

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 judicial 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 pro-

ducers" 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."

§ 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