

(4) obligations fully guaranteed as to principal and interest by the United States.

(g) Refund of assessments from escrow account

(1) Escrow account

During the period beginning on the effective date of an order and ending on the date the Secretary announces the results of a referendum that is conducted under section 7417(b)(1) of this title with respect to the order, the board established under the order shall—

(A) establish and maintain an escrow account of the kind described in subsection (f)(3) to be used to refund assessments; and

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

(2) Amount to be deposited

The board shall deposit in the account an amount equal to 10 percent of the assessments collected during the period referred to in paragraph (1).

(3) Right to receive refund

Subject to paragraphs (4), (5), and (6), persons subject to an order shall be eligible to demand a refund of assessments collected during the period referred to in paragraph (1) if—

(A) the assessments were remitted on behalf of the person; and

(B) the order is not approved in the referendum.

(4) Form of demand

The demand for a refund shall be made at such time and in such form as specified by the order.

(5) Payment of refund

A person entitled to a refund shall be paid promptly after the board receives satisfactory proof that the assessment for which the refund is demanded was paid on behalf of the person who makes the demand.

(6) Proration

If the funds in the escrow account required by paragraph (1) are insufficient to pay the amount of all refunds that persons subject to an order otherwise would have a right to receive under this subsection, the board shall prorate the amount of the funds among all the persons.

(7) Closing of escrow account

If the order is approved in a referendum conducted under section 7417(b)(1) of this title—

(A) the escrow account shall be closed; and

(B) the funds shall be available to the board for disbursement as authorized in the order.

(Pub. L. 104-127, title V, §517, Apr. 4, 1996, 110 Stat. 1042.)

§ 7416a. Confirmation of authority of Secretary of Agriculture to collect State commodity assessments

(a) Collection from marketing assistance loans

The Secretary of Agriculture shall collect commodity assessments from the proceeds of a marketing assistance loan for a producer if the assessment is required to be paid by the pro-

ducer or the first purchaser of a commodity pursuant to a State law or pursuant to an authority administered by the Secretary. This collection authority does not extend to a State tax or other revenue collection activity by a State.

(b) Collection pursuant to agreement

The collection of an assessment under subsection (a) shall be made as specified in an agreement between the Secretary of Agriculture and the State requesting the collection.

(c) Prohibition on charging certain fees

The Secretary may not charge any fees or related costs for the collection of commodity assessments pursuant to this section.

(Pub. L. 108-470, §1, Dec. 21, 2004, 118 Stat. 3894; Pub. L. 110-234, title I, §1616, May 22, 2008, 122 Stat. 1021; Pub. L. 110-246, §4(a), title I, §1616, June 18, 2008, 122 Stat. 1664, 1749.)

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.

Section was not enacted as part of the Commodity Promotion, Research, and Information Act of 1996 which comprises this subchapter.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246, §1616(1), substituted “shall” for “may”.

Subsec. (c). Pub. L. 110-246, §1616(2), added subsec. (c).

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.

§ 7417. Referenda

(a) Initial referendum

(1) Optional referendum

For the purpose of ascertaining whether the persons to be covered by an order favor the 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