

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 public 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.)

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.)

§ 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.)

AMENDMENTS

1971—Subsecs. (b), (c). Pub. L. 92-67 added subsec. (b) and redesignated former subsec. (b) as (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1034 of this title.

§ 1045. Limitation on entry of eggs and egg products and other materials into official plants

The Secretary may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may pre-

scribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter.

(Pub. L. 91-597, §16, Dec. 29, 1970, 84 Stat. 1630.)

§ 1046. Imports

(a) Authorization for importation of restricted eggs; prerequisites for importation of egg products; treatment as domestic articles subject to this chapter; marking and labeling exemption for personal consumption

(1) No restricted eggs capable of use as human food shall be imported into the United States except as authorized by regulations of the Secretary.

(2) No egg products capable of use as human food shall be imported into the United States unless they were processed under an approved continuous inspection system of the government of the foreign country of origin or subdivision thereof and are labeled and packaged in accordance with, and otherwise comply with the standards of this chapter and regulations issued thereunder applicable to such articles within the United States.

(3) No eggs packed into a container that is destined for the ultimate consumer shall be imported into the United States unless the eggs are accompanied by a certification that the eggs have at all times after packaging been stored and transported under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit, as required by sections 1034(e) and 1037(c) of this title.

(4) All such imported articles shall upon entry into the United States be deemed and treated as domestic articles subject to the other provisions of this chapter: *Provided*, That they shall be labeled as required by such regulations for imported articles: *Provided further*, That nothing in this section shall apply to eggs or egg products purchased outside the United States by any individual for consumption by him and members of his household and his nonpaying guests and employees.

(b) Terms and conditions for destruction

The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section, unless (1) they are exported by the consignee within the time fixed therefor by the Secretary or (2) in the case of articles which are not in compliance solely because of misbranding, such articles are brought into compliance with this chapter under supervision of authorized representatives of the Secretary.

(c) Payment of storage, cartage, and labor charges by owner or consignee; liens

All charges for storage, cartage, and labor with respect to any article which is imported contrary to this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against such article and any other article thereafter imported under this chapter by or for such owner or consignee.

(d) Prohibition

The importation of any article contrary to this section is prohibited.

(Pub. L. 91-597, §17, Dec. 29, 1970, 84 Stat. 1630; Pub. L. 102-237, title X, §1012(f), Dec. 13, 1991, 105 Stat. 1901.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-237 designated first sentence as par. (1) and second sentence as par. (2), added par. (3), and designated third sentence as par. (4).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1037, 1054 of this title.

§ 1047. Refusal or withdrawal of inspection services; hearing; grounds; person deemed to have responsible connection with business; finality of order of Secretary; judicial review; other provisions for refusal of services unaffected

The Secretary (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) may refuse to provide or may withdraw inspection service under this chapter with respect to any plant if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under this chapter because the applicant or recipient or anyone responsibly connected with the applicant or recipient has been convicted in any Federal or State court, within the previous ten years, of (1) any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food, or (2) any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health.

For the purpose of this section, a person shall be deemed to be responsibly connected with the business if he is a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock, or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the United States court of appeals for the circuit in which such applicant or recipient has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Judicial review of any such order shall be upon the record upon which the determination and order are based. The provisions of section 194 of title 7 shall be applicable to appeals taken under this section.

This section shall not affect in any way other provisions of this chapter for refusal of inspection services.

(Pub. L. 91-597, §18, Dec. 29, 1970, 84 Stat. 1630.)