

which is classified generally to chapter 39 (§1451 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 15 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (i) and (u), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables.

The effective date of this chapter, referred to in subsec. (r), means the effective date of Pub. L. 91-597. For such effective date, see Effective Date note set out under section 1031 of this title.

The Agricultural Marketing Act of 1946, referred to in subsec. (r), is title II of act Aug. 14, 1946, ch. 966, 60 Stat. 1087, which is classified generally to chapter 38 (§1621 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1621 of Title 7 and Tables.

#### AMENDMENTS

1992—Subsec. (a)(2)(D). Pub. L. 102-571 substituted “379e” for “376”.

#### EFFECTIVE DATE

For effective date of this section, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of this title.

### § 1034. Inspection of egg products

#### (a) Processing operations and establishments subject to coverage; rules and regulations

For the purpose of preventing the entry into or flow or movement in commerce of, or the burdening of commerce by, any egg product which is capable of use as human food and is misbranded or adulterated, the Secretary shall, whenever processing operations are being conducted, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under section 1044 of this title. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of section 1044(a)(1) of this title in the preparation of any articles for human food shall be deemed to be a plant processing egg products, with respect to such operations.

#### (b) Authority of Secretary to retain, segregate, and reinspect eggs and egg products

The Secretary, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

#### (c) Condemnation of adulterated products; destruction or reprocessing; procedure upon appeal from determination of adulteration

Eggs and egg products found to be adulterated at official plants shall be condemned and, if no appeal be taken from such determination of condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: *Provided*, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and there-

after found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Secretary determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

#### (d) Inspection of business premises, facilities, inventory, operations, and records of egg handlers; inspection of records and inventory of others required to keep records; authority of Secretary of Health and Human Services to inspect food manufacturing establishments, institutions, and restaurants; access to places of business

The Secretary shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under section 1040 of this title, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of section 1037 of this title, except that the Secretary of Health and Human Services shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of said Secretaries shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter.

#### (e) Refrigeration and labeling requirements

(1) Subject to paragraphs (2), (3), and (4), the Secretary shall make such inspections as the Secretary considers appropriate of a facility of an egg handler (including a transport vehicle) to determine if shell eggs destined for the ultimate consumer—

(A) are being held under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit after packing; and

(B) contain labeling that indicates that refrigeration is required.

(2) In the case of a shell egg packer packing eggs for the ultimate consumer, the Secretary shall make an inspection in accordance with paragraph (1) at least once each calendar quarter.

(3) The Secretary of Health and Human Services shall cause such inspections to be made as the Secretary considers appropriate to ensure compliance with the requirements of paragraph (1) at food manufacturing establishments, institutions, and restaurants, other than plants packing eggs.

(4) The Secretary shall not make an inspection as provided in paragraph (1) on any egg handler with a flock of not more than 3,000 layers.

(5) A representative of the Secretary and the Secretary of Health and Human Services shall

be afforded access to a place of business referred to in this subsection, including a transport vehicle, for purposes of making an inspection required under this subsection.

(Pub. L. 91-597, § 5, Dec. 29, 1970, 84 Stat. 1624; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-237, title X, § 1012(b), Dec. 13, 1991, 105 Stat. 1899.)

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d), 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. (e). Pub. L. 102-237 added subsec. (e).

## CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (d) 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

Pub. L. 102-237, title X, § 1012(h), Dec. 13, 1991, 105 Stat. 1901, provided that: “This section and the amendments made by this section [amending this section and sections 1037, 1041, 1042, 1046, and 1052 of this title and enacting provisions set out as a note under section 1031 of this title] shall become effective 12 months after the Secretary of Agriculture promulgates final regulations implementing this section and the amendments.” [Final regulations were promulgated Aug. 20, 1998, effective Aug. 27, 1999. See 63 F.R. 45663.]

## EFFECTIVE DATE

For effective date of this section, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of this title.

### § 1035. Sanitary operating practices in official plants

#### (a) Premises, facilities, and equipment

Each official plant shall be operated in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the Secretary to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

#### (b) Refusal by Secretary to inspect nonconforming plants

The Secretary shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

(Pub. L. 91-597, § 6, Dec. 29, 1970, 84 Stat. 1625.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

## EFFECTIVE DATE

For effective date of this section, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of this title.

### § 1036. Pasteurization and labeling of egg products at official plants

#### (a) Contents of label

Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the Secretary, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the Secretary, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the Secretary may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

#### (b) False or misleading or use of nonapproved labeling or containers; determination by Secretary; procedures applicable; appeal

No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the Secretary. If the Secretary has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the Secretary, such person may request a hearing, but the use of the labeling or container shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the United States court of appeals for the circuit in which such person has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 194 of title 7,<sup>1</sup> shall be applicable to appeals taken under this section.

(Pub. L. 91-597, § 7, Dec. 29, 1970, 84 Stat. 1625.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

## EFFECTIVE DATE

For effective date of this section, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of this title.

### § 1037. Prohibited acts

(a)(1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for trans-

<sup>1</sup> So in original. The comma probably should not appear.