

ules with respect to assessments, as provided for in sections 4906 and 4908 of this title, to recognize differences in marketing practices and procedures used in different production areas.

**(d) Advertising and sales promotion programs or projects**

The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and other sales promotion of watermelons and for the disbursement of necessary funds for such purposes. Any such program or project shall be directed toward increasing the general demand for watermelons, and promotional activities shall comply with the provisions of section 4906(g) of this title.

**(e) Marketing objectives of research and development projects and studies**

The plan may provide for establishing and carrying out research and development projects and studies to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

**(f) Reserve funds; limitation**

The plan may provide authority for the accumulation of reserve funds from assessments collected under this chapter, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when watermelon production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for two years operation.

**(g) Foreign market sales**

The plan may provide for the use of funds from assessments collected under this chapter, with the approval of the Secretary, for the development and expansion of sales of watermelons in foreign markets.

**(h) Other terms and conditions**

The plan may contain terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of the plan.

(Pub. L. 99-198, title XVI, § 1648, Dec. 23, 1985, 99 Stat. 1625.)

**§ 4908. Assessment procedures**

**(a) Persons responsible for remittance of assessments; recordkeeping; equal and unitary assessments**

(1) Each handler required to pay assessments under a plan, as provided for under section 4906(f) of this title, shall be responsible for payment to the Board, as it may direct, of the assessments. A handler also shall collect from any producer, or shall deduct from the proceeds paid to any producer, on whose watermelons a producer assessment is made, the assessments required to be paid by the producer. The handler shall remit producer assessments to the Board as the Board directs. Such handler shall maintain a separate record with respect to each producer for whom watermelons were handled. Such records shall indicate the total quantity of wa-

termelons handled by the handler, including those handled for producers and for the handler, the total quantity of watermelons handled by the handler that are included under the terms of the plan, as well as those that are exempt under the plan, and such other information as may be prescribed by the Board. To facilitate the collection and payment of assessments, the Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures used in any State or area. The handler shall be assessed an equal amount as the producer. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any watermelons.

(2)(A) If importers are subject to the plan, each importer required to pay assessments under the plan shall be responsible for payment of the assessment to the Board, as the Board may direct.

(B) The assessment on imported watermelons shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer to the Board at the time of the entry of the watermelons into the United States.

(C) Each importer required to pay assessments under the plan shall maintain a separate record that includes a record of—

(i) the total quantity of watermelons imported into the United States that are included under the terms of the plan;

(ii) the total quantity of watermelons that are exempt from the plan; and

(iii) such other information as may be prescribed by the Board.

(D) No more than 1 assessment shall be made on any imported watermelon.

**(b) Inspection of records**

Handlers and importers responsible for payment of assessments under subsection (a) shall maintain and make available for inspection by the Secretary such books and records as required by the plan and file reports at the times, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the Board and to the Secretary that is appropriate or necessary to the effectuation, administration, or enforcement of this chapter or of any plan or regulation issued under this chapter.

**(c) Confidentiality of information; disclosure authority; general or violation statements; penalties; removal from office**

All information obtained under subsections (a) and (b) shall be kept confidential by all officers and employees of the Department of Agriculture and of the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this subsection shall be deemed to prohibit—

(1) the issuance of general statements based on the reports of a number of handlers or im-

porters subject to a plan if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary of the name of any person violating any plan together with a statement of the particular provisions of the plan violated by such person.

Any such officer or employee violating the provisions of this subsection shall be subject to a fine of not more than \$1,000 or imprisonment for not more than one year, or both, and shall be removed from office.

(Pub. L. 99-198, title XVI, § 1649, Dec. 23, 1985, 99 Stat. 1626; Pub. L. 103-189, § 8(g), Dec. 14, 1993, 107 Stat. 2262.)

#### Editorial Notes

##### AMENDMENTS

1993—Subsec. (a). Pub. L. 103-189, § 8(g)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 103-189, § 8(g)(2), inserted “and importers” after “Handlers”.

Subsec. (c)(1). Pub. L. 103-189, § 8(g)(3), inserted “or importers” after “handlers”.

#### § 4909. Petition and review

(a) Any person subject to a plan may file a written petition with the Secretary, stating that the plan or any provision of the plan, or any obligation imposed in connection therewith, is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary. After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with the law.

(b) The district courts of the United States in any district in which the person is an inhabitant, or in which the person's principal place of business is located, are hereby vested with jurisdiction to review such ruling, provided that a complaint for that purpose is filed within twenty days from the date of the entry of the ruling. Service of process in such proceedings may be had on the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the Secretary with directions either to (1) make such ruling as the court shall determine to be in accordance with law, or (2) take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted under subsection (a) shall not impede or delay the United States or the Secretary from obtaining relief under section 4910(a)<sup>1</sup> of this title.

(Pub. L. 99-198, title XVI, § 1650, Dec. 23, 1985, 99 Stat. 1627.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 4910(a) of this title, referred to in subsec. (b), was in the original “section 1851(a)”, a nonexistent sec-

<sup>1</sup> See References in Text note below.

tion in Pub. L. 99-198, and has been translated as if the reference had been to “section 1651(a)” to reflect the probable intent of Congress.

#### § 4910. Enforcement

(a) 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 plan or regulation made or issued under this chapter. The facts relating to any civil action that may be brought under this subsection shall be referred to the Attorney General for appropriate action, except that nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of the plan or regulation would be adequately served by administrative action under subsection (b) or suitable written notice or warning to any person committing the violations.

(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation. No penalty shall be assessed nor cease and desist order issued unless the person is given notice and opportunity for a hearing before the Secretary with respect to the violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person affected by the order files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record on which the violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2), of not more than \$500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and