

stitute or contain evidence), or to require the person to whom the subpoena is directed to permit the inspection of premises relating to the administration or enforcement of this chapter or any matter under investigation in connection with this chapter.

(b) Location of production

The attendance of any witness and production of evidence relevant to the inquiry may be required from any place in the United States.

(c) Enforcement of Subpoena

In the case of disobedience to a subpoena by any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, in requiring the attendance and testimony of any witness, the production of evidence, or the inspection of premises. In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary and give evidence concerning the matter in question, produce evidence, or permit the inspection of premises. Any failure to obey the court's order may be punished by the court as a contempt of the court.

(d) Compensation

Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid to witnesses in courts of the United States, and witnesses whose depositions are taken and the persons taking the depositions shall be entitled to the same fees that are paid for similar services in the courts of the United States.

(e) Procedures

The Secretary shall publish procedures for the issuance of subpoenas under this section. Such procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. If the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review for legal sufficiency outside that agency.

(Pub. L. 106-224, title IV, § 423, June 20, 2000, 114 Stat. 449; Pub. L. 107-171, title X, § 10418(b)(2), May 13, 2002, 116 Stat. 508; Pub. L. 110-234, title X, § 10203(c), May 22, 2008, 122 Stat. 1343; Pub. L. 110-246, § 4(a), title X, § 10203(c), June 18, 2008, 122 Stat. 1664, 2104.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246, § 10203(c)(1), added subsec. (a) and struck out former subsec. (a). Prior to

amendment, text read as follows: "The Secretary shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the administration or enforcement of this chapter or any matter under investigation in connection with this chapter."

Subsec. (b). Pub. L. 110-246, § 10203(c)(2), struck out "documentary" before "evidence".

Subsec. (c). Pub. L. 110-246, § 10203(c)(3), in first sentence substituted "testimony of any witness, the production of evidence, or the inspection of premises" for "testimony of any witness and the production of documentary evidence" and in second sentence substituted "question, produce evidence, or permit the inspection of premises" for "question or to produce documentary evidence".

2002—Subsec. (b). Pub. L. 107-171, § 10418(b)(2)(A), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "The attendance of any witness and production of documentary evidence may be required from any place in the United States at any designated place of hearing."

Subsec. (e). Pub. L. 107-171, § 10418(b)(2)(B), inserted "to an agency other than the Office of Administrative Law Judges" after "subpoena is delegated".

Subsec. (f). Pub. L. 107-171, § 10418(b)(2)(C), struck out heading and text of subsec. (f). Text read as follows: "Subpoenas for witnesses to attend court in any judicial district or to testify or produce evidence at an administrative hearing in any judicial district in any action or proceeding arising under this chapter may run to any other judicial district."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 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.

§ 7734. Penalties for violation

(a) Criminal penalties

(1) Offenses

(A) In general

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be fined under title 18, imprisoned not more than 1 year, or both.

(B) Movement

A person that knowingly imports, enters, exports, or moves any plant, plant product, biological control organism, plant pest, noxious weed, or article, for distribution or sale, in violation of this chapter, shall be fined under title 18, imprisoned not more than 5 years, or both.

(2) Multiple violations

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined

under title 18, imprisoned not more than 10 years, or both.

(b) Civil penalties

(1) In general

Any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A) \$50,000 in the case of any individual (except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain), \$250,000 in the case of any other person for each violation, \$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation; or

(B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this chapter that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

- (A) ability to pay;
- (B) effect on ability to continue to do business;
- (C) any history of prior violations;
- (D) the degree of culpability; and
- (E) any other factors the Secretary considers appropriate.

(3) Settlement of civil penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

(4) Finality of orders

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) Liability for acts of an agent

When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person.

(d) Guidelines for civil penalties

The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

(Pub. L. 106-224, title IV, § 424, June 20, 2000, 114 Stat. 450; Pub. L. 107-171, title X, § 10810, May 13, 2002, 116 Stat. 531; Pub. L. 110-234, title X, § 10203(d), May 22, 2008, 122 Stat. 1343; Pub. L. 110-246, § 4(a), title X, § 10203(d), June 18, 2008, 122 Stat. 1664, 2105.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (b)(1)(A). Pub. L. 110-246, § 10203(d), substituted “\$500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation” for “and \$500,000 for all violations adjudicated in a single proceeding”.

2002—Subsec. (a). Pub. L. 107-171 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Any person that knowingly violates this chapter, or that knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be guilty of a misdemeanor, and, upon conviction, shall be fined in accordance with title 18, imprisoned for a period not exceeding 1 year, or both.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 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.

§ 7735. Enforcement actions of Attorney General

The Attorney General may—

(1) prosecute, in the name of the United States, all criminal violations of this chapter that are referred to the Attorney General by the Secretary or are brought to the notice of the Attorney General by any person;

(2) bring an action to enjoin the violation of or to compel compliance with this chapter, or to enjoin any interference by any person with the Secretary in carrying out this chapter, whenever the Secretary has reason to believe that the person has violated, or is about to violate this chapter, or has interfered, or is about to interfere, with the Secretary; and

(3) bring an action for the recovery of any unpaid civil penalty, funds under reimbursable agreements, late payment penalty, or interest assessed under this chapter.