

(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—

- (A) to make such ruling as the court shall determine to be in accordance with law; or
- (B) to take such further proceedings as, in the opinion of the court, the law requires.

(Pub. L. 101-624, title XIX, §1999K, Nov. 28, 1990, 104 Stat. 3921.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6411. Enforcement**(a) Jurisdiction**

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or 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, or any order or regulation issued under 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 such violation or by administrative action under subsection (c) of this section.

(c) Civil penalties and orders**(1) Civil penalties**

Any person who violates any provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulations, may be assessed—

- (A) a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation; or
- (B) in the case of a willful failure or refusal to pay, collect, or remit any assessment or fee duly required of the person under this chapter or a regulation issued under this chapter, a civil penalty by the Secretary of not less than \$10,000 nor more than \$100,000 for each such violation.

Each violation shall be a separate offense.

(2) Cease-and-desist orders

In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing such violation.

(3) Notice and hearing

No penalty shall be assessed or cease-and-desist order issued by the Secretary unless the

person against whom the penalty is assessed or the order issued is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(4) Finality

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 district court of the United States in accordance with subsection (d) of this section.

(d) Review by district court**(1) Commencement of action**

Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) of this section may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or order issued, a notice of appeal in—

- (i) the district court of the United States for the district in which the person resides or carries on business; or
- (ii) the United States District Court for the District of Columbia; and

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

(2) Record

The Secretary shall file promptly in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

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

(e) Failure to obey orders

Any person who fails to obey a cease-and-desist order after the order has become final and unappealable, or after the appropriate United States district court 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 subsections (c) and (d) of this section, of not more than \$5,000 for each offense. Each day during which the failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties

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 United States district court 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 the district court in which the person resides or conducts business. In the action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) Additional remedies

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

(Pub. L. 101-624, title XIX, §1999L, Nov. 28, 1990, 104 Stat. 3922; Pub. L. 102-237, title VIII, §809, Dec. 13, 1991, 105 Stat. 1883.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102-237 substituted “this section” for “this subsection” after “brought under”.

§ 6412. 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 has engaged or is engaging in any act that constitutes a violation of this chapter, or any order, rule, or regulation issued under this chapter.

(b) Subpoenas, oaths, and affirmations

(1) In general

For the purpose of an investigation under subsection (a) of this section, the Secretary may administer oaths and affirmations, and 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 6410 or 6411 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 the 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 6410 or 6411 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 101-624, title XIX, §1999M, Nov. 28, 1990, 104 Stat. 3924.)

§ 6413. Requirement of initial referendum

(a) In general

Within the 60-day period immediately preceding the effective date of an order issued under section 6405(a) of this title, the Secretary shall conduct a referendum among fluid milk processors to ascertain whether the order shall go into effect.

(b) Implementation

If, as a result of the referendum conducted under subsection (a) of this section, the Secretary determines that implementation of the order is favored—

(1) by at least 50 percent of fluid milk processors voting in the referendum; and

(2) by fluid milk processors voting in the referendum that marketed during the representative period, as determined by the Secretary, 60 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the referendum;

the order shall become effective as provided in section 6405(b) of this title.

(c) Costs of referendum

The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this chapter.

(d) Manner

(1) In general

Referenda conducted pursuant to this chapter shall be conducted in a manner determined by the Secretary.

(2) Advance registration

A fluid milk processor who chooses to vote in any referendum conducted under this chapter shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

(3) Voting

A fluid milk processor who votes in any referendum conducted under this chapter shall vote in accordance with procedures established by the Secretary. The ballots and other information or reports that reveal or tend to reveal the vote of any processor shall be held strictly confidential.

(4) Notice

The Secretary shall notify all processors at least 30 days prior to a referendum conducted under this chapter. The notice shall explain the procedure established under this subsection.

(Pub. L. 101-624, title XIX, §1999N, Nov. 28, 1990, 104 Stat. 3924; Pub. L. 104-127, title I, §146(d)(1), Apr. 4, 1996, 110 Stat. 919.)

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-127 substituted “fluid milk processors voting in the referendum;” for “all processors;”.

§ 6414. Suspension or termination of orders

(a) Suspension or termination by Secretary

The Secretary shall, whenever the Secretary finds that the order or any provision of the order