

104TH CONGRESS
1ST SESSION

S. 1091

To finance and implement a program of research, promotion, market development, and industry and consumer information to enhance demand for and increase the profitability of canola and rapeseed products in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 10), 1995

Mr. CRAIG (for himself and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To finance and implement a program of research, promotion, market development, and industry and consumer information to enhance demand for and increase the profitability of canola and rapeseed products in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Canola and Rapeseed Research, Promotion, and
6 Consumer Information Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and declaration of policy.
- Sec. 3. Definitions.
- Sec. 4. Issuance and amendment of orders.
- Sec. 5. Required terms in orders.
- Sec. 6. Assessments.
- Sec. 7. Referenda.
- Sec. 8. Petition and review.
- Sec. 9. Enforcement.
- Sec. 10. Investigations and power to subpoena.
- Sec. 11. Suspension or termination of an order.
- Sec. 12. Regulations.
- Sec. 13. Authorization of appropriations.

3 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

4 (a) FINDINGS.—Congress finds that—

5 (1) canola and rapeseed products are an impor-
6 tant and nutritious part of the human diet;

7 (2) the production of canola and rapeseed prod-
8 ucts plays a significant role in the economy of the
9 United States in that canola and rapeseed products
10 are produced by thousands of canola and rapeseed
11 producers, processed by numerous processing enti-
12 ties, and canola and rapeseed products produced in
13 the United States are consumed by people through-
14 out the United States and foreign countries;

15 (3) canola, rapeseed, and canola and rapeseed
16 products should be readily available and marketed
17 efficiently to ensure that consumers have an ade-
18 quate supply of canola and rapeseed products at a
19 reasonable price;

1 (4) the maintenance and expansion of existing
2 markets and development of new markets for canola,
3 rapeseed, and canola and rapeseed products are vital
4 to the welfare of canola and rapeseed producers and
5 processors and those persons concerned with market-
6 ing canola, rapeseed, and canola and rapeseed prod-
7 ucts, as well as to the general economy of the United
8 States, and are necessary to ensure the ready avail-
9 ability and efficient marketing of canola, rapeseed,
10 and canola and rapeseed products;

11 (5) there exist established State and national
12 organizations conducting canola and rapeseed re-
13 search, promotion, and consumer education pro-
14 grams that are valuable to the efforts of promoting
15 the consumption of canola, rapeseed, and canola and
16 rapeseed products;

17 (6) the cooperative development, financing, and
18 implementation of a coordinated national program of
19 canola and rapeseed research, promotion, consumer
20 information, and industry information is necessary
21 to maintain and expand existing markets and de-
22 velop new markets for canola, rapeseed, and canola
23 and rapeseed products; and

24 (7) canola, rapeseed, and canola and rapeseed
25 products move in interstate and foreign commerce,

1 and canola, rapeseed, and canola and rapeseed prod-
2 ucts that do not move in interstate or foreign com-
3 merce directly burden or affect interstate commerce
4 in canola, rapeseed, and canola and rapeseed prod-
5 ucts.

6 (b) POLICY.—It is the policy of this Act to establish
7 an orderly procedure for developing, financing through as-
8 sessments on domestically-produced canola and rapeseed,
9 and implementing a program of research, promotion,
10 consumer information, and industry information designed
11 to strengthen the position in the marketplace of the canola
12 and rapeseed industry, to maintain and expand existing
13 domestic and foreign markets and uses for canola,
14 rapeseed, and canola and rapeseed products, and to de-
15 velop new markets and uses for canola, rapeseed, and
16 canola and rapeseed products.

17 (c) CONSTRUCTION.—Nothing in this Act provides
18 for the control of production or otherwise limits the right
19 of individual producers to produce canola, rapeseed, or
20 canola or rapeseed products.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) BOARD.—The term “Board” means the Na-
24 tional Canola and Rapeseed Board established under
25 section 5(b).

1 (2) CANOLA OR RAPESEED PRODUCTS.—The
2 term “canola or rapeseed products” means products
3 produced, in whole or in part, from canola or
4 rapeseed.

5 (3) COMMERCE.—The term “commerce” in-
6 cludes interstate, foreign, and intrastate commerce.

7 (4) CONFLICT OF INTEREST.—The term “con-
8 flict of interest” means a situation in which a mem-
9 ber has a direct or indirect financial interest in a
10 corporation, partnership, sole proprietorship, joint
11 venture, or other business entity dealing directly or
12 indirectly with the Board.

13 (5) CONSUMER INFORMATION.—The term
14 “consumer information” means information that will
15 assist consumers and other persons in making eval-
16 uations and decisions regarding the purchase, prepa-
17 ration, and use of canola or rapeseed products.

18 (6) DEPARTMENT.—The term “Department”
19 means the Department of Agriculture.

20 (7) FIRST PURCHASER.—The term “first pur-
21 chaser” means—

22 (A) except as provided in subparagraph

23 (B), a person buying or otherwise acquiring
24 canola, rapeseed, or canola or rapeseed prod-
25 ucts produced by a producer; or

1 (B) the Commodity Credit Corporation, in
2 a case in which canola or rapeseed is forfeited
3 to the Commodity Credit Corporation as collat-
4 eral for a loan issued under a price support
5 loan program administered by the Commodity
6 Credit Corporation.

7 (8) INDUSTRY INFORMATION.—The term “in-
8 dustry information” means information or programs
9 that will lead to the development of new markets,
10 new marketing strategies, or increased efficiency for
11 the canola and rapeseed industry, or an activity to
12 enhance the image of the canola or rapeseed indus-
13 try.

14 (9) INDUSTRY MEMBER.—The term “industry
15 member” means a member of the canola and
16 rapeseed industry who represents—

17 (A) manufacturers of canola or rapeseed
18 end products; or

19 (B) persons who commercially buy or sell
20 canola or rapeseed.

21 (10) MARKETING.—The term “marketing”
22 means the sale or other disposition of canola,
23 rapeseed, or canola or rapeseed products in a chan-
24 nel of commerce.

1 (11) ORDER.—The term “order” means an
2 order issued under section 4.

3 (12) PERSON.—The term “person” means an
4 individual, partnership, corporation, association, co-
5 operative, or any other legal entity.

6 (13) PRODUCER.—The term “producer” means
7 a person engaged in the growing of canola or
8 rapeseed in the United States who owns, or who
9 shares the ownership and risk of loss of, the canola
10 or rapeseed.

11 (14) PROMOTION.—The term “promotion”
12 means an action, including paid advertising, tech-
13 nical assistance, or trade servicing activity, to en-
14 hance the image or desirability of canola, rapeseed,
15 or canola or rapeseed products in domestic and for-
16 eign markets, or an activity designed to commu-
17 nicate to consumers, processors, wholesalers, retail-
18 ers, government officials, or others information re-
19 lating to the positive attributes of canola, rapeseed,
20 or canola or rapeseed products or the benefits of use
21 or distribution of canola, rapeseed, or canola or
22 rapeseed products.

23 (15) QUALIFIED STATE CANOLA AND RAPESEED
24 BOARD.—The term “qualified State canola and
25 rapeseed board” means a State canola and rapeseed

1 promotion entity that is authorized and functioning
2 under State law.

3 (16) RESEARCH.—The term “research” means
4 any type of test, study, or analysis to advance the
5 image, desirability, marketability, production, prod-
6 uct development, quality, or functional or nutritional
7 value of canola, rapeseed, or canola or rapeseed
8 products, including research activity designed to
9 identify and analyze barriers to export sales of
10 canola or rapeseed produced in the United States.

11 (17) SECRETARY.—The term “Secretary”
12 means the Secretary of Agriculture.

13 (18) STATE.—The term “State” means any of
14 the 50 States, the District of Columbia and the
15 Commonwealth of Puerto Rico.

16 (19) UNITED STATES.—The term “United
17 States” means collectively the 50 States, the District
18 of Columbia, and the Commonwealth of Puerto Rico.

19 **SEC. 4. ISSUANCE AND AMENDMENT OF ORDERS.**

20 (a) IN GENERAL.—Effective beginning with the first
21 marketing year that the Secretary estimates that canola
22 or rapeseed will be produced in the United States in a
23 quantity sufficient to effectuate the policy described in sec-
24 tion 2(b), the Secretary, subject to subsection (b), shall
25 issue 1 or more orders under this Act applicable to produc-

1 ers and first purchasers of canola or rapeseed products.
2 The order shall be national in scope. Not more than 1
3 order shall be in effect under this Act at any 1 time.

4 (b) PROCEDURE.—

5 (1) PROPOSAL OR REQUEST FOR ISSUANCE.—

6 The Secretary may propose the issuance of an order
7 under this Act, or an association of canola and
8 rapeseed producers or any other person that would
9 be affected by an order issued pursuant to this Act
10 may request the issuance of, and submit a proposal
11 for, an order.

12 (2) NOTICE AND COMMENT CONCERNING PRO-
13 POSED ORDER.—Not later than 60 days after the re-
14 ceipt of a request and proposal for an order pursu-
15 ant to paragraph (1), or whenever the Secretary de-
16 termines to propose an order, the Secretary shall
17 publish a proposed order and give due notice and op-
18 portunity for public comment on the proposed order.

19 (3) ISSUANCE OF ORDER.—After notice and op-
20 portunity for public comment are given as provided
21 in paragraph (2), the Secretary shall issue an order,
22 taking into consideration the comments received and
23 including in the order provisions necessary to ensure
24 that the order is in conformity with the require-
25 ments of this Act. The order shall be issued and be-

1 come effective not later than 180 days following
2 publication of the proposed order.

3 (c) AMENDMENTS.—The Secretary, from time to
4 time, may amend an order issued under this section.

5 **SEC. 5. REQUIRED TERMS IN ORDERS.**

6 (a) IN GENERAL.—An order issued under this Act
7 shall contain the terms and conditions specified in this sec-
8 tion.

9 (b) ESTABLISHMENT AND MEMBERSHIP OF THE NA-
10 TIONAL CANOLA AND RAPESEED BOARD.—

11 (1) IN GENERAL.—The order shall provide for
12 the establishment of, and appointment of members
13 to, a National Canola and Rapeseed Board to ad-
14 minister the order.

15 (2) SERVICE TO ENTIRE INDUSTRY.—The
16 Board shall carry out programs and projects that
17 will provide maximum benefit to the canola and
18 rapeseed industry in all parts of the United States
19 and only promote canola, rapeseed, or canola or
20 rapeseed products.

21 (3) BOARD MEMBERSHIP.—The Board shall
22 consist of 15 members, including—

23 (A) 11 members who are producers, in-
24 cluding—

1 (i) 1 member from each of 6 geo-
2 graphic regions comprised of States where
3 canola or rapeseed is produced, as deter-
4 mined by the Secretary; and

5 (ii) 5 members from the geographic
6 regions referred to in clause (i), allocated
7 according to the production in each region;
8 and

9 (B) 4 members who are industry members,
10 including at least—

11 (i) 1 member who represents manu-
12 facturers of canola or rapeseed end prod-
13 ucts; and

14 (ii) 1 member who represents persons
15 who commercially buy or sell canola or
16 rapeseed.

17 (4) LIMITATION ON STATE RESIDENCE.—There
18 shall be no more than 4 producer members of the
19 Board from any State.

20 (5) MODIFYING BOARD MEMBERSHIP.—In ac-
21 cordance with regulations approved by the Secretary,
22 at least once each 3 years and not more than once
23 each 2 years, the Board shall review the geographic
24 distribution of canola and rapeseed production

1 throughout the United States and, if warranted, rec-
2 ommend to the Secretary that the Secretary—

3 (A) reapportion regions in order to reflect
4 the geographic distribution of canola and
5 rapeseed production; and

6 (B) reapportion the seats on the Board to
7 reflect the production in each region.

8 (6) CERTIFICATION OF ORGANIZATIONS.—

9 (A) IN GENERAL.—The eligibility of any
10 State organization to represent producers shall
11 be certified by the Secretary.

12 (B) CRITERIA.—The Secretary shall certify
13 any State canola or rapeseed organization that
14 the Secretary determines meets all of the fol-
15 lowing eligibility criteria:

16 (i) MAJORITY REPRESENTATION.—

17 The organization's total paid member-
18 ship—

19 (I) is comprised of at least a ma-
20 jority of canola or rapeseed producers;
21 or

22 (II) represents at least a major-
23 ity of the canola or rapeseed produc-
24 ers in the State.

1 (ii) SUBSTANTIAL NUMBER OF PRO-
2 DUCERS REPRESENTED.—The organization
3 represents a substantial number of produc-
4 ers that produce a substantial amount of
5 canola or rapeseed in the State.

6 (iii) STABILITY AND PERMANENCY.—
7 The organization has a history of stability
8 and permanency.

9 (iv) PURPOSE.—A primary purpose of
10 the organization is to promote the eco-
11 nomic welfare of canola or rapeseed pro-
12 ducers.

13 (C) REPORT.—The Secretary shall make a
14 certification under this paragraph on the basis
15 of a factual report submitted by the State orga-
16 nization.

17 (7) TERMS OF OFFICE.—

18 (A) IN GENERAL.—The members of the
19 Board shall serve for a term of 3 years, except
20 that the members appointed to the initial Board
21 shall serve, proportionately, for terms of 1, 2,
22 and 3 years, as determined by the Secretary.

23 (B) TERMINATION OF TERMS.—Notwith-
24 standing subparagraph (C), each member shall

1 continue to serve until a successor is appointed
2 by the Secretary.

3 (C) LIMITATION ON TERMS.—No individ-
4 ual may serve more than 2 consecutive 3-year
5 terms as a member.

6 (8) COMPENSATION.—A member of the Board
7 shall serve without compensation, but shall be reim-
8 bursed for necessary and reasonable expenses in-
9 curred in the performance of duties for and ap-
10 proved by the Board.

11 (c) POWERS AND DUTIES OF THE BOARD.—The
12 order shall define the powers and duties of the Board,
13 which shall include the power and duty—

14 (1) to administer the order in accordance with
15 the terms and conditions of the order;

16 (2) to make regulations to effectuate the terms
17 and conditions of the order;

18 (3) to meet, organize, and select from among
19 members of the Board a chairperson, other officers,
20 and committees and subcommittees, as the Board
21 determines appropriate;

22 (4) to establish working committees of persons
23 other than Board members;

24 (5) to employ such persons, other than Board
25 members, as the Board considers necessary, and to

1 determine the compensation and define the duties of
2 the persons;

3 (6) to prepare and submit for the approval of
4 the Secretary, when appropriate or necessary, a rec-
5 ommended rate of assessment under section 6, and
6 a fiscal period budget of the anticipated expenses in
7 the administration of the order, including the prob-
8 able costs of all programs and projects;

9 (7) to develop programs and projects, subject to
10 subsection (d);

11 (8) to enter into contracts or agreements, sub-
12 ject to subsection (e), to develop and carry out pro-
13 grams or projects of research, promotion, industry
14 information, and consumer information;

15 (9) to carry out research, promotion, industry
16 information, and consumer information projects, and
17 to pay the costs of the projects with assessments col-
18 lected under section 6;

19 (10) to keep minutes, books, and records that
20 reflect the actions and transactions of the Board,
21 and promptly report minutes of each Board meeting
22 to the Secretary;

23 (11) to appoint and convene, from time to time,
24 working committees comprised of producers, indus-
25 try members, and the public to assist in the develop-

1 ment of research, promotion, industry information,
2 and consumer information programs for canola,
3 rapeseed, and canola and rapeseed products;

4 (12) to invest, pending disbursement under a
5 program or project, funds collected through assess-
6 ments authorized under section 6, or funds earned
7 from investments, only in—

8 (A) obligations of the United States or an
9 agency of the United States;

10 (B) general obligations of a State or a po-
11 litical subdivision of a State;

12 (C) an interest-bearing account or certifi-
13 cate of deposit of a bank that is a member of
14 the Federal Reserve System; or

15 (D) obligations fully guaranteed as to prin-
16 cipal and interest by the United States;

17 (13) to receive, investigate, and report to the
18 Secretary complaints of violations of the order;

19 (14) to furnish the Secretary with such infor-
20 mation as the Secretary may request;

21 (15) to recommend to the Secretary amend-
22 ments to the order;

23 (16) to develop and recommend to the Sec-
24 retary for approval such regulations as may be nec-
25 essary for the development and execution of pro-

1 grams or projects, or as may otherwise be necessary,
2 to carry out the order; and

3 (17) to provide the Secretary with advance no-
4 tice of meetings.

5 (d) PROGRAMS AND BUDGETS.—

6 (1) SUBMISSION TO SECRETARY.—The order
7 shall provide that the Board shall submit to the Sec-
8 retary for approval any program or project of re-
9 search, promotion, consumer information, or indus-
10 try information. No program or project shall be im-
11 plemented prior to approval by the Secretary.

12 (2) BUDGETS.—The order shall require the
13 Board, prior to the beginning of each fiscal year, or
14 as may be necessary after the beginning of a fiscal
15 year, to submit to the Secretary for approval budg-
16 ets of anticipated expenses and disbursements in the
17 implementation of the order, including projected
18 costs of research, promotion, consumer information,
19 and industry information programs and projects.

20 (3) INCURRING EXPENSES.—The Board may
21 incur such expenses for programs or projects of re-
22 search, promotion, consumer information, or indus-
23 try information, and other expenses for the adminis-
24 tration, maintenance, and functioning of the Board
25 as may be authorized by the Secretary, including

1 any implementation, administrative, and referendum
2 costs incurred by the Department.

3 (4) PAYING EXPENSES.—The funds to cover the
4 expenses referred to in paragraph (3) shall be paid
5 by the Board from assessments collected under sec-
6 tion 6 or funds borrowed pursuant to paragraph (5).

7 (5) AUTHORITY TO BORROW.—To meet the ex-
8 penses referred to in paragraph (3), the Board shall
9 have the authority to borrow funds, as approved by
10 the Secretary, for capital outlays and startup costs.

11 (e) CONTRACTS AND AGREEMENTS.—

12 (1) IN GENERAL.—To ensure efficient use of
13 funds, the order shall provide that the Board may
14 enter into a contract or agreement for the implemen-
15 tation and carrying out of a program or project of
16 canola or rapeseed research, promotion, consumer
17 information, or industry information, including a
18 contract with a producer organization, and for the
19 payment of the costs with funds received by the
20 Board under the order.

21 (2) REQUIREMENTS.—A contract or agreement
22 under paragraph (1) shall provide that—

23 (A) the contracting party shall develop and
24 submit to the Board a program or project to-
25 gether with a budget that shall show the esti-

1 mated costs to be incurred for the program or
2 project;

3 (B) the program or project shall become
4 effective on the approval of the Secretary; and

5 (C) the contracting party shall keep accu-
6 rate records of all transactions, account for
7 funds received and expended, make periodic re-
8 ports to the Board of activities conducted, and
9 make such other reports as the Board or the
10 Secretary may require.

11 (3) PRODUCER ORGANIZATIONS.—The order
12 shall provide that the Board may contract with pro-
13 ducer organizations for any other services. The con-
14 tract shall include provisions comparable to those re-
15 quired by paragraph (2).

16 (f) BOOKS AND RECORDS OF THE BOARD.—

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

19 (A) maintain such books and records
20 (which shall be available to the Secretary for in-
21 spection and audit) as the Secretary may pre-
22 scribe;

23 (B) prepare and submit to the Secretary,
24 from time to time, such reports as the Sec-
25 retary may prescribe; and

1 (C) account for the receipt and disburse-
2 ment of all funds entrusted to the Board.

3 (2) AUDITS.—The Board shall cause the books
4 and records of the Board to be audited by an inde-
5 pendent auditor at the end of each fiscal year, and
6 a report of the audit to be submitted to the Sec-
7 retary.

8 (g) PROHIBITION.—

9 (1) IN GENERAL.—Subject to paragraph (2),
10 the Board shall not engage in any action to, nor
11 shall any funds received by the Board under this Act
12 be used to—

13 (A) influence legislation or governmental
14 action;

15 (B) engage in an action that would be a
16 conflict of interest;

17 (C) engage in advertising that is false or
18 misleading; or

19 (D) engage in promotion that would dis-
20 parage other commodities.

21 (2) ACTION PERMITTED.—Paragraph (1) does
22 not preclude—

23 (A) the development and recommendation
24 of amendments to the order;

1 (B) the communication to appropriate gov-
2 ernment officials of information relating to the
3 conduct, implementation, or results of pro-
4 motion, research, consumer information, or in-
5 dustry information activities under the order; or

6 (C) any action designed to market canola
7 or rapeseed products directly to a foreign gov-
8 ernment or political subdivision of a foreign
9 government.

10 (h) BOOKS AND RECORDS.—

11 (1) IN GENERAL.—The order shall require that
12 each producer or industry member shall—

13 (A) maintain and submit to the Board any
14 reports considered necessary by the Secretary
15 to ensure compliance with this Act; and

16 (B) make available during normal business
17 hours, for inspection by employees of the Board
18 or Secretary, such books and records as are
19 necessary to carry out this Act, including such
20 records as are necessary to verify any required
21 reports.

22 (2) CONFIDENTIALITY.—

23 (A) IN GENERAL.—Except as otherwise
24 provided in this Act, all information obtained
25 from books, records, or reports required to be

1 maintained under paragraph (1) shall be kept
2 confidential, and shall not be disclosed to the
3 public by any person.

4 (B) DISCLOSURE.—Information referred to
5 in subparagraph (A) may be disclosed to the
6 public if—

7 (i) the Secretary considers the infor-
8 mation relevant;

9 (ii) the information is revealed in a
10 suit or administrative hearing brought at
11 the direction or on the request of the Sec-
12 retary or to which the Secretary or any of-
13 ficer of the Department is a party; and

14 (iii) the information relates to this
15 Act.

16 (C) MISCONDUCT.—A disclosure of con-
17 fidential information in violation of subpara-
18 graph (A) by a Board member or employee of
19 the Board, except as required by other law or
20 allowed under subparagraph (B) or (D), shall
21 be considered a violation of this Act.

22 (D) GENERAL STATEMENTS.—Nothing in
23 this paragraph prohibits—

24 (i) the issuance of general statements,
25 based on the reports, of the number of per-

1 sons subject to the order or statistical data
2 collected from the reports, if the state-
3 ments do not identify the information fur-
4 nished by any person; or

5 (ii) the publication, by direction of the
6 Secretary, of the name of a person violat-
7 ing the order, together with a statement of
8 the particular provisions of the order vio-
9 lated by the person.

10 (3) AVAILABILITY OF INFORMATION.—

11 (A) EXCEPTION.—Except as provided in
12 this Act, information obtained under this Act
13 may be made available to another agency of the
14 Federal Government for a civil or criminal law
15 enforcement activity if the activity is authorized
16 by law and if the head of the agency has made
17 a written request to the Secretary specifying
18 the particular information desired and the law
19 enforcement activity for which the information
20 is sought.

21 (B) PENALTY.—Any person knowingly vio-
22 lating this subsection, on conviction, shall be
23 subject to a fine of not more than \$1,000 or to
24 imprisonment for not more than 1 year, or
25 both, and if an officer or employee of the Board

1 or the Department, shall be removed from office
2 or terminated from employment, as applicable.

3 (5) WITHHOLDING INFORMATION.—Nothing in
4 this Act authorizes withholding information from
5 Congress.

6 (i) USE OF ASSESSMENTS.—The order shall provide
7 that the assessments collected under section 6 shall be
8 used for payment of the expenses in implementing and ad-
9 ministering this Act, with provision for a reasonable re-
10 serve, and to cover those administrative costs incurred by
11 the Secretary in implementing and administering this Act,
12 except for the salaries of Government employees incurred
13 in conducting referenda.

14 (j) OTHER TERMS AND CONDITIONS.—The order
15 also shall contain such terms and conditions, not inconsis-
16 tent with this Act, as determined necessary by the Sec-
17 retary to effectuate this Act.

18 **SEC. 6. ASSESSMENTS.**

19 (a) IN GENERAL.—During the effective period of an
20 order issued pursuant to this Act, assessments shall be—

21 (1) levied on all canola or rapeseed produced in
22 the United States and marketed; and

23 (2) deducted from the payment made to a pro-
24 ducer for all canola or rapeseed sold to a first pur-
25 chaser.

1 (b) LIMITATION ON ASSESSMENTS.—No more than
2 1 assessment may be assessed under subsection (a) on any
3 canola or rapeseed produced (as remitted by a first pur-
4 chaser).

5 (c) REMITTING ASSESSMENTS.—

6 (1) IN GENERAL.—Assessments required under
7 subsection (a) shall be remitted to the Board by a
8 first purchaser.

9 (2) TIMES TO REMIT ASSESSMENT.—Each first
10 purchaser shall remit the assessment to the Board
11 as provided for in the order.

12 (d) ASSESSMENT RATE.—

13 (1) INITIAL RATE.—The initial assessment rate
14 shall be—

15 (A) 2 cents per hundredweight of canola or
16 rapeseed produced and marketed in a State in
17 which there is a qualified State canola and
18 rapeseed board; and

19 (B) 4 cents per hundredweight of canola or
20 rapeseed produced and marketed in a State in
21 which there is no qualified State canola and
22 rapeseed board.

23 (2) INCREASE.—The assessment rate may be
24 increased on recommendation by the Board to a rate
25 not exceeding 8 cents per hundredweight of canola

1 or rapeseed produced and marketed in a State in
2 which there is a qualified State canola and rapeseed
3 board or 10 cents per hundredweight of canola or
4 rapeseed produced and marketed in a State in which
5 there is no qualified State canola and rapeseed
6 board, unless—

7 (A) after the initial referendum is held
8 under section 7(a), the Board recommends an
9 increase above 10 cents per hundredweight; and

10 (B) the increase is approved in a referen-
11 dum under section 7(b).

12 (e) LATE PAYMENT CHARGE.—

13 (1) IN GENERAL.—There shall be a late pay-
14 ment charge imposed on any person who fails to
15 remit, on or before the date provided for in the
16 order, to the Board the total amount for which the
17 person is liable.

18 (2) AMOUNT OF CHARGE.—The amount of the
19 late payment charge imposed under paragraph (1)
20 shall be prescribed by the Board with the approval
21 of the Secretary.

22 (f) REFUND OF ASSESSMENTS FROM ESCROW AC-
23 COUNT.—

24 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—

25 During the period beginning on the date on which

1 an order is first issued under section 4(b)(3) and
2 ending on the date on which a referendum is con-
3 ducted under section 7(a), the Board shall—

4 (A) establish an escrow account to be used
5 for assessment refunds; and

6 (B) place funds in such account in accord-
7 ance with paragraph (2).

8 (2) PLACEMENT OF FUNDS IN ACCOUNT.—The
9 Board shall place in such account, from assessments
10 collected during the period referred to in paragraph
11 (1), an amount equal to the product obtained by
12 multiplying the total amount of assessments col-
13 lected during the period by 10 percent.

14 (3) RIGHT TO RECEIVE REFUND.—The Board
15 shall refund to a producer the assessments paid by
16 or on behalf of the producer if—

17 (A) the producer is required to pay the as-
18 sessment;

19 (B) the producer does not support the pro-
20 gram established under this Act; and

21 (C) the producer demands the refund prior
22 to the conduct of the referendum under section
23 7(a).

24 (4) FORM OF DEMAND.—The demand shall be
25 made in accordance with such regulations, in such

1 form, and within such time period as prescribed by
2 the Board.

3 (5) MAKING OF REFUND.—The refund shall be
4 made on submission of proof satisfactory to the
5 Board that the producer paid the assessment for
6 which the refund is demanded.

7 (6) PRORATION.—If—

8 (A) the amount in the escrow account re-
9 quired by paragraph (1) is not sufficient to re-
10 fund the total amount of assessments demanded
11 by eligible producers; and

12 (B) the order is not approved pursuant to
13 the referendum conducted under section 7(a);
14 the Board shall prorate the amount of the refunds
15 among all eligible producers who demand a refund.

16 (7) PROGRAM APPROVED.—If the plan is ap-
17 proved pursuant to the referendum conducted under
18 section 7(a), all funds in the escrow account shall be
19 returned to the Board for use by the Board in ac-
20 cordance with this Act.

21 **SEC. 7. REFERENDA.**

22 (a) INITIAL REFERENDUM.—

23 (1) REQUIREMENT.—During the period ending
24 30 months after the date of the issuance of an order
25 under section 4, the Secretary shall conduct a ref-

1 erendum among producers who, during a representa-
2 tive period as determined by the Secretary, have
3 been engaged in the production of canola or
4 rapeseed for the purpose of ascertaining whether the
5 order then in effect shall be continued.

6 (2) ADVANCE NOTICE.—The Secretary shall, to
7 the extent practicable, provide broad public notice in
8 advance of any referendum. The notice shall be pro-
9 vided, without advertising expenses, by means of
10 newspapers, county newsletters, the electronic media,
11 and press releases, through the use of notices posted
12 in State and county Cooperative State Research,
13 Education, and Extension Service offices and county
14 Consolidated Farm Service Agency offices, and by
15 other appropriate means specified in the order. The
16 notice shall include information on when the referen-
17 dum will be held, registration and voting require-
18 ments, rules regarding absentee voting, and other
19 pertinent information.

20 (3) APPROVAL OF ORDER.—The order shall be
21 continued only if the Secretary determines that the
22 order has been approved by not less than a majority
23 of the producers voting in the referendum.

24 (4) DISAPPROVAL OF ORDER.—If continuation
25 of the order is not approved by a majority of those

1 voting in the referendum, the Secretary shall termi-
2 nate collection of assessments under the order within
3 6 months after the referendum and shall terminate
4 the order in an orderly manner as soon as prac-
5 ticable.

6 (b) ADDITIONAL REFERENDA.—

7 (1) IN GENERAL.—

8 (A) REQUIREMENT.—After the initial ref-
9 erendum on an order, the Secretary shall con-
10 duct additional referenda, as described in sub-
11 paragraph (C), if requested by a representative
12 group of producers, as described in subpara-
13 graph (B).

14 (B) REPRESENTATIVE GROUP OF PRODUC-
15 ERS.—An additional referendum on an order
16 shall be conducted if requested by 10 percent or
17 more of the producers who during a representa-
18 tive period have been engaged in the production
19 of canola or rapeseed.

20 (C) ELIGIBLE PRODUCERS.—Each addi-
21 tional referendum shall be conducted among all
22 producers who, during a representative period,
23 as determined by the Secretary, have been en-
24 gaged in the production of canola, rapeseed, or
25 canola or rapeseed products, to determine

1 whether the producers favor the termination or
2 suspension of the order.

3 (2) DISAPPROVAL OF ORDER.—If the Secretary
4 determines, in a referendum conducted under para-
5 graph (1), that suspension or termination of the
6 order is favored by a majority of the producers vot-
7 ing in the referendum, the Secretary shall suspend
8 or terminate, as appropriate, collection of assess-
9 ments under the order within 6 months after the de-
10 termination, and shall suspend or terminate the
11 order, as appropriate, in an orderly manner as soon
12 as practicable after the determination.

13 (3) OPPORTUNITY TO REQUEST ADDITIONAL
14 REFERENDA.—

15 (A) IN GENERAL.—Beginning on the date
16 that is 5 years after the conduct of a referen-
17 dum under this Act, and every 5 years there-
18 after, the Secretary shall provide canola and
19 rapeseed producers an opportunity to request
20 an additional referendum.

21 (B) METHOD OF MAKING REQUEST.—

22 (i) IN-PERSON REQUESTS.—To carry
23 out subparagraph (A), the Secretary shall
24 establish a procedure under which a pro-
25 ducer may request a reconfirmation ref-

1 referendum in-person at a county Cooperative
2 State Research, Education, and Extension
3 Service office or a county Consolidated
4 Farm Service Agency office during a pe-
5 riod established by the Secretary, or as
6 provided in clause (ii).

7 (ii) MAIL-IN REQUESTS.—In lieu of
8 making a request in person, a producer
9 may make a request by mail. To facilitate
10 the submission of requests by mail, the
11 Secretary may make mail-in request forms
12 available to producers.

13 (C) NOTIFICATIONS.—The Secretary shall
14 publish a notice in the Federal Register, and
15 the Board shall provide written notification to
16 producers, not later than 60 days prior to the
17 end of the period established under subpara-
18 graph (B)(i) for an in-person request, of the op-
19 portunity of producers to request an additional
20 referendum. The notification shall explain the
21 right of producers to an additional referendum,
22 the procedure for a referendum, the purpose of
23 a referendum, and the date and method by
24 which producers may act to request an addi-
25 tional referendum under this paragraph. The

1 Secretary shall take such other action as the
2 Secretary determines is necessary to ensure
3 that producers are made aware of the oppor-
4 tunity to request an additional referendum.

5 (D) ACTION BY SECRETARY.—As soon as
6 practicable following the submission of a re-
7 quest for an additional referendum, the Sec-
8 retary shall determine whether a sufficient
9 number of producers have requested the ref-
10 erendum, and take such steps as are necessary
11 to conduct the referendum, as required under
12 paragraph (1).

13 (E) TIME LIMIT.—An additional referen-
14 dum requested under the procedures provided
15 in this paragraph shall be conducted not later
16 than 1 year after the Secretary determines that
17 a representative group of producers, as de-
18 scribed in paragraph (1)(B), have requested the
19 conduct of the referendum.

20 (c) PROCEDURES.—

21 (1) REIMBURSEMENT OF SECRETARY.—The
22 Secretary shall be reimbursed from assessments col-
23 lected by the Board for any expenses incurred by the
24 Secretary in connection with the conduct of an activ-
25 ity required under this section, except for the sala-

1 ries of Government employees associated with con-
2 ducting a referendum under subsections (a) and (b).

3 (2) DATE.—Each referendum shall be con-
4 ducted for a reasonable period of time not to exceed
5 3 days, established by the Secretary, under a proce-
6 dure under which producers intending to vote in the
7 referendum shall certify that the producers were en-
8 gaged in the production of canola, rapeseed, or
9 canola or rapeseed products during the representa-
10 tive period and, at the same time, shall be provided
11 an opportunity to vote in the referendum.

12 **SEC. 8. PETITION AND REVIEW.**

13 (a) PETITION.—

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

17 (A) stating that the order, a provision of
18 the order, or an obligation imposed in connec-
19 tion with the order is not established in accord-
20 ance with law; and

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

23 (2) HEARINGS.—The petitioner shall be given
24 the opportunity for a hearing on a petition filed

1 under paragraph (1), in accordance with regulations
2 issued by the Secretary.

3 (3) RULING.—After a hearing under paragraph
4 (2), the Secretary shall make a ruling on the peti-
5 tion that is the subject of the hearing, which shall
6 be final if the ruling is in accordance with applicable
7 law.

8 (b) REVIEW.—

9 (1) COMMENCEMENT OF ACTION.—The district
10 court of the United States in any district in which
11 the person who is a petitioner under subsection (a)
12 resides or carries on business shall have jurisdiction
13 to review a ruling on the petition, if a complaint is
14 filed by the person not later than 20 days after the
15 date of the entry of a ruling by the Secretary under
16 subsection (a)(3).

17 (2) PROCESS.—Service of process in a proceed-
18 ing under paragraph (1) shall be conducted in ac-
19 cordance with the Federal Rules of Civil Procedure.

20 (3) REMANDS.—If the court determines, under
21 paragraph (1), that a ruling issued under subsection
22 (a)(3) is not in accordance with applicable law, the
23 court shall remand the matter to the Secretary with
24 directions either—

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

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

5 (4) ENFORCEMENT.—The pendency of proceed-
6 ings instituted under subsection (a) shall not im-
7 pede, hinder, or delay the Attorney General or the
8 Secretary from taking any action under section 9.

9 **SEC. 9. ENFORCEMENT.**

10 (a) JURISDICTION.—The district courts of the United
11 States are vested with jurisdiction specifically to enforce,
12 and to prevent and restrain any person from violating, an
13 order or regulation made or issued under this Act.

14 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
15 tion authorized to be commenced under this section shall
16 be referred to the Attorney General for appropriate action,
17 except that the Secretary shall not be required to refer
18 to the Attorney General a violation of this Act if the Sec-
19 retary believes that the administration and enforcement
20 of this Act would be adequately served by providing a suit-
21 able written notice or warning to the person who commit-
22 ted the violation or by administrative action under section
23 8.

24 (c) CIVIL PENALTIES AND ORDERS.—

25 (1) CIVIL PENALTIES.—

1 (A) IN GENERAL.—Any person who will-
2 fully violates any provision of an order or regu-
3 lation issued by the Secretary under this Act, or
4 who fails or refuses to pay, collect, or remit an
5 assessment or fee required of the person under
6 an order or regulation, may be assessed—

7 (i) a civil penalty by the Secretary of
8 not more than \$1,000 for each violation;
9 and

10 (ii) in the case of a willful failure to
11 pay, collect, or remit an assessment as re-
12 quired by an order or regulation, an addi-
13 tional penalty equal to the amount of the
14 assessment.

15 (B) SEPARATE OFFENSE.—Each violation
16 under subparagraph (A) shall be a separate of-
17 fense.

18 (2) CEASE-AND-DESIST ORDERS.—In addition
19 to, or in lieu of, a civil penalty under paragraph (1),
20 the Secretary may issue an order requiring a person
21 to cease and desist from continuing a violation.

22 (3) NOTICE AND HEARING.—No penalty shall
23 be assessed, or cease-and-desist order issued, by the
24 Secretary under this subsection unless the person
25 against whom the penalty is assessed or the order is

1 issued is given notice and opportunity for a hearing
2 before the Secretary with respect to the violation.

3 (4) FINALITY.—The order of the Secretary as-
4 sessed a penalty or imposing a cease-and-desist
5 order under this subsection shall be final and conclu-
6 sive unless the affected person files an appeal of the
7 order with the appropriate district court of the Unit-
8 ed States in accordance with subsection (d).

9 (d) REVIEW BY DISTRICT COURT.—

10 (1) COMMENCEMENT OF ACTION.—Any person
11 who has been determined to be in violation of this
12 Act, or against whom a civil penalty has been as-
13 sessed or a cease-and-desist order issued under sub-
14 section (c), may obtain review of the penalty or
15 order by—

16 (A) filing, within the 30-day period begin-
17 ning on the date the penalty is assessed or
18 order issued, a notice of appeal in—

19 (i) the district court of the United
20 States for the district in which the person
21 resides or conducts business; or

22 (ii) the United States District Court
23 for the District of Columbia; and

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

1 (2) RECORD.—The Secretary shall file promptly,
2 in the appropriate court referred to in paragraph
3 (1), a certified copy of the record on which the Secretary
4 has determined that the person has committed a violation.
5

6 (3) STANDARD OF REVIEW.—A finding of the
7 Secretary under this section shall be set aside only
8 if the finding is found to be unsupported by substantial
9 evidence.

10 (e) FAILURE TO OBEY ORDERS.—Any person who
11 fails to obey a cease-and-desist order issued under this section
12 after the order has become final and unappealable,
13 or after the appropriate United States district court has
14 entered a final judgment in favor of the Secretary, shall
15 be subject to a civil penalty assessed by the Secretary,
16 after opportunity for a hearing and for judicial review
17 under the procedures specified in subsections (c) and (d),
18 of not more than \$5,000 for each offense. Each day during
19 which the failure continues shall be considered as a separate
20 violation of the order.

21 (f) FAILURE TO PAY PENALTIES.—If a person fails
22 to pay an assessment of a civil penalty under this section
23 after the assessment has become a final and unappealable
24 order, or after the appropriate United States district court
25 has entered final judgment in favor of the Secretary, the

1 Secretary shall refer the matter to the Attorney General
2 for recovery of the amount assessed in the district court
3 in which the person resides or conducts business. In an
4 action for recovery, the validity and appropriateness of the
5 final order imposing the civil penalty shall not be subject
6 to review.

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

10 **SEC. 10. INVESTIGATIONS AND POWER TO SUBPOENA.**

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

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

14 and

15 (2) to determine whether any person has en-
16 gaged or is engaging in an act that constitutes a vio-
17 lation of this Act, or an order, rule, or regulation is-
18 sued under this Act.

19 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

20 (1) IN GENERAL.—For the purpose of an inves-
21 tigation under subsection (a), the Secretary may ad-
22 minister oaths and affirmations, and issue subpoe-
23 nas to require the production of any records that are
24 relevant to the inquiry.

1 (2) ADMINISTRATIVE HEARINGS.—For the pur-
2 pose of an administrative hearing held under section
3 8 or 9, the presiding officer is authorized to admin-
4 ister oaths and affirmations, subpoena and compel
5 the attendance of witnesses, take evidence, and re-
6 quire the production of any records that are relevant
7 to the inquiry. The attendance of witnesses and the
8 production of records may be required from any
9 place in the United States.

10 (c) AID OF COURTS.—In the case of contumacy by,
11 or refusal to obey a subpoena issued to, any person, the
12 Secretary may invoke the aid of any court of the United
13 States within the jurisdiction of which the investigation
14 or proceeding is carried on, or where the person resides
15 or carries on business, in order to enforce a subpoena is-
16 sued by the Secretary under subsection (b). The court may
17 issue an order requiring the person to comply with the
18 subpoena.

19 (d) CONTEMPT.—A failure to obey an order of the
20 court under this section may be punished by the court as
21 contempt of the court.

22 (e) PROCESS.—Process may be served on a person
23 in the judicial district in which the person resides or con-
24 ducts business or wherever the person may be found.

1 (f) HEARING SITE.—The site of a hearing held under
2 section 8 or 9 shall be in the judicial district where the
3 person affected by the hearing resides or has a principal
4 place of business.

5 **SEC. 11. SUSPENSION OR TERMINATION OF AN ORDER.**

6 The Secretary shall, whenever the Secretary finds
7 that an order or a provision of an order obstructs or does
8 not tend to effectuate the declared policy of this Act, ter-
9 minate or suspend the operation of the order or provision.
10 The termination or suspension of an order shall not be
11 considered an order within the meaning of this Act.

12 **SEC. 12. REGULATIONS.**

13 The Secretary may issue such regulations as are nec-
14 essary to carry out this Act, including regulations relating
15 to the assessment of late payment charges.

16 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There are authorized to be appro-
18 priated for each fiscal year such sums as are necessary
19 to carry out this Act.

20 (b) ADMINISTRATIVE EXPENSES.—Funds appro-
21 priated under subsection (a) shall not be available for pay-
22 ment of the expenses or expenditures of the Board in ad-
23 ministering a provision of an order issued under this Act.

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