

**§ 2583. Repealed. Pub. L. 96-574, § 20, Dec. 22, 1980, 94 Stat. 3352**

Section, Pub. L. 91-577, title III, §144, Dec. 24, 1970, 84 Stat. 1559, exempted certain plants from provisions of this chapter.

**CHAPTER 58—POTATO RESEARCH AND PROMOTION**

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7401 of this title.

**§ 2611. Congressional findings and declaration of policy**

Potatoes are a basic food in the United States and foreign countries. They are produced by many individual potato growers in every State in the United States and imported into the United States from foreign countries. In 1966, there were one million four hundred and ninety-seven thousand acres of cropland in the United States devoted to the production of potatoes.

Potatoes and potato products move in the channels of interstate or foreign commerce, and potatoes which do not move in such channels directly burden or affect interstate commerce in potatoes and potato products.

The maintenance and expansion of existing potato markets and the development of new or improved markets are vital to the welfare of potato growers and those concerned with marketing, using, and processing potatoes as well as the general economic welfare of the Nation.

Therefore, it is the declared policy of the Congress and the purpose of this chapter 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 financing, through adequate assessments on all potatoes harvested in the United States for commercial use and imported into the United States from foreign countries, and the carrying out of an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products.

(Pub. L. 91-670, title III, §302, Jan. 11, 1971, 84 Stat. 2041; Pub. L. 101-624, title XIX, §1936, Nov. 28, 1990, 104 Stat. 3865.)

AMENDMENTS

1990—Pub. L. 101-624, in first par., inserted “and foreign countries” and “and imported into the United States from foreign countries” and struck out at end “Approximately two hundred and seventy-five million hundredweight of potatoes have been produced annually during the past five years with an estimated sales value to the potato producers of \$561,000,000.”; in second par., struck out “, in a large part,” after “products move”, inserted “or foreign”, and struck out at end “All potatoes produced in the United States are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in potatoes and

potato products.” and, in third par., inserted “and imported into the United States from foreign countries” and substituted “and potato products” for “produced in the United States”.

## EFFECTIVE DATE

Section 319 of title III of Pub. L. 91-670 provided that: “This title [this chapter] shall take effect upon enactment [Jan. 11, 1971]”.

## SHORT TITLE OF 1990 AMENDMENT

Section 1935 of Pub. L. 101-624 provided that: “This subtitle [subtitle C (§§1935-1946) of title XIX of Pub. L. 101-624, amending this section and sections 2612 to 2614, 2617 to 2619, and 2622 to 2624 of this title, and enacting provisions set out as a note under section 2625 of this title] may be cited as the ‘Potato Research and Promotion Act Amendments of 1990’.”

## SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-244, §1, Aug. 26, 1982, 96 Stat. 310, provided: “That this Act [amending sections 2617, 2621, and 2623 of this title] may be cited as the ‘Potato Research and Promotion Act Amendments of 1982’.”

## SHORT TITLE

Section 301 of title III of Pub. L. 91-670 provided that: “This title [enacting this chapter] may be cited as the ‘Potato Research and Promotion Act’.”

**§ 2612. Definitions**

As used in this chapter:

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

(b) The term “person” means any individual, partnership, corporation, association, or other entity.

(c) The term “potatoes” means all varieties of Irish potatoes grown by producers in the 50 States of the United States, and grown in foreign countries and imported into the United States.

(d) The term “handler” means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes in a manner specified in a plan issued pursuant to this chapter or in the rules and regulations issued thereunder.

(e) The term “producer” means any person engaged in the growing of five or more acres of potatoes.

(f) The term “promotion” means any action taken by the National Potato Promotion Board, pursuant to this chapter, to present a favorable image for potatoes to the public with the express intent of improving their competitive positions and stimulating sales of potatoes and shall include, but shall not be limited to, paid advertising.

(g) The term “importer” means any person who imports tablestock, frozen, or processed potatoes for ultimate consumption by humans or seed potatoes into the United States.

(Pub. L. 91-670, title III, §303, Jan. 11, 1971, 84 Stat. 2041; Pub. L. 101-624, title XIX, §1937, Nov. 28, 1990, 104 Stat. 3866.)

## AMENDMENTS

1990—Subsec. (c). Pub. L. 101-624, §1937(1), substituted “50” for “forty-eight contiguous” and inserted before the period at the end “, and grown in foreign countries and imported into the United States”.

Subsec. (g). Pub. L. 101-624, §1937(2), added subsec. (g).

**§ 2613. Authority for issuance and amendment of plan**

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and from time to time amend, orders applicable to handlers and importers and shall have authority to issue orders authorizing the collection of assessments on potatoes handled or imported under the provisions of this chapter, and to authorize the use of such funds to provide research, development, advertising, and promotion of potatoes in a manner prescribed in this chapter. Any order issued by the Secretary under this chapter shall hereinafter in this chapter be referred to as a “plan”. Any such plan shall be applicable to potatoes produced in the 50 States of the United States and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States.

(Pub. L. 91-670, title III, §304, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 101-624, title XIX, §1938, Nov. 28, 1990, 104 Stat. 3866.)

## AMENDMENTS

1990—Pub. L. 101-624 substituted “handlers and importers” for “persons engaged in the handling of potatoes (hereinafter referred to as handlers)”, inserted “or imported”, substituted “50” for “forty-eight contiguous”, and inserted before period at end “and in foreign countries, if importers are subject to a plan and such potatoes are imported into the United States”.

**§ 2614. Notice and hearings**

When sufficient evidence is presented to the Secretary by interested persons, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this chapter, he shall give due notice and opportunity for a hearing upon a proposed plan. Such hearing may be requested by any interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

(Pub. L. 91-670, title III, §305, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 101-624, title XIX, §1939, Nov. 28, 1990, 104 Stat. 3866.)

## AMENDMENTS

1990—Pub. L. 101-624 substituted “interested persons” for “potato producers” in first sentence and “by any interested person, including the Secretary” for “by potato producers or by any other interested person or persons, including the Secretary” in second sentence.

**§ 2615. Finding and issuance of plan**

After notice and opportunity for hearing, the Secretary shall issue a plan if he finds, and sets forth in such plan, upon the evidence introduced at such hearing, that the issuance of such plan and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 91-670, title III, §306, Jan. 11, 1971, 84 Stat. 2042.)

**§ 2616. Regulations**

The Secretary is authorized to make such regulations with the force and effect of law, as may

be necessary to carry out the provisions of this chapter and the powers vested in him by this chapter.

(Pub. L. 91-670, title III, §307, Jan. 11, 1971, 84 Stat. 2042.)

**§ 2617. Required terms and conditions of plans**

Any plan issued pursuant to this chapter shall contain the following terms and conditions:

**(a) National Potato Promotion Board; establishment; powers and duties**

Providing for the establishment by the Secretary of a National Potato Promotion Board (hereinafter referred to as "the board") and for defining its powers and duties, which shall include powers—

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

**(b) Membership of board**

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. If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary. 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 or importers 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. The requirement for inclusion of public representatives on the board shall not be subject to producer approval, or to importer approval when importers are subject to a plan, in a referendum.

**(c) Compensation and expenses of board members**

Providing that board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the board.

**(d) Budget; preparation and submission**

Providing that the board shall prepare and submit to the Secretary for his 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.

**(e) Assessment rate per poundage handled; limitation**

Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate at not more than 2 cents per one

hundred pounds of potatoes handled; except that if approved by producers, and importers when importers are subject to a plan, pursuant to section 2623 of this title, the rate of assessment 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.

**(f) Restrictions**

Providing that—

(1) funds collected by the board shall be used for research, development, advertising, or promotion of potatoes and potato products 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: *Provided*, That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval, or importer approval when importers are subject to a plan, in a referendum;

(2) no advertising or sales promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products; and

(3) no funds collected by the board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a)(4) of this section.

**(g) Research, development, advertising or promotion programs or projects; development and submission by board; approval by Secretary**

Providing that the board shall, subject to the provisions of subsections (e) and (f) of this section, develop and submit to the Secretary for his approval any research, development, advertising or promotion programs or projects, and that any such program or project must be approved by the Secretary before becoming effective.

**(h) Contract authority of board; funds for payment of cost**

Providing 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 pursuant to this chapter.

**(i) Recordkeeping; reports for accounting; receipts and disbursements; audit report**

Providing that the board shall maintain books and records and 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 cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

(Pub. L. 91-670, title III, §308, Jan. 11, 1971, 84 Stat. 2042; Pub. L. 97-244, §2, Aug. 26, 1982, 96 Stat. 310; Pub. L. 98-171, §2(a), Nov. 29, 1983, 97

Stat. 1117; Pub. L. 101-624, title XIX, §1940, Nov. 28, 1990, 104 Stat. 3866.)

#### AMENDMENTS

1990—Subsec. (b). Pub. L. 101-624, §1940(1), inserted after first sentence “If importers are subject to a plan, the board shall also include up to 5 representatives of importers, appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.”, inserted “or importers” after “If producers”, and inserted “, or to importer approval when importers are subject to a plan,” after “approval” in last sentence.

Subsec. (e). Pub. L. 101-624, §1940(2), substituted “2 cents” for “one cent” and inserted “, and importers when importers are subject to a plan,” after “producers”.

Subsec. (f)(1). Pub. L. 101-624, §1940(3), inserted “, or importer approval when importers are subject to a plan,” after “producer approval” in proviso.

Subsecs. (g) to (j). Pub. L. 101-624, §1940(4), redesignated subsecs. (h) to (j) as (g) to (i), respectively, and struck out former subsec. (g) which read as follows: “Providing that, notwithstanding any other provisions of this chapter, any potato producer against whose potatoes any assessment is made and collected under authority of this chapter and who is not in favor of supporting the research and promotion program as provided for under this chapter shall have the right to demand and receive from the board a refund of such assessment: *Provided*, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisfactory to the board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor.”

1983—Subsec. (b). Pub. L. 98-171, §2(a)(1), inserted “The requirement for inclusion of public representatives on the board shall not be subject to producer approval in a referendum.”

Subsec. (e). Pub. L. 98-171, §2(a)(2), amended subsec. (e) generally, substituting requirement that the Secretary fix “the assessment rate at not more than one cent per one hundred pounds of potatoes handled” for “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 chapter” and provision “except that if approved by producers pursuant to section 2623 of this title, the rate of assessment shall not exceed” for “*Provided*, That the rate of assessment for fiscal year 1982 and each fiscal year thereafter shall not exceed”.

Subsec. (f)(1). Pub. L. 98-171, §2(a)(3), inserted “*Provided*, That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval in a referendum”.

1982—Subsec. (b). Pub. L. 97-244, §2(1), substituted provisions that the board be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection, that representatives of producers be nominated by producers in such manner as may be prescribed by the Secretary, that public representatives be nominated by the board in such manner as may be prescribed by the Secretary, and that, 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 for provisions that the board could be composed of representatives of producers selected by the Secretary from nominations made by producers in such manner as might be prescribed by the Secretary and that, in the event producers failed to select nominees for appointment to the board, the Sec-

retary was to appoint producers on the basis of representation provided for in such plan.

Subsec. (e). Pub. L. 97-244, §2(2), substituted provisions that the assessment rate include any referendum and administrative costs estimated to be incurred by the Department of Agriculture under this chapter, but that the assessment rate for fiscal year 1982 and each fiscal year thereafter 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, for provisions that the assessment rate could not exceed 1 cent per hundred pounds of potatoes handled.

Subsec. (f)(1). Pub. L. 97-244, §2(3), substituted “as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter” for “as may be authorized by the Secretary”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2618 of this title.

### § 2618. Permissive terms and conditions of plans

Any plan issued pursuant to this chapter may contain one or more of the following terms and conditions:

#### (a) Exemptions

Providing authority to exempt from the provisions of the plan potatoes used for nonfood uses, and authority for the board to require satisfactory safeguards against improper use of such exemptions.

#### (b) Handler payment and reporting schedules

Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures utilized in different production areas.

#### (c) Advertisement and sales promotion programs or projects

Providing for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and sales promotion of potatoes and potato products and for the disbursement of necessary funds for such purposes: *Provided, however*, That any such program or project shall be directed toward increasing the general demand for potatoes and potato products: *And provided further*, That such promotional activities shall comply with the provisions of section 2617(f) of this title.

#### (d) Research and development projects and studies for marketing and utilization of potatoes

Providing for establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

#### (e) Reserve funds; accumulation; limitation

Providing for authority to accumulate reserve funds from assessments collected pursuant to this chapter, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when the production and assessment income may be reduced: *Provided*, That the total reserve fund does not exceed the amount budgeted for two years' operation.

**(f) Foreign markets; sales development and expansion**

Providing for authority to use funds collected herein, with the approval of the Secretary, for the development and expansion of potato and potato product sales in foreign markets.

**(g) Assessment; refund**

Providing that any potato producer or importer against whose potatoes any assessment is made and collected under authority of this chapter and who is not in favor of supporting the research and promotion program as provided for under this chapter shall have the right to demand and receive from the board a refund of such assessment. Such demand shall be made personally by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the board and approved by the Secretary, but in no event less than 90 days, and upon submission of proof satisfactory to the board that the producer or importer paid the assessment for which refund is sought, and any such refund shall be made within 60 days after demand therefor.

**(h) Assessment authority**

Providing for authority to assess imports of tablestock, frozen, or processed potatoes for ultimate consumption by humans and seed potatoes into the United States.

**(i) Incidental and necessary terms and conditions**

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 such plan.

(Pub. L. 91-670, title III, §309, Jan. 11, 1971, 84 Stat. 2044; Pub. L. 101-624, title XIX, §1941, Nov. 28, 1990, 104 Stat. 3867.)

## AMENDMENTS

1990—Subsecs. (g) to (i). Pub. L. 101-624 added subsecs. (g) and (h) and redesignated former subsec. (g) as (i).

**§ 2619. Assessments****(a) Collection and payment; recordkeeping; limitation**

(1) Each handler designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes; and such handler may collect from any producer or deduct from the proceeds paid to any producer, on whose potatoes such assessment is made, any such assessment required to be paid by such handler. Such handler shall maintain a separate record with respect to each producer for whom potatoes were handled, and such records shall indicate the total quantity of potatoes handled by him including those handled for producers and for himself, shall indicate the total quantity of potatoes handled by him which are included under the terms of a plan as well as those which are exempt under such plan, and shall indicate such other information as may be prescribed by the board. To facilitate the collection and payment of such assessments, the board may designate different handlers or classes of handlers

to recognize differences in marketing practices or procedures utilized in any State or area. No more than one such assessment shall be made on any potatoes.

(2) When importers are subject to a plan, each importer designated by the board, pursuant to regulations issued under the plan, to make payment of assessments shall be responsible for payment to the board, as it may direct, of any assessment levied on potatoes. The assessment on imported tablestock, frozen, or processed potatoes for ultimate consumption by humans, and seed potatoes shall be established by the board so that the effective assessment shall equal that on domestic production and shall be paid by the importer to the board at the time of entry into the United States. Each such importer shall maintain a separate record including the total quantity of tablestock, frozen, processed potatoes for ultimate consumption by humans, and seed potatoes imported into the United States that are included under the terms of the plan as well as those that are exempt under such plan, and shall indicate such other information as may be prescribed by the board. No more than one assessment shall be made on any imported potatoes.

**(b) Records and reports; availability**

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 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 which is appropriate or necessary to the effectuation, administration, or enforcement of this chapter or of any plan or regulation issued pursuant to this chapter.

**(c) Confidential information; disclosure during proceedings; prohibition inapplicable to general statements and publication of violations; penalties; removal from office**

All information obtained pursuant to 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 upon the request, of the Secretary, or to which he 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 section shall be deemed to prohibit—

(1) the issuance of general statements based upon 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 upon conviction

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. 91-670, title III, §310, Jan. 11, 1971, 84 Stat. 2044; Pub. L. 101-624, title XIX, §1942, Nov. 28, 1990, 104 Stat. 3867; Pub. L. 102-237, title VIII, §804, Dec. 13, 1991, 105 Stat. 1882.)

#### AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102-237 substituted “(2) When” for “(2) when”.

1990—Subsec. (a). Pub. L. 101-624, §1942(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101-624, §1942(2), inserted “and importers” after “Handlers”.

Subsec. (c)(1). Pub. L. 101-624, §1942(3), inserted “or importers” after “handlers”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2623 of this title.

### § 2620. Procedural rights of persons subject to plan

#### (a) Administrative proceedings; petition; hearing; finality of ruling

Any person subject to a plan may file a written petition with the Secretary, stating that such plan or any provision of such 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. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

#### (b) Judicial review; jurisdiction; complaint; remand; relief during pendency of proceedings

The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, 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 such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 2621(a) of this title.

(Pub. L. 91-670, title III, §311, Jan. 11, 1971, 84 Stat. 2045.)

### § 2621. Enforcement

#### (a) Jurisdiction of United States district courts; administrative action

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 authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, 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 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) Civil penalties; cease and desist orders; appeal; failure to comply with order or assessment; further proceedings and penalties

(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 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.

(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.

(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.

(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. 91-670, title III, §312, Jan. 11, 1971, 84 Stat. 2045; Pub. L. 97-244, §3, Aug. 26, 1982, 96 Stat. 310.)

#### AMENDMENTS

1982—Subsec. (a). Pub. L. 97-244 substituted “from violating any plan or regulation made or issued under this chapter” for “from violating, any plan or regulation made or issued pursuant to this chapter”, and inserted provision that the facts relating to any civil action authorized to be brought under this subsection must be referred to the Attorney General for appropriate action, provided 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 any such plan or regulation would be adequately served by administrative action under subsec. (b) of this section or suitable written notice or warning to any person committing such violations.

Subsec. (b). Pub. L. 97-244 added subsec. (b). Former subsec. (b), which provided that any handler who violated any provision of any plan issued by the Secretary under this chapter, or who failed or refused to remit any assessment or fee duly required of him thereunder, would be subject to criminal prosecution and would be fined not less than \$100 nor more than \$1,000 for each such offense, was struck out.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2620 of this title.

### § 2622. Investigations

#### (a) Administration of oath; subpoena; contempts; process; jurisdiction

The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this chapter or to determine whether any person has engaged or is engaging in any acts or practices which constitute a violation of any provision of this chapter, or of any plan, or rule or regulation issued under this chapter. For the purpose of any such investigation, the Secretary is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such 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, 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 such 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 such court as contempt thereof. All process in any such case may be served in the ju-

dicial district whereof such person is an inhabitant or wherever he may be found. The site of any hearings held under this section shall be within the judicial district where such person is an inhabitant or has his principal place of business.

#### (b) Self-incrimination; privilege

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 upon, or growing out of any alleged violation of this chapter, or of any plan, or rule or regulation issued thereunder on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his 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. 91-670, title III, §313, Jan. 11, 1971, 84 Stat. 2046; Pub. L. 101-624, title XIX, §1943, Nov. 28, 1990, 104 Stat. 3868.)

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-624 substituted “any” for “a handler or any other” before “person has engaged” in first sentence, and struck out “handler or other” after “judicial district where such” in last sentence.

### § 2623. Referendum

#### (a) Secretary's duty to conduct; purpose of referendum

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. When the issuance of a plan would subject importers to the terms and conditions of a plan, the Secretary also shall conduct the referendum among importers, who during a representative period determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.

#### (b) Required margin of approval

No plan issued under this chapter shall be effective unless the Secretary determines that the issuance of such plan is approved or favored by not less than a majority of the producers voting in such referendum or a majority of the producers and importers when the issuance of a plan would subject importers to the terms and conditions of a plan, voting in such referendum.

#### (c) Amendments

The failure of potato producers and importers to approve an amendment to any plan issued

under this chapter shall not be deemed to invalidate such plan.

**(d) Penalties for disclosure of confidential information, ballots and reports**

The ballots and other information or reports which reveal or tend to reveal the vote of any producer or his production of potatoes, or any importer or the volume of potatoes imported by such importer, 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 2619(c) of this title.

(Pub. L. 91-670, title III, §314, Jan. 11, 1971, 84 Stat. 2046; Pub. L. 97-244, §4, Aug. 26, 1982, 96 Stat. 311; Pub. L. 101-624, title XIX, §1944, Nov. 28, 1990, 104 Stat. 3868.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-624, §1944(1), inserted at end “When the issuance of a plan would subject importers to the terms and conditions of a plan, the Secretary also shall conduct the referendum among importers, who during a representative period determined by the Secretary have been engaged in the importation of potatoes, for the purpose of ascertaining whether the issuance of such plan is approved or favored by such importers.”

Subsec. (b). Pub. L. 101-624, §1944(2), substituted “a majority of the producers voting in such referendum or a majority of the producers and importers when the issuance of a plan would subject importers to the terms and conditions of a plan, voting in such referendum” for “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”.

Subsec. (c). Pub. L. 101-624, §1944(3), inserted “and importers” after “producers”.

Subsec. (d). Pub. L. 101-624, §1944(4), inserted “, or any importer or the volume of potatoes imported by such importer,” after “potatoes”.

1982—Pub. L. 97-244 designated existing provisions as subsecs. (a), (b) and (d), in subsec. (a), as so redesignated, inserted commas after “referendum among producers” and “production of potatoes”, struck out commas after “who” and “determined by the Secretary”, and substituted “by such producers” for “by producers”, in subsec. (b), as so redesignated, substituted “under this chapter” for “pursuant to this chapter”, and added subsec. (c).

CONSTRUCTION OF 1982 REFERENDUM ON AMENDMENTS TO PLAN

Pub. L. 98-171, §2(b), Nov. 29, 1983, 97 Stat. 1118, provided that: “The failure of potato producers in December 1982 to approve amendments to the plan issued under this title [probably means title III of Pub. L. 91-670 which is classified to this chapter] shall not be deemed to invalidate the plan.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2617 of this title.

**§ 2624. Suspension or termination of plans**

**(a) Duty of Secretary**

The Secretary shall, whenever he finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such plan or such provision thereof.

**(b) Referendum**

The Secretary may conduct a referendum at any time and shall hold a referendum on request of the board or of 10 per centum or more of the potato producers, or of the total number of producers and importers when importers are subject to a plan, to determine if potato producers and importers favor the termination or suspension of the plan, and he shall terminate or suspend such plan at the end of the marketing year whenever he determines that such suspension or termination is favored by a majority of those voting in a referendum, and who produce and import more than 50 per centum of the volume of the potatoes produced and imported by those voting in the referendum.

**(c) Limitation**

The termination or suspension of any plan, or any provision thereof, shall not be considered the issuance of a plan within the meaning of this chapter.

(Pub. L. 91-670, title III, §315, Jan. 11, 1971, 84 Stat. 2047; Pub. L. 101-624, title XIX, §1945, Nov. 28, 1990, 104 Stat. 3868.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this part”, and was translated as reading “this title”, meaning title III of Pub. L. 91-670, which enacted this chapter, as the probable intent of Congress, because title III does not contain parts.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-624, §1945(1), inserted “, or of the total number of producers and importers when importers are subject to a plan,” after first reference to “potato producers”, “and importers” after second reference to “potato producers”, and “and import” after “produce”, and substituted “and imported by those voting in the referendum” for “by the potato producers voting in the referendum”.

Subsec. (c). Pub. L. 101-624, §1945(2), added subsec. (c).

**§ 2625. Amendment procedure**

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

(Pub. L. 91-670, title III, §316, Jan. 11, 1971, 84 Stat. 2047.)

AMENDMENT PROCEDURE

Pub. L. 101-624, title XIX, §1946, Nov. 28, 1990, 104 Stat. 3869, provided that:

“(a) IN GENERAL.—Notwithstanding any provision of the Potato Research and Promotion Act [7 U.S.C. 2611 et seq.] (hereafter in this section referred to as the ‘Act’), the procedure specified in this section shall apply if a producer or a producer organization requests the Secretary of Agriculture (hereafter in this section referred to as the ‘Secretary’) to amend the plan in effect under that Act (hereafter in this section referred to as the ‘plan’) to—

“(1) subject importers to the terms and conditions of a plan, and

“(2) eliminate provisions for refunds of assessments for those not in favor of supporting the research and promotion program as provided under that Act.

The procedure under this section shall apply only in the case of the first such request received after the date of enactment of this Act [Nov. 28, 1990].

“(b) PUBLICATION OF PROPOSED AMENDMENTS.—The Secretary shall publish for public comment such proposed amendments to the plan within 60 days.

“(c) ISSUANCE OF FINAL AMENDMENTS.—Not later than 150 days after publication of such amendment, and after notice and opportunity for public comment, the Secretary shall issue the amendments to the plan, as described in subsection (a), if the Secretary has reason to believe that such amendments will tend to effectuate the declared policy of this subtitle [see Short Title of 1990 Amendment note set out under section 2611 of this title].

“(d) REFERENDUM.—Not later than 24 months after the date of issuance of such amendments to the plan, the Secretary shall conduct a referendum among producers and importers who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes. The amendments shall be continued only if the Secretary determines that the amendments to the plan have been approved by a majority of the total number of producers and importers voting in the referendum.

“(e) REFUNDS.—The board shall—

“(1) establish an escrow account to be used for assessment refunds, and place funds in such account in accordance with paragraph (2) during the period beginning on the effective date of the amendments to the plan issued under subsection (c) and ending on the date of the referendum on the amendments to the plan;

“(2) place in the account established under paragraph (1), from assessments collected under the plan during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent;

“(3) subject to paragraphs (4), (5), and (6), provide that for the period referred to in paragraph (1) any producer or importer shall have the right to demand and receive from the board a one-time refund of assessments collected from such producer or importer during such period if—

“(A) such producer or importer is responsible for paying such assessments;

“(B) such producer or importer does not support the program established under the plan; and

“(C) the amendments to the plan to eliminate provisions for refunds of assessments are not approved pursuant to a referendum conducted under subsection (d);

“(4) require such demand to be made in accordance with regulations, on a form, and within a time period prescribed by the board;

“(5) require such refund to be made on submission of proof satisfactory to the board that such producer or importer paid the assessment for which refund is demanded; and

“(6) if the amount in the escrow account required to be established by paragraph (1) is not sufficient to refund the total amount of assessments demanded by all eligible producers and importers under this subsection, prorate the amount of such refunds among all eligible producers and importers who demand such refund.

“(f) TERMINATION.—If such amendments to the plan are not approved, the Secretary shall terminate the amendments and the plan shall continue in effect without the amendments.

“(g) AMENDMENT TO INCLUDE THE 50 STATES.—Notwithstanding any provision of the Act, the Secretary shall, upon request of a producer or a producer organization, issue an amendment to the plan to include the 50 States of the United States. Such amendment shall not be subject to a referendum.”

### § 2626. 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 of the application of such provision to other persons and circumstances shall not be affected thereby.

(Pub. L. 91-670, title III, §317, Jan. 11, 1971, 84 Stat. 2047.)

### § 2627. Authorization

There is hereby made available from the funds provided by section 612c of this title such sums as are necessary to carry out the provisions of this chapter: *Provided*, That no such sum shall be used 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. 91-670, title III, §318, Jan. 11, 1971, 84 Stat. 2047.)

## CHAPTER 59—RURAL FIRE PROTECTION, DEVELOPMENT, AND SMALL FARM RESEARCH AND EDUCATION

### SUBCHAPTER I—RURAL COMMUNITY FIRE PROTECTION

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### SUBCHAPTER II—RURAL DEVELOPMENT AND SMALL FARM RESEARCH AND EDUCATION

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