

ter. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of this title and Tables.

§ 1040. Recordkeeping requirements; persons required to maintain records; scope of disclosure; access to records

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in commerce or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the Secretary of Agriculture or the Secretary of Health and Human Services may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of a duly authorized representative of either of said Secretaries, permit him at reasonable times to have access to and to copy all such records.

(Pub. L. 91-597, §11, Dec. 29, 1970, 84 Stat. 1627; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-597, Dec. 29, 1970, 84 Stat. 1620, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of this title and Tables.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 1041. Enforcement provisions

(a) Violations of section 1037; term of imprisonment and fine

Any person who commits any offense prohibited by section 1037 of this title shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than \$5,000, or both such imprisonment and fine, but if such violation involves intent to defraud, or any distribution or attempted distribution of any article that is known to be adulterated (except as defined in section 1033(a)(8) of this title), such person shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000, or both.

(b) Persons preventing enforcement of chapter; term of imprisonment and fine

Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than \$5,000 or imprisoned not more than three years or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Whoever kills any

person while engaged in or on account of the performance of his official duties under this chapter shall be punished as provided under sections 1111 and 1112 of title 18.

(c) Civil penalty

(1)(A) Except as otherwise provided in this subsection, any person who violates any provision of this chapter or any regulation issued under this chapter, other than a violation for which a criminal penalty has been imposed under this chapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation to which this subparagraph applies shall be considered a separate offense.

(B) No penalty shall be assessed against any person under this subsection unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5.

(C) The amount of the civil penalty imposed under this subsection—

(i) shall be assessed by the Secretary, by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and

(ii) may be reviewed only as provided in paragraph (2).

(2)(A) The determination and order of the Secretary under this subsection shall be final and conclusive unless the person against whom such a violation is found under paragraph (1) files an application for judicial review within 30 days after service of the order in the United States court of appeals for the circuit in which the person has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit.

(B) Judicial review of any such order shall be based on the record on which the determination and order are based.

(C) If the court determines that additional evidence needs to be taken, the court shall order the hearing to be reopened for this purpose in such manner and on such terms and conditions as the court considers proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, on the basis of the additional evidence so taken.

(3) If any person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General. The Attorney General shall institute a civil action to recover the amount assessed in an appropriate district court of the United States. In the collection action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(4) All penalties collected under this subsection shall be paid into the Treasury of the United States.

(5) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(6) Paragraph (1) shall not apply to an official plant.

(d) Scope of liability for violations of section 1037

When construing or enforcing the provisions of section 1037 of this title, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(e) Penalties applicable to carriers or warehousemen

No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of section 1040 of this title or subsection (c) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(Pub. L. 91-597, §12, Dec. 29, 1970, 84 Stat. 1628; Pub. L. 102-237, title X, §1012(d), Dec. 13, 1991, 105 Stat. 1899.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c)(1)(A), and (e), was in the original "this Act", meaning Pub. L. 91-597, Dec. 29, 1970, 84 Stat. 1620, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-237, §1012(d)(1), (2), substituted "\$5,000" for "\$1,000" in first sentence, and redesignated last sentence, relating to scope of liability for violations of section 1037 of this title, as subsec. (d).

Subsec. (b). Pub. L. 102-237, §1012(d)(4), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 102-237, §1012(d)(5), added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102-237, §1012(d)(2), designated last sentence of subsec. (a), relating to scope of liability for violations of section 1037 of this title, as subsec. (d).

Subsec. (e). Pub. L. 102-237, §1012(d)(3), redesignated subsec. (b) as (e).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-237 effective 12 months after promulgation of final implementing regulations, see section 1012(h) of Pub. L. 102-237, set out as a note under section 1034 of this title.

§ 1042. Reporting of violation to United States attorney for institution of criminal proceedings; procedure; presentation of views

Before any violation of this chapter is reported by the Secretary of Agriculture or Sec-

retary of Health and Human Services to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the Secretary of Agriculture or Secretary of Health and Human Services to report for criminal prosecution violations of this chapter whenever he believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning or an action to assess civil penalties.

(Pub. L. 91-597, §13, Dec. 29, 1970, 84 Stat. 1628; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-237, title X, §1012(e), Dec. 13, 1991, 105 Stat. 1900.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-597, Dec. 29, 1970, 84 Stat. 1620, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of this title and Tables.

AMENDMENTS

1991—Pub. L. 102-237 inserted "or an action to assess civil penalties" before period at end.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-237 effective 12 months after promulgation of final implementing regulations, see section 1012(h) of Pub. L. 102-237, set out as a note under section 1034 of this title.

§ 1043. Rules and regulations; administration and enforcement

The Secretary shall promulgate such rules and regulations as he deems necessary to carry out the purposes or provisions of this chapter, and shall be responsible for the administration and enforcement of this chapter except as otherwise provided in section 1034(d) of this title.

(Pub. L. 91-597, §14, Dec. 29, 1970, 84 Stat. 1629.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-597, Dec. 29, 1970, 84 Stat. 1620, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of this title and Tables.

§ 1044. Exemption of certain activities**(a) Regulation for exemptions**

The Secretary may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter—

(1) the sale, transportation, possession, or use of eggs which contain no more restricted