

§ 4311. Exemption from assessments

Any producer or importer whose total sales of flowers and plants do not exceed \$100,000 during a twelve consecutive month period prior to the date an assessment is due and payable shall be exempt from assessments under this chapter under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder and shall not vote in any referendum under this chapter: *Provided*, That the Floraboard shall have the discretion to make annual adjustments in the level of exemption to account for inflation. For the purpose of this section, a producer's or importer's total sales shall include, in those cases in which the producer or importer is an individual, sales attributable to such person's spouse, children, grandchildren, and parents; in those cases in which the producer or importer is a partnership or a member of a partnership, sales attributable to the other partners; and, in those cases in which the producer or importer is a corporation, sales attributable to any corporate subsidiaries of which such corporation owns 50 per centum or more of the stock, or if such subsidiaries are not corporations, subsidiaries which are controlled by such corporation. In addition, in determining a producer's or importer's total sales, the sales of any corporation in which such producer or importer owns 50 per centum or more of the stock shall be attributed to such producer or importer. For these purposes stock in the same corporation which is owned by such producer's or importer's spouse, children, grandchildren, parents, partners, and any corporation 50 per centum or more of whose stock is owned by the producer or importer shall be treated as owned by the producer or importer.

(Pub. L. 97-98, title XVII, §1712, Dec. 22, 1981, 95 Stat. 1354.)

§ 4312. Refund of assessments

Notwithstanding any other provisions of this chapter, any producer or importer who pays an assessment shall have the right to demand and receive from the Floraboard a refund of such assessment: *Provided*, That such demand shall be made by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the Floraboard and approved by the Secretary, but in no event more than sixty days after the end of the month in which the assessment was paid. Such refund shall be made not later than sixty days after submission of proof satisfactory to the Floraboard that the producer or importer paid the assessment for which refund is sought.

(Pub. L. 97-98, title XVII, §1713, Dec. 22, 1981, 95 Stat. 1355.)

§ 4313. Administrative and judicial review; procedures applicable

(a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for 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 prescribed by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final if in accordance with law.

(b) 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 4314(a) of this title.

(Pub. L. 97-98, title XVII, §1714, Dec. 22, 1981, 95 Stat. 1355.)

§ 4314. Enforcement of provisions

(a) 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 pursuant to this chapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That 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 the program would be adequately served by administrative action pursuant to subsection (b) of this section or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 or 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 violation or violations. No penalty may 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. 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