

“(2) With respect to the order in effect on November 28, 1990, following the referendum on such order required under section 4612(b)(2) of this title, a producer or importer may obtain a refund of an assessment under such order as provided in paragraph (1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum.”

Subsec. (i). Pub. L. 105-185, § 605(h)(6), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1996—Subsec. (f). Pub. L. 104-127 inserted “producers,” after “importers.”

1991—Subsec. (h)(1)(A). Pub. L. 102-237 inserted “to” before “an importer”.

1990—Subsec. (a). Pub. L. 101-624, § 1984(b)(1), inserted reference to subsec. (i) of this section.

Subsec. (d). Pub. L. 101-624, § 1984(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “In any case in which a loan is made with respect to any honey under the Honey Loan Price Support Program, the Secretary shall provide that the assessment shall be deducted from the proceeds of the loan and that the amount of such assessment shall be forwarded to the Honey Board. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.”

Subsec. (f). Pub. L. 101-624, § 1984(b)(3), inserted “, and persons receiving an exemption from assessments under section 4606(e)(2) of this title,” after “payment of assessments”.

Subsec. (h). Pub. L. 101-624, § 1984(b)(4), designated existing provisions as par. (1)(A); substituted “Except as otherwise provided in paragraph (2), any” for “Any”, “an importer” for “to importers”, and “from such importer” for “from importers”; added subpar. (B); and added par. (2).

Subsec. (i). Pub. L. 101-624, § 1984(b)(5), added subsec. (i).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4609. Petition and review

(a) Filing of petition; hearing

(1) In general

Subject to paragraph (4), a person subject to an order may file a written petition with the Secretary—

(A) that states 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) that requests—

(i) a modification of the order, provision, or obligation; or

(ii) to be exempted from the order, provision, or obligation.

(2) Hearing

In accordance with regulations issued by the Secretary, the petitioner shall be given an opportunity for a hearing on the petition.

(3) Ruling

After the hearing, the Secretary shall make a ruling on the petition that shall be final, if in accordance with law.

(4) Statute of limitations

A petition filed under this subsection that challenges an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed not later than 2 years after the later of—

(A) the effective date of the order, provision, or obligation challenged in the petition; or

(B) the date on which the petitioner became subject to the order, provision, or obligation challenged in the petition.

(b) District court; jurisdiction; review; rulings

The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 4610 of this title.

(Pub. L. 98-590, § 10, Oct. 30, 1984, 98 Stat. 3121; Pub. L. 105-185, title VI, § 605(i), June 23, 1998, 112 Stat. 599.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-185 added subsec. (a) and struck out former subsec. (a) which read as follows: “Any person subject to an order may file, within a period prescribed by the Secretary, a written petition with the Secretary, stating that such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon such petition which shall be final, if in accordance with law.”

§ 4610. Enforcement

(a) District courts; jurisdiction; Attorney General

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 issued under this chapter. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. Nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of any such order or regulation would be adequately served by administrative action under subsection (b) or suitable written notice or

warning to any person committing such violations.

(b) Civil penalties; notice and hearing; review; courts of appeals; cease and desist orders; failure to obey; Attorney General

(1) 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 such person thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense. 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.

§ 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), 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). 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".