

103^D CONGRESS
2^D SESSION

S. 2512

To require the Secretary of Agriculture to issue an order to establish a Thoroughbred horse industry promotion program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 12), 1994

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

A BILL

To require the Secretary of Agriculture to issue an order to establish a Thoroughbred horse industry promotion program, 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.**

4 This Act may be cited as the “Thoroughbred Horse
5 Industry Promotion and Research Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the breeding, buying, selling, training, and
9 racing of Thoroughbred horses is a significant com-

1 ponent of agriculture in the national economy be-
2 cause—

3 (A) Thoroughbred horses are bred and
4 raised by thousands of individual breeders, fam-
5 ilies, farmers, ranchers, owners, and other
6 horsemen throughout the United States who
7 employ tens of thousands of agricultural work-
8 ers on farms and at training centers, sales
9 venues, and racetracks;

10 (B) Thoroughbred horses are bought and
11 sold and compete in interstate and foreign com-
12 merce; and

13 (C) racing and parimutuel wagering on
14 Thoroughbred horseraces are televised and si-
15 mulcast throughout the United States and
16 around the world;

17 (2) the history and traditions of Thoroughbred
18 horse breeding and racing trace to colonial times
19 and are worthy of preservation and promotion;

20 (3) the preservation and promotion of the Thor-
21 oughbred horse industry also are necessary to ensure
22 that rural green spaces, farms, and other agri-
23 business entities that serve the Thoroughbred indus-
24 try can continue to exist and compete efficiently and
25 effectively in domestic and world markets;

1 (4) the breeding and racing of Thoroughbred
2 horses is valuable as both business and sport be-
3 cause millions of spectators and racing fans watch
4 races on and off track and on television, and racing
5 is a historically leading spectator sport that com-
6 bines the most desired elements of business, sport,
7 and entertainment;

8 (5) State associations of Thoroughbred
9 breeders and owners sponsor awards and incentive
10 programs that promote Thoroughbred racing and
11 the ownership of State-bred Thoroughbred horses
12 and are valuable promoters of Thoroughbred horse
13 breeding and racing in State and regional markets;

14 (6) Thoroughbred horses are valuable media of
15 international exchange because—

16 (A) the United States is the leading source
17 of top quality Thoroughbred bloodstock in the
18 world; and

19 (B) sales of Thoroughbred horses to for-
20 eign buyers contribute positively to the balance
21 of trade of the United States;

22 (7) it is important to the agricultural economy
23 of the United States to ensure that—

24 (A) the high quality of American bloodlines
25 of Thoroughbred horses be maintained; and

1 (B) American-bred Thoroughbred horses
2 be allowed to compete fairly and efficiently in
3 all racing and entertainment markets;

4 (8) the preservation of existing markets and the
5 development of new and improved markets are es-
6 sential to the continued economic health and well-
7 being of the Thoroughbred horse industry through-
8 out the United States;

9 (9) promotional and informational programs,
10 including advertising, will be an effective means of—

11 (A) maintaining and developing markets
12 for Thoroughbred race horses; and

13 (B) enlarging the share of the Thorough-
14 bred horse industry in sports and entertainment
15 markets;

16 (10) because the Thoroughbred industry is pri-
17 marily oriented to agriculture and comprised mainly
18 of small- and medium-size owners, breeders, and
19 small business proprietors, the development and im-
20 plementation of coordinated national marketing pro-
21 grams historically has been difficult to accomplish;

22 (11) an effective and coordinated means of or-
23 ganizing and financing nationwide programs that in-
24 clude generic promotion and market information is

1 needed to ensure that the Thoroughbred horse in-
2 dustry will be able to—

3 (A) carry out self-help measures; and

4 (B) provide promotional and market infor-
5 mation necessary for the industry to maintain,
6 develop, and expand markets for Thoroughbred
7 race horses and breeding stock; and

8 (12) the most efficient method of financing the
9 nationwide program referred to in paragraph (11) is
10 to assess revenues derived from wagering carried out
11 in connection with Thoroughbred horseracing.

12 **SEC. 3. DEFINITIONS.**

13 As used in this Act:

14 (1) BOARD.—The term “Board” means the
15 Thoroughbred Horse Industry Promotion Board es-
16 tablished under section 5(b).

17 (2) BREEDER.—The term “breeder” means a
18 person who breeds Thoroughbred horses.

19 (3) COMMERCE.—The term “commerce” means
20 interstate, foreign, or intrastate commerce.

21 (4) CONFLICT OF INTEREST.—The term “con-
22 flict of interest” means a situation in which a mem-
23 ber has a direct or indirect financial interest in a
24 corporation, partnership, sole proprietorship, joint

1 venture, or other business entity dealing directly or
2 indirectly with the Board.

3 (5) DEPARTMENT.—The term “Department”
4 means the United States Department of Agriculture.

5 (6) DISTRICT.—The term “district” means a
6 geographical area of the United States, determined
7 by the Board and approved by the Secretary, in
8 which Thoroughbred horse breeding or racing oc-
9 curs.

10 (7) HANDLE.—The term “handle” means the
11 gross amount of money wagered on Thoroughbred
12 horseraces at a licensed racetrack or off-track wa-
13 gering facility.

14 (8) HORSEMAN.—The term “horseman” means
15 an owner, trainer, or jockey.

16 (9) HORSEMEN’S ORGANIZATION.—The term
17 “horsemen’s organization” means a trade associa-
18 tion that represents horsemen in their contractual
19 relationships with racetrack owners or racing asso-
20 ciations.

21 (10) INDUSTRY INFORMATION.—The term “in-
22 dustry information” means information and pro-
23 grams that will lead to the development of new mar-
24 kets and marketing strategies, increased efficiency,

1 and other promotional activities to enhance the
2 image of the Thoroughbred horse industry.

3 (11) JOCKEY.—The term “jockey” means an
4 individual who rides a Thoroughbred horse in a race.

5 (12) MARKET INFORMATION.—The term “mar-
6 ket information” means information and programs
7 that will assist breeders, buyers, prospective owners,
8 and other persons in making evaluations and deci-
9 sions regarding the purchase, use, and enjoyment of
10 Thoroughbred horses.

11 (13) MEMBER.—The term “member” means a
12 member of the Board.

13 (14) OFF-TRACK WAGERING FACILITY.—The
14 term “off-track wagering facility” means a facility,
15 other than a racetrack, licensed by a State to con-
16 duct parimutuel wagering on Thoroughbred horse-
17 racing.

18 (15) OWNER.—The term “owner” means any
19 person who owns, or shares ownership of, a Thor-
20 oughbred horse in the United States and who is li-
21 censed as an owner by a State.

22 (16) PATRON.—The term “patron” means a
23 racing fan or member of the general public who wa-
24 gers on Thoroughbred horseracing.

1 (17) PERSON.—The term “person” means any
2 individual, group of individuals, partnership, cor-
3 poration, association, cooperative, joint venture,
4 State, political subdivision of a State, or any other
5 organization or entity.

6 (18) PLAN.—The term “plan” means a plan is-
7 sued under section 4.

8 (19) PROMOTION.—The term “promotion”
9 means any action taken by the Board pursuant to
10 this Act to present a favorable image of Thorough-
11 bred horses to the public with the express intent of
12 improving the competitive position of Thoroughbred
13 horses in the marketplace, stimulating interest and
14 participation in the Thoroughbred horse industry,
15 and stimulating sales of Thoroughbred horses, in-
16 cluding paid advertising.

17 (20) PURSE.—The term “purse” means the
18 total amount of money awarded as a prize for the
19 racing performance of a Thoroughbred horse in a
20 race conducted at a racetrack.

21 (21) RACE MEETING.—The term “race meet-
22 ing” means the scheduled days that a racing asso-
23 ciation is licensed by a State to conduct racing and
24 parimutuel wagering on Thoroughbred horseracing.

1 (22) RACETRACK.—The term “racetrack”
2 means a racing association or racetrack licensed by
3 a State to conduct racing or parimutuel wagering on
4 Thoroughbred horseracing.

5 (23) RACETRACK OWNER.—The term “race-
6 track owner” means the owner or operator of a race-
7 track.

8 (24) RACING ASSOCIATION.—The term “racing
9 association” means a racetrack or any other person
10 licensed by a State to conduct racing and parimutuel
11 wagering on Thoroughbred horseracing.

12 (25) RESEARCH.—The term “research” means
13 any type of test, study, or analysis designed to ad-
14 vance the image, desirability of ownership, speed,
15 stamina, breeding, racing soundness, or other mar-
16 ketable quality of Thoroughbred horses.

17 (26) SECRETARY.—The term “Secretary”
18 means the Secretary of Agriculture.

19 (27) STATE.—The term “State” means any of
20 the 50 States, the District of Columbia, and the
21 Commonwealth of Puerto Rico, including a political
22 subdivision or agency thereof that regulates Thor-
23 oughbred horseracing (such as a State racing com-
24 mission).

1 (28) TAKEOUT.—The term “takeout” means
2 the total handle, less the amount paid to persons
3 placing wagers on the race.

4 (29) THOROUGHBRED.—The term “Thorough-
5 bred” means a breed of horse originally developed by
6 crossing Arabian stallions with European mares.

7 (30) TRAINER.—The term “trainer” means a
8 person who trains and conditions Thoroughbred
9 horses.

10 (31) UNITED STATES.—The term “United
11 States” means the States collectively.

12 **SEC. 4. ISSUANCE OF PLANS.**

13 (a) IN GENERAL.—To carry out this Act, the Sec-
14 retary shall, subject to the requirements of this Act, issue,
15 and from time to time amend, plans applicable to race-
16 tracks and breeders and owners of thoroughbred horses.
17 Each plan shall be national in scope. Not more than 1
18 plan shall be in effect under this Act at any time.

19 (b) PROCEDURE.—

20 (1) PROPOSAL FOR ISSUANCE OF PLAN.—The
21 Secretary may propose the issuance of a plan under
22 this section. An association of racetracks, an asso-
23 ciation of owners and breeders, or any other person
24 who is affected by this Act may request the issuance
25 of, and submit a proposal for, the plan.

1 (2) PROPOSED PLAN.—Not later than 60 days
2 after the receipt of a request, or at the time the Sec-
3 retary proposes a plan, under paragraph (1), the
4 Secretary shall publish a proposed plan and give no-
5 tice and opportunity for public comment on the pro-
6 posed plan.

7 (3) ISSUANCE OF PLAN.—After giving notice
8 and opportunity for public comment pursuant to
9 paragraph (2), the Secretary shall issue a plan, tak-
10 ing into consideration the comments received pursu-
11 ant to paragraph (2). The Secretary shall include in
12 the plan such provisions as are necessary to ensure
13 that the plan conforms with the requirements of this
14 Act.

15 (4) EFFECTIVE DATE OF PLAN.—The plan re-
16 ferred to in paragraph (3) shall be issued, and be-
17 come effective, not later than 150 days after the
18 date of publication of the proposed plan referred to
19 in paragraph (2).

20 (c) AMENDMENTS.—From time to time, the Sec-
21 retary may amend a plan. The provisions of this Act that
22 apply to a plan shall apply to an amendment to a plan.

23 **SEC. 5. REQUIRED TERMS IN PLANS.**

24 (a) IN GENERAL.—Each plan shall contain the terms
25 and conditions prescribed in this section.

1 (b) THOROUGHBRED HORSE INDUSTRY PROMOTION
2 BOARD—

3 (1) ESTABLISHMENT.—The plan shall establish
4 a Thoroughbred Horse Industry Promotion Board to
5 assist the Secretary in carrying out an effective, con-
6 tinuous, and coordinated program of promotion, re-
7 search, market information, and industry informa-
8 tion that is designed to strengthen the position of
9 the Thoroughbred horse industry in the marketplace.

10 (2) SERVICE TO ENTIRE INDUSTRY.—The
11 Board shall assist the Secretary in carrying out pro-
12 grams and projects that will provide maximum eco-
13 nomic and promotional benefit to the Thoroughbred
14 horse industry in all parts of the United States and
15 only generically promote the Thoroughbred horse in-
16 dustry.

17 (3) BOARD MEMBERSHIP.—The Secretary shall
18 appoint 14 members to the Board as follows:

19 (A) 6 members shall be appointed to rep-
20 resent owners and breeders.

21 (B) 6 members shall be appointed to rep-
22 resent racetrack owners and operators.

23 (C) 1 member shall be appointed to rep-
24 resent trainers.

1 (D) 1 member shall be appointed to rep-
2 resent jockeys.

3 (4) REPRESENTATION OF MEMBERS.—

4 (A) OWNERS AND BREEDERS.—Of the
5 members referred to in paragraph (3)(A), the
6 members of the Board shall be selected to re-
7 flect an equitable representation of districts.

8 (B) MODIFYING BOARD MEMBERSHIP.—In
9 accordance with regulations issued by the Sec-
10 retary, not later than 3 years after the date of
11 appointment of the members of the initial
12 board, and not less frequently than once every
13 3 years thereafter, but not more frequently
14 than biennially, the Board shall—

15 (i) review the geographic distribution
16 of Thoroughbred horse breeding and racing
17 throughout the United States; and

18 (ii) if warranted, recommend to the
19 Secretary that the Secretary reapportion a
20 district in order to reflect the geographic
21 distribution of Thoroughbred horse breed-
22 ing and horseracing.

23 (5) SELECTION PROCESS FOR MEMBERS.—

1 (A) PUBLICITY.—The Board shall solicit
2 nominations of individuals interested in being
3 nominated for membership on the Board.

4 (B) ELIGIBILITY.—Each member of a cat-
5 egory referred to in paragraph (3) shall be eligi-
6 ble to vote for the nomination of the members
7 in the category.

8 (C) SELECTION OF NOMINEES.—Each in-
9 dividual referred to in subparagraph (B) shall
10 have 1 vote. With respect to each category, the
11 2 eligible candidates that receive the largest
12 number of votes for the category shall be the
13 nominees of the category.

14 (D) CERTIFICATION.—Except for the es-
15 tablishment of the initial Board, the nomina-
16 tions made under subparagraph (C) shall be
17 certified by the Board and submitted to the
18 Secretary not later than the May 1, or such
19 other date recommended by the Board and ap-
20 proved by the Secretary, preceding the com-
21 mencement of the term of office for Board
22 membership, as is established under paragraph
23 (6).

24 (E) APPOINTMENT.—To each vacant
25 Board position, the Secretary shall appoint 1

1 individual from among the nominees certified
2 and submitted under subparagraph (D).

3 (F) REJECTION OF NOMINEES.—The Sec-
4 retary may reject any nominee submitted under
5 subparagraph (D). If there are insufficient
6 nominees from which to appoint members to the
7 Board as a result of the rejection by the Sec-
8 retary of the nominees, additional nominees
9 shall be submitted to the Secretary in the same
10 manner as the original nominees.

11 (G) INITIAL BOARD.—The Secretary shall
12 establish an initial Board from among nomina-
13 tions solicited by the Secretary from trade asso-
14 ciations or organizations representing members
15 of categories described in paragraph (3). For
16 the purpose of obtaining nominations for the
17 members of the initial Board described in para-
18 graph (3), the Secretary shall perform such
19 functions of the Board under this subsection as
20 the Secretary determines are necessary and ap-
21 propriate.

22 (H) FAILURE TO NOMINATE.—If the mem-
23 bers of a category described in paragraph (3)
24 fail to nominate individuals for appointment,
25 the Secretary may appoint members on a basis

1 provided for in the plan. If the Board fails to
2 nominate a member pursuant to paragraph (3),
3 the member may be appointed without nomina-
4 tion.

5 (6) TERMS OF OFFICE.—

6 (A) IN GENERAL.—The members of the
7 Board shall serve for a term of 3 years, except
8 that the members appointed to the initial Board
9 established under paragraph (5)(G) shall serve,
10 proportionately, for terms of 1, 2, and 3 years,
11 as determined by the Secretary.

12 (B) TERMINATION OF TERMS.—Notwith-
13 standing subparagraph (C), each member shall
14 continue to serve until a successor is appointed
15 by the Secretary.

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

19 (D) VACANCIES.—

20 (i) SUBMITTING NOMINATIONS.—To
21 fill any vacancy created by the death, re-
22 moval, resignation, or disqualification of
23 any member of the Board, the Secretary
24 shall request that at least 2 eligible nomi-
25 nations for a successor for each such va-

1 cancy be submitted by the Board in the
2 manner provided in paragraph (5).

3 (ii) LACK OF NOMINATIONS.—If at
4 least 2 eligible nominations are not submit-
5 ted under clause (i), the Secretary shall de-
6 termine the manner of submission of nomi-
7 nations for the vacancy.

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

13 (c) POWERS AND DUTIES OF THE BOARD.—The plan
14 shall define the powers and duties of the Board, including
15 the power and duty—

16 (1) to administer the plan in accordance with
17 the terms and conditions of the plan;

18 (2) to issue regulations to carry out the terms
19 and conditions of the plan;

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

24 (4) to establish working committees of persons
25 other than Board members;

1 (5) to employ such individuals, other than
2 Board members, as the Board considers necessary
3 and to determine the compensation and define the
4 duties of the individuals;

5 (6) to prepare and submit for the approval of
6 the Secretary, prior to the beginning of each fiscal
7 period, a recommended rate of assessment under
8 section 7, and a fiscal period budget of the antici-
9 pated expenses in the administration of the plan, in-
10 cluding the probable costs of all programs and
11 projects;

12 (7) subject to subsection (d), to develop pro-
13 grams and projects;

14 (8) subject to subsection (e), to enter into con-
15 tracts or agreements to develop and carry out pro-
16 grams or projects of promotion, research, market in-
17 formation, and industry information;

18 (9) to carry out promotion, research, market in-
19 formation, and industry information, and to pay the
20 costs of the programs or projects with assessments
21 collected pursuant to section 7;

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

1 (11) to appoint and convene, from time to time,
2 working committees comprised of owners, breeders,
3 jockeys, trainers, patrons, and members of the gen-
4 eral public who engage in parimutuel wagering on
5 Thoroughbred horseraces for the development of
6 promotion, research, market information, and indus-
7 try information programs and projects;

8 (12) to invest, pending disbursement under a
9 program or project, funds collected through assess-
10 ments authorized under section 7, only in—

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

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

15 (C) interest-bearing accounts or certifi-
16 cates of deposit of a bank that is a member of
17 the Federal Reserve System; or

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

20 except that income from any invested funds may be
21 used for any purpose for which the invested funds
22 may be used;

23 (13) to receive, investigate, and report to the
24 Secretary complaints of violations of the plan;

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

3 (15) to recommend to the Secretary amend-
4 ments to the plan; and

5 (16) to develop and recommend to the Sec-
6 retary, for approval, such regulations as may be nec-
7 essary for the development and execution of pro-
8 grams or projects, or as may otherwise be necessary,
9 to carry out the plan.

10 (d) PROGRAMS AND BUDGETS.—

11 (1) SUBMISSION TO SECRETARY.—The plan
12 shall provide that the Board shall submit to the Sec-
13 retary, for approval, any program or project of pro-
14 motion, research, market information, or industry
15 information. No program or project shall be carried
16 out prior to the approval by the Secretary of the
17 program or project.

18 (2) BUDGETS.—The plan shall require the
19 Board, prior to the beginning of each fiscal period,
20 or as may be necessary after the beginning of the
21 fiscal period (as determined by the Secretary), to
22 submit to the Secretary for approval budgets of the
23 anticipated expenses of the Board (including reim-
24 bursements under subsection (b)(7)) and disburse-
25 ments in the implementation of the plan, including

1 projected costs of promotion, research, market infor-
2 mation, and industry information programs and
3 projects.

4 (3) INCURRING EXPENSES.—Subject to the re-
5 quirements of this Act, the Board may incur such
6 expenses for programs or projects of promotion, re-
7 search, market information, or industry information,
8 and other expenses for the administration, mainte-
9 nance, and functioning of the Board, as may be au-
10 thorized by the Secretary, including any expenses in-
11 curred by the Department in carrying out or admin-
12 istering a program under this Act or conducting a
13 referendum pursuant to section 11.

14 (4) PAYING EXPENSES.—The expenses referred
15 to in paragraph (3) shall be paid by the Board from
16 assessments collected under section 7 or funds bor-
17 rowed pursuant to paragraph (5).

18 (5) AUTHORITY TO BORROW.—In order to meet
19 the expenses referred to in paragraph (3), the Board
20 shall have the authority to borrow funds, as ap-
21 proved by the Secretary, for capital outlays and
22 startup costs.

23 (6) LIMITATION ON SPENDING.—The Board
24 shall not spend an amount that is greater than 10

1 percent of the assessments collected under section 7
2 for administration of the Board.

3 (e) CONTRACTS AND AGREEMENTS.—

4 (1) IN GENERAL.—To ensure the efficient use
5 of funds, the plan shall provide that the Board may
6 enter into contracts or agreements for implementing
7 and carrying out programs or projects for research,
8 market information, or industry information, includ-
9 ing contracts with owners, breeders, or horsemen's
10 organizations. The payment of the cost of the con-
11 tracts or agreements shall be made with funds re-
12 ceived by the Board under the plan.

13 (2) REQUIREMENTS.—A contract or agreement
14 referred to in paragraph (1) shall provide that—

15 (A) the contracting party shall develop and
16 submit to the Board a program or project and
17 a budget for the program or project that in-
18 cludes estimated costs that will be incurred
19 under the program or project;

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

22 (C) the contracting party shall—

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

1 (ii) account for funds received and ex-
2 pended by the party;

3 (iii) make periodic reports to the
4 Board of activities conducted by the party;
5 and

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

8 (3) OWNER, BREEDER, AND HORSEMEN'S ORGA-
9 NIZATIONS.—The plan shall provide that the Board
10 may contract with owners, breeders, and horsemen's
11 organizations, for any other services. The contract
12 shall include provisions comparable to the provisions
13 required under paragraph (2).

14 (f) BOOKS AND RECORDS OF BOARD.—

15 (1) IN GENERAL.—The plan shall require the
16 Board to—

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

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

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

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

6 (g) PROHIBITION.—The Board shall not engage in
7 any action to, or use any funds received by the Board
8 under this Act to—

9 (1) influence legislation or governmental action,
10 other than recommending to the Secretary amend-
11 ments to the plan;

12 (2) engage in any action that would be a con-
13 flict of interest; or

14 (3) engage in any advertising that may be false
15 or misleading.

16 (h) BOOKS AND RECORDS.—

17 (1) IN GENERAL.—The plan shall require that
18 owners, breeders, and other horsemen’s organiza-
19 tions shall—

20 (A) maintain and submit to the Board any
21 reports considered necessary by the Secretary
22 to ensure compliance with this Act; and

23 (B) make available during normal business
24 hours, for inspection by employees of the Board
25 or Secretary, such books and records as are

1 necessary to carry out this Act, including such
2 records as are necessary to verify any required
3 reports.

4 (2) RECORDS RETENTION REQUIREMENT.—The
5 records required under paragraph (1) shall be main-
6 tained for a period of 2 years after the end of the
7 fiscal period of the applicable records.

8 (3) CONFIDENTIALITY.—

9 (A) IN GENERAL.—Except as otherwise
10 provided in this Act, all information obtained
11 from books, records, and reports required to be
12 maintained under paragraph (1) shall be kept
13 confidential, and shall not be disclosed to the
14 public by any person.

15 (B) DISCLOSURE.—Information referred to
16 in subparagraph (A) may be disclosed to the
17 public only if—

18 (i) the Secretary considers the infor-
19 mation relevant;

20 (ii) the information is revealed in a
21 suit or administrative hearing brought at
22 the direction or on the request of the Sec-
23 retary or to which the Secretary or any of-
24 ficer of the Department is a party; and

1 (iii) the information relates to the ad-
2 ministration of this Act.

3 (C) MISCONDUCT.—Any disclosure of con-
4 fidential information in violation of subpara-
5 graph (A) by any Board member or employee of
6 the Board, except as otherwise required by law
7 or permitted under subparagraph (B) or (D),
8 shall be a violation of this Act.

9 (D) GENERAL STATEMENTS.—Nothing in
10 this paragraph is intended to prohibit—

11 (i) the issuance of general statements,
12 based on the reports, of the number of per-
13 sons subject to the plan or statistical data
14 collected from the persons, which state-
15 ments do not identify the information fur-
16 nished by any person; or

17 (ii) the publication, by direction of the
18 Secretary, of the name of any person vio-
19 lating the plan, together with a statement
20 of the particular provisions of the plan vio-
21 lated by the person.

22 (4) AVAILABILITY OF INFORMATION.—Except
23 as otherwise provided in this Act, information ob-
24 tained under this Act may be made available to an-

1 other agency of the Federal Government for a civil
2 or criminal law enforcement activity if—

3 (A) the activity is authorized by law; and

4 (B) the head of the agency has made a
5 written request to the Secretary specifying the
6 particular information desired and the law en-
7 forcement activity for which the information is
8 sought.

9 (5) PENALTY.—Any person who knowingly vio-
10 lates this subsection, on conviction, shall be subject,
11 to a fine of not more than \$1,000 or to imprison-
12 ment for not more than 1 year, or both. On convic-
13 tion, an officer or employee of the Board or the De-
14 partment who knowingly violates this subsection
15 shall be removed from office.

16 (6) WITHHOLDING OF INFORMATION.—Nothing
17 in this Act is intended to authorize the withholding
18 of information from Congress.

19 (i) USE OF ASSESSMENTS.—The plan shall provide
20 that the assessments collected under section 7 shall be
21 used for the payment of the expenses incurred in carrying
22 out this Act, with provision for a reasonable reserve, and
23 to cover those administrative costs incurred by the Sec-
24 retary in carrying out this Act, except for the salaries of

1 employees of the Federal Government incurred in conduct-
2 ing referenda.

3 (j) OTHER TERMS AND CONDITIONS.—In addition to
4 the terms and conditions described in subsections (a)
5 through (i), the plan shall contain such terms and condi-
6 tions consistent with this Act as the Secretary determines
7 are necessary to carry out this Act.

8 **SEC. 6. PERMISSIVE TERMS IN PLANS.**

9 (a) IN GENERAL.—A plan may contain a term or con-
10 dition described in this section.

11 (b) EXEMPTIONS.—A plan may provide authority to
12 exempt from the plan Thoroughbred horses used for
13 nonracing uses and authority for the Board to require sat-
14 isfactory safeguards against improper uses of the exemp-
15 tions.

16 (c) PROMOTION.—The plan may provide for the es-
17 tablishment, issuance, effectuation, and administration of
18 appropriate programs or projects for the promotion of
19 Thoroughbred horses and for the disbursement of funds
20 that are necessary for the promotion, except that—

21 (1) the program or project shall be directed to-
22 ward increasing market demand for Thoroughbred
23 horses; and

1 (2) the promotional activities shall comply with
2 other restrictions on the use of funds established
3 under this Act.

4 (d) RESEARCH AND INFORMATION.—The plan may
5 provide for—

6 (1) establishing and carrying out research, mar-
7 ket information, and industry information programs
8 and projects to the extent that the marketing and
9 utilization of Thoroughbred horses is better under-
10 stood and encouraged, expanded, improved, or made
11 more efficient; and

12 (2) the disbursement of funds that are nec-
13 essary for the purposes specified in paragraph (1).

14 (e) RESERVE FUNDS.—The plan may provide the au-
15 thority to accumulate reserve funds from assessments col-
16 lected under section 7, to permit an effective and continu-
17 ous coordinated program of promotion, research, market
18 information, and industry information, during years in
19 which the assessments may be reduced, except that the
20 total reserve fund may not exceed the amount budgeted
21 for the operation of the plan for 2 years.

22 (f) FOREIGN MARKETS.—The plan may provide au-
23 thority to use funds collected under this Act, with the ap-
24 proval of the Secretary, for the development and expansion
25 of Thoroughbred horse sales in foreign markets.

1 **SEC. 7. ASSESSMENTS AND CONTRIBUTIONS.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), during the effective period of a plan, a mandatory as-
4 sessment shall be deducted from the handle in an amount
5 that is equal to 0.25 percent of the handle.

6 (b) ADJUSTMENT OF ASSESSMENT.—The Board,
7 after receiving the approval of the Secretary, may increase
8 or decrease the amount of a mandatory assessment re-
9 quired under subsection (a)(1).

10 (c) REMITTING ASSESSMENTS.—

11 (1) IN GENERAL.—An assessment required
12 under subsection (a)(1) shall be remitted to the
13 Board by not later than the date that is 45 days
14 after the last day of the race meeting that is the
15 subject of the assessment.

16 (2) CONTRIBUTION.—Each voluntary contribu-
17 tion under subsection (a)(2) shall be made by the
18 date specified in paragraph (1).

19 (3) REGULATIONS.—The Secretary may issue
20 such regulations as may be necessary to carry out
21 this section.

22 (d) LATE-PAYMENT CHARGE.—

23 (1) IN GENERAL.—There shall be a late-pay-
24 ment charge imposed on any person who fails to
25 remit, on or before the due date established by the

1 Board under subsection (c)(1), to the Board the
2 total amount for which the person is liable.

3 (2) AMOUNT OF CHARGE.—The amount of the
4 late-payment charge imposed under paragraph (1)
5 shall be prescribed by the Board with the approval
6 of the Secretary.

7 (e) REFUND OF ASSESSMENTS FROM ESCROW AC-
8 COUNT.—

9 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—
10 During the period beginning on the effective date of
11 an initial plan and ending on the date the referen-
12 dum is conducted under section 11(a), the Board
13 shall—

14 (A) establish an escrow account to be used
15 for assessment refunds; and

16 (B) place funds in the account in accord-
17 ance with paragraph (2).

18 (2) PLACEMENT OF FUNDS IN ACCOUNT.—The
19 Board shall place in the account, from assessments
20 collected during the period referred to in paragraph
21 (1), an amount equal to the product obtained by
22 multiplying the total amount of assessments col-
23 lected during the period by 10 percent.

24 (3) RIGHT TO RECEIVE REFUND.—Subject to
25 paragraphs (4), (5), and (6), an owner or a race-

1 track shall have the right to demand, and receive
2 from the Board, a one-time refund of an assessment
3 paid by, or on behalf of, the person during the pe-
4 riod referred to in paragraph (1), if—

5 (A) the owners, as a group, and race-
6 tracks, as a group, do not support the program
7 established under this Act;

8 (B) the owners, as a group, and race-
9 tracks, as a group, demand the refund prior to
10 the conduct of the referendum under section
11 11(a); and

12 (C) the plan is not approved pursuant to
13 the referendum conducted under section 11(a).

14 (4) FORM OF DEMAND.—A demand under para-
15 graph (3) shall be made in accordance with rules, on
16 a form, and within a time period, prescribed by the
17 Board.

18 (5) MAKING OF REFUND.—The refund shall be
19 made on submission of proof satisfactory to the
20 Board that the assessment for which a refund is de-
21 manded was paid.

22 (6) PRORATION.—If—

23 (A) the amount in the escrow account re-
24 quired by paragraph (1) is not sufficient to re-

1 fund the total amount of assessments demanded
2 by eligible owners and racetracks; and

3 (B) the plan is not approved pursuant to
4 the referendum conducted under section 11(a);
5 the Board shall prorate the amount of the refunds
6 among all eligible owners and racetracks who de-
7 mand a refund under paragraph (3).

8 (7) APPROVAL OF PROGRAM.—If the plan is ap-
9 proved pursuant to the referendum conducted under
10 section 11(a), all funds in the escrow account estab-
11 lished under paragraph (1) shall be returned to the
12 Board for use by the Board in accordance with this
13 Act.

14 **SEC. 8. PETITION AND REVIEW.**

15 (a) PETITION.—

16 (1) IN GENERAL.—A person subject to a plan
17 may file with the Secretary a petition that—

18 (A) states that the plan, any provision of
19 the plan, or any obligation imposed in connec-
20 tion with the plan is not in accordance with ap-
21 plicable law; and

22 (B) requests a modification of the plan or
23 an exemption from the plan.

24 (2) HEARINGS.—A person who files a petition
25 under paragraph (1) shall be given the opportunity

1 for a hearing on the petition, on the record and in
2 accordance with regulations issued by the Secretary.

3 (3) RULING.—After holding a hearing under
4 paragraph (2), the Secretary shall issue a ruling on
5 the petition that is the subject of the hearing. The
6 ruling shall be considered a final agency action.

7 (b) JUDICIAL REVIEW.—

8 (1) COMMENCEMENT OF ACTION.—During the
9 20-day period beginning on the date on which the
10 Secretary issues a ruling on a petition pursuant to
11 subsection (a)(3), the person who filed the petition
12 may obtain review of the ruling by filing a complaint
13 in the district court of the United States for any dis-
14 trict in which the person resides or conducts on
15 business.

16 (2) PROCESS.—Service of process in judicial re-
17 view proceedings conducted pursuant to this sub-
18 section shall be in accordance with the Federal
19 Rules of Civil Procedure.

20 (3) REMANDS.—If the court determines that
21 the ruling that is the subject of the judicial review
22 conducted pursuant to this subsection was not made
23 in accordance with applicable law, the court shall re-
24 mand the matter to the Secretary with directions—

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

4 (B) to carry out such further proceedings
5 as, in the opinion of the court, are required
6 under applicable law.

7 (4) ENFORCEMENT.—Pending proceedings in-
8 stituted under subsection (a) are not intended to im-
9 pede, hinder, or delay the Attorney General or the
10 Secretary from taking any action under section 10.

11 **SEC. 9. ENFORCEMENT.**

12 (a) JURISDICTION.—The district courts of the United
13 States shall have jurisdiction specifically to enforce, and
14 to prevent and restrain a person from violating, this Act
15 or any plan or regulation issued under this Act.

16 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
17 tion brought under this section shall be referred to the
18 Attorney General for appropriate action, except that the
19 Secretary is not required to refer to the Attorney General
20 a violation of this Act or any plan or regulation issued
21 under this Act if the Secretary believes that the adminis-
22 tration and enforcement of this Act would be adequately
23 served by administrative action under subsection (c) or by
24 providing a suitable written notice or warning to any per-
25 son committing the violation.

1 (c) CIVIL PENALTIES AND ORDERS.—

2 (1) CIVIL PENALTIES.—

3 (A) IN GENERAL.—Except as otherwise
4 provided in this Act, a person who willfully vio-
5 lates any provision of this Act or any plan or
6 regulation issued under this Act, or who fails to
7 pay, collect, or remit any assessment or fee re-
8 quired of the person under this Act or any plan
9 or regulation issued under this Act, may be as-
10 sessed by the Secretary a civil penalty of not
11 less than \$1,000 and not more than \$10,000
12 for each violation.

13 (B) SEPARATE OFFENSE.—Each violation
14 referred to in subparagraph (A) shall be a sepa-
15 rate offense.

16 (2) CEASE AND DESIST ORDERS.—In addition
17 to, or in lieu of, a civil penalty referred to in para-
18 graph (1), the Secretary may issue an order requir-
19 ing the person to cease and desist from continuing
20 the violation.

21 (3) NOTICE AND HEARING.—The Secretary
22 may not assess a penalty, or issue a cease and desist
23 order, under this subsection unless the Secretary
24 gives the person against whom the assessment is

1 made, or order is issued, notice and opportunity for
2 a hearing on the record with respect to the violation.

3 (4) FINALITY.—The order of the Secretary as-
4 sessing a penalty or imposing a cease and desist
5 order shall be final and conclusive unless the person
6 against whom the order is issued files an appeal
7 from the order of the Secretary in accordance with
8 subsection (d).

9 (d) REVIEW BY DISTRICT COURT.—

10 (1) COMMENCEMENT OF ACTION.—A person
11 against whom a civil penalty is assessed or a cease
12 and desist order is issued under subsection (c) may
13 obtain review of the penalty or order in the district
14 court of the United States for any district in which
15 the person resides or conducts business, or in the
16 United States District Court for the District of Co-
17 lumbia, by—

18 (A) filing, within the 30-day period begin-
19 ning on the date the penalty is assessed or
20 order issued, a complaint in the court; and

21 (B) simultaneously sending a copy of the
22 complaint by certified mail to the Secretary.

23 (2) RECORD.—The Secretary shall promptly file
24 in the court a certified copy of the record on which

1 the Secretary found that the person committed a
2 violation.

3 (3) STANDARD OF REVIEW.—A finding of the
4 Secretary shall be set aside only if the finding is
5 found to be unsupported by substantial evidence.

6 (e) FAILURE TO OBEY ORDERS.—Any person who
7 fails to obey a cease and desist order after the order has
8 become final and unappealable, or after the appropriate
9 district court has entered a final judgment in favor of the
10 Secretary, shall be subject to a civil penalty assessed by
11 the Secretary, after opportunity for a hearing on the
12 record and for judicial review under the procedures speci-
13 fied in subsections (c) and (d), of not more than \$1,000
14 for each offense. Each day during which the failure contin-
15 ues shall be considered a separate violation of the order.

16 (f) FAILURE TO PAY PENALTY.—If a person fails to
17 pay a civil penalty after the penalty is imposed by a final
18 and unappealable order issued by the Secretary, or after
19 the appropriate district court has entered a final judgment
20 in favor of the Secretary, the Secretary shall refer the
21 matter to the Attorney General for recovery of the amount
22 assessed in the district court of the United States for any
23 district in which the person resides or conducts business.
24 In the action, the validity and appropriateness of the order
25 imposing the civil penalty shall not be subject to review.

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

2 (a) IN GENERAL.—The Secretary may make such in-
3 vestigations as the Secretary determines necessary—

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

5 or

6 (2) to determine whether a person has engaged
7 in, or is engaging in, any act or practice that con-
8 stitutes a violation of any provision of this Act, or
9 of any plan, rule, or regulation issued under this
10 Act.

11 (b) POWER TO SUBPOENA.—

12 (1) INVESTIGATIONS.—For the purpose of an
13 investigation made under subsection (a), the Sec-
14 retary may administer oaths and affirmations and
15 issue subpoenas to require the production of any
16 records that are relevant to the investigation. The
17 production of any records described in the preceding
18 sentence may be required from any location in the
19 United States.

20 (2) ADMINISTRATIVE HEARINGS.—For the pur-
21 pose of an administrative hearing held under section
22 8 or 9, the presiding officer is authorized to admin-
23 ister oaths and affirmations, subpoena witnesses,
24 compel the attendance of the witnesses, take evi-
25 dence, and require the production of any records
26 that are relevant to the inquiry. The attendance of

1 witnesses and the production of any of the records
2 described in the preceding sentence may be required
3 from any location in the United States.

4 (c) AID OF COURTS.—In case of contumacy by, or
5 refusal to obey a subpoena issued to, any person, the Sec-
6 retary may invoke the aid of any court of the United
7 States—

8 (1) within the jurisdiction of which the inves-
9 tigation or proceeding is carried out; or

10 (2) where the person resides or conducts busi-
11 ness;

12 in order to enforce a subpoena issued by the Secretary
13 under subsection (b). The court may issue an order requir-
14 ing the person to comply with the subpoena.

15 (d) CONTEMPT.—Any failure to obey an order of the
16 court made under subsection (c) may be punished by the
17 court as a contempt of the court.

18 (e) PROCESS.—Process in any case referred to in sub-
19 section (d) may be served in the judicial district—

20 (1) in which the person resides or conducts
21 business; or

22 (2) where the person is found.

23 (f) HEARING SITE.—The site of any hearings held
24 under section 8 or 9 shall be within the judicial district

1 where the person resides or has a principal place of busi-
2 ness.

3 **SEC. 11. REQUIREMENT OF REFERENDUM.**

4 (a) IN GENERAL.—Not later than 3 years after the
5 effective date of the initial plan, the Secretary shall con-
6 duct a referendum among owners and racetracks who,
7 during a representative period determined by the Sec-
8 retary, have been engaged in activities relating to Thor-
9 oughbred horseracing to determine whether they favor the
10 continuation, termination, or suspension of the plan.

11 (b) OTHER REFERENDA.—

12 (1) IN GENERAL.—After the referendum is con-
13 ducted under subsection (a), the Secretary shall hold
14 a referendum on request of the Board or 10 percent
15 or more of the total number of owners and race-
16 tracks to determine whether they favor the termi-
17 nation or suspension of the plan.

18 (2) SUSPENSION OR TERMINATION.—The Sec-
19 retary shall terminate or suspend the plan, in ac-
20 cordance with section 12(b), whenever the Secretary
21 determines that the suspension or termination is fa-
22 vored by a majority of those voting in a referendum.

23 (c) COSTS OF REFERENDUM.—The Secretary shall be
24 reimbursed, from any assessments collected by the Board,
25 for any expenses incurred by the Department in connec-

1 tion with the conduct of any referendum under this sec-
2 tion, except for the salaries of Federal Government em-
3 ployees.

4 (d) MANNER.—

5 (1) IN GENERAL.—Each referendum under this
6 section shall be conducted in a manner determined
7 by the Secretary.

8 (2) ADVANCE REGISTRATION.—An owner or a
9 racetrack that chooses to vote in any referendum
10 conducted under this section shall register—

11 (A) prior to the voting period; and

12 (B) with the State racing commission that
13 licensed the owner or racetrack, as determined
14 by the Secretary.

15 (3) VOTING.—An owner or a racetrack that
16 votes in a referendum conducted under this Act shall
17 vote in person at an appropriate polling place, as de-
18 termined by the Secretary, or by mail to the Sec-
19 retary.

20 (4) NOTICE.—Not later than 30 days before a
21 referendum is conducted under this Act, the appro-
22 priate official of the Department shall notify owners
23 and racetracks. The notice shall explain the registra-
24 tion and voting procedures established under this
25 subsection.

1 **SEC. 12. SUSPENSION OR TERMINATION OF PLAN.**

2 (a) SUSPENSION OR TERMINATION ON THE BASIS OF
3 A FINDING.—If the Secretary finds that a plan or any
4 provision of the plan obstructs or does not carry out a
5 policy of this Act, the Secretary shall terminate or suspend
6 the operation of the plan or provision.

7 (b) SUSPENSION OR TERMINATION ON THE BASIS OF
8 A REFERENDUM.—If, on the basis of a result of any ref-
9 erendum conducted under section 11, the Secretary deter-
10 mines that suspension or termination of a plan is favored
11 by a majority of the owners and racetracks who voted in
12 the referendum, the Secretary shall—

13 (1) not later than 180 days after making the
14 determination, suspend or terminate, as the case
15 may be, the collection of assessments under the plan;
16 and

17 (2) suspend or terminate, as the case may be,
18 activities under the plan in an orderly manner as
19 soon as practicable.

20 **SEC. 13. REGULATIONS.**

21 The Secretary may issue such regulations as are nec-
22 essary to carry out this Act.

23 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) IN GENERAL.—There are authorized to be appro-
25 priated such sums as are necessary to carry out this Act.

1 (b) ADMINISTRATIVE EXPENSES.—No funds made
2 available by appropriations pursuant to this section, may
3 be used for the expenses or expenditures of the Board in
4 carrying out administrative functions under any provision
5 of any plan.

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