

(1) may be collected in advance of the provision of such activities;

(2) shall be credited as offsetting collections to the currently applicable appropriation, account, or fund of U.S. Customs and Border Protection;

(3) shall remain available until expended;

(4) shall be available for the purposes for which such appropriation, account, or fund is authorized to be used; and

(5) may be collected and shall be available only to the extent provided in appropriations Acts.

(c) Payment of employees

(1) In general

Notwithstanding any other law, the Secretary may pay an officer or employee of the Department of Agriculture performing services under this chapter relating to imports into and exports from the United States for all overtime, night, or holiday work performed by the officer or employee at a rate of pay determined by the Secretary.

(2) Reimbursement

(A) In general

The Secretary may require a person for whom the services are performed to reimburse the Secretary for any expenses paid by the Secretary for the services under this subsection.

(B) Use of funds

All funds collected under this subsection shall—

(i) be credited to the account that incurs the costs; and

(ii) remain available until expended, without fiscal year limitation.

(d) Late payment penalties

(1) Collection

On failure by a person to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty against the person, including interest on overdue funds, as required by section 3717 of title 31.

(2) Use of funds

Any late payment penalty and any accrued interest shall—

(A) be credited to the account that incurs the costs; and

(B) remain available until expended, without fiscal year limitation.

(Pub. L. 107–171, title X, §10412, May 13, 2002, 116 Stat. 503; Pub. L. 114–125, title VIII, §818(b), Feb. 24, 2016, 130 Stat. 222.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original “this subtitle”, meaning subtitle E (§§10401–10418) of title X of Pub. L. 107–171, May 13, 2002, 116 Stat. 494, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–125 amended subsec. (b) generally. Prior to amendment, text read as follows: “Funds collected for preclearance activities shall—

“(1) be credited to accounts that may be established by the Secretary for carrying out this section; and

“(2) remain available until expended for the preclearance activities, without fiscal year limitation.”

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8312. Administration and claims

(a) Administration

To carry out this chapter, the Secretary may—

(1) acquire and maintain real or personal property;

(2) employ a person;

(3) make a grant; and

(4) notwithstanding chapter 63 of title 31, enter into a contract, cooperative agreement, memorandum of understanding, or other agreement.

(b) Tort claims

(1) In general

Except as provided in paragraph (2), the Secretary may pay a tort claim, in the manner authorized by the first paragraph of section 2672 of title 28, if the claim arises outside the United States in connection with an activity authorized under this chapter.

(2) Requirements

A claim may not be allowed under this subsection unless the claim is presented in writing to the Secretary not later than 2 years after the date on which the claim arises.

(Pub. L. 107–171, title X, §10413, May 13, 2002, 116 Stat. 503.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original “this subtitle”, meaning subtitle E (§§10401–10418) of title X of Pub. L. 107–171, May 13, 2002, 116 Stat. 494, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Short Title note set out under section 8301 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8313. Penalties

(a) Criminal penalties

(1) Offenses

(A) In general

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certifi-

cate, permit, or other document provided for in this chapter shall be fined under title 18, imprisoned not more than 1 year, or both.

(B) Distribution or sale

A person that knowingly imports, enters, exports, or moves any animal or article, for distribution or sale, in violation of this chapter, shall be fined under title 18, imprisoned not more than 5 years, or both.

(2) Multiple violations

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined under title 18, imprisoned not more than 10 years, or both.

(b) Civil penalties

(1) In general

Except as provided in section 8309(d) of this title, any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A)(i) \$50,000 in the case of any individual, except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain;

(ii) \$250,000 in the case of any other person for each violation; and

(iii) for all violations adjudicated in a single proceeding—

(I) \$500,000 if the violations do not include a willful violation; or

(II) \$1,000,000 if the violations include 1 or more willful violations.

(B) twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under this chapter that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

(A) the ability to pay;

(B) the effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) such other factors as the Secretary considers to be appropriate.

(3) Settlement of civil penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

(4) Finality of orders

(A) Final order

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28.

(B) Review

The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

(C) Interest

Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) Liability for acts of agents

In the construction and enforcement of this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the officer, agent, or person, shall be deemed also to be the act, omission, or failure of the other person.

(d) Guidelines for civil penalties

Subject to the approval of the Attorney General, the Secretary shall establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

(Pub. L. 107-171, title X, §10414, May 13, 2002, 116 Stat. 504; Pub. L. 110-234, title XI, §11012(a), May 22, 2008, 122 Stat. 1360; Pub. L. 110-246, §4(a), title XI, §11012(a), June 18, 2008, 122 Stat. 1664, 2122.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle E (§§10401-10418) of title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 494, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Short Title note set out under section 8301 of this title and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (b)(1)(A)(iii). Pub. L. 110-246, §11012(a), added cl. (iii) and struck out former cl. (iii) which read as follows: "\$500,000 for all violations adjudicated in a single proceeding; or".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland

Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8314. Enforcement

(a) Collection of information

(1) In general

The Secretary may gather and compile information and conduct any inspection or investigation that the Secretary considers to be necessary for the administration or enforcement of this chapter.

(2) Subpoenas

(A) In general

The Secretary shall have the power to subpoena the attendance and testimony of any witness, the production of all evidence (including books, papers, documents, electronically stored information, and other tangible things that constitute or contain evidence), or to require the person to whom the subpoena is directed to permit the inspection of premises relating to the administration or enforcement of this chapter¹ or any matter under investigation in connection with this chapter.¹

(B) Location of production

The attendance of any witness and production of evidence relevant to the inquiry may be required from any place in the United States.

(C) Enforcement

(i) In general

In case of disobedience to a subpoena by any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, to require the attendance and testimony of any witness, the production of evidence, or the inspection of premises.

(ii) Noncompliance

In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary and give evidence concerning the matter in question, produce evidence, or permit the inspection of premises.

(iii) Contempt

Any failure to obey the order of the court may be punished by the court as contempt of the court.

(D) Compensation

(i) Witnesses

A witness summoned by the Secretary under this chapter shall be paid the same fees and mileage that are paid to a witness in a court of the United States.

(ii) Depositions

A witness whose deposition is taken, and the person taking the deposition, shall be

entitled to the same fees that are paid for similar services in a court of the United States.

(E) Procedures

(i) Publication

The Secretary shall publish procedures for the issuance of subpoenas under this section.

(ii) Review

The procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and, to be effective, be signed by the Secretary.

(iii) Delegation

If the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review of the subpoena for legal sufficiency outside that agency.

(b) Authority of Attorney General

The Attorney General may—

(1) prosecute, in the name of the United States, all criminal violations of this chapter that are referred to the Attorney General by the Secretary or are brought to the notice of the Attorney General by any person;

(2) bring an action to enjoin the violation of or to compel compliance with this chapter, or to enjoin any interference by any person with the Secretary in carrying out this chapter, in any case in which the Secretary has reason to believe that the person has violated, or is about to violate this chapter or has interfered, or is about to interfere, with the actions of the Secretary; or

(3) bring an action for the recovery of any unpaid civil penalty, funds under a reimbursable agreement, late payment penalty, or interest assessed under this chapter.

(c) Court jurisdiction

(1) In general

The United States district courts, the District Court of Guam, the District Court of the Northern Mariana Islands, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories and possessions are vested with jurisdiction in all cases arising under this chapter.

(2) Venue

Any action arising under this chapter may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(3) Exception

Paragraphs (1) and (2) do not apply to sections 8309(c) and 8313(b) of this title.

(Pub. L. 107-171, title X, § 10415, May 13, 2002, 116 Stat. 505; Pub. L. 110-234, title XI, § 11012(b), May

¹ See References in Text note below.