

Subsec. (g)(3). Pub. L. 110-246, §1507(d), added par. (3) and struck out former par. (3) which read as follows: "The rate of assessment for milk produced in the United States and imported dairy products prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof, as determined by the Secretary."

Subsec. (g)(6)(B), (C). Pub. L. 110-246, §1507(e), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: "The assessment on imported dairy products shall be paid by the importer to Customs at the time the entry documents are filed with Customs. Customs shall remit the assessments to the Board. For purposes of this subparagraph, the term 'importer' includes persons who hold title to foreign-produced dairy products immediately upon release by Customs, as well as persons who act on behalf of others, as agents, brokers, or consignees, to secure the release of dairy products from Customs."

Subsec. (g)(7). Pub. L. 110-246, §1507(f), added par. (7).

2002—Subsec. (b). Pub. L. 107-171, §1505(b), inserted heading, designated first to ninth sentences as pars. (1) to (5) and (7) to (10), respectively, and realigned margins, substituted "Except as provided in paragraph (6), the members of the Board" for "Members of the Board" in par. (2) and "is produced as well as importers of dairy products" for "is produced" in par. (8), and added par. (6).

Subsec. (e). Pub. L. 107-171, §1505(c), inserted heading, designated existing provisions as par. (1), inserted heading, and struck out "For each of fiscal years 1997 through 2001, the Board's budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States." at end, and added par. (2).

Subsec. (g). Pub. L. 107-171, §1505(d), inserted heading, designated first to fifth sentences as pars. (1) to (5), respectively, and realigned margins, inserted "for milk produced in the United States and imported dairy products" after "The rate of assessment" and ", as determined by the Secretary" before period at end in par. (3), and added par. (6).

Subsec. (k). Pub. L. 107-171, §1505(e), substituted "importer of imported dairy products, each person receiving milk from farmers" for "person receiving milk from farmers" in first sentence.

1996—Subsec. (e). Pub. L. 104-127 inserted at end "For each of fiscal years 1997 through 2001, the Board's budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 4505. Certification of organizations

(a) The eligibility of any organization to represent milk producers, and to participate in the making of nominations under section 4504 of this title shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this section and the Secretary's determination as to eligibility shall be final.

(b) Certification shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified

by the Secretary, including, but not limited to, the following:

- (1) geographic territory covered by the organization's active membership;
- (2) nature and size of the organization's active membership including the proportion of the total number of active milk producers represented by the organization;
- (3) evidence of stability and permanency of the organization;
- (4) sources from which the organization's operating funds are derived;
- (5) functions of the organization; and
- (6) the organization's ability and willingness to further the aims and objectives of this subchapter.

The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(Pub. L. 98-180, title I, §114, Nov. 29, 1983, 97 Stat. 1140.)

§ 4506. Requirement of referendum

(a) Within the sixty-day period immediately preceding September 30, 1985, the Secretary shall conduct a referendum among producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use for the purpose of ascertaining whether the order then in effect shall be continued. Such order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use. If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that such action is favored by a majority of the producers voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this section and section 4507 of this title, except for the salaries of Government employees.

(Pub. L. 98-180, title I, §115, Nov. 29, 1983, 97 Stat. 1141.)

§ 4507. Suspension and termination of orders

(a) Determination by Secretary

After September 30, 1985, the Secretary shall, whenever the Secretary finds that any order issued under this subchapter or any provision thereof obstructs or does not tend to effectuate the declared policy of this subchapter, terminate or suspend the operation of such order or such provisions thereof.

(b) Referendum

After September 30, 1985, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 per centum or more of the number of producers and importers subject to the order, to determine whether the producers and importers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use and importers voting in the referendum (who have been engaged in the importation of dairy products during the same representative period, as determined by the Secretary) and shall terminate the order in an orderly manner as soon as practicable after such determination.

(c) Action not considered an order

The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subchapter.

(Pub. L. 98-180, title I, § 116, Nov. 29, 1983, 97 Stat. 1141; Pub. L. 107-171, title I, § 1505(f), May 13, 2002, 116 Stat. 209.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-171, which directed amendment of section 116(b) of the Dairy Promotion Stabilization Act of 1983 by inserting “and importers” after “of producers” and after “whether the producers” in first sentence and inserting “and importers voting in the referendum (who have been engaged in the importation of dairy products during the same representative period, as determined by the Secretary)” after “commercial use” in second sentence, was executed by making the insertions in subsec. (b) of this section, section 116 of the Dairy Production Stabilization Act of 1983, to reflect the probable intent of Congress.

§ 4508. Cooperative association representation

Whenever, under the provisions of this subchapter, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, engaged in a bona fide manner in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. If a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer, on whose behalf the cooperative association is expressing approval or disapproval, a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot.

The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes.

(Pub. L. 98-180, title I, § 117, Nov. 29, 1983, 97 Stat. 1141.)

§ 4509. Petition and review

(a) Any person subject to any order issued under this subchapter may file with the Secretary a petition 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 requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant or carries on business are hereby vested with jurisdiction to review such ruling, if 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 on 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. 98-180, title I, § 118, Nov. 29, 1983, 97 Stat. 1142.)

§ 4510. Enforcement**(a) Restraining order; civil action; minor violation**

The 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 under this subchapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General minor violations of this subchapter whenever the Secretary believes that the administration and enforcement of this subchapter would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Civil penalties

Any person who willfully violates any provision of any order issued by the Secretary under this subchapter shall be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by the order, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States.