

(1) The association or organization's total paid membership is comprised of at least a majority of cattle producers or the association or organization's total paid membership represents at least a majority of the cattle producers in the State.

(2) The association or organization represents a substantial number of producers that produce a substantial number of cattle in the State.

(3) The association or organization has a history of stability and permanency.

(4) A primary or overriding purpose of the association or organization is to promote the economic welfare of cattle producers.

**(c) Factual report basis for certification of State cattle association and State general farm association**

Certification of State cattle associations and State general farm organizations shall be based on a factual report submitted by the association or organization involved.

**(d) Certification of more than one State organization; caucus**

If more than one State organization is certified in a State (or in a unit referred to in section 2904(1) of this title), such organizations may caucus to determine any of such State's (or such unit's) nominations under section 2904(1) of this title.

(Pub. L. 94-294, §6, May 28, 1976, 90 Stat. 531; Pub. L. 99-198, title XVI, §1601(b), Dec. 23, 1985, 99 Stat. 1603.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to certification of organizations to nominate for provisions relating to findings and issuance of orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

**§ 2906. Requirement of referendum**

**(a) Continuation or termination of order**

For the purpose of determining whether the initial order shall be continued, not later than 22 months after the issuance of the order (or any earlier date recommended by the Board), the Secretary shall conduct a referendum among persons who have been producers or importers during a representative period, as determined by the Secretary. The 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 cattle. If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that continuation of the order is not favored by a majority voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

**(b) Additional referendum to determine suspension or termination of order**

After the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 10 per centum or more of the number of cattle producers to determine whether cattle producers 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 cattle and shall terminate or suspend the order in an orderly manner as soon as practicable after such determination.

**(c) Reimbursement for cost of referendum; time and place of referendum; certification by producers; absentee mail ballot**

The Department shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with conducting any referendum under this section, except for the salaries of Government employees. Any referendum conducted under this section shall be conducted on a date established by the Secretary, whereby producers shall certify that they were engaged in the production of cattle during the representative period and, on the same day, shall be provided an opportunity to vote in the referendum. Each referendum shall be conducted at county extension offices, and there shall be provision for an absentee mail ballot on request.

(Pub. L. 94-294, §7, May 28, 1976, 90 Stat. 531; Pub. L. 99-198, title XVI, §1601(b), Dec. 23, 1985, 99 Stat. 1604.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to requirement of referendum for provisions relating to permissive terms and conditions in orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

**§ 2907. Refunds**

**(a) Establishment of escrow account**

During the period prior to the approval of the continuation of an order pursuant to the referendum required under section 2906(a) of this title, subject to subsection (f) of this section, the Board shall—

(1) establish an escrow account to be used for assessment refunds;

(2) place funds in such account in accordance with subsection (b) of this section; and

(3) refund assessments to persons in accordance with this section.

**(b) Funding escrow account**

Subject to subsection (f) of this section, the Board shall place in such account, from assessments collected under section 2906 of this title during the period referred to in subsection (a) of

this section, an amount equal to the product obtained by multiplying—

- (1) the total amount of assessments collected under section 2906 of this title during such period; by
- (2) the greater of—
  - (A) the average rate of assessment refunds provided to producers under State beef promotion, research, and consumer information programs financed through producer assessments, as determined by the Board; or
  - (B) 15 percent.

**(c) Demand and receipt of one-time refund**

Subject to subsections (d), (e), and (f) of this section and notwithstanding any other provision of this chapter,<sup>1</sup> any person shall have the right to demand and receive from the Board a one-time refund of all assessments collected under section 2906 of this title from such person during the period referred to in subsection (a) of this section if such person—

- (1) is responsible for paying such assessment; and
- (2) does not support the program established under this chapter.

**(d) Form and time period for demand for one-time refund**

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

**(e) Submission of proof for one-time refund**

Such refund shall be made on submission of proof satisfactory to the Board that the producer, person, or importer—

- (1) paid the assessment for which refund is sought; and
- (2) did not collect such assessment from another producer, person, or importer.

**(f) Insufficiency of funds in escrow account; proration of funds among eligible persons**

(1) If the amount in the escrow account required to be established by subsection (a) of this section is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is approved pursuant to the referendum required under section 2906(a)<sup>1</sup> of this title, the Board shall—

- (A) continue to place in such account, from assessments collected under section 2904 of this title, the amount required under subsection (b) of this section, until such time as the Board is able to comply with subparagraph (B); and
- (B) provide to all eligible persons the total amount of assessments demanded by all eligible producers.

(2) If the amount in the escrow account required to be established by subsection (a) of this section is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is not approved pursuant to the referendum required under section 2906(a) of this title, the Board shall prorate the amount of such refunds among all eligible persons who demand such refund.

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

(Pub. L. 94-294, § 8, May 28, 1976, 90 Stat. 532; Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1604.)

REFERENCES IN TEXT

This chapter, referred to in provisions preceding par. 1 of subsec. (c), was in the original "this subtitle", and was translated as reading "this Act" to reflect the probable intent of Congress.

Section 2906(a) of this title, referred to in subsec. (f)(1), was in the original a reference to section 10(a) of Pub. L. 94-294, section 2909(a) of this title, and was translated as section 2906(a) of this title as the probable intent of Congress, in view of section 2909 of this title not containing a subsec. (a) and the subject matter of section 2906(a) which relates to a referendum.

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to refunds for provisions relating to required terms and conditions in orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

**§ 2908. Enforcement**

**(a) Restraining order; civil penalty**

If the Secretary believes that the administration and enforcement of this chapter or an order would be adequately served by such procedure, following an opportunity for an administrative hearing on the record, the Secretary may—

- (1) issue an order to restrain or prevent a person from violating an order; and
- (2) assess a civil penalty of not more than \$5,000 for violation of such order.

**(b) Jurisdiction of district court**

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation made or issued under this chapter.

**(c) Civil action to be referred to Attorney General**

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action.

(Pub. L. 94-294, § 9, May 28, 1976, 90 Stat. 534; Pub. L. 95-334, title III, § 302, Aug. 4, 1978, 92 Stat. 433; Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1605.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to enforcement for provisions relating to referendum and cattle producer approval of orders, reimbursement of expenses by Secretary, procedural requirements, and bonding requirements.

1978—Pub. L. 95-334 substituted "a majority" for "not less than two-thirds".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

**§ 2909. Investigations by Secretary; oaths and affirmations; subpoenas; judicial enforcement; contempt proceedings; service of process**

The Secretary may make such investigations as the Secretary deems necessary for the effec-