds in the escrow account are insufficient to pay the amount of all refunds that persons subject to an order otherwise would have a right to receive under this subsection, the board shall prorate the amount of the funds among all the persons



SEC. 517. Assessments

REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT

- **CLOSING OF ESCROW ACCOUNT** - If the order is approved in a referendum
- The escrow account shall be closed
- The funds shall be available to the board for disbursement as authorized in the order



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 519. PETITION AND REVIEW OF ORDERS

SEC. 520. ENFORCEMENT

SEC. 521. INVESTIGATIONS AND POWER TO SUBPOENA

SEC. 522. SUSPENSION OR TERMINATION

SEC. 523. AMENDMENTS TO ORDERS

SEC. 524. EFFECT ON OTHER LAWS

SEC. 525. REGULATIONS

SEC. 526. AUTHORIZATION OF APPROPRIATIONS

SEC. 519. PETITION AND REVIEW OF ORDERS

PETITION - A person subject to an order may file with the Secretary a petition -

- 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
- requesting a modification of the order or an exemption from the order

SEC. 519. PETITION AND REVIEW OF ORDERS

- **HEARING** - The Secretary shall give the petitioner an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary
- **RULING** - After the hearing, the Secretary shall make a ruling on the petition.
- The ruling shall be final, subject to review

SEC. 519. PETITION AND REVIEW OF ORDERS

LIMITATION ON PETITION - Any petition filed challenging an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed within 2 years after the effective date of the order, provision, or obligation subject to challenge in the petition



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 519. PETITION AND REVIEW OF ORDERS

REVIEW - COMMENCEMENT OF ACTION - The district court of the United States for any district in which a person who is a petitioner resides or carries on business shall have jurisdiction to review the final ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of the final ruling by the Secretary

SEC. 519. PETITION AND REVIEW OF ORDERS

- **PROCESS** - Delivering a copy of the complaint to the Secretary qualifies as service of process
- If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions -
 - to make such ruling as the court determines to be in accordance with law; or
 - to take such further action as, in the opinion of the court, the law requires

SEC. 519. PETITION AND REVIEW OF ORDERS

EFFECT ON ENFORCEMENT PROCEEDINGS - The pendency of a petition filed or an action commenced shall not operate as a stay of any action authorized by section 520 to be taken to enforce this subtitle, including any rule, order, or penalty in effect under this subtitle

SEC. 520. ENFORCEMENT

JURISDICTION - The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued under this subtitle

SEC. 520. ENFORCEMENT

REFERRAL TO ATTORNEY GENERAL - Any civil action 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 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 the violation or by an administrative action under this section

SEC. 520. ENFORCEMENT

CIVIL PENALTIES - A person who willfully violates an order or regulation issued by the Secretary under this Act may be assessed by the Secretary a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation

SEPARATE OFFENSE - Each violation and each day during which there is a failure to comply with an order or regulation issued by the Secretary shall be considered to be a separate offense

SEC. 520. ENFORCEMENT

CEASE-AND-DESIST ORDERS. - In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring a person to cease and desist from violating the order or regulation

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 provides notice and an opportunity for a hearing on the record with respect to the violation

SEC. 520. ENFORCEMENT

FINALITY - An order assessing a penalty or a cease-and-desist order issued under this subsection by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from the order with the United States court of appeals

SEC. 520. ENFORCEMENT

REVIEW BY COURT OF APPEALS - A person against whom an order is issued may obtain review of the order by -

filing, not later than 30 days after the person receives notice of the order, a notice of appeal in the United States court of appeals, and simultaneously sending a copy of the notice of appeal by certified mail to the Secretary

SEC. 520. ENFORCEMENT

RECORD -The Secretary shall file with the court a certified copy of the record on which the Secretary has determined that the person has committed a violation

STANDARD OF REVIEW - A finding of the Secretary under this section shall be set aside only if the finding is found to be unsupported by substantial evidence on the record

SEC. 520. ENFORCEMENT

FAILURE TO OBEY CEASE-AND-DESIST ORDERS -

A person who fails to obey a valid cease-and-desist order issued by the Secretary under this section, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not less than \$1,000 and not more than \$10,000 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the cease-and-desist order

SEC. 520. ENFORCEMENT

FAILURE TO PAY PENALTIES - If a person fails to pay a civil penalty imposed under this section by 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 for any district in which the person resides or carries on business. In the action, the validity and appropriateness of the order imposing the civil penalty shall not be subject to review

SEC. 521. INVESTIGATIONS AND POWER TO SUBPOENA

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 about to engage, in any action that constitutes or will constitute a violation of this subtitle or any order or regulation issued under this subtitle

**SEC. 521. INVESTIGATIONS AND POWER TO SUBPOENA
SUBPOENAS, OATHS, AND AFFIRMATIONS** - For the
purpose of any investigation under subsection (a), the
Secretary may administer oaths and affirmations,
subpoena witnesses, compel the attendance of witnesses,
take evidence, and require the production of any records
or documents that are relevant to the inquiry. The
attendance of witnesses and the production of records or
documents may be required from any place in the United
States

SEC. 521. INVESTIGATIONS AND POWER TO SUBPOENA

AID OF COURTS - In the case of refusal to obey a subpoena the Secretary may invoke the aid of any court in order to require attendance and testimony or the production of records

CONTEMPT - Any failure to obey the order of the court may be punished by the court as a contempt of the court.

PROCESS – Authorization to serve judicial process

SEC. 522. SUSPENSION OR TERMINATION

MANDATORY SUSPENSION OR TERMINATION -The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or a provision of an order

- obstructs or does not tend to effectuate the purpose of this subtitle,
- or if the Secretary determines that the order or a provision of an order is not favored by persons voting in a referendum

SEC. 522. SUSPENSION OR TERMINATION


IMPLEMENTATION OF SUSPENSION OR

TERMINATION - If, as a result of a referendum, the Secretary determines that an order is not approved, the Secretary shall -

- not later than 180 days after the determination, suspend or terminate collection of assessments
- and suspend or terminate the order in an orderly manner.

SEC. 523. AMENDMENTS TO ORDERS

The provisions of this subtitle applicable to an order shall be applicable to any amendment to an order, except that section 518 shall not apply to an amendment



COMMODITY PROMOTION, RESEARCH,
AND INFORMATION ACT OF 1996
(7 U.S.C. 7411-7425)

SEC. 524 EFFECT ON OTHER LAWS.

This subtitle shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity

SEC. 525. REGULATIONS

The Secretary may issue such regulations as may be necessary to carry out this subtitle and the power vested in the Secretary under this subtitle.

SEC. 526. AUTHORIZATION OF APPROPRIATIONS

IN GENERAL - There are authorized to be appropriated such sums as may be necessary to carry out this subtitle

LIMITATION ON EXPENDITURES FOR ADMINISTRATIVE EXPENSES

Funds appropriated to carry out this subtitle may not be expended for the payment of expenses incurred by a board to administer an order