

Par. (10). Pub. L. 103-189, §3(a)(2), added par. (10).

### § 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.

(Pub. L. 99-198, title XVI, §1644, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103-189, §§3(b), 8(b), Dec. 14, 1993, 107 Stat. 2259, 2261.)

#### Editorial Notes

##### AMENDMENTS

1993—Pub. L. 103-189, in first sentence, substituted “, handlers, and importers” for “and handlers”, struck out after first sentence “Any order issued by the Secretary under this chapter shall hereinafter in this chapter be referred to as a ‘plan’.”, and in last sentence, struck out “the forty-eight contiguous States of” after “watermelons produced in”, and inserted “or imported into the United States” before period at end.

### § 4904. Notice and hearings

(a) When sufficient evidence, as determined by the Secretary, is presented to the Secretary by watermelon producers, handlers, and 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.

(b) After notice and opportunity for hearing as provided in subsection (a) of this section, the Secretary shall issue a plan if the Secretary finds, and sets forth in such plan, on the evidence introduced at the hearing that the issuance of the plan and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 99-198, title XVI, §1645, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103-189, §8(c), Dec. 14, 1993, 107 Stat. 2261.)

#### Editorial Notes

##### AMENDMENTS

1993—Subsec. (a). Pub. L. 103-189 substituted “, handlers, and importers” for “and handlers” and “, handlers, or importers” for “or handlers”.

### § 4905. Regulations

The Secretary may issue such regulations as may be necessary to carry out the provisions of this chapter and the powers vested in the Secretary under this chapter.

(Pub. L. 99-198, title XVI, §1646, Dec. 23, 1985, 99 Stat. 1624.)

### § 4906. Required terms in plans

#### (a) Description of terms and provisions

Any plan issued under this chapter shall contain the terms and provisions described in this section.

#### (b) Establishment and powers of National Watermelon Promotion Board

The plan shall provide for the establishment by the Secretary of the National Watermelon Promotion Board and for defining its powers and duties, which shall include the powers to—

- (1) administer the plan in accordance with its terms and conditions;
- (2) make rules and regulations to effectuate the terms and conditions of the plan;
- (3) receive, investigate, and report to the Secretary complaints of violations of the plan; and
- (4) recommend to the Secretary amendments to the plan.

#### (c) Membership of Board; representation of interests; appointment; nomination; eligibility of producers; importer representation

(1) The plan shall provide that the Board shall be composed of representatives of producers and handlers, and one representative of the public, appointed by the Secretary from nominations submitted in accordance with this subsection. An equal number of representatives of producers and handlers shall be nominated by producers and handlers, and the representative of the public shall be nominated by the other members of the Board, in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided for in the plan. If the Board fails to nominate a public representative, the Secretary shall choose such representative for appointment.

(2) A producer shall be eligible to serve on the Board only as a representative of handlers, and not as a representative of producers, if—

- (A) the producer purchases watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or
- (B) the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producers' production is more than 50 percent of the producer's own production.

(3)(A) If importers are subject to the plan, the Board shall also include 1 or more representatives of importers, who shall be appointed by the 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), 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.<sup>1</sup> 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).

(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), 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 sub-

<sup>1</sup> So in original.

mit 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.

#### **(I) 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.

(Pub. L. 99-198, title XVI, § 1647, Dec. 23, 1985, 99 Stat. 1624; Pub. L. 103-189, §§ 4-7, 8(d)-(f), (k)(4), 9(b), Dec. 14, 1993, 107 Stat. 2260-2262, 2264.)

### **Editorial Notes**

#### **AMENDMENTS**

1993—Subsec. (c). Pub. L. 103-189, §§ 4, 8(d), designated existing provisions as par. (1), substituted “other members of the Board” for “producer and handler members of the Board” in second sentence, and added pars. (2) and (3).

Subsec. (f). Pub. L. 103-189, §§ 5(1), 6, 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. 103-189, § 8(k)(4)(A), substituted “the following:” for “that—” in introductory provisions.

Subsec. (g)(1). Pub. L. 103-189, §§ 5(2), 8(k)(4)(B), substituted “Funds received” for “funds collected” and a period for semicolon at end.

Subsec. (g)(2). Pub. L. 103-189, § 8(k)(4)(C), substituted “No” for “no” and a period for semicolon at end.

Subsec. (g)(3). Pub. L. 103-189, §§ 5(2), 8(k)(4)(D), substituted “No” for “no”, “received” for “collected”, and a period for “; and” at end.

Subsec. (g)(4). Pub. L. 103-189, § 8(e)(1), substituted “Assessments” for “assessments” and inserted “in the case of producers and handlers” after “such assessments”.

Subsec. (g)(5). Pub. L. 103-189, § 8(e)(2), added par. (5).

Subsec. (h). Pub. L. 103-189, §§ 7, 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 “or handler” the first two places appearing, substituted “, handler, or importer paid the assessment” for “or handler paid the assessment”, and added pars. (2) and (3).

Subsec. (I). Pub. L. 103-189, § 9(b), added subsec. (I).

### **§ 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 sched-

ules 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 the 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.

(Pub. L. 99-198, title XVI, § 1648, Dec. 23, 1985, 99 Stat. 1625.)

### **§ 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 4906(f) of this title, shall be responsible for payment to the Board, as it may direct, of the assessments. A handler also shall collect from any producer, or shall deduct from the proceeds paid to any producer, on whose watermelons a producer assessment is made, the assessments required to be paid by the producer. The handler shall remit producer assessments to the Board as the Board directs. Such handler shall maintain a separate record with respect to each producer for whom watermelons were handled. Such records shall indicate the total quantity of wa-