

§ 7105. Referenda**(a) Initial referendum****(1) In general**

Following the issuance of an order under section 7103 of this title, the Secretary shall conduct a referendum among producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, or importation of sheep or sheep products for the purpose of ascertaining whether the order shall go into effect.

(2) Approval of order

The order shall become effective only if the Secretary determines that the order has been approved by not less than a majority of the producers, feeders, and importers voting in the referendum or at least $\frac{2}{3}$ of the production represented by persons voting in the referendum.

(b) Additional referenda**(1) In general**

After the initial referendum, on the request of a representative group comprising 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, importation, or processing of sheep or sheep products, the Secretary shall conduct a referendum of producers, feeders, and importers to determine whether the producers, feeders, and importers favor the termination or suspension of the order.

(2) Suspension or termination

If the Secretary determines that suspension or termination of the order is favored by a majority of the producers, feeders, and importers voting in the referendum or at least $\frac{2}{3}$ of the production represented by the persons voting in the referendum, the Secretary shall suspend or terminate—

(A) collection of assessments under the order not later than 180 days after the determination; and

(B) the order in an orderly manner as soon as practicable after the determination.

(c) Procedures**(1) Reimbursement****(A) In general**

Except as provided in subparagraph (B), the Board shall reimburse the Secretary for any expenses incurred by the Secretary in connection with the conduct of any referendum under this section.

(B) Federal employee salaries

The Board shall not be required to reimburse the Secretary for the salaries of Federal employees under subparagraph (A) if the Secretary determines that the reimbursement would be overly burdensome and costly.

(2) Date

Each referendum under this section shall be conducted on a date established by the Sec-

retary, under a procedure by which producers, feeders, and importers intending to vote in the referendum shall certify that the producers, feeders, and importers were engaged in the production, feeding, or importation of sheep or sheep products during the representative period and, on the same day, 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. Absentee mail ballots shall be furnished by the Secretary on request made in person, by mail, or by telephone.

(4) Allocation of production

The Secretary shall determine a method of allocating, by a pro rata percentage of annual projected or actual assessments from importers, the volume of production represented by importers in referenda conducted pursuant to this section.

(Pub. L. 103-407, §6, Oct. 22, 1994, 108 Stat. 4223.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7103 of this title.

§ 7106. 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 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 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 if the ruling is in accordance with law.

(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) of this section resides or carries on business shall have jurisdiction to review the 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 ruling by the Secretary under subsection (a)(3) of this section.

(2) Process

Service of process in a proceeding may be conducted on the Secretary by delivering a copy of the complaint to the Secretary, under such rules or regulations as are considered necessary by the Secretary to facilitate the service of process.

(3) Remands

If the court determines that the ruling is not in accordance with law, the court shall re-

mand the matter to the Secretary with directions—

- (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.

(Pub. L. 103-407, §7, Oct. 22, 1994, 108 Stat. 4224.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7107 of this title.

§ 7107. Enforcement

(a) Jurisdiction

Each district court 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 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, if the Secretary believes that the administration and enforcement of this chapter 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 section 7106 of this title.

(c) Civil penalties and orders

(1) Civil penalties

A person who willfully violates an order or regulation issued by the Secretary under this chapter may be assessed by the Secretary—

- (A) a civil penalty of not more than \$1,000 for each such violation; and
- (B) in the case of a willful failure to pay, collect, or remit an assessment as required by the order, an additional penalty equal to the amount of the assessment.

(2) Separate offense

Each violation shall be a separate offense.

(3) Cease-and-desist orders

In addition to, or in lieu of, the civil penalty, the Secretary may issue an order requiring the 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) of this section, not later than 30 days after the person receives notice of the order.

(d) Review by court of appeals

(1) In general

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

(A) filing, not later than 30 days after the date 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 promptly in 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.

(e) Failure to obey 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 more than \$500 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the order.

(f) Failure to pay penalties

If a person fails to pay a valid 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.

(g) Additional remedies

The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 103-407, §8, Oct. 22, 1994, 108 Stat. 4224.)

§ 7108. Investigations and power to subpoena

(a) Investigations

The Secretary may make such investigations as the Secretary considers necessary—

- (1) for the effective administration of this chapter; or
- (2) to determine whether any person subject to this chapter has engaged, or is about to engage, in any action that constitutes or will constitute a violation of this chapter, or of any order or regulation issued under this chapter.

(b) Subpoenas, oaths, and affirmations

For the purpose of any investigation under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.