

(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.)

#### § 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 subsection<sup>1</sup> 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

<sup>1</sup> So in original. Probably should be "section".

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 which the Board is appointed pursuant to section 4808 of this title.<sup>2</sup>

(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 sections<sup>3</sup> 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;<sup>4</sup>

(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,<sup>4</sup> including any expenses incurred for the conduct of a referendum under this chapter.<sup>4</sup>

(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.

#### (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

<sup>2</sup> So in original. The period probably should be a comma.

<sup>3</sup> So in original. Probably should be "section".

<sup>4</sup> See References in Text note below.

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 then<sup>1</sup> 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,

<sup>1</sup> So in original. Probably should be followed by “in”.