

owns or operates or otherwise controls and provides children's services or any individual who owns or operates or otherwise controls and provides such services.

**(5) Secretary**

The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 89-10, title IV, §4302, as added Pub. L. 107-110, title IV, §401, Jan. 8, 2002, 115 Stat. 1773.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in par. (2), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Social Security Act, referred to in par. (2)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**§ 7183. Nonsmoking policy for children's services**

**(a) Prohibition**

After January 8, 2002, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

**(b) Additional prohibition**

**(1) In general**

After January 8, 2002, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood development (Head Start) services.

**(2) Exception**

Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

**(c) Federal agencies**

**(1) Kindergarten, elementary, or secondary education or library services**

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

**(2) Health or day care or early childhood development services**

**(A) In general**

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to

provide routine or regular health or day care or early childhood development (Head Start) services to children.

**(B) Exception**

Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) any private residence.

**(3) Application of provisions**

The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

**(d) Notice**

The prohibitions in subsections (a) through (c) of this section shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children's services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after January 8, 2002, whichever occurs first.

**(e) Civil penalties**

**(1) In general**

Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any subchapter of this chapter by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c) of this section, the term "person", as used in this paragraph, shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

**(2) Administrative proceeding**

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple

form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

**(3) Circumstances affecting penalty or order**

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C)<sup>1</sup> such other matters as justice may require.

**(4) Modification**

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

**(5) Petition for review**

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

**(6) Failure to comply**

If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at

prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

(Pub. L. 89-10, title IV, § 4303, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1774.)

**§ 7184. Preemption**

Nothing in this part is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this part.

(Pub. L. 89-10, title IV, § 4304, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1776.)

**SUBCHAPTER V—PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS**

**CODIFICATION**

Title V of the Elementary and Secondary Education Act of 1965, comprising this subchapter, was originally enacted as part of Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, amended, and subsequently revised, restated, and amended by other public laws. Title V is shown, herein, as having been added by Pub. L. 107-110, title V, § 501, Jan. 8, 2002, 115 Stat. 1776, without reference to earlier amendments because of the extensive revision of the title's provisions by Pub. L. 107-110. See Codification note preceding section 6301 of this title.

**PART A—INNOVATIVE PROGRAMS**

**§ 7201. Purposes, State and local responsibility**

**(a) Purposes**

The purposes of this part are the following:

(1) To support local education reform efforts that are consistent with and support statewide education reform efforts.

(2) To provide funding to enable State educational agencies and local educational agencies to implement promising educational reform programs and school improvement programs based on scientifically based research.

(3) To provide a continuing source of innovation and educational improvement, including support programs to provide library services and instructional and media materials.

(4) To meet the educational needs of all students, including at-risk youth.

(5) To develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs.

**(b) State and local responsibility**

The State educational agency shall bear the basic responsibility for the administration of funds made available under this part, but it is the intent of Congress that the responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under this part be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because local educational agencies and individuals

<sup>1</sup> Opening parenthesis editorially supplied.