

victed of a Federal or State offense relating to a controlled substance.

(d) Limitation on number of assessments

A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

(e) Assessment

A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

(f) Compromise

The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(g) Judicial review

If the Attorney General issues an order pursuant to subsection (e) of this section after a hearing described in such subsection, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined *de novo*, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

(h) Civil action

If an individual does not request a hearing pursuant to subsection (e) of this section and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) of this section seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28. Such interest shall accrue from the expiration of the 30-day period described in subsection (g) of this section. In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(i) Limitation

The Attorney General may not under this subsection¹ commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a) of this section.

(j) Expungement procedures

The Attorney General shall dismiss the proceedings under this section against an individ-

ual upon application of such individual at any time after the expiration of 3 years if—

- (1) the individual has not previously been assessed a civil penalty under this section;
- (2) the individual has paid the assessment;
- (3) the individual has complied with any conditions imposed by the Attorney General;
- (4) the individual has not been convicted of a Federal or State offense relating to a controlled substance; and
- (5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

(Pub. L. 91-513, title II, §405, formerly Pub. L. 100-690, title VI, §6486, Nov. 18, 1988, 102 Stat. 4384, renumbered §405 of Pub. L. 91-513, and amended Pub. L. 101-647, title X, §1002(g)(1), (2), Nov. 29, 1990, 104 Stat. 4828.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 91-513 was renumbered section 418 and is classified to section 859 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, §1002(g)(2)(A), made technical amendments to references to sections 841(b)(1)(A) and 844 of this title to correct references to corresponding provisions of original act.

Subsecs. (c), (j)(4). Pub. L. 101-647, §1002(g)(2)(B), (C), struck out “as defined in section 802 of this title” after “controlled substance”.

§§ 845 to 845b. Transferred

CODIFICATION

Section 845, Pub. L. 91-513, title II, §405, Oct. 27, 1970, 84 Stat. 1265, as amended, which related to distribution of controlled substances to persons under age twenty-one, was renumbered §418 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(a)(1), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 859 of this title.

Section 845a, Pub. L. 91-513, title II, §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069, and amended, which related to distribution or manufacturing of controlled substances in or near schools and colleges, was renumbered §419 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(b), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 860 of this title.

Section 845b, Pub. L. 91-513, title II, §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10, and amended, which related to employment or use of persons under 18 years of age in drug operations, was renumbered §420 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(c), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 861 of this title.

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall

¹ So in original. Probably should be “section”.