

period described in paragraph (2) for which the handler would have owed assessments had the amended order been in effect.

(4) Effectiveness of order

The amended order shall become effective only if the Secretary determines that the amended order is effective in accordance with section 4611 of this title.

(e) Continuation of existing order if amended order is rejected

If adoption of the amended order is not approved—

(1) the order issued under section 4603 of this title that is in effect on June 23, 1998, shall continue in full force and effect; and

(2) the Secretary may amend the order to ensure the conformity of the order with this chapter (as in effect on the day before June 23, 1998).

(f) Effect of rejection on subsequent orders

(1) In general

Subject to paragraph (2), if adoption of the amended order is not approved in the referendum required under subsection (d) of this section, the Secretary may issue an amended order that implements some or all of the amendments made to this chapter by section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998, or makes other changes to an existing order, in accordance with the administrative procedures specified in sections 4604 and 4605 of this title.

(2) Approval

An amendment to an order that implements a provision that is subject to a referendum shall be approved in accordance with section 4611 of this title before becoming effective.

(g) Effect on periodic referenda

If the amended order becomes effective, any referendum otherwise required to be conducted under section 4612(c) of this title shall not be held before the date that is 5 years after the date of the referendum conducted under this section.

(Pub. L. 98-590, §14, as added Pub. L. 105-185, title VI, § 605(m), June 23, 1998, 112 Stat. 602.)

REFERENCES IN TEXT

Section 605 of the Agricultural Research, Extension, and Education Reform Act of 1998, referred to in subsecs. (a) to (d)(1)(A) and (f)(1), is section 605 of Pub. L. 105-185, June 23, 1998, 112 Stat. 523, which enacted this section and amended sections 4601 to 4612 of this title. Subsec. (m) of section 605 enacted this section.

CHAPTER 78—AGRICULTURAL PRODUCTIVITY RESEARCH

§§ 4701 to 4710. Repealed. Pub. L. 101-624, title XVI, § 1620(a), Nov. 28, 1990, 104 Stat. 3734

Section 4701, Pub. L. 99-198, title XIV, §1461, Dec. 23, 1985, 99 Stat. 1562, provided definitions for chapter.

Section 4702, Pub. L. 99-198, title XIV, §1462, Dec. 23, 1985, 99 Stat. 1563, set forth Congressional findings.

Section 4703, Pub. L. 99-198, title XIV, §1463, Dec. 23, 1985, 99 Stat. 1563, set forth purposes of chapter.

Section 4704, Pub. L. 99-198, title XIV, §1464, Dec. 23, 1985, 99 Stat. 1564, related to information study.

Section 4705, Pub. L. 99-198, title XIV, §1465, Dec. 23, 1985, 99 Stat. 1564, authorized research projects to promote purposes of chapter.

Section 4706, Pub. L. 99-198, title XIV, §1466, Dec. 23, 1985, 99 Stat. 1565, related to coordination of projects.

Section 4707, Pub. L. 99-198, title XIV, §1467, Dec. 23, 1985, 99 Stat. 1565, required reports to Congress.

Section 4708, Pub. L. 99-198, title XIV, §1468, Dec. 23, 1985, 99 Stat. 1565, authorized agreements with other expert entities.

Section 4709, Pub. L. 99-198, title XIV, §1469, Dec. 23, 1985, 99 Stat. 1565, related to dissemination of data.

Section 4710, Pub. L. 99-198, title XIV, §1470, Dec. 23, 1985, 99 Stat. 1566, authorized appropriations to carry out chapter.

EFFECTIVE DATE

Pub. L. 99-198, title XIV, subtitle C (§§1461-1471), §1471, Dec. 23, 1985, 99 Stat. 1566, which provided that this chapter was effective Oct. 1, 1985, was repealed by Pub. L. 101-624, title XVI, §1620(a), Nov. 28, 1990, 104 Stat. 3734.

CHAPTER 79—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Sec.	
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4804.	Notice and hearing.
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§ 4801. Congressional findings and declaration of purpose

(a) Congress finds that—

(1) pork and pork products are basic foods that are a valuable and healthy part of the human diet;

(2) the production of pork and pork products plays a significant role in the economy of the United States because pork and pork products are—

(A) produced by thousands of producers, including many small- and medium-sized producers; and

(B) consumed by millions of people throughout the United States on a daily basis;

(3) pork and pork products must be available readily and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets, and development of new markets, for pork and pork products are vital to—

(A) the welfare of pork producers and persons concerned with producing and marketing pork and pork products; and

(B) the general economy of the United States;

(5) pork and pork products move in interstate and foreign commerce;

(6) pork and pork products that do not move in such channels of commerce directly burden or affect interstate commerce in pork and pork products; and

(7) in recent years, increasing quantities of low-cost, imported pork and pork products have been brought into the United States and replaced domestic pork and pork products in normal channels of trade.

(b)(1) It is the purpose of this chapter to authorize the establishment of an orderly procedure for financing, through adequate assessments, and carrying out an effective and coordinated program of promotion, research, and consumer information designed to—

(A) strengthen the position of the pork industry in the marketplace; and

(B) maintain, develop, and expand markets for pork and pork products.

(2) Such procedure shall be implemented, and such program shall be conducted, at no cost to the Federal Government.

(3) Nothing in this chapter may be construed to—

(A) permit or require the imposition of quality standards for pork or pork products;

(B) provide for control of the production of pork or pork products; or

(C) otherwise limit the right of an individual pork producer to produce pork and pork products.

(Pub. L. 99-198, title XVI, §1612, Dec. 23, 1985, 99 Stat. 1607.)

EFFECTIVE DATE

Section 1631 of Pub. L. 99-198 provided that: "This subtitle [subtitle B (§§1611-1631) of title XVI of Pub. L. 99-198, enacting this chapter] shall become effective on January 1, 1986."

SHORT TITLE

Section 1611 of Pub. L. 99-198 provided that: "This subtitle [subtitle B (§§1611-1631) of title XVI of Pub. L. 99-198, enacting this chapter] may be cited as the 'Pork Promotion, Research, and Consumer Information Act of 1985'."

§ 4802. Definitions

For purposes of this chapter:

(1) The term "Board" means the National Pork Board established under section 4808 of this title.

(2) The term "consumer information" means an activity intended to broaden the understanding of sound nutritional attributes of pork or pork products, including the role of pork or pork products in a balanced, healthy diet.

(3) The term "Delegate Body" means the National Pork Producers Delegate Body established under section 4806 of this title.

(4) The term "imported" means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

(5) The term "importer" means a person who imports porcine animals, pork, or pork products into the United States.

(6) The term "order" means a pork and pork products promotion, research, and consumer

information order issued under section 4803 of this title.

(7) The term "person" means an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

(8) The term "porcine animal" means a swine raised for—

(A) feeder pigs;

(B) seedstock; or

(C) slaughter.

(9) The term "pork" means the flesh of a porcine animal.

(10) The term "pork product" means a product produced or processed in whole or in part from pork.

(11) The term "producer" means a person who produces porcine animals in the United States for sale in commerce.

(12) The term "promotion" means an action, including paid advertising, taken to present a favorable image for porcine animals, pork, or pork products to the public with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

(13) The term "research" means—

(A) research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products; or

(B) dissemination to a person of the results of such research.

(14) The term "Secretary" means the Secretary of Agriculture.

(15) The term "State" means each of the 50 States.

(16) The term "State association" means—

(A) the single organization of pork producers in a State that is—

(i) organized under the laws of the State in which such association operates; and

(ii) recognized by the chief executive officer of such State as representing the pork producers of such State; or

(B) if such organization does not exist on January 1, 1986, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

(17) The term "to market" means to sell or to otherwise dispose of a porcine animal, pork, or pork product in commerce.

(Pub. L. 99-198, title XVI, §1613, Dec. 23, 1985, 99 Stat. 1607.)

§ 4803. Pork and pork product orders

(a) To carry out this chapter, the Secretary shall, in accordance with this chapter, issue and, from time to time, amend orders applicable to persons engaged in—

(1) the production and sale of porcine animals, pork, and pork products in the United States; and

(2) the importation of porcine animals, pork, or pork products into the United States.

(b) The Secretary may issue such regulations as are necessary to carry out this chapter.

(Pub. L. 99-198, title XVI, §1614, Dec. 23, 1985, 99 Stat. 1609.)

§ 4804. Notice and hearing

During the period beginning on January 1, 1986, and ending 30 days after receipt of a proposal for an initial order submitted by any person affected by this chapter, the Secretary shall—

- (1) publish such proposed order; and
- (2) give due notice of and opportunity for public comment on such proposed order.

(Pub. L. 99-198, title XVI, §1615, Dec. 23, 1985, 99 Stat. 1609.)

§ 4805. Findings and issuance of orders

(a) Necessary findings

After notice and opportunity for public comment have been provided in accordance with section 4804 of this title, the Secretary shall issue and publish an order if the Secretary finds, and sets forth in such order, that the issuance of such order and all terms and conditions thereof will assist in carrying out this chapter.

(b) Number of orders in effect at a time

Not more than one order may be in effect at a time.

(c) Effective date

An order shall become effective on a date that is not more than 90 days following the publication of such order.

(d) Terms and conditions

An order shall contain such terms and conditions as are required in sections 4806 through 4809 of this title and, except as provided in section 4810 of this title, no others.

(Pub. L. 99-198, title XVI, §1616, Dec. 23, 1985, 99 Stat. 1609.)

§ 4806. National Pork Producers Delegate Body

(a) Establishment and appointment

The order shall provide for the establishment and appointment by the Secretary, not later than 60 days after the effective date of such order, of a National Pork Producers Delegate Body.

(b) Membership; number of producer members; number of importer members

(1) The Delegate Body shall consist of—

(A) producers, as appointed by the Secretary in accordance with paragraph (2), from nominees submitted as follows:

(i) in the case of the initial Delegate Body appointed by each State in accordance with section 4807 of this title.

(ii) in the case of each succeeding Delegate Body, each State association shall submit nominations selected by such association pursuant to a selection process that—

- (I) is approved by the Secretary;
- (II) requires public notice of the process to be given at least one week in advance by publication in a newspaper or news-

paper of general circulation in such State and in pork production and agriculture trade publications; and

(III) that provides complete and equal access to the nominating process to every producer who has paid all assessments due under section 4809 of this title and not demanded a refund under section 4813 of this title,

or pursuant to an election of nominees conducted in accordance with section 4807 of this title.

(iii) In the case of a State that has a State association that does not submit nominations or that does not have a State association, such State shall submit nominations in a manner prescribed by the Secretary; and

(B) importers, as appointed by the Secretary in accordance with paragraph (3).

(2) The number of producer members appointed to the Delegate Body from each State shall equal at least two members, and additional members, allocated as follows:

(A) Shares shall be assigned to each State—

(i) for the 1986 calendar year, on the basis of one share for each \$400,000 of farm market value of porcine animals marketed from such State (as determined by the Secretary based on the annual average of farm market value in the most recent 3 calendar years preceding such year), rounded to the nearest \$400,000; and

(ii) for each calendar year thereafter, on the basis of one share for each \$1,000 of the aggregate amount of assessments collected (minus refunds under section 4813 of this title) in such State from persons described in section 4809(a)(1)(A) and (B) of this title, rounded to the nearest \$1,000.

(B) If during a calendar year the number of such shares of a State is—

(i) less than 301, the State shall receive a total of two producer members;

(ii) more than 300 but less than 601, the State shall receive a total of three producer members;

(iii) more than 600 but less than 1,001, the State shall receive a total of four producer members; and

(iv) more than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) The number of importer members appointed to the Delegate Body shall be determined as follows:

(A) Shares shall be assigned to importers—

(i) for the 1986 calendar year, on the basis of one share for each \$575,000 of market value of marketed porcine animals, pork, or pork products (as determined by the Secretary based on the annual average of imports in the most recent 3 calendar years preceding such year), rounded to the nearest \$575,000; and

(ii) for each calendar year thereafter, on the basis of one share for each \$1,000 of the aggregate amount of assessments collected

(minus refunds under section 4813 of this title) from importers, rounded to the nearest \$1,000.

(B) The number of importer members appointed to the Delegate Body shall equal a total of—

(i) three members for the first 1,000 such shares; and

(ii) one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(c) Voting; quorum; votes necessary for decision

(1) A producer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to—

(A) the number of shares attributable to the State of the member; divided by

(B) the number of producer members from such State.

(2) An importer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to—

(A) the number of shares allocated to importers; divided by

(B) the number of importer members.

(3) Members entitled to cast a majority of the votes (including fractions thereof) on the Delegate Body shall constitute a quorum.

(4) A majority of the votes (including fractions thereof) cast at a meeting at which a quorum is present shall be decisive of a motion or election presented to the Delegate Body for a vote.

(d) Term of office

A member of the Delegate Body shall serve for a term of 1 year, except that the term of a member of the Delegate Body shall continue until the successor of such member, if any, is appointed in accordance with subsection (b)(1) of this section.

(e) Chairman

(1) At the first annual meeting, the Delegate Body shall select a Chairman by a majority vote.

(2) At each annual meeting thereafter, the President of the Board shall serve as the Chairman of the Delegate Body.

(f) Compensation

A member of the Delegate Body shall serve without compensation, but may be reimbursed by the Board from assessments collected under section 4809 of this title for transportation expenses incurred in performing duties as a member of the Delegate Body.

(g) Nomination of members to National Pork Board; annual meeting; majority vote in person to nominate

(1) The Delegate Body shall—

(A) nominate—

(i) not less than 23 persons for appointment to the Board, for the first year for which nominations are made; and

(ii) not less than 1½ persons (rounded up to the nearest person) for each vacancy in the Board that requires nominations thereafter; and

(B) submit such nominations to the Secretary.

(2) The Delegate Body shall meet annually to make such nominations.

(3) A majority of the Delegate Body shall vote in person in order to nominate members to the Board.

(h) Duties and functions

The Delegate Body shall—

(1) recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 4809(5)¹ of this title, and

(2) determine the percentage of the aggregate amount of assessments collected in a State that each State association shall receive under section 4809(c)(1) of this title.

(Pub. L. 99-198, title XVI, §1617, Dec. 23, 1985, 99 Stat. 1609.)

§ 4807. Selection of Delegate Body

(a) Nominations

(1) Not later than 30 days after the effective date of the order, the Secretary shall call for the nomination within each State of candidates for appointment as producer members of the initial Delegate Body.

(2) Each State association may nominate producers who are residents of such State to serve as such candidates.

(3)(A)¹ Additional producers who are residents of a State may be nominated as candidates of such State by written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. The Secretary shall establish and publicize the procedures governing the time and place for filing petitions.

(b) Election; eligibility to vote; notice of election; number of members nominated

(1) After the Secretary has received the nominations required under subsection (a) of this section and not later than 45 days after the effective date of the order, the Secretary shall call for an election within each State of persons for appointment as producer members of the initial Delegate Body.

(2) To be eligible to vote in an election held in a State, a person must be a producer who is a resident of such State.

(3)(A) Notice of each such election shall be given by the Secretary—

(i) by publication in a newspaper or newspapers of general circulation in each State, and in pork production and agriculture trade publications, at least 1 week prior to the election; and

(ii) in any other reasonable manner determined by the Secretary.

(B) The notice shall set forth the period of time and places for voting and such other information as the Secretary considers necessary.

(4) Each State shall nominate to the Delegate Body the number of producer members required under section 4806(b)(2)(B) of this title.

(5) The producers who receive the highest number of votes in each State shall be nomi-

¹ So in original. Probably should be section "4809(b)".

¹ So in original. No subpar. (B) has been enacted.

nated for appointment as members of the Delegate Body from such State.

(c) Subsequent nominations and elections to be administered by Board; time of election; voting eligibility

(1) Except as provided in paragraph (3), after the election of the producer members of the initial Delegate Body, the Board shall administer all subsequent nominations and elections of the producer members to be nominated for appointment as members of the Delegate Body, with the assistance of the Secretary and in accordance with subsections (a)(3) and (b) of this section.

(2) The Board shall determine the timing of an election referred to in paragraph (1).

(3) To be eligible to vote in such an election in a State, a person must—

(A) be a producer who is a resident of such State;

(B) have paid all assessments due under section 4809 of this title; and

(C) not demanded a refund of an assessment under section 4813 of this title.

(d) Nominating committee; appointment; nomination to fill position for pending election

(1) Prior to the expiration of the term of any producer member of the Delegate Body, the Board shall appoint a nominating committee of producers who are residents of the State represented by such member.

(2) Such committee shall nominate producers of such State as candidates to fill the position for which an election is to be held.

(3) Additional producers who are residents of a State may be nominated to fill such positions in accordance with subsection (a)(3) of this section.

(Pub. L. 99-198, title XVI, § 1618, Dec. 23, 1985, 99 Stat. 1611.)

§ 4808. National Pork Board

(a)(1) The order shall provide for the establishment and appointment by the Secretary of a 15-member National Pork Board.

(2)¹ The Board shall consist of producers representing at least 12 States and importers appointed by the Secretary from nominations submitted under section 4806(g) of this title.

(2)¹ The Board shall consist of producers or importers appointed by the Secretary from nominations submitted under section 4806(g) of this title.

(3) A member of the Board shall serve for a 3-year term, with no such member serving more than two consecutive 3-year terms, except that initial appointments to the Board shall be staggered with an equal number of members appointed, to the maximum extent possible, to 1-year, 2-year, and 3-year terms, except that the term of a member of the Board shall continue until the successor of such member, if any, is appointed in accordance with paragraph (2).

(4) The Board shall select its President by a majority vote.

(5)(A) A majority of the members of the Board shall constitute a quorum at a meeting of the Board.

(B) A majority of votes cast at a meeting at which a quorum is present shall determine a motion or election.

(6) A member of the Board shall serve without compensation, but shall be reimbursed by the Board from assessments collected under section 4809 of this title for reasonable expenses incurred in performing duties as a member of the Board.

(b)(1) The Board shall—

(A) develop, at the initiative of the Board or other person, proposals for promotion, research, and consumer information plans and projects;

(B) submit such plans and projects to the Secretary for approval;

(C) administer the order, in accordance with the order and this chapter;

(D) prescribe such rules as are necessary to carry out such order;

(E) receive, investigate, and report to the Secretary complaints of violations of such order;

(F) make recommendations to the Secretary with respect to amendments to such order; and

(G) employ a staff and conduct routine business.

(2) The Board shall prepare and submit to the Secretary, for the approval of the Secretary, a budget for each fiscal year of anticipated expenses and disbursements of the Board in the administration of the order, including the projected cost of—

(A) any promotion, research or consumer information plan or project to be conducted by the Board directly or by way of contract or agreement; and

(B) the budgets, plans, or projects for which State associations are to receive funds pursuant to section 4809(c)(1) of this title.

(3) No plan, project, or budget referred to in paragraph (1) or (2) may become effective unless approved by the Secretary.

(4)(A) The Board, with the approval of the Secretary, may enter into contracts or agreements with a person for—

(i) the development and conduct of activities authorized under an order; and

(ii) the payment of the cost thereof with funds collected through assessments under such order.

(B) Such contract or agreement shall require that—

(i) the contracting party develop and submit to the Board a plan or project, together with a budget or budgets that include the estimated cost to be incurred under such plan or project;

(ii) such plan or project become effective on the approval of the Secretary; and

(iii) the contracting party—

(I) keep accurate records of all relevant transactions of the party;

(II) make periodic reports to the Board of—

(aa) relevant activities the party has conducted; and

(bb) an accounting for funds received and expended under such contract; and

(III) make such other reports as the Secretary or Board may require.

(Pub. L. 99-198, title XVI, § 1619, Dec. 23, 1985, 99 Stat. 1612.)

¹ So in original. Two pars. (2) have been enacted.

§ 4809. Assessments**(a) Collection and remission to Board; persons required to pay**

(1) The order shall provide that, not later than 30 days after the effective date of the order under section 4805(c) of this title an assessment shall be paid, in the manner prescribed in the order. Upon the appointment of the Board, the assessments held in escrow shall be distributed to the Board. Except as provided in paragraph (3), assessments shall be payable by—

(A) each producer for each porcine animal described in subparagraph (A) or (C) of section 4802(8) of this title produced in the United States that is sold or slaughtered for sale;

(B) each producer for each porcine animal described in subsection¹ 4802(8)(B) of this title that is sold; and

(C) each importer for each porcine animal, pork, or pork product that is imported into the United States.

(2) Such assessment shall be collected and remitted to the Board once it is appointed pursuant to section 4808 of this title, but, until that time, to the Secretary, who shall promptly proceed to distribute the funds received by him in accordance with the provisions of subsection (c) of this section, except that the Secretary shall retain the funds to be received by the Board until such time as the Board is appointed pursuant to section 4808 of this title, by—

(A) in the case of subparagraph (A) of paragraph (1), the purchaser of the porcine animal referred to in such subparagraph;

(B) in the case of subparagraph (B) of paragraph (1), the producer of the porcine animal referred to in such subparagraph; and

(C) in the case of subparagraph (C) of paragraph (1), the importer referred to in such subparagraph.

(3) A person is not required to pay an assessment for a porcine animal, pork, or pork product under paragraph (1) if such person proves to the Board that an assessment was paid previously under such paragraph by a person for such porcine animal (of the same category described in subparagraph (A), (B), or (C) of section 4802(8) of this title), pork, or pork product.

(b) Rate of assessment; increase; waiver of collection of assessment

(1) Except as provided in paragraph (2), the rate of assessment prescribed by the initial order shall be the lesser of—

(A) 0.25 percent of the market value of the porcine animal, pork, or pork product sold or imported; or

(B) an amount established by the Secretary based on a recommendation of the Delegate Body.

(2) Except as provided in paragraph (3), the rate of assessment in the initial order may be increased by not more than 0.1 percent per year on recommendation of the Delegate Body.

(3) The rate of assessment may not exceed 0.50 percent of such market value unless—

(A) after the initial referendum required under section 4811(a) of this title, the Delegate

Body recommends an increase in such rate above 0.50 percent; and

(B) such increase is approved in a referendum conducted under section 4811(b) of this title.

(4)(A) Pork or pork products imported into the United States shall be assessed based on the equivalent value of the live porcine animal from which such pork or pork products were produced, as determined by the Secretary.

(B) The Secretary may waive the collection of assessments on a type of such imported pork or pork products if the Secretary determines that such collection is not practicable.

(c) Distribution and use

Funds collected by the Board from assessments collected under this section shall be distributed and used in the following manner:

(1)(A) Each State association, shall receive an amount of funds equal to the product obtained by multiplying—

(i) the aggregate amount of assessments attributable to porcine animals produced in such State by persons described in subsection (a)(1)(A) and (B) of this section minus that State's share of refunds determined pursuant to paragraph (4) by such persons pursuant to section 4813 of this title; and

(ii) a percentage applicable to such State association determined by the Delegate Body, but in no event less than sixteen and one-half percent, or

(B) in the case of a State association that was conducting a pork promotion program in the period from July 1, 1984, to June 30, 1985, if greater than (A) an amount of funds equal to the amount of funds that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals, subject to assessment and to which no refund was received in such State in each year following December 23, 1985, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessments then in effect and the rate of return then in effect from each State to the Council described in paragraph (2)(A), and other national entities involved in pork promotion, research and consumer information.

(C) A State association shall use such funds and any proceeds from the investment of such funds for financing—

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses incurred in connection with such plans and projects.

(2)(A) The National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(3) of title 26 and incorporated in the State of Iowa, shall receive an amount of funds equal to—

(i) 37½ percent of the aggregate amount of assessments collected under this section throughout the United States from the date assessment commences pursuant to subsection (a)(1) of this section until the first day of the month following the month in

¹ So in original. Probably should be "section".

which the Board is appointed pursuant to section 4808 of this title.²

(ii) 35 percent thereafter until the referendum is conducted pursuant to section 4811 of this title,

(iii) 25 percent until twelve months after the referendum is conducted, and

(iv) no funds thereafter except in so far as it obtains such funds from the Board pursuant to sections³ 4808 or 4809 of this title, each of which amounts determined under (i), (ii), and (iii) shall be less the Council's share of refunds determined pursuant to paragraph (4).

(B) The Council shall use such funds and proceeds from the investment of such funds for financing—

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses of the Council.

(3)(A) The Board shall receive the amount of funds that remain after the distribution required under paragraphs (1) and (2).

(B) The Board shall use such funds and any proceeds from the investment of such funds pursuant to subsection (g) of this section for—

(i) financing promotion, research, and consumer information plans and projects in accordance with this chapter;⁴

(ii) such expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary;

(iii) accumulation of a reasonable reserve to permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced; and

(iv) administrative costs incurred by the Secretary to carry out this chapter,⁴ including any expenses incurred for the conduct of a referendum under this chapter.⁴

(4)(A) Each State's share of refunds shall be determined by multiplying the aggregate amount of refunds received by producers in such State by the percentage applicable to such State pursuant to paragraph (1)(A)(ii).

(B) The National Pork Producers Council's share of refunds shall be determined by multiplying its applicable percent of the aggregate amount of assessments by the product of—

(i) subtracting from the aggregate amount of refunds received by all producers the aggregate amount of State share or refunds in every State determined pursuant to subparagraph (A), and

(ii) adding to that sum the aggregate amount of refunds received by importers.

(d) Prohibited promotions

No promotion funded with assessments collected under this chapter may make—

(1) a false or misleading claim on behalf of pork or a pork product; or

(2) a false or misleading statement with respect to an attribute or use of a competing product.

² So in original. The period probably should be a comma.

³ So in original. Probably should be "section".

⁴ See References in Text note below.

(e) Influencing legislation prohibited

No funds collected through assessments authorized by this section may, in any manner, be used for the purpose of influencing legislation, as defined in section 4911(d) and (e)(2) of title 26.

(f) Maintenance of books and records; audits

The Board shall—

(1) maintain such books and records, and prepare and submit to the Secretary such reports from time to time, as may be required by the Secretary for appropriate accounting of the receipt and disbursement of funds entrusted to the Board or a State association, as the case may be; and

(2) cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

(g) Investment by Board of funds collected

The Board, with the approval of the Secretary, may invest funds collected through assessments authorized under this section, pending disbursement for a plan or project, only in—

(1) an obligation of the United States, or of a State or political subdivision thereof;

(2) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(3) an obligation fully guaranteed as to principal and interest by the United States.

(Pub. L. 99-198, title XVI, §1620, Dec. 23, 1985, 99 Stat. 1614; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(3)(B)(i), (iv), was in the original "this title" and was translated as reading "this subtitle", meaning subtitle B of title XVI of Pub. L. 99-198, which enacted this chapter, as the probable intent of Congress.

AMENDMENTS

1986—Subsecs. (c)(2)(A), (e). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

§ 4810. Permissive provisions

(a) Recordkeeping and reporting requirements; incidental and necessary terms and conditions

On the recommendation of the Board, and with the approval of the Secretary, an order may contain one or more of the following provisions:

(1) Each person purchasing a porcine animal from a producer for commercial use, and each importer, shall—

(A) maintain and make available for inspection such books and records as may be required by the order; and

(B) file reports at the time, in the manner, and having the content prescribed by the order,

including documentation of the State of origin of a purchased porcine animal or the place of origin of an imported porcine animal, pork, or pork product.

(2) A term or condition—

(A) incidental to, and not inconsistent with, the terms and conditions specified in this chapter; and

(B) necessary to effectuate the other provisions of such order.

(b) Availability of information to Secretary and Board; confidentiality; disclosure; issuance of general statement, statistical data, or name of violator of order

(1) Information referred to in subsection (a)(1) of this section shall be made available to the Secretary and the Board as is appropriate or necessary for the effectuation, administration, or enforcement of this chapter or an order.

(2)(A) Except as provided in subparagraphs (B) and (C), information obtained under subsection (a)(1) of this section shall be kept confidential by officers or employees of the Department of Agriculture or the Board.

(B) Such information may be disclosed only—

(i) in a suit or administrative hearing involving the order with respect to which the information was furnished or acquired—

(I) brought at the direction or on the request of the Secretary; or

(II) to which the Secretary or an officer of the United States is a party; and

(ii) if the Secretary considers such information to be relevant to such suit or hearing.

(C) Nothing in this section prohibits—

(i) the issuance of a general statement based on the reports of a number of persons subject to an order, or statistical data collected therefrom, if such statement or data does not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of a person violating an order, together with a statement of the particular provisions of the order violated by such person.

(c) Penalty for willful violations

A person who willfully violates subsection (a)(1) or (b) of this section shall, on conviction, be—

(1) subject to a fine of not more than \$1,000 or imprisoned for not more than 1 year, or both; and

(2) if such person is an employee of the Department of Agriculture or the Board, removed from office.

(Pub. L. 99-198, title XVI, § 1621, Dec. 23, 1985, 99 Stat. 1617.)

§ 4811. Referendum

(a) Continuation of order

For the purpose of determining whether an order then¹ effect shall be continued during the period beginning not earlier than 24 months after the issuance of the order and ending not later than 30 months after the issuance of the order, the Secretary shall conduct a referendum among persons who have been pork producers and importers during a representative period, as determined by the Secretary.

(b) Factors determining continuation; termination of order

(1) Such order shall be continued only if the Secretary determines that such order has been

approved by not less than a majority of the producers and importers voting in the referendum.

(2) If the continuation of such order is not approved by a majority of the producers and importers voting in the referendum, the Secretary shall terminate—

(A) collection of assessments under the order not later than 6 months after the date of such determination; and

(B) the order in an orderly manner as soon as practicable after the date of such determination.

(c) Reimbursement for cost

The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred in connection with a referendum conducted under this section or section 4812 of this title.

(d) Manner of conducting

A referendum shall be conducted in such manner as prescribed by the Secretary.

(e) Amendment of initial order

A referendum to amend the initial order shall be conducted pursuant to this section.

(Pub. L. 99-198, title XVI, § 1622, Dec. 23, 1985, 99 Stat. 1618.)

§ 4812. Suspension and termination of orders

(a) Authority of Secretary

If after the initial referendum provided for in section 4811(a) of this title the Secretary determines that an order, or a provision of the order, obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of such order or provision.

(b) Referendum to terminate or suspend; eligible voters; requirements for approval; termination or suspension date; one referendum within 2-year period

(1)(A) Except as provided in paragraph (2), after the initial referendum provided for in section 4811(a) of this title, on the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period, as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the termination or suspension of the order.

(B) The Secretary shall—

(i) suspend or terminate collection of assessments under the order not later than 6 months after the date the Secretary determines that suspension or termination of the order is favored by a majority of the producers and importers voting in the referendum; and

(ii) terminate the order in an orderly manner as soon as practicable after the date of such determination.

(2) Except with respect to a referendum required to be conducted under section 4811 of this title, the Secretary shall not be required by paragraph (1) to conduct more than one referendum under this chapter in a 2-year period.

¹ So in original. Probably should be followed by "in".

(c) Termination or suspension not to be considered an order

The termination or suspension of an order, or a provision of an order, shall not be considered an order within the meaning of this chapter.

(Pub. L. 99-198, title XVI, §1623, Dec. 23, 1985, 99 Stat. 1618.)

§ 4813. Refunds**(a) Demand for refund; persons eligible**

Notwithstanding any other provision of this chapter, prior to the approval of the continuation of an order pursuant to the referendum required under section 4811(a) of this title, any person shall have the right to demand and receive from the Board a refund of an assessment collected under section 4809 of this title if such person—

- (1) is responsible for paying such assessment; and
- (2) does not support the program established under this chapter.

(b) Form and time within which demand to be made

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid.

(c) Payment of refund on submission of satisfactory proof

Such refund shall be made not later than 30 days after demand is received therefore¹ on submission of proof satisfactory to the Board that the producer, person, or importer—

- (1) paid the assessment for which refund is sought; and
- (2) did not collect such assessment from another producer, person, or importer.

(Pub. L. 99-198, title XVI, §1624, Dec. 23, 1985, 99 Stat. 1619.)

§ 4814. Petition and review

(a)(1) A person subject to an order may file with the Secretary a petition—

- (A) stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and
- (B) requesting a modification of such order or an exemption from such order.

(2) Such person shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) After such hearing, the Secretary shall make a determination granting or denying such petition.

(b)(1) A district court of the United States in the district in which such person resides or does business shall have jurisdiction to review such determination if a complaint for such purpose is filed not later than 20 days after the date such person receives notice of such determination.

(2) Service of process in such proceeding may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) If a court determines that such determination is not in accordance with law, the court shall remand such proceedings to the Secretary with directions to—

- (A) make such ruling as the court shall determine to be in accordance with law; or
- (B) take such further proceedings as, in the opinion of the court, the law requires.

(Pub. L. 99-198, title XVI, §1625, Dec. 23, 1985, 99 Stat. 1619.)

§ 4815. Enforcement**(a) Jurisdiction of district court; referral of civil actions to Attorney General**

(1) A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating an order, rule, or regulation issued under this chapter.

(2) A civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter if the Secretary believes that the administration and enforcement of this chapter would be adequately served by providing a suitable written notice or warning to a person who committed such violation or by administrative action under subsection (b) of this section.

(b) Penalties for willful violations; issuance of cease-and-desist orders; judicial review of orders; penalty for failure to obey cease-and-desist order

(1)(A) A person who willfully violates an order, rule, or regulation issued by the Secretary under this chapter may be assessed—

- (i) a civil penalty by the Secretary of not more than \$1,000 for each such violation; and
- (ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order, an additional penalty equal to the amount of such assessment.

(B) Each such violation shall be a separate offense.

(C) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from violating such order, rule, or regulation.

(D) No penalty may be assessed or cease-and-desist order issued unless the Secretary gives such person notice and opportunity for a hearing on the record with respect to such violation.

(E) An order issued under this paragraph by the Secretary shall be final and conclusive unless such person files an appeal from such order with the appropriate United States court of appeals not later than 30 days after such person receives notice of such order.

(2)(A) A person against whom an order is issued under paragraph (1) may obtain review of such order in the court of appeals of the United States for the circuit in which such person resides or does business, or in the United States Court of Appeals for the District of Columbia Circuit, by—

- (i) filing a notice of appeal in such court not later than 30 days after the date of such order; and

¹ So in original. Probably should be "therefor".

(ii) simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall file promptly in such court a certified copy of the record on which such violation was found.

(C) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(3)(A) A person who fails to obey a valid cease-and-desist order issued under paragraph (1) by the Secretary, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not more than \$500 for each offense.

(B) Each day during which such failure continues shall be considered a separate violation of such order.

(4)(A) If a person fails to pay a valid civil penalty imposed under this subsection by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in an appropriate district court of the United States.

(B) In such action, the validity and appropriateness of the order imposing such civil penalty shall not be subject to review.

(c) Availability of additional remedies

The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 99-198, title XVI, § 1626, Dec. 23, 1985, 99 Stat. 1620.)

§ 4816. Investigations

(a) Purposes

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

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

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

(b) Oaths and affirmations; subpoenas

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

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

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

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

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

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

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

(Pub. L. 99-198, title XVI, § 1627, Dec. 23, 1985, 99 Stat. 1621.)

§ 4817. Preemption

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

This chapter is intended to occupy the field of—

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

(2) obtaining funds therefor from pork producers.

(b) Additional or different State regulation prohibited

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

(c) Application of section

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

(Pub. L. 99-198, title XVI, § 1628, Dec. 23, 1985, 99 Stat. 1621.)

§ 4818. Administrative provision

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

(Pub. L. 99-198, title XVI, § 1629, Dec. 23, 1985, 99 Stat. 1621.)

§ 4819. Authorization of appropriations

(a) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out this chapter, subject to reimbursement from the Board under section 4809(c)(3)(B)(iv) of this title.

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

(Pub. L. 99-198, title XVI, § 1630, Dec. 23, 1985, 99 Stat. 1621.)

CHAPTER 80—WATERMELON RESEARCH AND PROMOTION

Sec.	
4901.	Congressional findings and declaration of policy.
4902.	Definitions.
4903.	Issuance of plans.
4904.	Notice and hearings.

¹So in original. Probably should be "section 4811(b)(2)(A) or 4812(b)(1)(B)".