

ruling on the petition, if a complaint is filed by the person not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a)(3).

(2) Process

Service of process in a proceeding under paragraph (1) shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines, under paragraph (1), that a ruling issued under subsection (a)(3) is not in accordance with applicable law, the court shall remand the matter to the Secretary with directions either—

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

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

(4) Enforcement

The pendency of proceedings instituted under subsection (a) shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 7448 of this title.

(Pub. L. 104-127, title V, §538, Apr. 4, 1996, 110 Stat. 1060.)

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.

§ 7448. Enforcement

(a) Jurisdiction

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, an order or regulation made or issued under this subchapter.

(b) Referral to Attorney General

A civil action authorized to be commenced under this section shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subchapter if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by providing a suitable written notice or warning to the person committing the violation or by administrative action under subsection (c).

(c) Civil penalties and orders

(1) Civil penalties

(A) In general

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

(i) a civil penalty by the Secretary of not more than \$1,000 for each violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required

by an order or regulation, an additional penalty equal to the amount of the assessment.

(B) Separate offense

Each violation under subparagraph (A) shall be a separate offense.

(2) Cease-and-desist orders

In addition to, or in lieu of, a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing a violation.

(3) Notice and hearing

No penalty shall be assessed, or cease-and-desist order issued, by the Secretary under this subsection unless the person against whom the penalty is assessed or the cease-and-desist order is issued is given notice and opportunity for a hearing 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 under this subsection shall be final and conclusive unless the affected person files an appeal of the order in the appropriate district court of the United States in accordance with subsection (d).

(d) Review by district court

(1) Commencement of action

Any person who has been determined to be in violation of this subchapter, or against whom a civil penalty has been assessed or a cease-and-desist order issued under subsection (c), may obtain review of the penalty or cease-and-desist order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or cease-and-desist order issued, a notice of appeal in—

(i) the district court of the United States for the district in which the person resides or carries on business; or

(ii) the United States District Court for the District of Columbia; and

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

(2) Record

The Secretary shall file promptly, in the appropriate court referred to in paragraph (1), a certified copy of the record on which the Secretary determined that the person committed the violation.

(3) Standard of review

A finding of the Secretary under this section 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 under this section 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 \$5,000 for each offense. Each day during which the failure continues shall be considered as 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 under this section after the assessment has become a final and unappealable order, 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.

(g) Additional remedies

The remedies provided in this subchapter shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 104-127, title V, §539, Apr. 4, 1996, 110 Stat. 1061.)

§ 7449. Investigations and power to subpoena

(a) Investigations

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

- (1) for the effective administration of this subchapter; and
- (2) to determine whether any person has engaged or is engaging in an act that constitutes a violation of this subchapter, or an order, rule, or regulation issued under this subchapter.

(b) Subpoenas, oaths, and affirmations

(1) In general

For the purpose of an investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, take evidence, and issue subpoenas to require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States.

(2) Administrative hearings

For the purpose of an administrative hearing held under section 7447 or 7448 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena and 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 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 issued 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, in order to enforce a subpoena issued by the Sec-

retary under subsection (b). The court may issue an order requiring the person to comply with the subpoena.

(d) Contempt

A failure to obey an order of the court under this section may be punished by the court as contempt of the court.

(e) Process

Process may be served on a person 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 a hearing held under section 7447 or 7448 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, §540, Apr. 4, 1996, 110 Stat. 1062.)

§ 7450. Suspension or termination

The Secretary shall, whenever the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the declared policy of this subchapter, suspend or terminate the operation of the order or provision. The suspension or termination of an order shall not be considered an order within the meaning of this subchapter.

(Pub. L. 104-127, title V, §541, Apr. 4, 1996, 110 Stat. 1063.)

§ 7451. Regulations

The Secretary may issue such regulations as are necessary to carry out this subchapter.

(Pub. L. 104-127, title V, §542, Apr. 4, 1996, 110 Stat. 1063.)

§ 7452. Authorization of appropriations

(a) In general

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subchapter.

(b) Administrative expenses

Funds appropriated under subsection (a) shall not be available for payment of the expenses or expenditures of the Board in administering a provision of an order issued under this subchapter.

(Pub. L. 104-127, title V, §543, Apr. 4, 1996, 110 Stat. 1063.)

SUBCHAPTER IV—KIWIFRUIT

§ 7461. Findings and purposes

(a) Findings

Congress finds that—

- (1) domestically produced kiwifruit are grown by many individual producers;
- (2) virtually all domestically produced kiwifruit are grown in the State of California, although there is potential for production in many other areas of the United States;
- (3) kiwifruit move in interstate and foreign commerce, and kiwifruit that do not move in