

a violation is found under paragraph (1) files an application for judicial review within 30 days after service of the order in the United States court of appeals for the circuit in which the person has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit.

(B) Judicial review of any such order shall be based on the record on which the determination and order are based.

(C) If the court determines that additional evidence needs to be taken, the court shall order the hearing to be reopened for this purpose in such manner and on such terms and conditions as the court considers proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, on the basis of the additional evidence so taken.

(3) If any person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General. The Attorney General shall institute a civil action to recover the amount assessed in an appropriate district court of the United States. In the collection action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(4) All penalties collected under this subsection shall be paid into the Treasury of the United States.

(5) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(6) Paragraph (1) shall not apply to an official plant.

(d) Scope of liability for violations of section 1037

When construing or enforcing the provisions of section 1037 of this title, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(e) Penalties applicable to carriers or warehousemen

No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of section 1040 of this title or subsection (c) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(Pub. L. 91-597, § 12, Dec. 29, 1970, 84 Stat. 1628; Pub. L. 102-237, title X, § 1012(d), Dec. 13, 1991, 105 Stat. 1899.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-237, § 1012(d)(1), (2), substituted “\$5,000” for “\$1,000” in first sentence, and redesignated last sentence, relating to scope of liability for violations of section 1037 of this title, as subsec. (d).

Subsec. (b). Pub. L. 102-237, § 1012(d)(4), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 102-237, § 1012(d)(5), added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102-237, § 1012(d)(2), designated last sentence of subsec. (a), relating to scope of liability for violations of section 1037 of this title, as subsec. (d).

Subsec. (e). Pub. L. 102-237, § 1012(d)(3), redesignated subsec. (b) as (e).

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.

§ 1042. Reporting of violation to United States attorney for institution of criminal proceedings; procedure; presentation of views

Before any violation of this chapter is reported by the Secretary of Agriculture or Secretary of Health and Human Services to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and 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