

Public Law 103-407
103d Congress

An Act

Oct. 22, 1994
[S. 2500]

To enable producers and feeders of sheep and importers of sheep and sheep products to develop, finance, and carry out a nationally coordinated program for sheep and sheep product promotion, research, and information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sheep
Promotion,
Research, and
Information Act
of 1994.
7 USC 7101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sheep Promotion, Research, and Information Act of 1994".

7 USC 7101.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress finds that—

- (1) sheep and sheep products are important goods;
- (2) the production of sheep and sheep products play a significant role in the economy of the United States in that sheep and sheep products are produced throughout the United States and used by millions of people throughout the United States and foreign countries;
- (3) sheep and sheep products must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of sheep products;
- (4) the maintenance and expansion of existing markets and development of new markets for sheep and sheep products are vital to the welfare of sheep producers and persons concerned with marketing, using, and producing sheep and sheep products, as well as to the general economy of the United States, and necessary to ensure the ready availability and efficient marketing of sheep and sheep products;
- (5) there exist established State organizations conducting sheep and sheep product promotion, research, and industry and consumer education programs that are invaluable to the efforts of promoting the consumption of sheep and sheep products;
- (6) the cooperative development, financing, and implementation of a coordinated national program of sheep and sheep product promotion, research, consumer information, education, and industry information are necessary to maintain and expand existing markets and develop new markets for sheep and sheep products; and
- (7) sheep and sheep products move in interstate and foreign commerce, and sheep and sheep products that do not move in such channels of commerce directly burden or affect interstate commerce in sheep and sheep products.

(b) **POLICY.**—It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for developing, financing (through adequate assessments on sheep and sheep products produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research, consumer information, education, and industry information designed to—

(1) strengthen the position of the sheep and sheep product industry in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for sheep and sheep products; and

(3) develop new markets and uses for sheep and sheep products.

(c) **CONSTRUCTION.**—Nothing in this Act provides for the control of production, or otherwise limits, the right of any person to produce sheep or sheep products.

SEC. 3. DEFINITIONS.

7 USC 7102.

As used in this Act (unless the context clearly requires otherwise):

(1) **BOARD.**—The term “Board” means the National Sheep Promotion, Research, and Information Board established under section 5(b).

(2) **CARBONIZED WOOL.**—The term “carbonized wool” means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibres.

(3) **CONSUMER INFORMATION.**—The term “consumer information” means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

(4) **CUSTOMS SERVICE.**—The term “Customs Service” means United States Customs Service of the Department of the Treasury.

(5) **DEGREASED WOOL.**—The term “degreased wool” means wool from which the bulk of impurities has been removed by processing.

(6) **DEPARTMENT.**—The term “Department” means the United States Department of Agriculture.

(7) **EDUCATION.**—The term “education” means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

(8) **EXECUTIVE COMMITTEE.**—The term “Executive Committee” means the Executive Committee established under section 5(g).

(9) **EXPORTER.**—The term “exporter” means any person who exports domestic live sheep or greasy wool from the United States.

(10) **FEEDER.**—The term “feeder” means a person who feeds lambs until the lambs reach slaughter weight.

(11) **GREASY WOOL.**—The term “greasy wool” means wool that has not been washed or otherwise cleaned.

(12) **HANDLER.**—The term “handler” means any person who purchases and markets greasy wool.

(13) **IMPORTER.**—The term “importer” means any person who imports sheep or sheep products into the United States.

(14) **INDUSTRY INFORMATION.**—The term “industry information” means information and programs that will lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

(15) **ORDER.**—The term “order” means a sheep and wool promotion, research, education, and information order issued under section 4.

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

(17) **PROCESSOR.**—The term “processor” means any person who slaughters sheep or processes greasy wool into degreased wool.

(18) **PRODUCER.**—The term “producer” means any person, other than a feeder, who owns or acquires ownership of sheep.

(19) **PRODUCER INFORMATION.**—The term “producer information” means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

(20) **PROMOTION.**—The term “promotion” means any action (including paid advertising) to advance the image and desirability of sheep or sheep products to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

(21) **PULLED WOOL.**—The term “pulled wool” means wool that is pulled from the skin of a slaughtered sheep.

(22) **QUALIFIED STATE SHEEP BOARD.**—The term “qualified State sheep board” means a sheep and wool promotion entity that—

(A) is authorized by State statute or is otherwise organized and operating within a State;

(B) receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

(C) is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than 1 qualified State sheep board shall exist in any State at any 1 time.

(23) **RAW WOOL.**—The term “raw wool” means greasy wool, pulled wool, degreased wool, or carbonized wool.

(24) **RESEARCH.**—The term “research” means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

(25) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(26) **SHEEP.**—The term “sheep” means ovine animals of any age, including lambs.

(27) SHEEP PRODUCTS.—The term “sheep products” means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

(28) STATE.—The term “State” means each of the 50 States.

(29) UNIT.—The term “unit” means each State, group of States, or class designation that is represented on the Board.

(30) UNITED STATES.—The term “United States” means the 50 States and the District of Columbia.

(31) WOOL.—The term “wool” means the fiber from the fleece of a sheep.

(32) WOOL PRODUCTS.—The term “wool products” means products produced, in whole or in part, from wool and products containing wool fiber.

SEC. 4. ISSUANCE AND AMENDMENT OF ORDERS.

7 USC 7103.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall issue orders under this Act applicable to producers, feeders, importers, handlers, and purchasers of sheep and sheep products. Any order shall be national in scope. Not more than 1 order shall be in effect under this Act at any 1 time.

(b) PROCEDURE.—

(1) PROPOSAL OR REQUEST FOR ISSUANCE.—The Secretary may propose the issuance of an order under this Act, or an association of producers may request the issuance of, and submit a proposal for, an order.

(2) NOTICE AND COMMENT CONCERNING PROPOSED ORDER.—Not later than 60 days after the receipt of a request and proposal for an order under paragraph (1), the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

Publication.

(3) ISSUANCE OF ORDERS.—After notice and opportunity for public comment are given as provided in paragraph (2), the Secretary shall issue an order, taking into consideration the comments received, that includes provisions necessary to ensure that the order is in conformity with this Act. The order shall be issued not later than 180 days following publication of the proposed order.

(4) REFERENDUM.—The order shall go into effect only if the order is approved by producers, feeders, and importers in a referendum conducted under section 6.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any order issued under this Act.

SEC. 5. REQUIRED TERMS IN ORDERS.

7 USC 7104.

(a) IN GENERAL.—An order issued under this Act shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF BOARD.—

(1) IN GENERAL.—The order shall provide for the establishment of, and appointment of members to, a National Sheep Promotion, Research, and Information Board to administer the order. Members of the Board shall be appointed by the Secretary from nominations provided in accordance with this subsection. The cumulative number of seats on the Board shall be 120 and shall be apportioned as follows:

(A) PRODUCERS.—Producers shall be appointed to the Board to represent States, with each State represented by the following number of members:

| | |
|----------------------|----|
| Alabama | 1 |
| Alaska | 1 |
| Arizona | 1 |
| Arkansas | 1 |
| California | 5 |
| Colorado | 4 |
| Connecticut | 1 |
| Delaware | 1 |
| Florida | 1 |
| Georgia | 1 |
| Hawaii | 1 |
| Idaho | 2 |
| Illinois | 1 |
| Indiana | 1 |
| Iowa | 2 |
| Kansas | 1 |
| Kentucky | 1 |
| Louisiana | 1 |
| Maine | 1 |
| Maryland | 1 |
| Massachusetts | 1 |
| Michigan | 1 |
| Minnesota | 2 |
| Mississippi | 1 |
| Missouri | 1 |
| Montana | 5 |
| Nebraska | 1 |
| Nevada | 1 |
| New Hampshire | 1 |
| New Jersey | 1 |
| New Mexico | 2 |
| New York | 1 |
| North Carolina | 1 |
| North Dakota | 2 |
| Ohio | 1 |
| Oklahoma | 1 |
| Oregon | 2 |
| Pennsylvania | 1 |
| Rhode Island | 1 |
| South Carolina | 1 |
| South Dakota | 4 |
| Tennessee | 1 |
| Texas | 10 |
| Utah | 3 |
| Vermont | 1 |
| Virginia | 1 |
| Washington | 1 |
| West Virginia | 1 |
| Wisconsin | 1 |
| Wyoming | 5 |

(B) FEEDERS.—The feeder sheep industry shall be represented on the Board by 10 members.

(C) IMPORTERS.—Importers shall be represented on the Board by 25 members.

(D) ALTERNATES.—The order shall provide that a unit represented by only 1 member may have an alternate member appointed to ensure representation at meetings of the Board.

(2) NOMINATIONS.—

(A) PRODUCERS.—The Secretary shall appoint producers to represent units established under paragraph (1)(A) from nominations submitted by eligible organizations certified under subsection (c)(3). An eligible organization may

submit only nominations from the membership of the organization for the unit in which the organization is located. To be represented on the Board, each eligible organization shall submit to the Secretary at least 1.5 nominations for each appointment to the Board for which the unit is entitled to representation, as determined under paragraph (1)(A). If a unit is entitled to 1 appointment on the Board, the unit shall submit at least 2 nominations for the appointment.

(B) FEEDERS.—The Secretary shall appoint representatives of the feeder sheep industry to seats established under paragraph (1)(B) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which the feeder sheep industry is entitled to representation, as determined under paragraph (1)(B).

(C) IMPORTERS.—The Secretary shall appoint importers to seats established under paragraph (1)(C) from nominations submitted by qualified organizations that represent importers, as determined by the Secretary. To be represented on the Board, importers shall provide at least 1.5 nominations for each appointment to the Board for which importers are entitled to representation, as determined under paragraph (1)(C).

(c) METHOD FOR OBTAINING NOMINATIONS.—

(1) INITIALLY ESTABLISHED BOARD.—

(A) PRODUCER NOMINATIONS.—The Secretary shall solicit nominations for each seat on the initially established Board to which a unit is entitled to representation from eligible organizations certified under paragraph (3). If no such organization exists in the unit, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(B) FEEDER AND IMPORTER NOMINATIONS.—The Secretary shall solicit nominations for each seat for which feeders or importers are entitled to representation from organizations that represent feeders and importers, respectively. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether—

(i) the active membership of the organization includes a significant number of feeders or importers in relation to the total membership of the organization;

(ii) there is evidence of stability and permanency of the organization; and

(iii) the organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(2) SUBSEQUENT APPOINTMENT.—

(A) PRODUCER NOMINATIONS.—The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under paragraph (3) shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(B) FEEDER AND IMPORTER NOMINATIONS.—The solicitation of feeder and importer nominations for seats on the

Board shall be made by the Secretary in accordance with paragraph (1)(B).

(3) CERTIFICATION OF ORGANIZATIONS.—

(A) IN GENERAL.—The eligibility of any organization to represent producers, and to participate in the making of nominations to represent producers under this section, shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this paragraph. An eligibility determination of the Secretary under this paragraph shall be final.

(B) BASIS FOR CERTIFICATION.—Certification under this paragraph shall be based, in addition to other available information, on a factual report submitted by the organization, that shall contain information considered relevant and specified 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 producers represented by the organization;

(iii) evidence of 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 aims and objectives of this Act.

(C) 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 producers who own a substantial quantity of sheep; and

(ii) an interest of the organization is in the production of sheep.

(d) ADMINISTRATION.—

(1) TERMS.—Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than 2 consecutive 3-year terms, except that an elected officer of the Board shall not be subject to this sentence while the officer holds office.

(2) COMPENSATION.—A Board member shall serve without compensation, but shall be reimbursed for the reasonable expenses of the member incurred in performing the duties of the Board.

(3) MEETINGS.—The order shall provide for at least an annual meeting of the Board and such additional meetings of the Board as may be required.

(e) POWERS AND DUTIES OF THE BOARD.—The order shall define the powers and duties of the Board and shall include the power and duty—

(1) to elect officers of the Board, including a Chairperson, Vice Chairperson, and Secretary;

(2) to administer the order in accordance with the terms and provisions of the order;

(3) to recommend regulations to effectuate the terms and provisions of the order;

(4) to elect members of the Board to serve on the Executive Committee;

(5) to approve or reject budgets submitted by the Executive Committee;

(6) on approval, to submit the budgets to the Secretary for the approval or disapproval of the Secretary;

(7) to contract with entities, if necessary, to carry out plans or projects in accordance with this Act; Contracts.

(8) to conduct programs of promotion, research, consumer information, education, industry information, and producer information;

(9) to receive, investigate, and report to the Secretary complaints of violations of the order; Reports.

(10) to recommend to the Secretary amendments to the order;

(11) to provide the Secretary with prior notice of meetings of the Board to permit the Secretary, or a designated representative, to attend the meetings;

(12) to provide, not less than annually, a report to producers, feeders, and importers accounting for funds expended by the Board and describing programs carried out under this Act, and to make the report available to the public on request; Reports.

(13) to establish 7 regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of producers and sheep production;

(14) to employ or retain necessary staff; and

(15) to invest funds in accordance with subsection (k).

(f) BUDGETS.—

(1) **IN GENERAL.**—The order shall provide that the Board shall review budgets submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. On approval by the Board, the Board shall submit the budget to the Secretary for the approval of the Secretary.

(2) **LIMITATION.**—No expenditure of funds may be made by the Board unless the expenditure is authorized under a budget or budget amendment approved by the Secretary.

(g) EXECUTIVE COMMITTEE.—

(1) **ESTABLISHMENT.**—The order shall establish an Executive Committee to administer the terms and provisions of the order, as provided in this subsection, under the direction of the Board and consistent with the policies determined by the Board.

(2) **MEMBERSHIP.**—The Executive Committee shall be composed of 14 members, of which—

(A) 11 members shall be elected by the Board on an annual basis, of which—

(i) 7 members shall represent producers, with 1 member representing each of the regions established in the order;

(ii) 1 member shall represent feeders; and

(iii) 3 members shall represent importers; and

(B) 3 members shall be the Chairperson, Vice Chairperson, and Secretary of the Board.

(3) POWERS AND DUTIES.—

(A) PLANS OR PROJECTS.—The Executive Committee shall develop plans or projects of promotion, research, consumer information, education, industry information, and producer information, which shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until the plans or projects are approved by the Secretary.

(B) BUDGETS.—The Executive Committee shall be responsible for developing and submitting to the Board, for the approval of the Board, budgets, on a fiscal year basis, of the anticipated expenses and disbursements of the Board, including probable costs of promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove a budget submitted by the Executive Committee, and, if approved, shall submit the budget to the Secretary for the approval of the Secretary.

(4) TERMS.—A term of appointment to the Executive Committee shall be for 1 year.

(5) CHAIRPERSON.—The Chairperson of the Board shall serve as Chairperson of the Executive Committee.

(6) QUORUM.—A quorum of the Executive Committee shall consist of 8 members.

(h) EXPENSES, CONTRACTS, AND AGREEMENTS.—

(1) EXPENSES.—The order shall provide that the Board shall be responsible for all expenses of the Board and the Executive Committee.

(2) CONTRACTS AND AGREEMENTS.—A contract or agreement entered into by the Board under subsection (e)(7) shall provide that—

(A) the contracting party shall develop and submit to the Board a plan or project, together with a budget or budgets that provides estimated costs to be incurred for the plan or project;

(B) the plan or project, and the contract or agreement, shall not become effective until the plan or project has been approved by the Secretary; and

(C) the contracting party shall—

(i) keep accurate records of all of the transactions of the party;

(ii) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(iii) make periodic reports to the Board of activities conducted; and

(iv) make such other reports as the Board or the Secretary may require.

(i) ASSESSMENTS.—

(1) SHEEP PURCHASES.—

(A) IN GENERAL.—The order shall provide that each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall, in the manner prescribed by the order, collect an assessment from the

Records.

Reports.

producer or feeder on each sheep sold by the producer or feeder.

(B) PROCESSING.—Any person purchasing sheep for processing shall collect the assessment from the seller and remit the assessment to the Board in the manner prescribed by the order.

(C) RATE.—

(i) IN GENERAL.—Except as provided in clause (ii), the rate of assessment under this paragraph shall be 1 cent per pound of live sheep sold.

(ii) EXCEPTION.—The rate of assessment under this paragraph may be raised or lowered not more than $\frac{15}{100}$ of a cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this paragraph shall not exceed 2.5 cents per pound of live sheep sold.

(2) WOOL PURCHASES.—

(A) IN GENERAL.—The order shall provide that each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall, in the manner prescribed by the order, collect an assessment on each pound of greasy wool sold.

(B) PROCESSING.—Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board in the manner prescribed by the order.

(C) RATE.—

(i) IN GENERAL.—Except as provided in clause (ii), the rate of assessment under this paragraph shall be 2 cents per pound of greasy wool.

(ii) EXCEPTION.—The rate of assessment under this paragraph may be raised or lowered not more than $\frac{2}{10}$ of a cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this paragraph shall not exceed 4 cents per pound of greasy wool.

(3) DIRECT PROCESSING.—The order shall provide that any person processing or causing to be processed sheep or sheep products of that person's own production and marketing shall—

(A) pay an assessment on the sheep or sheep products at the time of sale at a rate equivalent to the rate provided for in paragraph (1) or (2), as appropriate; and

(B) remit the assessment to the Board in the manner prescribed by the order.

(4) EXPORTS.—The order shall provide that any person exporting live sheep or greasy wool shall—

(A) pay the assessment on the sheep or greasy wool at the time of export at a rate equivalent to the rate provided for in paragraph (1) or (2), as appropriate; and

(B) remit the assessment to the Board in the manner prescribed by the order.

(5) IMPORTS.—

(A) IN GENERAL.—The order shall provide that any person importing sheep or sheep product, and any person importing wool or products containing wool, into the United

States shall pay an assessment to the Board in the manner prescribed by the order, except that this paragraph shall not apply to raw wool that is imported into the United States.

(B) **COLLECTION.**—The Customs Service shall collect the assessment required under this paragraph and remit the assessment to the Secretary for disbursement to the Board.

(C) **RATE FOR SHEEP AND SHEEP PRODUCTS.**—

(i) **IN GENERAL.**—Except as provided in subparagraph (B), the rate of assessment under this paragraph for sheep and sheep products shall be—

(I) in the case of a live sheep, 1 cent per pound; and

(II) in the case of a sheep product, the equivalent of 1 cent per pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry.

(ii) **EXCEPTION.**—The rate of assessment under this subparagraph may be raised or lowered not more than $\frac{15}{100}$ cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this subparagraph shall not exceed 2.5 cents per pound.

(D) **RATE FOR WOOL AND WOOL PRODUCTS.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), the rate of assessment under this paragraph for wool and products containing wool, shall be 2 cents per pound of degreased wool or the equivalent of degreased wool.

(ii) **EXCEPTION.**—The rate of assessment under this subparagraph may be raised or lowered not more than $\frac{2}{10}$ cent per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, except that the rate of assessment under this subparagraph shall not exceed 4 cents per pound of degreased wool or the equivalent of degreased wool.

(6) **QUALIFIED STATE SHEEP BOARDS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the order shall provide that 20 percent of the total assessments collected by the Board on the marketing of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the qualified State sheep board of the State.

(B) **EXCEPTION.**—No qualified State sheep board shall receive less than \$2,500 under subparagraph (A) in any year.

(7) **DE MINIMIS IMPORTS.**—The Secretary may issue regulations that—

(A) exclude certain imported materials or products that contain de minimis content levels of sheep or sheep products; and

(B) waive the assessment due on the materials or products.

(8) **USE OF ASSESSMENTS.**—

(A) **IN GENERAL.**—The order shall provide that assessments received by the Board shall be used by the Board for the payment of expenses incurred in administering the order, with authorization for a reasonable reserve.

(B) **REIMBURSEMENT OF SECRETARY.**—The Secretary shall be reimbursed for costs incurred in implementing and administering the order.

(j) **BOOKS AND RECORDS OF BOARD.**—

(1) **IN GENERAL.**—The order shall require the Board to—

(A) maintain such books and records as the Secretary may prescribe, which shall be available to the Secretary for inspection and audit;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) **AUDIT.**—The Board shall cause books and records of the Board related to the order to be audited by an independent auditor at the end of each fiscal year. The Board shall submit a report of the audit to the Secretary.

Reports.

(k) **INVESTMENT OF FUNDS.**—

(1) **IN GENERAL.**—The order shall provide that the Board may invest, pending disbursement, funds the Board receives under the order, only in—

(A) obligations of the United States or any agency of the United States;

(B) general obligations of any State or any political subdivision of a State;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States.

(2) **USE OF INCOME.**—Income from any investment under paragraph (1) may be used for any purpose for which the invested funds may be used.

(l) **PROHIBITION ON USE OF FUNDS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) **EXCEPTIONS.**—Paragraph (1) shall not apply to—

(A) the development and recommendation to the Secretary of amendments to the order; or

(B) the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities under the order.

(3) **FALSE OR MISLEADING CLAIMS.**—A plan or project conducted under this Act shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(m) **BOOKS AND RECORDS.**—

(1) **IN GENERAL.**—The order shall require that each person making payment to a producer, feeder, or handler for sheep

or sheep products, each importer and exporter of sheep or sheep products, and each person marketing sheep products of the person's own production to maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) USE OF INFORMATION.—

(A) IN GENERAL.—Information from the records or reports shall be made available to the Secretary for the administration or enforcement of this Act, or any order or regulation issued under this Act.

(B) OTHER INFORMATION.—The Secretary shall authorize the use under this Act of information regarding persons paying producers, feeders, importers, handlers, or processors that is accumulated under a law or regulation other than this Act or a regulation issued under this Act.

(3) CONFIDENTIALITY.—

(A) IN GENERAL.—Except as otherwise provided in this Act, all information obtained under paragraph (1) or (2) shall be kept confidential by all officers and employees of the Department and of the Board.

(B) DISCLOSURE.—Information referred to in subparagraph (A) may be disclosed only if—

(i) the Secretary considers the information relevant;

(ii) the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party; and

(iii) the information relates to this Act.

(C) GENERAL STATEMENTS.—Nothing in this paragraph prohibits—

(i) the issuance of general statements, based on the reports, of the number of persons subject to an order or statistical data collected from the persons, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating any order and a statement of the particular provisions of the order violated by the person.

(D) ADMINISTRATION.—No information obtained under this Act may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this Act or any investigatory or enforcement action necessary for the implementation of this Act.

(E) PENALTY.—Any person who willfully violates this paragraph, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if the person is an officer or employee of the Board or the Department, shall be removed from office.

(n) OTHER TERMS AND CONDITIONS.—The order shall provide such terms and conditions, not inconsistent with this section, as are necessary to carry out the order, including provisions for the

assessment of a penalty for the late payment of an assessment due under the order.

SEC. 6. REFERENDA.

7 USC 7105.

(a) INITIAL REFERENDUM.—

(1) **IN GENERAL.**—Following the issuance of an order under section 4, the Secretary shall conduct a referendum among producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, or importation of sheep or sheep products for the purpose of ascertaining whether the order shall go into effect.

(2) **APPROVAL OF ORDER.**—The order shall become effective only if the Secretary determines that the order has been approved by not less than a majority of the producers, feeders, and importers voting in the referendum or at least $\frac{2}{3}$ of the production represented by persons voting in the referendum.

(b) ADDITIONAL REFERENDA.—

(1) **IN GENERAL.**—After the initial referendum, on the request of a representative group comprising 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, importation, or processing of sheep or sheep products, the Secretary shall conduct a referendum of producers, feeders, and importers to determine whether the producers, feeders, and importers favor the termination or suspension of the order.

(2) **SUSPENSION OR TERMINATION.**—If the Secretary determines that suspension or termination of the order is favored by a majority of the producers, feeders, and importers voting in the referendum or at least $\frac{2}{3}$ of the production represented by the persons voting in the referendum, the Secretary shall suspend or terminate—

(A) collection of assessments under the order not later than 180 days after the determination; and

(B) the order in an orderly manner as soon as practicable after the determination.

(c) PROCEDURES.—

(1) REIMBURSEMENT.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Board shall reimburse the Secretary for any expenses incurred by the Secretary in connection with the conduct of any referendum under this section.

(B) **FEDERAL EMPLOYEE SALARIES.**—The Board shall not be required to reimburse the Secretary for the salaries of Federal employees under subparagraph (A) if the Secretary determines that the reimbursement would be overly burdensome and costly.

(2) **DATE.**—Each referendum under this section shall be conducted on a date established by the Secretary, under a procedure by which producers, feeders, and importers intending to vote in the referendum shall certify that the producers, feeders, and importers were engaged in the production, feeding, or importation of sheep or sheep products during the representative period and, on the same day, shall be provided an opportunity to vote in the referendum.

(3) **PLACE.**—Referenda under this section shall be conducted at locations determined by the Secretary. Absentee mail ballots shall be furnished by the Secretary on request made in person, by mail, or by telephone.

(4) **ALLOCATION OF PRODUCTION.**—The Secretary shall determine a method of allocating, by a pro rata percentage of annual projected or actual assessments from importers, the volume of production represented by importers in referenda conducted pursuant to this section.

7 USC 7106.

SEC. 7. PETITION AND REVIEW.**(a) PETITION.**—

(1) **IN GENERAL.**—A person subject to an order issued under this Act may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) **HEARINGS.**—The petitioner shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) **RULING.**—After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final if the ruling is in accordance with law.

(b) REVIEW.—

(1) **COMMENCEMENT OF ACTION.**—The district court of the United States for any district in which a person who is a petitioner under subsection (a) resides or carries on business shall have jurisdiction to review the 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 ruling by the Secretary under subsection (a)(3).

(2) **PROCESS.**—Service of process in a proceeding may be conducted on the Secretary by delivering a copy of the complaint to the Secretary, under such rules or regulations as are considered necessary by the Secretary to facilitate the service of process.

(3) **REMANDS.**—If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

7 USC 7107.

SEC. 8. ENFORCEMENT.

(a) **JURISDICTION.**—Each district court 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 Act.

(b) **REFERRAL TO ATTORNEY GENERAL.**—A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this Act, if the Secretary believes that the administration and enforcement of this Act 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 section 7.

(c) CIVIL PENALTIES AND ORDERS.—

(1) 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) a civil penalty of not more than \$1,000 for each such violation; and

(B) in the case of a willful failure to pay, collect, or remit an assessment as required by the order, an additional penalty equal to the amount of the assessment.

(2) SEPARATE OFFENSE.—Each violation shall be a separate offense.

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

(4) 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.

(5) 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, as provided in subsection (d), not later than 30 days after the person receives notice of the order.

(d) REVIEW BY COURT OF APPEALS.—

(1) IN GENERAL.—A person against whom an order is issued under subsection (c) may obtain review of the order by—

(A) filing, not later than 30 days after the date of the order, a notice of appeal in—

(i) the United States court of appeals for the circuit in which the person resides or carries on business; or

(ii) the United States Court of Appeals for the District of Columbia Circuit; and

(B) simultaneously sending a copy of the notice of appeal by certified mail to the Secretary.

(2) RECORD.—The Secretary shall file promptly in the court a certified copy of the record on which the Secretary has determined that the person has committed a violation.

(3) 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.

(e) FAILURE TO OBEY 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 more than \$500 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the order.

(f) FAILURE TO PAY PENALTIES.—If a person fails to pay a valid 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.

(g) **ADDITIONAL REMEDIES.**—The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

7 USC 7108.

SEC. 9. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) **INVESTIGATIONS.**—The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this Act; or

(2) to determine whether any person subject to this Act has engaged, or is about to engage, in any action that constitutes or will constitute a violation of this Act, or of any order or regulation issued under this Act.

(b) **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 that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) **AID OF COURTS.**—In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, in order to require the attendance and testimony of the person or the production of records. The court may issue an order requiring the person to appear before the Secretary to produce records or to give testimony regarding the matter under investigation.

(d) **CONTEMPT.**—Any failure to obey the order of the court may be punished by the court as a contempt of the court.

(e) **PROCESS.**—Process in any case under this section may be served in the judicial district in which the person resides or carries on business or wherever the person may be found.

7 USC 7109.

SEC. 10. ADMINISTRATIVE PROVISIONS.

(a) **CONSTRUCTION.**—Nothing in this Act preempts or supersedes any other program relating to sheep promotion, research, or information organized and operated under the laws of the United States or any State.

(b) **AMENDMENTS TO ORDERS.**—The provisions of this Act applicable to an order shall be applicable to amendments to the order, except that the Secretary is not required to conduct a referendum on a proposed amendment to an order.

7 USC 7110.

SEC. 11. REGULATIONS.

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

7 USC 7111.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this Act.

(b) **ADMINISTRATIVE EXPENSES.**—Funds appropriated under subsection (a) shall not be available for payment of the expenses

or expenditures of the Board in administering any provision of any order issued under this Act.

Approved October 22, 1994.

LEGISLATIVE HISTORY—S. 2500:

CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 4, considered and passed Senate.

Oct. 5, considered and passed House.