

fense. 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 violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals 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 paragraphs (1) and (2) of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals 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 appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 98-590, § 11, Oct. 30, 1984, 98 Stat. 3122; Pub. L. 105-185, § 605(j), June 23, 1998, 112 Stat. 600.)

AMENDMENTS

1998—Subsecs. (a), (b)(1). Pub. L. 105-185 substituted “order” for “plan” wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4609, 4610a of this title.

§ 4610a. Investigations and power to subpoena

(a) In general

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

- (1) for the effective administration of this chapter; or
- (2) to determine whether a person has engaged or is engaging in any act or practice

that constitutes a violation of any provision of this chapter, or of any order, rule, or regulation issued under this chapter.

(b) Power to subpoena

(1) Investigations

For the purpose of an investigation made under subsection (a) of this section, the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) Administrative hearings

For the purpose of an administrative hearing held under section 4609 or 4610 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) Aid of courts

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

(d) Contempt

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Process

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) Hearing site

The site of any hearings held under section 4609 or 4610 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 98-590, § 11A, as added Pub. L. 101-624, title XIX, § 1986, Nov. 28, 1990, 104 Stat. 3908; amended Pub. L. 102-237, title VIII, § 807(2), Dec. 13, 1991, 105 Stat. 1883.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-237 struck out “section” after “4609 or”.

§ 4611. Requirements of referendum

(a) In general

For the purpose of ascertaining whether issuance of an order is approved by producers, importers, and in the case of an order assessing handlers, handlers, the Secretary shall conduct a referendum among producers, importers, and, in the case of an order assessing handlers, han-