

Dec. 13, 1991, 105 Stat. 1882; Pub. L. 110-234, title X, §10104, May 22, 2008, 122 Stat. 1336; Pub. L. 110-246, §4(a), title X, §10104, June 18, 2008, 122 Stat. 1664, 2097.)

REFERENCES IN TEXT

The Agricultural Marketing Act of 1946, referred to in subsec. (h), is title II of act Aug. 14, 1946, ch. 966, 60 Stat. 1087, as amended, which is classified generally to chapter 38 (§1621 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1621 of this title and Tables.

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 L. 110-234 were repealed by section 4(a) of Pub.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—Subsec. (b)(2)(B). Pub. L. 110-246, §10104(a)(1), substituted “3 regions” for “4 regions”.

Subsec. (b)(2)(D). Pub. L. 110-246, §10104(a)(2), substituted “50,000,000 pounds” for “35,000,000 pounds”.

Subsec. (b)(2)(E). Pub. L. 110-246, §10104(a)(3), added subpar. (E) and struck out former subpar. (E). Prior to amendment, text read as follows: “Subject to the nine-member limit on the number of members on the Council provided in paragraph (1), the Secretary shall appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region.”

Subsec. (c)(6) to (9). Pub. L. 110-246, §10104(b), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

1991—Subsec. (h). Pub. L. 102-237 substituted “governmental” for “government”.

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.

§ 6105. Referenda

(a) Initial referendum

(1) In general

Within the 60-day period immediately preceding the effective date of an order issued under section 6103(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

(2) Approval of order

The order shall become effective, as provided in section 6103(b) of this title, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

(b) Succeeding referenda

(1) Determination concerning order

(A) In general

Effective 5 years after the date on which an order becomes effective under section 6103(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether they

favor continuation, termination, or suspension of the order.

(B) Request for referendum

Effective beginning 3 years after the date on which an order becomes effective under section 6103(b) of this title, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

(2) Suspension or termination

If, as a result of any referendum conducted under paragraph (1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall—

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(c) Manner

Referenda conducted pursuant to this section shall be conducted in such a manner as is determined by the Secretary.

(Pub. L. 101-624, title XIX, §1926, Nov. 28, 1990, 104 Stat. 3861.)

§ 6106. Petition and review

(a) Petition

(1) In general

A person subject to an order issued under this chapter 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 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 the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) Review

(1) Commencement of action

The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed

within 20 days after the date of the entry of such ruling of the Secretary under subsection (a).

(2) Process

Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines that such ruling is not in accordance with 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 action 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 obtaining relief pursuant to section 6107 of this title.

(Pub. L. 101-624, title XIX, §1927, Nov. 28, 1990, 104 Stat. 3862.)

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.

§ 6107. Enforcement

(a) Jurisdiction

The several 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 by the Secretary under this chapter.

(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 is not required to refer to the Attorney General a violation of this chapter, or any order or regulation issued under this chapter, if the Secretary believes that the administration and enforcement of this chapter would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person who committed or is committing the violation.

(c) Civil penalties and orders

(1) Civil penalties

A person who willfully violates a provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under such order or regulation, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense.

(2) Cease-and-desist orders

In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) Notice and hearing

No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) Finality

The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d).

(d) Review by district court

(1) Commencement of action

Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia; and

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

(2) Record

The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey orders

A person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d), of not more than \$500 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties

If a person fails to pay an assessment of a civil penalty after it has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty shall not be subject to review.

(Pub. L. 101-624, title XIX, §1928, Nov. 28, 1990, 104 Stat. 3863; Pub. L. 102-237, title VIII, §803(2), Dec. 13, 1991, 105 Stat. 1882.)