

Public Law 97-244
97th Congress

An Act

Aug. 26, 1982
[H.R. 2160]

To amend the Potato Research and Promotion Act.

Potato Research
and Promotion
Act
Amendments
of 1982.
7 USC 2611 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Potato Research and Promotion Act Amendments of 1982".

REQUIRED TERMS IN PLANS

SEC. 2. Section 308 of the Potato Research and Promotion Act (7 U.S.C. 2617) is amended by—

(1) amending subsection (b) to read as follows:

"(b) Providing that the board shall be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection. Representatives of producers shall be nominated by producers in such manner as may be prescribed by the Secretary. Public representatives shall be nominated by the board in such manner as may be prescribed by the Secretary. If producers fail to select nominees for appointment to the board, or the board fails to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan.";

(2) amending subsection (e) to read as follows:

"(e) Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate required for such costs as may be incurred under subsection (d) of this section, including any referendum and administrative costs estimated to be incurred by the United States Department of Agriculture under this title: *Provided*, That the rate of assessment for fiscal year 1982 and each fiscal year thereafter shall not exceed one-half of 1 per centum of the immediate past ten calendar year United States average price received for potatoes by growers as reported by the Department of Agriculture."; and

(3) inserting before the semicolon in subsection (f)(1) the following: "; including any referendum and administrative costs incurred by the Department of Agriculture under this title".

Assessment rate;
referendum and
administrative
costs.

ENFORCEMENT

SEC. 3. Section 312 of the Potato Research and Promotion Act (7 U.S.C. 2621) is amended to read as follows:

"SEC. 312. (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 title. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this title shall be construed as requiring the Secretary to refer to the Attorney General violations of this title whenever the Secretary

believes that the administration and enforcement of any such plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing such violations.

“(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 or more than \$5,000 for each such 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 such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

Penalty.

Notice and hearing.

“(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (b)(1) of this section may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

Appeal.

“(3) Any person who fails to obey a cease and desist order after it has become 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 subsections (b) (1) and (2) of this section, of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

Hearing and judicial review.

“(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.”.

REQUIREMENT OF REFERENDUM

SEC. 4. Section 314 of the Potato Research and Promotion Act (7 U.S.C. 2623) is amended to read as follows:

“SEC. 314. (a) The Secretary shall conduct a referendum among producers, who during a representative period determined by the Secretary have been engaged in the production of potatoes, for the purpose of ascertaining whether the issuance of a plan is approved or favored by such producers.

"(b) No plan issued under this title shall be effective unless the Secretary determines that the issuance of such plan is approved or favored by not less than two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the potatoes produced during the representative period by producers voting in such referendum, and by not less than a majority of the producers voting in such referendum.

"(c) The failure of potato producers to approve an amendment to any plan issued under this title shall not be deemed to invalidate such plan.

"(d) The ballots and other information or reports which reveal or tend to reveal the vote of any producer or his production of potatoes shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall upon conviction be subject to the penalties provided in section 310(c) above."

Approved August 26, 1982.

LEGISLATIVE HISTORY—H.R. 2160:

HOUSE REPORT No. 97-446 (Comm. on Agriculture).

SENATE REPORT No. 97-334 (Comm. on Agriculture, Nutrition, and Forestry).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Mar. 9, considered and passed House.

May 5, considered and passed Senate, amended.

July 26, House disagreed to Senate amendments.

Aug. 12, Senate receded from its disagreement on House amendments.