

facturer shall pay to the Council, pursuant to regulations issued under the order, an assessment based on the number of hundredweights of processed wheat purchased, including intra-company transfers of processed wheat, for use in the manufacture of end products, from processors, distributors, or (in the case of intra-company transfers) related companies or divisions of the same company. Such assessment shall be used for such expenses and expenditures defined above, including provisions for a reasonable reserve, and any referendum and administrative costs incurred by the Secretary and the Council under this chapter, as the Secretary finds are reasonable and likely to be incurred under the order during any period specified by the Secretary. The circumstances under which such a purchase or intra-company transfer will be deemed to have occurred will be prescribed by the Secretary in the order. Such assessment shall be calculated and set aside on the books and records of the end product manufacturer at the time of each purchase or intra-company transfer of processed wheat, and shall be remitted to the Council in the manner prescribed by the order. In order to enable end product manufacturers to calculate the amount of processed wheat they have purchased, persons selling or transferring processed wheat in combination with other ingredients to such end product manufacturers for use in the manufacture of end products, shall disclose to such end product manufacturers, as prescribed by the Secretary in the order, the amount or proportion of processed wheat contained in such products. The rate of assessment shall not exceed five cents per hundredweight of processed wheat purchased or transferred. The Secretary may maintain a suit against any person subject to such assessment for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy;

**(f) Maintenance of records**

that the Council shall maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time, to the Secretary as the Secretary may prescribe, and for appropriate accounting by the Council, with respect to the receipt and disbursement of all funds entrusted to it;

**(g) Contracts**

that the Council, with the approval of the Secretary, may enter into contracts or agreements for the development and conduct of the activities authorized under the order pursuant to terms and conditions specified in clauses (a) and (b) of section 3404 of this title and for the payment of the cost thereof with funds collected through the assessments pursuant to the order. Any such contract or agreement shall provide that the contractors shall develop and submit to the Council a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective

upon the approval of the Secretary, and further, shall provide that the contracting party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary may require;

**(h) Investment of assessment funds**

that the Council, with the approval of the Secretary, may invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under this title in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

**(i) Lobbying restriction**

that no funds collected by the Council under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by clause (a)(4) of this section; and

**(j) Reimbursement of expenses**

that the Council members, and alternates therefor, shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Council.

(Pub. L. 95-113, title XVII, §1706, Sept. 29, 1977, 91 Stat. 1034.)

**§ 3406. Exemption for retail bakers**

Any end product manufacturer who is a retail baker shall be exempt from the provisions of this chapter. For the purposes of this section, the term "retail baker" shall be deemed to include all end product manufacturers who sell end products directly to the ultimate consumer: *Provided*, That such term shall not include any end product manufacturer who derives less than 10 per centum of gross end product sales revenues from sales to ultimate consumers or who derives 10 per centum or more of gross food or food products sales revenues from the sale of such products manufactured or produced by others.

(Pub. L. 95-113, title XVII, §1707, Sept. 29, 1977, 91 Stat. 1036.)

**§ 3407. Referendum**

The Secretary shall conduct a referendum as soon as practicable among end product manufacturers not exempt hereunder who, during a representative period preceding the date of the referendum, as determined by the Secretary, have been engaged in the manufacture of end products, for the purpose of ascertaining whether the issuance of an order is approved or favored by such manufacturers. Qualified end product manufacturers may register with the Secretary by mail to vote in such referendum during a period ending not less than thirty days prior to the

date of the referendum. Within ten days thereafter, the Secretary shall determine which end product manufacturers are eligible to vote in such referendum and cause to be published the list of such eligible voters. The Secretary shall issue ballots to all such persons who have so registered and been declared eligible to vote. No order issued pursuant to this chapter shall be effective unless the Secretary determines (1) that votes were cast by at least 50 per centum of such registered end product manufacturers, and (2) that the issuance of such order is approved or favored by not less than two-thirds of the end product manufacturers voting in such referendum or by a majority of the end product manufacturers voting in such referendum if such majority manufactured end products containing not less than two-thirds of the total processed wheat contained in all end products manufactured by those voting in the referendum, during the representative period defined by the Secretary: *Provided*, That at the time of the registration provided under this section each end product manufacturer so registering shall certify to the Secretary the amount of processed wheat contained in the end products manufactured by such end product manufacturer during such representative period. The Secretary shall be reimbursed from assessments collected by the Council for any expenses incurred for the conduct of the referendum. Eligible voter lists and ballots cast in the referendum shall be retained by the Secretary for a period of not less than twelve months after they are cast for audit and recount in the event the results of the referendum are challenged and either the Secretary or the courts determine a recount and retabulation of results is appropriate.

(Pub. L. 95-113, title XVII, § 1708, Sept. 29, 1977, 91 Stat. 1036.)

#### **§ 3408. Refund of processed wheat assessment**

##### **(a) Election of end product manufacturers to seek refunds**

Subsequent to the approval by the Secretary of the annual budget of the Council or amendments thereto, a summary of such budget or amendments thereto, including a brief general description of the proposed research and nutrition education programs contemplated therein, shall be published in the Federal Register. All end product manufacturers not exempt hereunder shall have sixty days from the date of such publication within which to elect, under such conditions as the Secretary may prescribe, by so indicating to the Council in writing, by registered or certified mail, to reserve the right to seek refunds under subsection (b) of this section. Only those end product manufacturers who make such an election, under the described procedure, shall be eligible for refunds of assessments paid during the one-year period immediately following the expiration of such sixty-day period.

##### **(b) Refund demand; rules and regulations**

Notwithstanding any other provision of this chapter, any end product manufacturer who has been subject to and has paid an assessment, but who has reserved the right, under subsection (a)

of this section, to seek a refund, and who is not in favor of supporting the programs as provided for herein, shall have the right to demand and receive from the Council a refund of such assessment: *Provided*, That such demand shall be made by such end product manufacturer in accordance with regulations, and on a form and within a time period, prescribed by the Council and approved by the Secretary and upon submission of proof satisfactory to the Council that the end product manufacturer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand is received therefor.

(Pub. L. 95-113, title XVII, § 1709, Sept. 29, 1977, 91 Stat. 1037.)

#### **§ 3409. Petition and review**

##### **(a) Petition; hearing; ruling**

Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or for an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations issued 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; process; remand**

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 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 a copy of the complaint to the Secretary. 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.

(Pub. L. 95-113, title XVII, § 1710, Sept. 29, 1977, 91 Stat. 1037.)

#### **§ 3410. Enforcement of orders and regulations**

##### **(a) Jurisdiction; reference of civil actions to Attorney General**

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 order or regulation made or issued pursuant to this chapter. Any civil action authorized to be brought under this chapter 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 minor violations of this chapter whenever the Secretary believes that the administration and enforcement of the program would be adequately