

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(4) Enforcement

The pendency of a proceeding instituted pursuant to subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 7468 of this title.

(Pub. L. 104-127, title V, §558, Apr. 4, 1996, 110 Stat. 1070.)

Editorial Notes

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.

§ 7468. Enforcement

(a) Jurisdiction

A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subchapter.

(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 subchapter, or any order or regulation issued under this subchapter, if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by administrative action under subsection (c) or suitable written notice or warning to the person committing the violation.

(c) Civil penalties and orders

(1) Civil penalties

Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subchapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, 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.

(2) Cease-and-desist orders

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

(3) Notice and hearing

No order assessing a civil penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to the 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 person against whom the order is issued files an appeal of the order in the appropriate district court of the United States, in accordance with subsection (d).

(d) Review by United States 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) may obtain review of the penalty or cease-and-desist order in the district court of the United States for the district in which the person resides or carries on business, or the United States District Court for the District of Columbia, by—

(A) filing a notice of appeal in the court not later than 30 days after the date on which the penalty is assessed or cease-and-desist order issued; and

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

(2) Record

The Secretary shall promptly file in the court a certified copy of the record on which the Secretary found that the person committed the 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 cease-and-desist orders

Any person who fails to obey a cease-and-desist order issued by the Secretary after the cease-and-desist 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 not more than \$500 for each offense. Each day during which the failure continues shall be considered a separate violation of the cease-and-desist order.

(f) Failure to pay penalties

If a person fails to pay an assessment of a civil penalty after the assessment has become a final and unappealable order issued by the Secretary, 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 of the United States for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 104-127, title V, §559, Apr. 4, 1996, 110 Stat. 1071.)

§ 7469. Investigations and power to subpoena

(a) In general

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective carrying out of the responsibilities of the Secretary under this subchapter; or

(2) to determine whether a person subject to this subchapter has engaged or is engaging in any act that constitutes a violation of this subchapter, or any order, rule, or regulation issued under this subchapter.

(b) Power to subpoena

(1) Investigations

For the purpose of an investigation made under subsection (a), the Secretary may administer oaths and affirmations and may issue subpoenas 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 7467 or 7468 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The 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 to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, to enforce a subpoena issued by the Secretary under subsection (b). The court may issue an order requiring the person to comply with the subpoena.

(d) Contempt

Any failure to obey the order of the court may be punished by the court as a contempt of the court.

(e) Process

Process in any such case may be served in the judicial district in which the person resides or carries on business or wherever the person may be found.

(f) Hearing site

The site of any hearing held under section 7467 or 7468 of this title shall be in the judicial district where the person affected by the hearing resides or has a principal place of business.

(Pub. L. 104-127, title V, §560, Apr. 4, 1996, 110 Stat. 1072.)

§ 7470. Referenda

(a) Initial referendum

(1) Referendum required

During the 60-day period immediately preceding the proposed effective date of an order issued under section 7463 of this title, the Secretary shall conduct a referendum among kiwifruit producers and importers who will be subject to assessments under the order, to ascertain whether producers and importers approve the implementation of the order.

(2) Approval of order

The order shall become effective, as provided in section 7463 of this title, if the Secretary determines that—

(A) the order has been approved by a majority of the producers and importers voting in the referendum; and

(B) the producers and importers favoring approval produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(b) Subsequent referenda

The Secretary may periodically conduct a referendum to determine if kiwifruit producers and importers favor the continuation, termination, or suspension of any order issued under section 7463 of this title that is in effect at the time of the referendum.

(c) Required referenda

The Secretary shall hold a referendum under subsection (b)—

(1) at the end of the 6-year period beginning on the effective date of the order and at the end of each subsequent 6-year period;

(2) at the request of the Board; or

(3) if not less than 30 percent of the kiwifruit producers and importers subject to assessments under the order submit a petition requesting the referendum.

(d) Vote

On completion of a referendum under subsection (b), the Secretary shall suspend or terminate the order that was subject to the referendum at the end of the marketing year if—

(1) the suspension or termination of the order is favored by not less than a majority of the producers and importers voting in the referendum; and

(2) the producers and importers produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(e) Confidentiality

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this subchapter and the voting list shall be held strictly confidential and shall not be disclosed.

(Pub. L. 104-127, title V, §561, Apr. 4, 1996, 110 Stat. 1073.)

§ 7471. Suspension or termination

(a) In general

If the Secretary finds that an order issued under section 7463 of this title, or a provision of the order, obstructs or does not tend to effectuate the purposes of this subchapter, the Secretary shall suspend or terminate the operation of the order or provision.

(b) Limitation

The suspension or termination of any order, or any provision of an order, shall not be considered an order under this subchapter.

(Pub. L. 104-127, title V, §562, Apr. 4, 1996, 110 Stat. 1074.)