

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

desist order issued under paragraph (1) of this subsection 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 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 pursuant to the procedures specified in paragraphs (1) and (2) of this subsection, 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 who shall recover 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. 97-98, title XVII, §1715, Dec. 22, 1981, 95 Stat. 1356.)

§ 4315. Certification of organizations; applicable criteria and considerations

The eligibility of any organization to represent producers of flowers and plants of any producing area of the United States or importers of flowers and plants, for purposes of requesting the issuance of an order under section 4304 of this title, or making nominations under section 4306(2) of this title, shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership, the proportion of such active membership accounted for by producers and importers, and information as to the volume of production by State or the volume of importation by country accounted for by the organization's producer and importer members;

(3) the extent to which the producer and importer membership of such organization is represented in setting the organization's policies;

(4) evidence of stability and permanency of the organization;

(5) sources from which the organization's operating funds are derived;