

registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 3010 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity alleged to be in violation of section 3010 of this title.

(b) The statement that remittances may be made to a person named in a sexually oriented advertisement is prima facie evidence that such named person is the principal, agent, or representative of the mailer for the receipt of remittances on his behalf. The court is not precluded from ascertaining the existence of the agency on the basis of any other evidence.

(c) In preparation for, or during the pendency of, a civil action under subsection (a) of this section, a district court of the United States, upon application therefor by the Attorney General and upon a showing of probable cause to believe the statute is being violated, may enter a temporary restraining order or preliminary injunction containing such terms as the court deems just, including, but not limited to, provisions enjoining the defendant from mailing any sexually oriented advertisement to any person or class of persons, directing any postmaster to refuse to accept such defendant's sexually oriented advertisements for mailing, and directing the detention of the defendant's incoming mail by any postmaster pending the conclusion of the judicial proceedings. Any action taken by a court under this subsection does not affect or determine any fact at issue in any other proceeding under this section.

(d) A civil action under this section may be brought in the judicial district in which the defendant resides, or has his principal place of business, or in any judicial district in which any sexually oriented advertisement mailed in violation of section 3010 has been delivered by mail according to the direction thereon.

(e) Nothing in this section or in section 3010 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or section 3007 or 3008 of this title.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 750; Pub. L. 106-168, title I, §105(b)(2)(B), Dec. 12, 1999, 113 Stat. 1811.)

#### AMENDMENTS

1999—Subsec. (e). Pub. L. 106-168 substituted “3007” for “3006, 3007.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-168 effective 120 days after Dec. 12, 1999, see section 111 of Pub. L. 106-168, set out as a note under section 3001 of this title.

#### EFFECTIVE DATE

Section effective first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

### § 3012. Civil penalties

(a) Any person—

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed \$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the Postal Service may, under the provisions of section 409(d) of this title, commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which the defendant resides or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the court shall determine the civil penalty, if any under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

(c)(1) In any proceeding in which the Postal Service may issue an order under section 3005(a), the Postal Service may in lieu of that order or as part of that order assess civil penalties in an amount not to exceed \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000.

(2) In any proceeding in which the Postal Service assesses penalties under this subsection the Postal Service shall determine the civil penalty taking into account the nature, circumstances, extent, and gravity of the violation or violations of section 3005(a), and with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability and other such matters as justice may require.

(d) Any person who violates section 3001(l) shall be liable to the United States for a civil penalty not to exceed \$10,000 for each mailing to an individual.

(e) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(f) In any proceeding at any time under this section, the defendant shall be entitled as a defense or counterclaim to seek judicial review, if not already had, pursuant to chapter 7 of title 5, of the order issued under section 3005 of this title. However, nothing in this section shall be construed to preclude independent judicial review otherwise available pursuant to chapter 7 of title 5 of an order issued under section 3005 of this title.

(Added Pub. L. 98-186, §3(a), Nov. 30, 1983, 97 Stat. 1316; amended Pub. L. 106-168, title I, §106, Dec. 12, 1999, 113 Stat. 1811.)

#### AMENDMENTS

1999—Subsec. (a). Pub. L. 106-168, §106(1), in concluding provisions, substituted “\$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000” for “\$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection”.

Subsec. (b)(1), (2). Pub. L. 106-168, §106(2), inserted “, (c), or (d)” after “of subsection (a)”.

Subsecs. (c) to (f). Pub. L. 106-168, §106(3), (4), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-168 effective 120 days after Dec. 12, 1999, see section 111 of Pub. L. 106-168, set out as a note under section 3001 of this title.

#### EFFECTIVE DATE

Pub. L. 98-186, §3(b), Nov. 30, 1983, 97 Stat. 1317, provided that: “Section 3012 of title 39, United States Code (as added by subsection (a) of this section) shall apply with respect to conduct which occurs on or after the date of the enactment of this Act [Nov. 30, 1983].”

### § 3013. Semiannual reports on investigative activities of the Postal Service

The Postmaster General shall submit semiannual reports to the Inspector General summarizing the investigative activities of the Postal Service. One semiannual report shall be submitted for the reporting period beginning on October 1 and ending on March 31, and the other semiannual report shall be submitted for the reporting period beginning on April 1 and ending on September 30. Each such report shall be submitted within 1 month (or such shorter length of time as the Inspector General may specify) after the close of the reporting period involved and shall include with respect to such reporting period—

(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

(2) the number of cases in which the authority described in section 3005(e) of this title was used;

(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

(4) the total amount of expenditures and obligations incurred in carrying out the investigative activities of the Postal Service;

(5) the number of cases in which the authority described in section 3016 was used, and a comprehensive statement describing how that authority was used in each of those cases; and

(6) such other information relating to the investigative activities of the Postal Service as the Inspector General may require.

The information in a report submitted under this section to the Inspector General with respect to a reporting period shall be included as part of the semiannual report prepared by the Inspector General under section 5 of the Inspector General Act of 1978 for the same reporting period. Nothing in this section shall be considered to permit or require that any report by the Postmaster General under this section include any information relating to activities of the Inspector General.

(Added Pub. L. 98-186, §3(a), Nov. 30, 1983, 97 Stat. 1317; amended Pub. L. 104-66, title II, §221(b), Dec. 21, 1995, 109 Stat. 733; Pub. L. 106-168, title I, §§107(c), 110(b)(1), Dec. 12, 1999, 113 Stat. 1813, 1817.)

#### REFERENCES IN TEXT

Section 5 of the Inspector General Act of 1978, referred to in text, is section 5 of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

1999—Pub. L. 106-168, §110(b)(1), in introductory provisions, substituted “Inspector General” for “Board” and “1 month (or such shorter length of time as the Inspector General may specify)” for “sixty days” and substituted concluding provisions for former concluding provisions which read as follows: “Upon approval of a report submitted under the first sentence of this section, the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).”

Par. (5). Pub. L. 106-168, §107(c), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 106-168, §110(b)(1)(A), substituted “Inspector General” for “Board”.

Pub. L. 106-168, §107(c), redesignated par. (5) as (6).

1995—Pub. L. 104-66 substituted at end “the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.)” for “the Board shall transmit such report to the Congress”.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 107(c) of Pub. L. 106-168 effective 120 days after Dec. 12, 1999, see section 111 of Pub. L. 106-168, set out as a note under section 3001 of this title.

Pub. L. 106-168, title I, §110(b)(2), (3), Dec. 12, 1999, 113 Stat. 1817, provided that:

“(2) EFFECTIVE DATE.—This subsection [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1999], and the amendments made by this subsection shall apply with respect to semiannual reporting periods beginning on or after such date of enactment.

“(3) SAVINGS PROVISION.—For purposes of any semiannual reporting period preceding the first semiannual reporting period referred to in paragraph (2), the provisions of title 39, United States Code, shall continue to apply as if the amendments made by this subsection had not been enacted.”

### § 3014. Nonmailable plants

(a)(1) Whenever the Secretary of Agriculture establishes a quarantine under section 8 of the