

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 Secretary 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 pub-

lic 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 eggs than are allowed by the tolerance in the official standards of United States consumer grades for shell eggs;

(2) the processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the Secretary, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of United States consumer grades for shell eggs, and the egg products processed at such plant;

(3) the sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this paragraph;

(4) the processing of egg products by any poultry producer from eggs of his own flocks' production for sale of such products directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the egg products so processed when handled in accordance with this paragraph;

(5) the sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this paragraph;

(6) for such period of time (not to exceed two years) during the initiation of operations under this chapter as the Secretary determines that it is impracticable to provide inspection, the processing of egg products at any class of plants and the egg products processed at such plants; and

(7) the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens.

(b) Plants located in noncontiguous areas of United States

The Secretary shall, by regulation and under such procedures as he may prescribe, exempt any plant located within noncontiguous areas of the United States from specific provisions of this chapter, where, despite good faith efforts by the owner of such plant, such owner has not been able to bring his plant into full compliance with this chapter: *Provided*, That in order to provide at least minimum standards for the protection of the public health, whenever processing operations are being conducted at any such plant, continuous inspection shall be maintained to assure that it is operated in a sanitary manner. No exemption under this subsection shall be granted for a period extending beyond December 31, 1971.

(c) Suspension or termination of exemptions

The Secretary may immediately suspend or terminate any exemption under subsection (a)(2) or (6) of this section at any time with respect to any person, if the conditions of exemption prescribed by this section or the regulations of the Secretary are not being met. The Secretary may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter.

(Pub. L. 91-597, §15, Dec. 29, 1970, 84 Stat. 1629; Pub. L. 92-67, Aug. 6, 1971, 85 Stat. 173.)

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.