

§ 4902. Definitions

As used in this chapter:

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

(2) The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

(3) The term “watermelon” means all varieties of watermelon grown by producers in the United States or imported into the United States.

(4) The term “handler” means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons in a manner specified in a plan issued under this chapter or in regulations promulgated thereunder.

(5) The term “producer” means any person engaged in the growing of 10 or more acres of watermelons.

(6) The term “importer” means any person who imports watermelons into the United States.

(7) The term “plan” means an order issued by the Secretary under this chapter.

(8) The term “promotion” means any action taken by the Board, under this chapter, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

(9) The term “Board” means the National Watermelon Promotion Board provided for in section 4906 of this title.

(10) The term “United States” means each of the several States and the District of Columbia.

(Pub. L. 99-198, title XVI, § 1643, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103-189, §§3(a), 8(a), (k)(3), 9(a), Dec. 14, 1993, 107 Stat. 2259, 2261, 2263, 2264.)

Editorial Notes

AMENDMENTS

1993—Pub. L. 103-189, §8(k)(3)(A), substituted “chapter:” for “chapter—” in introductory provisions.

Pars. (1), (2). Pub. L. 103-189, §8(k)(3)(B), (C), substituted “The term” for “the term” and a period for semicolon at end.

Par. (3). Pub. L. 103-189, §8(a)(1), (k)(3)(B), substituted “The term” for “the term” and “or imported into the United States.” for the semicolon at end.

Pub. L. 103-189, §3(a)(1), struck out “the forty-eight contiguous States of” after “by producers in”.

Par. (4). Pub. L. 103-189, §8(k)(3)(B), (C), substituted “The term” for “the term” and a period for semicolon at end.

Par. (5). Pub. L. 103-189, §9(a), substituted “10” for “five”.

Pub. L. 103-189, §8(k)(3)(B), (C), substituted “The term” for “the term” and a period for semicolon at end.

Pars. (6), (7). Pub. L. 103-189, §8(a)(2), (3), added pars. (6) and (7) and redesignated former pars. (6) and (7) as (8) and (9), respectively.

Par. (8). Pub. L. 103-189, §8(a)(2), (k)(3)(D), redesignated par. (6) as (8) and substituted “The term” for “the term” and a period for “; and” at end.

Par. (9). Pub. L. 103-189, §8(a)(2), (k)(3)(E), redesignated par. (7) as (9) and substituted “The term” for “the term” and “4906” for “4903”.

Par. (10). Pub. L. 103-189, §3(a)(2), added par. (10).

§ 4903. Issuance of plans

To effectuate the declared policy of this chapter, the Secretary shall, under the provisions of this chapter, issue, and from time to time may amend, orders (applicable to producers, handlers, and importers of watermelons) authorizing the collection of assessments on watermelons under this chapter and the use of such funds to cover the costs of research, development, advertising, and promotion with respect to watermelons under this chapter. Any plan shall be applicable to watermelons produced in the United States or imported into the United States.

(Pub. L. 99-198, title XVI, § 1644, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103-189, §§3(b), 8(b), Dec. 14, 1993, 107 Stat. 2259, 2261.)

Editorial Notes

AMENDMENTS

1993—Pub. L. 103-189, in first sentence, substituted “, handlers, and importers” for “and handlers”, struck out after first sentence “Any order issued by the Secretary under this chapter shall hereinafter in this chapter be referred to as a ‘plan.’”, and in last sentence, struck out “the forty-eight contiguous States of” after “watermelons produced in”, and inserted “or imported into the United States” before period at end.

§ 4904. Notice and hearings

(a) When sufficient evidence, as determined by the Secretary, is presented to the Secretary by watermelon producers, handlers, and importers, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this chapter, the Secretary shall give due notice and opportunity for a hearing on a proposed plan. Such hearing may be requested by watermelon producers, handlers, or importers or by any other interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

(b) After notice and opportunity for hearing as provided in subsection (a) of this section, the Secretary shall issue a plan if the Secretary finds, and sets forth in such plan, on the evidence introduced at the hearing that the issuance of the plan and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 99-198, title XVI, § 1645, Dec. 23, 1985, 99 Stat. 1623; Pub. L. 103-189, §8(c), Dec. 14, 1993, 107 Stat. 2261.)

Editorial Notes

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-189 substituted “, handlers, and importers” for “and handlers” and “, handlers, or importers” for “or handlers”.

§ 4905. Regulations

The Secretary may issue such regulations as may be necessary to carry out the provisions of this chapter and the powers vested in the Secretary under this chapter.

(Pub. L. 99-198, title XVI, § 1646, Dec. 23, 1985, 99 Stat. 1624.)

§ 4906. Required terms in plans**(a) Description of terms and provisions**

Any plan issued under this chapter shall contain the terms and provisions described in this section.

(b) Establishment and powers of National Watermelon Promotion Board

The plan shall provide for the establishment by the Secretary of the National Watermelon Promotion Board and for defining its powers and duties, which shall include the powers to—

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

(c) Membership of Board; representation of interests; appointment; nomination; eligibility of producers; importer representation

(1) The plan shall provide that the Board shall be composed of representatives of producers and handlers, and one representative of the public, appointed by the Secretary from nominations submitted in accordance with this subsection. An equal number of representatives of producers and handlers shall be nominated by producers and handlers, and the representative of the public shall be nominated by the other members of the Board, in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided for in the plan. If the Board fails to nominate a public representative, the Secretary shall choose such representative for appointment.

(2) A producer shall be eligible to serve on the Board only as a representative of handlers, and not as a representative of producers, if—

- (A) the producer purchases watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or
- (B) the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producers' production is more than 50 percent of the producer's own production.

(3)(A) If importers are subject to the plan, the Board shall also include 1 or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.

(B) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least 1 representative of importers shall serve on the Board.

(C) If importers are subject to the plan and fail to select nominees for appointment to the Board, the Secretary may appoint any importers as the representatives of importers.

(D) Not later than 5 years after the date that importers are subjected to the plan, and every 5

years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(d) Compensation and expenses of Board

The plan shall provide that all Board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the Board.

(e) Budget on fiscal period basis

The plan shall provide that the Board shall prepare and submit to the Secretary for the Secretary's approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(f) Assessments; payments; notice

The plan shall provide for the fixing by the Secretary of assessments to cover costs incurred under the budgets provided for in subsection (e), and under section 4907(f) of this title, based on the Board's recommendation as to the appropriate rate of assessment, and for the payment of the assessments to the Board.¹ In fixing or changing the rate of assessment pursuant to the plan, the Secretary shall comply with the notice and comment procedures established under section 553 of title 5. Sections 556 and 557 of such title shall not apply with respect to fixing or changing the rate of assessment.

(g) Scope of expenditures; restrictions; assessments on per-unit basis; importers

The plan shall provide the following:

(1) Funds received by the Board shall be used for research, development, advertising, or promotion of watermelons and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter.

(2) No advertising or sales promotion program under this chapter shall make any reference to private brand names nor use false or unwarranted claims in behalf of watermelons or their products or false or unwarranted statements with respect to attributes or use of any competing products.

(3) No funds received by the Board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsections (b)(4) and (f).

(4) Assessments shall be made on watermelons produced by producers and watermelons handled by handlers, and the rate of such assessments in the case of producers and handlers shall be the same, on a per-unit basis, for producers and handlers. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(5) If importers are subject to the plan, an assessment shall also be made on watermelons

¹ So in original.