

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-185, § 605(h)(1)(A), added subsec. (a) and struck out former subsec. (a) which read as follows: “Except as provided by subsections (c), (d), (e), and (i) of this section, the first handler of honey shall be responsible for the collection from the producer, and payment to the Honey Board, of assessments authorized by this chapter.”

Subsec. (c). Pub. L. 105-185, § 605(h)(1)(B), added subsec. (c) and struck out former subsec. (c) which read as follows: “The assessment on imported honey and honey products shall be paid by the importer at the time of entry into the United States and shall be remitted to the Honey Board.”

Subsec. (e). Pub. L. 105-185, § 605(h)(1)(C), added subsec. (e) and struck out former subsec. (e) which read as follows: “Producer-packers shall pay to the Honey Board the assessment on the honey they produce.”

Subsec. (f). Pub. L. 105-185, § 605(h)(2), added subsec. (f) and struck out former subsec. (f) which read as follows: “Handlers, importers, producers, and producer-packers responsible for payment of assessments, and persons receiving an exemption from assessments under section 4606(e)(2) of this title, shall maintain and make available for inspection by the Secretary such books and records as are required by the order and file reports at the times, in the manner, and having the content prescribed by the order, so that information and data shall be made available to the Honey Board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of the chapter or of any order or regulation issued pursuant to this chapter.”

Subsec. (g). Pub. L. 105-185, § 605(h)(3), added subsec. (g) and struck out former subsec. (g) which read as follows: “All information obtained pursuant to subsection (f) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the Honey Board. Only such information as the Secretary deems relevant shall be disclosed and only in a suit or administrative hearing brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party involving the order with reference to which the information was furnished or acquired. Nothing in this section prohibits—

“(1) issuance of general statements based upon the reports of a number of handlers subject to any order, if such statements do not identify the information furnished by any person; or

“(2) the publication by direction of the Secretary, of the name of any person violating any order issued under this chapter, together with a statement of the particular provisions of the order violated by such person.”

Subsec. (h). Pub. L. 105-185, § 605(h)(4), (5), added subsec. (h) and struck out former subsec. (h) which read as follows: “(h)(1)(A) Except as otherwise provided in paragraph (2), any producer or importer may obtain a refund of the assessment collected from the producer or importer if demand is made within the time and in the manner prescribed by the Honey Board and approved by the Secretary; except that, during any year, the amount of refunds made to an importer, as a percentage of total assessments collected from such importer, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Such refund shall be made by the Honey Board in June and December of each year.

“(B) A producer that has obtained a honey price support loan under the Agricultural Act of 1949, or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received under subsection (d) of this section of the amount of assessment deducted from the loan funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made.

“(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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 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 be-

lieves 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.)