

**§ 4811. Referendum****(a) Continuation of order**

For the purpose of determining whether an order then<sup>1</sup> effect shall be continued during the period beginning not earlier than 24 months after the issuance of the order and ending not later than 30 months after the issuance of the order, the Secretary shall conduct a referendum among persons who have been pork producers and importers during a representative period, as determined by the Secretary.

**(b) Factors determining continuation; termination of order**

(1) Such order shall be continued only if the Secretary determines that such order has been approved by not less than a majority of the producers and importers voting in the referendum.

(2) If the continuation of such order is not approved by a majority of the producers and importers voting in the referendum, the Secretary shall terminate—

(A) collection of assessments under the order not later than 6 months after the date of such determination; and

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

**(c) Reimbursement for cost**

The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred in connection with a referendum conducted under this section or section 4812 of this title.

**(d) Manner of conducting**

A referendum shall be conducted in such manner as prescribed by the Secretary.

**(e) Amendment of initial order**

A referendum to amend the initial order shall be conducted pursuant to this section.

(Pub. L. 99-198, title XVI, § 1622, Dec. 23, 1985, 99 Stat. 1618.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective Jan. 1, 1986, see section 1631 of Pub. L. 99-198, set out as a note under section 4801 of this title.

**§ 4812. Suspension and termination of orders****(a) Authority of Secretary**

If after the initial referendum provided for in section 4811(a) of this title the Secretary determines that an order, or a provision of the order, obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of such order or provision.

**(b) Referendum to terminate or suspend; eligible voters; requirements for approval; termination or suspension date; one referendum within 2-year period**

(1)(A) Except as provided in paragraph (2), after the initial referendum provided for in sec-

tion 4811(a) of this title, on the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period, as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the termination or suspension of the order.

(B) The Secretary shall—

(i) suspend or terminate collection of assessments under the order not later than 6 months after the date the Secretary determines that suspension or termination of the order is favored by a majority of the producers and importers voting in the referendum; and

(ii) terminate the order in an orderly manner as soon as practicable after the date of such determination.

(2) Except with respect to a referendum required to be conducted under section 4811 of this title, the Secretary shall not be required by paragraph (1) to conduct more than one referendum under this chapter in a 2-year period.

**(c) Termination or suspension not to be considered an order**

The termination or suspension of an order, or a provision of an order, shall not be considered an order within the meaning of this chapter.

(Pub. L. 99-198, title XVI, § 1623, Dec. 23, 1985, 99 Stat. 1618.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective Jan. 1, 1986, see section 1631 of Pub. L. 99-198, set out as a note under section 4801 of this title.

**§ 4813. Refunds****(a) Demand for refund; persons eligible**

Notwithstanding any other provision of this chapter, prior to the approval of the continuation of an order pursuant to the referendum required under section 4811(a) of this title, any person shall have the right to demand and receive from the Board a refund of an assessment collected under section 4809 of this title if such person—

(1) is responsible for paying such assessment; and

(2) does not support the program established under this chapter.

**(b) Form and time within which demand to be made**

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid.

**(c) Payment of refund on submission of satisfactory proof**

Such refund shall be made not later than 30 days after demand is received therefore<sup>1</sup> on submission of proof satisfactory to the Board that the producer, person, or importer—

(1) paid the assessment for which refund is sought; and

<sup>1</sup> So in original. Probably should be followed by "in".

<sup>1</sup> So in original. Probably should be "therefor".

(2) did not collect such assessment from another producer, person, or importer.

(Pub. L. 99-198, title XVI, § 1624, Dec. 23, 1985, 99 Stat. 1619.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1986, see section 1631 of Pub. L. 99-198, set out as a note under section 4801 of this title.

#### § 4814. Petition and review

(a)(1) A person subject to an order may file with the Secretary a petition—

(A) stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and

(B) requesting a modification of such order or an exemption from such order.

(2) Such person shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) After such hearing, the Secretary shall make a determination granting or denying such petition.

(b)(1) A district court of the United States in the district in which such person resides or does business shall have jurisdiction to review such determination if a complaint for such purpose is filed not later than 20 days after the date such person receives notice of such determination.

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

(3) If a court determines that such determination is not in accordance with law, the court shall remand such proceedings to the Secretary with directions to—

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

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

(Pub. L. 99-198, title XVI, § 1625, Dec. 23, 1985, 99 Stat. 1619.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1986, see section 1631 of Pub. L. 99-198, set out as a note under section 4801 of this title.

#### § 4815. Enforcement

##### (a) Jurisdiction of district court; referral of civil actions to Attorney General

(1) A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating an order, rule, or regulation issued under this chapter.

(2) A civil action authorized to be brought under this subsection 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 ade-

quately served by providing a suitable written notice or warning to a person who committed such violation or by administrative action under subsection (b).

##### (b) Penalties for willful violations; issuance of cease-and-desist orders; judicial review of orders; penalty for failure to obey cease-and-desist order

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

(i) a civil penalty by the Secretary of not more than \$1,000 for each such violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order, an additional penalty equal to the amount of such assessment.

(B) Each such violation shall be a separate offense.

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

(D) No penalty may be assessed or cease-and-desist order issued unless the Secretary gives such person notice and opportunity for a hearing on the record with respect to such violation.

(E) An order issued under this paragraph by the Secretary shall be final and conclusive unless such person files an appeal from such order with the appropriate United States court of appeals not later than 30 days after such person receives notice of such order.

(2)(A) A person against whom an order is issued under paragraph (1) may obtain review of such order in the court of appeals of the United States for the circuit in which such person resides or does business, or in the United States Court of Appeals for the District of Columbia Circuit, by—

(i) filing a notice of appeal in such court not later than 30 days after the date of such order; and

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

(B) The Secretary shall file promptly in such court a certified copy of the record on which such violation was found.

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

(3)(A) A person who fails to obey a valid cease-and-desist order issued under paragraph (1) by the Secretary, 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.

(B) Each day during which such failure continues shall be considered a separate violation of such order.

(4)(A) If a person fails to pay a valid civil penalty imposed under this subsection by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in an appropriate district court of the United States.

(B) In such action, the validity and appropriateness of the order imposing such civil penalty shall not be subject to review.