

order going into effect, the order may provide for the Secretary to conduct an initial referendum among persons to be subject to an assessment under section 7416 of this title who, during a representative period determined by the Secretary, engaged in—

- (A) the production or handling of the agricultural commodity covered by the order; or
- (B) the importation of the agricultural commodity.

(2) Procedure

The results of the referendum shall be determined in accordance with subsection (e). The Secretary may require that the agricultural commodity industry involved post a bond or other collateral to cover the cost of the referendum.

(b) Required referenda

(1) In general

For the purpose of ascertaining whether the persons covered by an order favor the continuation, suspension, or termination of the order, the Secretary shall conduct a referendum among persons subject to assessments under section 7416 of this title who, during a representative period determined by the Secretary, have engaged in—

- (A) the production or handling of the agricultural commodity covered by the order; or
- (B) the importation of the agricultural commodity.

(2) Time for referendum

The referendum shall be conducted not later than 3 years after assessments first begin under the order.

(3) Exception

This subsection shall not apply if an initial referendum was conducted under subsection (a).

(c) Subsequent referenda

The Secretary shall conduct a subsequent referendum—

- (1) not later than 7 years after assessments first begin under the order;
- (2) at the request of the board established under the order; or
- (3) at the request of 10 percent or more of the number of persons eligible to vote under subsection (b)(1);

to determine if the persons favor the continuation, suspension, or termination of the order.

(d) Other referenda

The Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the order or a provision of the order is favored by persons eligible to vote under subsection (b)(1).

(e) Approval of order

An order may provide for its approval in a referendum—

- (1) by a majority of those persons voting;
- (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or
- (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

(f) Costs of referenda

The board established under an order with respect to which a referendum is conducted under this section shall reimburse the Secretary for any expenses incurred by the Secretary to conduct the referendum.

(g) Manner of conducting referenda

(1) In general

A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

(2) Advance registration

If the Secretary determines that an advance registration of eligible voters in a referendum is necessary before the voting period in order to facilitate the conduct of the referendum, the Secretary may institute the advance registration procedures by mail, or in person through the use of national and local offices of the Department.

(3) Voting

Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(4) Notice

Not later than 30 days before a referendum is conducted under this section with respect to an order, the Secretary shall notify the agricultural commodity industry involved, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this subsection.

(Pub. L. 104-127, title V, §518, Apr. 4, 1996, 110 Stat. 1043.)

§ 7418. Petition and review of orders

(a) Petition

(1) In general

A person subject to an order issued under this subchapter may file with the Secretary a petition—

- (A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law; and
- (B) requesting a modification of the order or an exemption from the order.

(2) Hearing

The Secretary shall give the petitioner an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final, subject to review as set forth in subsection (b).

(4) Limitation on petition

Any petition filed under this subsection challenging an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed within 2 years

after the effective date of the order, provision, or obligation subject to challenge in the petition.

(b) Review

(1) Commencement of action

The district court of the United States for any district in which a person who is a petitioner under subsection (a) resides or carries on business shall have jurisdiction to review the final ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of the final ruling by the Secretary under subsection (a)(3).

(2) Process

Service of process in a proceeding may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) Remands

If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions—

(A) to make such ruling as the court determines to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(c) Effect on enforcement proceedings

The pendency of a petition filed under subsection (a) or an action commenced under subsection (b) shall not operate as a stay of any action authorized by section 7419 of this title to be taken to enforce this subchapter, including any rule, order, or penalty in effect under this subchapter.

(Pub. L. 104-127, title V, §519, Apr. 4, 1996, 110 Stat. 1044.)

§ 7419. Enforcement

(a) Jurisdiction

The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued under this subchapter.

(b) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subchapter if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by providing a suitable written notice or warning to the person who committed the violation or by an administrative action under this section.

(c) Civil penalties and orders

(1) Civil penalties

A person who willfully violates an order or regulation issued by the Secretary under this subchapter may be assessed by the Secretary a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

(2) Separate offense

Each violation and each day during which there is a failure to comply with an order or

regulation issued by the Secretary shall be considered to be a separate offense.

(3) Cease-and-desist orders

In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring a person to cease and desist from violating the order or regulation.

(4) Notice and hearing

No order assessing a penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary provides notice and an opportunity for a hearing on the record with respect to the violation.

(5) Finality

An order assessing a penalty or a cease-and-desist order issued under this subsection by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from the order with the United States court of appeals, as provided in subsection (d).

(d) Review by court of appeals

(1) In general

A person against whom an order is issued under subsection (c) may obtain review of the order by—

(A) filing, not later than 30 days after the person receives notice of the order, a notice of appeal in—

(i) the United States court of appeals for the circuit in which the person resides or carries on business; or

(ii) the United States Court of Appeals for the District of Columbia Circuit; and

(B) simultaneously sending a copy of the notice of appeal by certified mail to the Secretary.

(2) Record

The Secretary shall file with the court a certified copy of the record on which the Secretary has determined that the person has committed a violation.

(3) Standard of review

A finding of the Secretary under this section shall be set aside only if the finding is found to be unsupported by substantial evidence on the record.

(e) Failure to obey cease-and-desist orders

A person who fails to obey a valid cease-and-desist order issued by the Secretary under this section, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not less than \$1,000 and not more than \$10,000 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the cease-and-desist order.

(f) Failure to pay penalties

If a person fails to pay a civil penalty imposed under this section by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In the action, the validity and appropriateness of the order imposing the civil penalty shall not be subject to review.