§ 4816. Investigations

(a) Purposes

The Secretary may make such investigations as the Secretary considers necessary—

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

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

(b) Oaths and affirmations; subpoenas

(1) For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry.

(2) Such attendance of witnesses and the production of such records may be required from any place in the United States.

(c) Judicial enforcement; contempt proceedings; service of process

(1) In the case of contumacy, or refusal to obey a subpoena, by a person, the Secretary may invoke the aid of a court of the United States with jurisdiction over such investigation or proceeding, or where such person resides or does business, in requiring the attendance and testimony of such person and the production of such records.

(2) The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation.

(3) A failure to obey an order issued under this section by the court may be punished by the court as a contempt thereof.

(4) Process in such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.


§ 4817. Preemption

(a) Promotion and consumer education; funds from pork producers

This chapter is intended to occupy the field of—

(1) promotion and consumer education involving pork and pork products; and

(2) obtaining funds therefor from pork producers.

(b) Additional or different State regulation prohibited

The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from this chapter may not be imposed by a State.

(c) Application of section

This section shall apply only during a period beginning on the date of the commencement of the collection of assessments under section 4809 of this title and ending on the date of the termination of the collection of assessments under section 4811(a)(3) or 4811(b)(1)(B)1 of this title.


§ 4818. Administrative provision

The provisions of this chapter applicable to orders shall be applicable to amendments to orders.


§ 4819. Authorization of appropriations

(a) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out this chapter, subject to reimbursement from the Board under section 4909(c)(3)(B)(iv) of this title.

(b) Sums appropriated to carry out this chapter shall not be available for payment of an expense or expenditure incurred by the Board in administering an order.


CHAPTER 80—WATERMELON RESEARCH AND PROMOTION

Sec. 4901. Congressional findings and declaration of policy.

4902. Definitions.

4903. Issuance of plans.

4904. Notice and hearings.

1 So in original. Probably should be “section 4811(b)(2)(A) or 4811(b)(1)(B)”.
§ 4901. Congressional findings and declaration of policy

(a) Congress finds that—

(1) the per capita consumption of watermelons in the United States has declined steadily in recent years;

(2) watermelons are an important cash crop to many farmers in the United States and are an economical, enjoyable, and healthful food for consumers;

(3) approximately 2,607,600,000 pounds of watermelons with a farm value of $158,923,000 were produced in 1981 in the United States;

(4) watermelons move in the channels of interstate commerce, and watermelons that do not move in such channels directly affect interstate commerce;

(5) the maintenance and expansion of existing markets and the establishment of new or improved markets and uses for watermelons are vital to the welfare of watermelon growers and those concerned with marketing, using, handling, and importing watermelons, as well as the general economic welfare of the Nation; and

(6) the development and implementation of coordinated programs of research, development, advertising, and promotion are necessary to maintain and expand existing markets and establish new or improved markets and uses for watermelons.

(b) It is declared to be the policy of Congress that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the development, financing (through adequate assessments on watermelons harvested in the United States, or imported into the United States, for commercial use), and carrying out of an effective, continuous, and coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon’s competitive position in the marketplace, and establish, maintain, and expand domestic and foreign markets for watermelons.

The purpose of this chapter is to so authorize the establishment of such procedure and the development, financing, and carrying out of such program. Nothing in this chapter may be construed to dictate quality standards nor provide for the control of production or otherwise limit the right of individual watermelon producers to produce watermelons.


AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103–189, §8(k)(1), substituted “handling, and importing” for “and handling”, before “watermelons”.

$4902. Definitions

As used in this chapter:

(1) The term “Secretary” means the Secretary of Agriculture.

(2) The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

(3) The term “watermelon” means all varieties of watermelon grown by producers in the United States or imported into the United States.

(4) The term “handler” means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons in a manner specified in a plan issued under this chapter or in regulations promulgated thereunder.

(5) The term “producer” means any person engaged in the growing of 10 or more acres of watermelons.

(6) The term “importer” means any person who imports watermelons into the United States.

(7) The term “plan” means an order issued by the Secretary under this chapter.

(8) The term “promotion” means any action taken by the Board, under this chapter, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

(9) The term “Board” means the National Watermelon Promotion Board provided for in section 4906 of this title.

(10) The term “United States” means each of the several States and the District of Columbia.


AMENDMENTS


Par. (1). Pub. L. 103–189, §§3(a), (k)(3)(B), substituted “The term” for “the term” and a period for semicolon at end.

Par. (2). Pub. L. 103–189, §8(a)(1), (k)(3)(B), substituted “‘watermelons’” for “‘and other watermelons’”.

Par. (3). Pub. L. 103–189, §3(a)(1), struck out “the forty-eight contiguous States of” after “by producers in”.

SHORT TITLE

Title XVI, 7 U.S.C. §§1641–1657, provided that: “This title [subtitle C (§§1641–1657) of Pub. L. 99–198, enacting this chapter] may be cited as the ‘Watermelon Research and Promotion Act’.”

SHORT TITLE

Pub. L. 103–189, §1(a), Dec. 14, 1993, 107 Stat. 2259, provided that: “This Act [amending this section and sections 4902 to 4904, 4906, 4908, and 4911 to 4914 of this title] may be cited as the ‘Watermelon Research and Promotion Improvement Act of 1993’.”

AMENDMENTS

1993—Pub. L. 103–189, §8(k)(2), inserted “, or imported into the United States,” after “harvested in the United States” and struck out “produced in the United States” after “foreign markets for watermelons”.

SUBSEC. (b). Pub. L. 103–189, §8(k)(2), inserted “, or imported into the United States,” after “harvested in the United States” and struck out “produced in the United States” after “foreign markets for watermelons”.

SHORT TITLE

Pub. L. 103–189, §1(a), Dec. 14, 1993, 107 Stat. 2259, provided that: “This Act [amending this section and sections 4902 to 4904, 4906, 4908, and 4911 to 4914 of this title] may be cited as the ‘Watermelon Research and Promotion Improvement Act of 1993’.”
§ 4903. Issuance of plans

To effectuate the declared policy of this chapter, the Secretary shall, under the provisions of this chapter, issue, and from time to time may amend, orders (applicable to producers, handlers, and importers of watermelons) authorizing the collection of assessments on watermelons under this chapter and the use of such funds to cover the costs of research, development, advertising, and promotion with respect to watermelons under this chapter. Any plan shall be applicable to watermelons produced in the United States or imported into the United States.


AMENDMENTS

1993—Pub. L. 103–189, in first sentence, substituted ‘‘producers, handlers, and importers’’ for ‘‘and handlers’’ and ‘‘and handlers, and importers’’ for ‘‘or handlers’’.

§ 4904. Notice and hearings

(a) When sufficient evidence, as determined by the Secretary, is presented to the Secretary by watermelon producers, handlers, or importers, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this chapter, the Secretary shall give due notice and opportunity for a hearing on a proposed plan. Such hearing may be requested by watermelon producers, handlers, or importers or by any other interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.

(B) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least 1 representative of importers shall serve on the Board.

(C) If importers are subject to the plan and fail to select nominees for appointment to the Board, the Secretary may appoint any importers as the representatives of importers.

(D) Not later than 5 years after the date that importers are subjected to the plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(d) Compensation and expenses of Board

The plan shall provide that all Board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the Board.

(e) Budget on fiscal period basis

The plan shall provide that the Board shall prepare and submit to the Secretary for the Secretary’s approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(f) Assessments; payments; notice

The plan shall provide for the fixing by the Secretary of assessments to cover costs incurred under the budgets provided for in subsection (e) of this section, and under section 4907(f) of this title, based on the Board’s recommendation as to the appropriate rate of assessment, and for the payment of the assessments to the Board. In fixing or changing the rate of assessment pursuant to the plan, the Secretary shall comply with the notice and comment procedures established under section 553 of title 5. Sections 556 and 557 of such title shall not apply with respect to fixing or changing the rate of assessment.

(g) Scope of expenditures; restrictions; assessments on per-unit basis; importers

The plan shall provide the following:

(1) Funds received by the Board shall be used for research, development, advertising, or promotion of watermelons and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter.

(2) No advertising or sales promotion program under this chapter shall make any reference to private brand names nor use false or unwarranted claims in behalf of watermelons or their products or false or unwarranted statements with respect to attributes or use of any competing products.

(3) No funds received by the Board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsections (b)(4) and (f) of this section.

(4) Assessments shall be made on watermelons produced by producers and watermelons handled by handlers, and the rate of such assessments in the case of producers and handlers shall be the same, on a per-unit basis, for producers and handlers. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(5) If importers are subject to the plan, an assessment shall also be made on watermelons imported into the United States by the importers. The rate of assessment for importers who are subject to the plan shall be equal to the combined rate for producers and handlers.

(h) Refunds

(1) Except as provided in paragraph (2), the plan shall provide that, notwithstanding any other provisions of this chapter, any watermelon producer or handler (or importer who is subject to the plan) against whose watermelons an assessment is made and collected under this chapter and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this chapter shall have the right to demand a refund of the assessment from the Board, under regulations, and on a form and within a time period (not less than 90 days), prescribed by the Board and approved by the Secretary. A producer or handler (or importer who is subject to the plan) who timely makes demand in accord with the regulations, on submission of proof satisfactory to the Board that the producer, handler, or importer paid the assessment for which the refund is sought, shall receive such refund within 60 days after demand therefor.

(2) If approved in the referendum required by section 4914(b) of this title relating to the elimination of the assessment refund under paragraph (1), the Secretary shall amend the plan that is in effect on the day before December 14, 1993, to eliminate the refund provision.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B), if importers are subject to the plan, the plan shall provide that an importer of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is based on the rate of assessment paid by domestic producers.

(B) The Secretary may adjust the quantity of the weight exemption specified in subparagraph (A) on the recommendation of the Board after an opportunity for public notice and opportunity for comment in accordance with section 553 of title 5, and without regard to sections 556 and 557 of such title, to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(i) Submission of programs or projects; approval by Secretary

The plan shall provide that the Board, subject to the provisions of subsections (e), (f), and (g) of this section, shall develop and submit to the Secretary, for the Secretary’s approval, any research, development, advertising, or promotion
program or project, and that a program or project must be approved by the Secretary before becoming effective.

(j) Contract authority

The plan shall provide the Board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertising, or promotion programs or projects, and the payment of the cost thereof with funds collected under this chapter.

(k) Recordkeeping; accounting and audit reports

The plan shall provide that the Board shall (1) maintain books and records, (2) prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and (3) cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

(l) Certification

The plan shall provide that the Board shall have the authority to establish rules for certifying whether a person meets the definition of a producer under section 4902(5) of this title.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–203, §5(1)(C), substituted “‘producer and handler members of the Board’” in second sentence, and added pars. (2) and (3).

Subsec. (f). Pub. L. 100–203, §5(1), substituted “‘payment of the assessments to the Board.’” for “‘collection of the assessments by the Board’” and inserted at end “In fixing or changing the rate of assessment pursuant to the plan, the Secretary shall comply with the notice and comment procedures established under section 553 of title 5. Sections 556 and 557 of such title shall not apply with respect to fixing or changing the rate of assessment.”

Subsec. (g). Pub. L. 103–188, §8(k)(4)(A), substituted “the following:” for “‘that—” in introductory provisions.

Subsec. (g)(1). Pub. L. 103–188, §8(k)(4)(B), substituted “‘Funds received’” for “‘funds collected’” and a period for semicolon at end.

Subsec. (g)(2). Pub. L. 103–188, §8(k)(4)(C), substituted “‘No’ for ‘‘no’” and a period for semicolon at end.

Subsec. (g)(3). Pub. L. 103–188, §8(k)(4)(D), substituted “‘No’ for ‘‘no’”, “‘received’” for “‘collected’”, and a period for “‘;’” and at end.

Subsec. (g)(4). Pub. L. 103–188, §8(e)(1), substituted “‘Assessments’” for “‘assessments’” and inserted “in the case of producers and handlers” after “such assessments.”


Subsec. (h). Pub. L. 103–188, §8(f), designated existing provisions as par. (1), substituted “‘Except as provided in paragraph (2), the’” for “‘The’, inserted ‘‘or importer who is subject to the plan’” after “‘handler’” the first two places appearing, substituted “‘or handler paid the assessment’” for “‘or handler paid the assessment’” and added pars. (2) and (3).


§ 4907. Permissive terms in plans

(a) Description of terms and provisions; prohibition

Any plan issued under this chapter may contain one or more of the terms and provisions described in this section, but except as provided in section 4906 of this title no others.

(b) Exemptions

The plan may provide for the exemption, from the provisions of the plan, of watermelons used for nonfood uses, and authority for the Board to establish satisfactory safeguards against improper use of such exemption.

(c) Designation of different handler payment and reporting schedules for assessments

The plan may provide for the designation of different handler payment and reporting schedules with respect to assessments, as provided for in sections 4906 and 4908 of this title, to recognize differences in marketing practices and procedures used in different production areas.

(d) Advertising and sales promotion programs or projects

The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and other sales promotion of watermelons and for the disbursement of necessary funds for such purposes. Any such program or project shall be directed toward increasing the general demand for watermelons, and promotional activities shall comply with the provisions of section 4906(g) of this title.

(e) Marketing objectives of research and development projects and studies

The plan may provide for establishing and carrying out research and development projects and studies to end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) Reserve funds; limitation

The plan may provide authority for the accumulation of reserve funds from assessments collected under this chapter, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when watermelon production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for two years operation.

(g) Foreign market sales

The plan may provide for the use of funds from assessments collected under this chapter, with the approval of the Secretary, for the development and expansion of sales of watermelons in foreign markets.

(h) Other terms and conditions

The plan may contain terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of the plan.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–188, §§4, 8(d), designated existing provisions as par. (1), substituted “‘other members of the Board’” in second sentence, and added pars. (2) and (3).


§ 4908. Assessment procedures

(a) Persons responsible for remittance of assessments; recordkeeping; equal and unitary assessments

(1) Each handler required to pay assessments under a plan, as provided for under section
section shall not impede or delay the United States or the Secretary from the pendency of proceedings instituted under this chapter.

(b) Inspection of records

Handlers and importers responsible for payment of assessments under subsection (a) of this section shall maintain and make available for inspection by the Secretary such records as required by the plan and file reports at the times, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the Board and to the Secretary that is appropriate or necessary to the effectuation, administration, or enforcement of this chapter or of any plan or regulation issued under this chapter.

(c) Confidentiality of information; disclosure authority; general or violation statements; penalties; removal from office

All information obtained under subsections (a) and (b) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this subsection shall be deemed to prohibit—

(1) the issuance of general statements based on the reports of a number of handlers or importers subject to a plan if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary of the name of any person violating any plan together with a statement of the particular provisions of the plan violated by such person.

Any such officer or employee violating the provisions of this subsection shall be subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, and shall be removed from office.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–189, § 8(g)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 103–189, § 8(g)(2), inserted “and importers” after “Handlers”.

Subsec. (c)(1). Pub. L. 103–189, § 8(g)(3), inserted “or importers” after “handlers”.

§ 4909. Petition and review

(a) Any person subject to a plan may file a written petition with the Secretary, stating that the plan or any provision of the plan, or any obligation imposed in connection therewith, is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The person shall be given an opportunity to be heard, to modify the petition, in accordance with regulations prescribed by the Secretary. After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with the law.

(b) The district courts of the United States in any district in which the person is an inhabitant, or in which the person’s principal place of business is located, are hereby vested with jurisdiction to review such ruling, provided that a complaint for that purpose is filed within twenty days from the date of the entry of the ruling. Service of process in such proceedings may be had on the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the Secretary with directions either to (1) make such ruling as the court shall determine to be in accordance with law, or (2) take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted under subsection (a) of this section shall not impede or delay the United States or the Secretary from taking any action to enforce or to enforce the plan or any provision of the plan.
obtaining relief under section 4910(a) of this title.

REFERENCES IN TEXT
Section 4910(a) of this title, referred to in subsec. (b), was in the original “section 1851(a)”, a nonexistent section in Pub. L. 99–198, and has been translated as if the reference had been to “section 1651(a)” to reflect the probable intent of Congress.

§ 4910. Enforcement

(a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation made or issued under this chapter. The facts relating to any civil action that may be brought under this subsection shall be referred to the Attorney General for appropriate action, except that nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of the plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable quasi-judicial procedures specified in paragraphs (1) and (2), of not more than $500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violations.

(2) No penalty shall be assessed nor cease and desist order issued unless the person is given notice and opportunity for a hearing before the Secretary with respect to the violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2), of not more than $500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.


§ 4911. Investigation and power to subpoena

(a) The Secretary may make such investigations as the Secretary deems necessary to carry out effectively the Secretary’s responsibilities under this chapter or to determine whether a person has engaged or is engaging in any acts or practices that constitute a violation of any provision of this chapter, or of any plan or regulation issued under this chapter. For the purpose of an investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a handler (or an importer who is subject to the plan), the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring the person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by the court as contempt thereof. All process in any such case may be served in the judicial district in which the person is an inhabitant or wherever the person may be found. The site of any hearing held under this subsection shall be within the judicial district in which the person is an inhabitant or in which the person’s principal place of business is located.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based on, or growing out of, any alleged violation of this chapter, or of any plan or regulation

1 See References in Text note below.
issued thereunder, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the person’s privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.


AMENDMENTS

1993—Subsec. (a). Pub. L. 103–189, in first sentence, substituted “a person” for “a handler or any other person”, in fourth sentence, inserted “(or an importer who is subject to the plan)” after “a handler”, and in last sentence, substituted “the person” for “the handler or other person”.

§ 4912. Requirement of referendum

(a) The Secretary shall conduct a referendum among producers, handlers, and importers not exempt under sections 4902(5) and 4907(b) of this title who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons, for the purpose of ascertaining whether the issuance of a plan is approved or favored by producers, handlers, and importers. The ballots and other information or reports that reveal or tend to reveal the vote of any producer, handler, or importer or the person’s volume of watermelons produced, handled, or imported shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall be subject to the penalties provided in section 4906(c) of this title.

(b) A plan issued under this chapter shall not take effect unless the Secretary determines that the issuance of the plan is approved or favored by a majority of the producers and handlers (and importers who are subject to the plan) voting in the referendum.


AMENDMENTS

1993—Pub. L. 103–189 designated existing provisions as subsec. (a), added subsec. (b), and in subsec. (a) substituted “handlers, and importers” for “and handlers” in two places and “handling, or importing” for “or handling” in first sentence, substituted “handler, or importer” for “or handler” and “handled, or imported” for “or handled” in sentence beginning with “The ballots”, and struck out after first sentence “The referendum shall be conducted at the county extension offices. No plan issued under this chapter shall be effective unless the Secretary determines that the issuance of the plan is approved or favored by not less than two-thirds of the producers and handlers voting in such referendum, or by the producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in such referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum.”

§ 4913. Suspension or termination of plans

(a) Whenever the Secretary finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of the plan or provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers eligible to vote in a referendum, to determine if watermelon producers, handlers, and importers favor the termination or suspension of the plan. The Secretary shall terminate or suspend the plan at the end of the marketing year whenever the Secretary determines that the termination or suspension is favored by a majority of those voting in the referendum, and who produce, handle, or import more than 50 per cent of the combined total of the volume of the watermelons produced by the producers, handled by the handlers, or imported by the importers voting in the referendum.


AMENDMENTS

1993—Subsec. (b). Pub. L. 103–189, §8(j)(3), struck out at end “Any such referendum shall be conducted at county extension offices.”

Pub. L. 103–189, §8(j)(2)(C), which directed the substitution of “handled by the handlers, or imported by the importers” for “or handled by the handlers,” in second sentence, was executed by making the substitution in text which did not contain a comma after the word “handlers”, to reflect the probable intent of Congress.

Pub. L. 103–189, §8(j)(1)–(2)(B), in first sentence, substituted “the Secretary” for “a person” who is subject to the plan”)” after “a handler”, and in last sentence, substituted “the person” for “the handler or any other person”.

§ 4914. Amendment procedure

(a) In general

Before a plan issued by the Secretary under this chapter may be amended, the Secretary shall publish the proposed amendments for public comment and conduct a referendum in accordance with section 4912 of this title.

(b) Separate consideration of amendments

(1) In general

The amendments described in paragraph (2) that are required to be made by the Secretary to a plan as a result of the amendments made by the Watermelon Research and Promotion Improvement Act of 1993 shall be subject to separate line item voting and approval in a referendum conducted pursuant to section 4912 of this title before the Secretary alters the plan as in effect on the day before December 14, 1993.
CHAPTER 81—NATIONAL COMMISSION ON AGRICULTURE AND RURAL DEVELOPMENT POLICY

§ 5001 to 5007. Omitted

**Codification**

Sections 5001 to 5007 were omitted pursuant to section 5007 which provided that this chapter and the National Commission on Agriculture and Rural Development Policy established by this chapter terminated 5 years after Dec. 23, 1985.

**Amendments**

The amendments referred to in paragraph (1) are the amendments to a plan required under—

(A) section 7 of the Watermelon Research and Promotion Improvement Act of 1993 relating to the elimination of the assessment refund; and

(B) section 8 of such Act relating to subjecting importers to the terms and conditions of the plan.

(3) Importers

When conducting the referendum relating to subjecting importers to the terms and conditions of a plan, the Secretary shall include as eligible voters in the referendum producers, handlers, and importers who would be subject to the plan if the amendments to a plan were approved.


**References in Text**


§ 4915. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this chapter and the application of such provision to other persons and circumstances shall not be affected thereby.


§ 4916. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this chapter, except that the funds so appropriated shall not be available for the payment of any expenses or expenditures of the Board in administering any provision of any plan issued under authority of this chapter.


CHAPTER 82—STATE AGRICULTURAL LOAN MEDIATION PROGRAMS

§ 5101. Qualifying States

(a) In general

A State is a qualifying State if the Secretary of Agriculture (hereinafter in this chapter referred to as the "Secretary") determines that the State has in effect a mediation program that meets the requirements of subsection (c) of this section.

(b) Determination by Secretary

Within 15 days after the Secretary receives from the Governor of a State a description of the mediation program of the State and a statement certifying that the State has met all of the requirements of subsection (c) of this section, the Secretary shall determine whether the State is a qualifying State.

(c) Requirements of State mediation programs

(1) Issues covered

(A) In general

To be certified as a qualifying State, the mediation program of the State must provide mediation services to persons described in paragraph (2) that are involved in agricultural loans (regardless of whether the loans are made or guaranteed by the Secretary or made by a third party).