

rapeseed, or canola or rapeseed products, shall remit to the Board or a State organization certified to represent producers under section 7444(b)(6) of this title, in the manner prescribed by the order, an assessment established at a rate equivalent to the rate provided for under subsection (d).

(b) Limitation on assessments

No more than 1 assessment may be assessed under subsection (a) on any canola or rapeseed produced (as remitted by a first purchaser).

(c) Remitting of assessments

(1) In general

Assessments required under subsection (a) shall be remitted to the Board by a first purchaser. The Board shall use State organizations certified to represent producers under section 7444(b)(6) of this title to collect the assessments. If an appropriate certified State organization does not exist to collect an assessment, the assessment shall be collected by the Board. There shall be only 1 certified State organization in each State.

(2) Times to remit assessment

Each first purchaser shall remit the assessment to the Board as provided for in the order.

(d) Assessment rate

(1) Initial rate

The initial assessment rate shall be 4 cents per hundredweight of canola or rapeseed produced and marketed.

(2) Increase

The assessment rate may be increased on recommendation by the Board to a rate not exceeding 10 cents per hundredweight of canola or rapeseed produced and marketed in a State, unless—

(A) after the initial referendum is held under section 7446(a) of this title, the Board recommends an increase above 10 cents per hundredweight; and

(B) the increase is approved in a referendum under section 7446(b) of this title.

(3) Credit

A producer who demonstrates to the Board that the producer is participating in a program of a State organization certified to represent producers under section 7444(b)(6) of this title shall receive credit, in determining the assessment due from the producer, for contributions to the program of up to 2 cents per hundredweight of canola or rapeseed marketed.

(e) Late payment charge

(1) In general

There shall be a late payment charge imposed on any person who fails to remit, on or before the date provided for in the order, to the Board the total amount for which the person is liable.

(2) Amount of charge

The amount of the late payment charge imposed under paragraph (1) shall be prescribed by the Board with the approval of the Secretary.

(f) Refund of assessments from escrow account

(1) Establishment of escrow account

During the period beginning on the date on which an order is first issued under section 7443(b)(3) of this title and ending on the date on which a referendum is conducted under section 7446(a) of this title, the Board shall—

(A) establish and maintain an escrow account to be used for assessment refunds; and

(B) place funds in the account in accordance with paragraph (2).

(2) Placement of funds in account

The Board shall place in the account, from assessments collected during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during the period by 10 percent.

(3) Right to receive refund

The Board shall refund to a producer the assessments paid by or on behalf of the producer if—

(A) the producer is required to pay the assessment;

(B) the producer does not support the program established under this subchapter; and

(C) the producer demands the refund prior to the conduct of the referendum under section 7446(a) of this title.

(4) Form of demand

The demand shall be made in accordance with such regulations, in such form, and within such time period as prescribed by the Board.

(5) Making of refund

The refund shall be made on submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is demanded.

(6) Proration

If—

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible producers; and

(B) the order is not approved pursuant to the referendum conducted under section 7446(a) of this title;

the Board shall prorate the amount of the refunds among all eligible producers who demand a refund.

(7) Program approved

If the plan is approved pursuant to the referendum conducted under section 7446(a) of this title, all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this subchapter.

(Pub. L. 104-127, title V, §536, Apr. 4, 1996, 110 Stat. 1056.)

§ 7446. Referenda

(a) Initial referendum

(1) Requirement

During the period ending 30 months after the date on which an order is first issued under

section 7443(b)(3) of this title, 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 canola or rapeseed for the purpose of ascertaining whether the order then in effect shall be continued.

(2) Advance notice

The Secretary shall, to the extent practicable, provide broad public notice in advance of any referendum. The notice shall be provided, without advertising expenses, by means of newspapers, county newsletters, the electronic media, and press releases, through the use of notices posted in State and county cooperative extension offices and county Consolidated Farm Service Agency offices, and by other appropriate means specified in the order. The notice shall contain information on when the referendum will be held, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

(3) Approval of order

The order shall be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum.

(4) Disapproval of order

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 180 days after the referendum and shall terminate the order in an orderly manner as soon as practicable.

(b) Additional referenda

(1) In general

(A) Requirement

After the initial referendum on an order, the Secretary shall conduct additional referenda, as described in subparagraph (C), if requested by a representative group of producers, as described in subparagraph (B).

(B) Representative group of producers

An additional referendum on an order shall be conducted if requested by 10 percent or more of the producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed.

(C) Eligible producers

Each additional referendum shall be conducted among all producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed to determine whether the producers favor the termination or suspension of the order.

(2) Disapproval of order

If the Secretary determines, in a referendum conducted under paragraph (1), that suspension or termination of the order is favored by a majority of the producers voting in the referendum, the Secretary shall suspend or terminate, as appropriate, collection of assessments under the order within 180 days after

the determination, and shall suspend or terminate the order, as appropriate, in an orderly manner as soon as practicable after the determination.

(3) Opportunity to request additional referenda

(A) In general

Beginning on the date that is 5 years after the conduct of a referendum under this subchapter, and every 5 years thereafter, the Secretary shall provide canola and rapeseed producers an opportunity to request an additional referendum.

(B) Method of making request

(i) In-person requests

To carry out subparagraph (A), the Secretary shall establish a procedure under which a producer may make a request for a reconfirmation referendum in person at a county cooperative extension office or a county Consolidated Farm Service Agency office during a period established by the Secretary, or as provided in clause (ii).

(ii) Mail-in requests

In lieu of making a request in person, a producer may make a request by mail. To facilitate the submission of requests by mail, the Secretary may make mail-in request forms available to producers.

(C) Notifications

The Secretary shall publish a notice in the Federal Register, and the Board shall provide written notification to producers, not later than 60 days prior to the end of the period established under subparagraph (B)(i) for an in-person request, of the opportunity of producers to request an additional referendum. The notification shall explain the right of producers to an additional referendum, the procedure for a referendum, the purpose of a referendum, and the date and method by which producers may act to request an additional referendum under this paragraph. The Secretary shall take such other action as the Secretary determines is necessary to ensure that producers are made aware of the opportunity to request an additional referendum.

(D) Action by Secretary

As soon as practicable following the submission of a request for an additional referendum, the Secretary shall determine whether a sufficient number of producers have requested the referendum, and take such steps as are necessary to conduct the referendum, as required under paragraph (1).

(E) Time limit

An additional referendum requested under the procedures provided in this paragraph shall be conducted not later than 1 year after the Secretary determines that a representative group of producers, as described in paragraph (1)(B), have requested the conduct of the referendum.

(c) Procedures

(1) Reimbursement of Secretary

The Secretary shall be reimbursed from assessments collected by the Board for any ex-

penses incurred by the Secretary in connection with the conduct of an activity required under this section.

(2) Date

Each referendum shall be conducted for a reasonable period of time not to exceed 3 days, established by the Secretary, under a procedure under which producers intending to vote in the referendum shall certify that the producers were engaged in the production of canola, rapeseed, or canola or rapeseed products during the representative period and, at the same time, shall be provided an opportunity to vote in the referendum.

(3) Place

Referenda under this section shall be conducted at locations determined by the Secretary. On request, absentee mail ballots shall be furnished by the Secretary in a manner prescribed by the Secretary.

(Pub. L. 104-127, title V, §537, Apr. 4, 1996, 110 Stat. 1058; Pub. L. 110-234, title VII, §7511(c)(28), May 22, 2008, 122 Stat. 1270; Pub. L. 110-246, §4(a), title VII, §7511(c)(28), June 18, 2008, 122 Stat. 1664, 2031.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsecs. (a)(2), (b)(3)(B)(i). Pub. L. 110-246, §7511(c)(28), substituted “cooperative extension” for “Cooperative State Research, Education, and Extension Service”.

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, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 7511(c)(28) of Pub. L. 110-246 effective Oct. 1, 2009, see section 7511(c) of Pub. L. 110-246, set out as a note under section 1522 of this title.

§ 7447. Petition and review

(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, a provision of the order, or an 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) Hearings

The petitioner shall be given the opportunity for a hearing on a petition filed under paragraph (1), in accordance with regulations issued by the Secretary.

(3) Ruling

After a hearing under paragraph (2), the Secretary shall issue a ruling on the petition that

is the subject of the hearing, which shall be final if the ruling is in accordance with applicable law.

(4) Limitation on petition

Any petition filed under this subchapter challenging an order, or any obligation imposed in connection with an order, shall be filed not later than 2 years after the effective date of the order or imposition of the obligation.

(b) Review

(1) Commencement of action

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

(2) Process

Service of process in a proceeding under paragraph (1) shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines, under paragraph (1), that a ruling issued under subsection (a)(3) is not in accordance with applicable law, the court shall remand the matter to the Secretary with directions either—

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

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

(4) Enforcement

The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 7448 of this title.

(Pub. L. 104-127, title V, §538, Apr. 4, 1996, 110 Stat. 1060.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 7448. Enforcement

(a) Jurisdiction

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

(b) Referral to Attorney General

A civil action authorized to be commenced 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 committing the violation or by administrative action under subsection (c).