

and opportunity for public comment on the proposed order.

(3) Issuance of order

After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this chapter. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 6105(a) of this title, shall become effective not later than 180 days following publication of the proposed order.

(c) Amendments

(1) In general

The Secretary, from time to time, may amend any order issued under this section.

(2) Application of chapter

The provisions of this chapter applicable to an order shall be applicable to amendments to the order.

(Pub. L. 101-624, title XIX, §1924, Nov. 28, 1990, 104 Stat. 3856.)

§ 6104. Required terms in orders

(a) In general

Each order issued under this chapter shall contain the terms and conditions prescribed in this section.

(b) Mushroom Council

(1) Establishment and membership of Council

(A) Establishment

The order shall provide for the establishment of, and selection of members to, a Mushroom Council that shall consist of at least 4 members and not more than 9 members.

(B) Membership

Except as provided for in paragraph (2), the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

(2) Appointments

(A) In general

In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

(B) Units

In establishing such geographical distribution of mushroom production, a whole State shall be considered as a unit and such units shall be organized into 3 regions that shall fairly represent the geographic distribution

of mushroom production within the United States.

(C) Importers

Importers shall be represented as one region, which shall be separate from the regions established for mushrooms produced in the United States.

(D) Members per region

The Secretary shall appoint one member from each region if such region produces or imports, on average, at least 50,000,000 pounds of mushrooms annually.

(E) Additional members

In addition to the members appointed pursuant to paragraph (1), and subject to the 9-member limit of members on the Council provided in that paragraph, the Secretary shall appoint additional members to the council from a region that attains additional pounds of production as follows:

(i) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(ii) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(F) Average annual production

For purposes of this paragraph, in determining average annual mushroom production in each of the 4 regions of the United States established under this paragraph, the Secretary shall only consider mushrooms produced by producers covered by this chapter, as defined in section 6102(11) of this title.

(G) Failure to nominate

If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order.

(3) Terms; compensation

(A) Terms

The term of appointment to the Council shall be for 3 years, except that the initial appointments shall to the extent practicable be proportionately for 1-year, 2-year, and 3-year terms.

(B) Compensation

Council members shall serve without compensation but shall be reimbursed for their expenses incurred in performing their duties as members of the Council.

(c) Powers and duties of Council

The order shall define the powers and duties of the Council, which shall include the following powers and duties—

(1) to administer the order in accordance with its terms and provisions;

- (2) to make rules and regulations to effectuate the terms and provisions of the order;
- (3) to appoint members of the Council to serve on an executive committee;
- (4) to propose, receive, evaluate, approve and submit to the Secretary for approval under subsection (d) budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;
- (5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;
- (6) to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms;
- (7) to receive, investigate, and report to the Secretary complaints of violations of the order;
- (8) to recommend to the Secretary amendments to the order; and
- (9) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this chapter only in—
 - (A) obligations of the United States or any agency thereof;
 - (B) general obligations of any State or any political subdivision thereof;
 - (C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or
 - (D) obligations fully guaranteed as to principal and interest by the United States,

except that income from any such invested funds may only be used for any purpose for which the invested funds may be used.

(d) Plans and budgets

(1) Submission to Secretary

The order shall provide that the Council shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) Budgets

The order shall require the Council to submit to the Secretary for approval budgets on a fiscal year basis of its anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

(3) Approval by Secretary

No plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary.

(e) Contracts and agreements

(1) In general

To ensure efficient use of funds, the order shall provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including

contracts with producer organizations, and for the payment of the cost thereof with funds received by the Council under the order.

(2) Requirements

Any such contract or agreement shall provide that—

- (A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

- (B) the plan or project shall become effective on the approval of the Secretary; and

- (C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

(3) Producer organizations

The order shall provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of paragraph (2).

(f) Books and records of Council

(1) In general

The order shall require the Council to—

- (A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

- (B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

- (C) account for the receipt and disbursement of all funds entrusted to the Council.

(2) Audits

The Council shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) Assessments

(1) Collection and payment

(A) In general

The order shall provide that each first handler of mushrooms for the domestic fresh market produced in the United States shall collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

(B) Importers

The order also shall provide that each importer of mushrooms for the domestic fresh market shall pay assessments to the Council in the manner prescribed by the order.

(C) Direct marketing

Any person marketing mushrooms of that person's own production directly to consumers shall remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

(2) Rate of assessment

The rate of assessment shall be determined and announced by the Council and may be

changed by the Council at any time. The order shall provide that the rate of assessment—

(A) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(B) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(C) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(D) for the following years of the order, may not exceed one cent per pound of mushrooms.

(3) Use of assessments

The order shall provide that the assessments shall be used for payment of the expenses in implementing and administering this chapter, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this chapter, except for the salaries of Government employees incurred in conducting referenda.

(4) Limitation on collection

No assessment may be collected on mushrooms that a first handler certifies will be exported as mushrooms.

(h) Prohibition

The order shall prohibit any funds received by the Council under the order from being used in any manner for the purpose of influencing legislation or governmental action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this chapter and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(i) Books and records

(1) In general

The order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) Availability to Secretary

Such information shall be made available to the Secretary as is appropriate for the administration or enforcement of this chapter, the order, or any regulation issued under this chapter.

(3) Confidentiality

(A) In general

Except as otherwise provided in this chapter, all information obtained under paragraph (1) shall be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought

at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) Limitations

Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by such person.

(4) Availability of information

(A) In general

Except as otherwise provided in this chapter, information obtained under this chapter may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(B) Penalty

Any person knowingly violating this subsection, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee of the Council or the Department, shall be removed from office.

(5) Withholding information

Nothing in this chapter shall be construed to authorize the withholding of information from Congress.

(j) Other terms and conditions

The order also shall contain such terms and conditions, not inconsistent with this chapter, as are necessary to effectuate this chapter, including provisions for the assessment of a penalty for each late payment of assessments under subsection (g).

(Pub. L. 101-624, title XIX, §1925, Nov. 28, 1990, 104 Stat. 3857; Pub. L. 102-237, title VIII, §803(1), 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.)

Editorial Notes

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, 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”.

Statutory Notes and Related Subsidiaries

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—