

## 7 USC Ch. 80: WATERMELON RESEARCH AND PROMOTION

### From Title 7—AGRICULTURE

#### CHAPTER 80—WATERMELON RESEARCH AND PROMOTION

Sec.	
4901.	Congressional findings and declaration of policy.
4902.	Definitions.
4903.	Issuance of plans.
4904.	Notice and hearings.
4905.	Regulations.
4906.	Required terms in plans.
4907.	Permissive terms in plans.
4908.	Assessment procedures.
4909.	Petition and review.
4910.	Enforcement.
4911.	Investigation and power to subpoena.
4912.	Requirement of referendum.
4913.	Suspension or termination of plans.
4914.	Amendment procedure.
4915.	Separability.
4916.	Authorization of appropriations.

### §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 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.

(Pub. L. 99–198, title XVI, §1642, Dec. 23, 1985, 99 Stat. 1622; Pub. L. 103–189, §8(k)(1), (2), Dec. 14, 1993, 107 Stat. 2263.)

#### AMENDMENTS

**1993**—Subsec. (a)(5). Pub. L. 103–189, §8(k)(1), substituted "handling, and importing" for "and handling".  
 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 OF 1993 AMENDMENT

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'."

## SHORT TITLE

Pub. L. 99–198, title XVI, §1641, Dec. 23, 1985, 99 Stat. 1622, provided that: "This subtitle [subtitle C (§§1641–1657) of Pub. L. 99–198, enacting this chapter] may be cited as the 'Watermelon Research and Promotion Act'."

## §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.

(Pub. L. 99–198, title XVI, §1643, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103–189, §§3(a), 8(a), (k)(3), 9(a), Dec. 14, 1993, 107 Stat. 2259, 2261, 2263, 2264.)

## AMENDMENTS

- 1993**—Pub. L. 103–189, §8(k)(3)(A), substituted "chapter:" for "chapter—" in introductory provisions. Pars. (1), (2). Pub. L. 103–189, §8(k)(3)(B), (C), substituted "The term" for "the term" and a period for semicolon at end.
- Par. (3). Pub. L. 103–189, §8(a)(1), (k)(3)(B), substituted "The term" for "the term" and "or imported into the United States." for the semicolon at end.
- Pub. L. 103–189, §3(a)(1), struck out "the forty-eight contiguous States of" after "by producers in".
- Par. (4). Pub. L. 103–189, §8(k)(3)(B), (C), substituted "The term" for "the term" and a period for semicolon at end.
- Par. (5). Pub. L. 103–189, §9(a), substituted "10" for "five".
- Pub. L. 103–189, §8(k)(3)(B), (C), substituted "The term" for "the term" and a period for semicolon at end.
- Pars. (6), (7). Pub. L. 103–189, §8(a)(2), (3), added pars. (6) and (7) and redesignated former pars. (6) and (7) as (8) and (9), respectively.
- Par. (8). Pub. L. 103–189, §8(a)(2), (k)(3)(D), redesignated par. (6) as (8) and substituted "The term" for "the term" and a period for "; and" at end.
- Par. (9). Pub. L. 103–189, §8(a)(2), (k)(3)(E), redesignated par. (7) as (9) and substituted "The term" for "the term" and "4906" for "4903".
- 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.)

## 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.)

## 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 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.

(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.)

## 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. (l). Pub. L. 103–189, §9(b), added subsec. (l).

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

## §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 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 watermelons handled by the handler, including those handled for producers and for the handler, the total quantity of watermelons handled by the handler that are included under the terms of the plan, as well as those that are exempt under the plan, and such other information as may be prescribed by the Board. To facilitate the collection and payment of assessments, the Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures used in any State or area. The handler shall be assessed an equal amount as the producer. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any watermelons.

(2)(A) If importers are subject to the plan, each importer required to pay assessments under the plan shall be responsible for payment of the assessment to the Board, as the Board may direct.

(B) The assessment on imported watermelons shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer to the Board at the time of the entry of the watermelons into the United States.

(C) Each importer required to pay assessments under the plan shall maintain a separate record that includes a record of—

- (i) the total quantity of watermelons imported into the United States that are included under the terms of the plan;
- (ii) the total quantity of watermelons that are exempt from the plan; and
- (iii) such other information as may be prescribed by the Board.

(D) No more than 1 assessment shall be made on any imported watermelon.

**(b) Inspection of records**

Handlers and importers responsible for payment of assessments under subsection (a) shall maintain and make available for inspection by the Secretary such books and 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) 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.

(Pub. L. 99–198, title XVI, §1649, Dec. 23, 1985, 99 Stat. 1626; Pub. L. 103–189, §8(g), Dec. 14, 1993, 107 Stat. 2262.)

### **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 for a hearing on 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) shall not impede or delay the United States or the Secretary from obtaining relief under section 4910(a)<sup>1</sup> of this title. (Pub. L. 99–198, title XVI, §1650, Dec. 23, 1985, 99 Stat. 1627.)

### **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.

<sup>1</sup> See References in Text note below.

### **§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) or suitable written notice or warning to any person committing the violations.

(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 violation. 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 conclusive unless the person affected by the order files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) 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 after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record on which the violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(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 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.

(Pub. L. 99–198, title XVI, §1651, Dec. 23, 1985, 99 Stat. 1627.)

## **§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 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.

(Pub. L. 99–198, title XVI, §1652, Dec. 23, 1985, 99 Stat. 1628; Pub. L. 103–189, §8(h), Dec. 14, 1993, 107 Stat. 2262.)

## **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 4908(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.

(Pub. L. 99–198, title XVI, §1653, Dec. 23, 1985, 99 Stat. 1629; Pub. L. 103–189, §§2, 8(i), Dec. 14, 1993, 107 Stat. 2259, 2262.)

## **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.

(Pub. L. 99–198, title XVI, §1654, Dec. 23, 1985, 99 Stat. 1630; Pub. L. 103–189, §8(j), Dec. 14, 1993, 107 Stat. 2263.)

## **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 "at least 10 percent of the combined total" for "10 per centum or more" and ", handlers, and importers" for "and handlers" in two places, and in second sentence, substituted ", handle, or import" for "or handle" and "50 percent of the combined total" for "50 per centum".

### **§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.

### **(2) 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.

(Pub. L. 99–198, title XVI, §1655, Dec. 23, 1985, 99 Stat. 1630; Pub. L. 103–189, §10, Dec. 14, 1993, 107 Stat. 2264.)

## **REFERENCES IN TEXT**

The Watermelon Research and Promotion Improvement Act of 1993, referred to in subsec. (b)(1), (2), is Pub. L. 103–189, Dec. 14, 1993, 107 Stat. 2259, which amended this section and sections 4901 to 4904, 4906, 4908, and 4911 to 4913 of this title, and enacted provisions set out as a note under section 4901 of this title. Section 7 of the Act amended section 4906 of this title. Section 8 of the Act amended sections 4901 to 4904, 4906, 4908, and 4911 to 4913 of this title. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 4901 of this title and Tables.

## **AMENDMENTS**

**1993**—Pub. L. 103–189 amended section generally. Prior to amendment, section read as follows: "The provisions of this chapter applicable to plans shall be applicable to amendments to plans."

### **§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.

(Pub. L. 99–198, title XVI, §1656, Dec. 23, 1985, 99 Stat. 1630.)

### **§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.

(Pub. L. 99–198, title XVI, §1657, Dec. 23, 1985, 99 Stat. 1630.)