

REFERENCES IN TEXT

Section 5890 of this title, referred to in text, was repealed by Pub. L. 106-113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.

Subchapter III of this chapter, referred to in text, was in the original a reference to title III of Pub. L. 103-227, Mar. 31, 1994, 108 Stat. 157, which was classified generally to subchapter III (§5881 et seq.) of this chapter and was repealed by Pub. L. 106-113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.

§ 6067. Sense of Congress

It is the sense of the Congress that—

(1) no funds appropriated pursuant to this chapter should be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with chapter 83 of title 41;

(2) in the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this chapter, entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products;

(3) in providing financial assistance under this chapter, the head of each Federal agency should provide to each recipient of the assistance a notice describing the statement made in subsection (a)¹ by the Congress; and

(4) if it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning to any product sold in or shipped to the United States that is not made in the United States, such person should be ineligible to receive any contract or subcontract made with funds provided pursuant to this chapter, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations, as such sections existed on March 31, 1994.

(Pub. L. 103-227, title X, §1022, Mar. 31, 1994, 108 Stat. 270.)

CODIFICATION

In par. (1), “chapter 83 of title 41” substituted for “sections 2 through 4 of the Act of March 3, 1993 (41 U.S.C. 10a-10c, popularly known as the ‘Buy American Act’)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Another section 1022 of Pub. L. 103-227 was classified to section 6055a of this title, prior to repeal by Pub. L. 107-279.

PART B—ENVIRONMENTAL TOBACCO SMOKE

CODIFICATION

This part was, in the original, part C of title X of Pub. L. 103-227 and has been designated part B of this subchapter for purposes of codification.

Similar provisions relating to environmental tobacco smoke are contained in part C (§7181 et seq.) of subchapter IV of chapter 70 of this title.

§ 6081. Short title

This part may be cited as the “Pro-Children Act of 1994”.

¹ So in original. No subsec. (a) has been enacted.

(Pub. L. 103-227, title X, §1041, Mar. 31, 1994, 108 Stat. 271.)

§ 6082. Definitions

As used in this part:

(1) Children

The term “children” means individuals who have not attained the age of 18.

(2) Children’s services

The term “children’s services” means the provision on a routine or regular basis of health, day care, education, or library services—

(A) that are funded, after March 31, 1994, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs—

(i) administered by either the Secretary of Health and Human Services or the Secretary of Education (other than services provided and funded solely under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]); or

(ii) administered by the Secretary of Agriculture in the case of a clinic (as defined in 7 CFR 246.2) under section 17(b)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(6)), or

(B) that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds, as determined by the appropriate Secretary in any enforcement action under this subchapter,

except that nothing in clause (ii) of subparagraph (A) is intended to include facilities (other than clinics) where coupons are redeemed under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(3) Person

The term “person” means any State or local subdivision thereof, agency of such State or subdivision, corporation, or partnership that 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.

(4) Indoor facility

The term “indoor facility” means a building that is enclosed.

(5) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(Pub. L. 103-227, title X, §1042, Mar. 31, 1994, 108 Stat. 271.)

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 Social Security Act are

classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This subchapter, referred to in par. (2)(B), was in the original “this title”, meaning title X of Pub. L. 103-227, Mar. 31, 1994, 108 Stat. 265, which enacted this subchapter and section 3351 of this title, amended sections 1107, 1232h, 2421, 3381 to 3384, and 3386 of this title, sections 1632, 1633, and 1635 of Title 29, Labor, and section 11903a of Title 42, and enacted provisions set out as notes under section 2701 of this title and section 11901 of Title 42.

§ 6083. Nonsmoking policy for children’s services

(a) Prohibition

After March 31, 1994, 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

After March 31, 1994, no person shall permit smoking within any indoor facility (or portion thereof) owned or leased or contracted for by such person for the provision by such person of regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of the employees of such person who provides such services, except that this subsection shall not apply to—

- (1) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
- (2) any private residence.

(c) Federal agencies

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

After March 31, 1994, 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

After March 31, 1994, no Federal agency shall permit smoking within any indoor facility (or portion thereof) 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, except that this paragraph 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.

(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) shall be incorporated by publication of 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 March 31, 1994, whichever occurs first.

(e) Special waiver

(1) In general

On receipt of an application, the head of the Federal agency may grant a special waiver to a person described in subsection (a) who employs individuals who are members of a labor organization and provide children’s services pursuant to a collective bargaining agreement that—

- (A) took effect before March 31, 1994; and
- (B) includes provisions relating to smoking privileges that are in violation of the requirements of this section.

(2) Termination of waiver

A special waiver granted under this subsection shall terminate on the earlier of—

- (A) the first expiration date (after March 31, 1994) of the collective bargaining agreement containing the provisions relating to smoking privileges; or
- (B) the date that is 1 year after March 31, 1994.

(f) Civil penalties

(1) In general

Any failure to comply with a prohibition in this section shall 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 under this section, the total amount shall not exceed the amount of Federal funds received by such person for the fiscal year in which the continuing violations occurred. For the purpose of the prohibition in subsection (c), the term “person” 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, 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 thereof to such person by certified mail with return receipt and provide therein 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 to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary