

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-

dlers, not exempt under section 4606(e)(4) of this title, that, during a representative period determined by the Secretary, have been engaged in the production, importation, or handling of honey or honey products.

(b) Effectiveness of order

(1) In general

No order issued under this chapter shall be effective unless the Secretary determines that—

(A) the order is approved by a majority of the producers, importers, and if covered by the order, handlers, voting in the referendum; and

(B) the producers, importers, and handlers comprising the majority produced, imported, and handled not less than 50 percent of the quantity of the honey and honey products produced, imported, and handled during the representative period by the persons voting in the referendum.

(2) Amendments to orders

The Secretary may amend an order in accordance with the administrative procedures specified in sections 4604 and 4605 of this title, except that the Secretary may not amend a provision of an order that implements a provision of this chapter that specifically provides for approval in a referendum without the approval provided for in this section.

(c) Producer-packers and importers

(1) In general

Each producer-packer and each importer shall have 1 vote as a handler as well as 1 vote as a producer or importer (unless exempt under section 4606(e)(4) of this title) in all referenda concerning orders assessing handlers to the extent that the individual producer-packer or importer owes assessments as a handler.

(2) Attribution of quantity of honey

For the purpose of subsection (b)(1)(B) of this section—

(A) the quantity of honey or honey products on which the qualifying producer-packer or importer owes assessments as a handler shall be attributed to the person's vote as a handler under paragraph (1); and

(B) the quantity of honey or honey products on which the producer-packer or importer owes an assessment as a producer or importer shall be attributed to the person's vote as a producer or importer.

(d) Confidentiality

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any producer, importer, or handler of honey or honey products shall be held strictly confidential and shall not be disclosed.

(Pub. L. 98–590, §12, Oct. 30, 1984, 98 Stat. 3123; Pub. L. 105–185, title VI, §605(k), June 23, 1998, 112 Stat. 600.)

AMENDMENTS

1998—Pub. L. 105–185 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “For the purpose of ascertaining whether issuance of an order is approved

or favored by producers and importers, the Secretary shall conduct a referendum among those producers and importers not exempt under section 4606(e)(2) of this title who, during a representative period determined by the Secretary, have been engaged in the production and importation of honey. No order issued pursuant to this chapter shall be effective unless the Secretary determines that the issuance of such an order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the honey produced and imported during the representative period. The ballots and other information or reports which reveal, or tend to reveal, the vote of any producer or importer of honey shall be held strictly confidential and shall not be disclosed.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4612, 4613 of this title.

§ 4612. Termination or suspension

(a) “Person” defined

In this section, the term “person” means a producer, importer, or handler.

(b) Authority of Secretary

If the Secretary finds that an order issued under this chapter, or any provision of the order, obstructs or does not tend to effectuate the purposes of this chapter, the Secretary shall terminate or suspend the operation of the order or provision.

(c) Periodic referenda

Except as provided in subsection (d)(3) of this section and section 4613(g) of this title, on the date that is 5 years after the date on which the Secretary issues an order authorizing the collection of assessments on honey or honey products under this chapter, and every 5 years thereafter, the Secretary shall conduct a referendum to determine if the persons subject to assessment under the order approve continuation of the order in accordance with section 4611 of this title.

(d) Referenda on request

(1) In general

On the request of the Honey Board or the petition of at least 10 percent of the total number of persons subject to assessment under the order, the Secretary shall conduct a referendum to determine if the persons subject to assessment under the order approve continuation of the order in accordance with section 4611 of this title.

(2) Limitation

Referenda conducted under paragraph (1) may not be held more than once every 2 years.

(3) Effect on periodic referenda

If a referendum is conducted under this subsection and the Secretary determines that continuation of the order is approved under section 4611 of this title, any referendum otherwise required to be conducted under subsection (c) of this section shall not be held before the date that is 5 years after the date of the referendum conducted under this subsection.