

ficial mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary;

(2) forge or alter any official device, mark, or certificate;

(3) without authorization from the Secretary, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under section 1036 of this title after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(4) contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(5) knowingly possess, without promptly notifying the Secretary or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary;

(7) knowingly represent that any article has been inspected or exempted, under this chapter, when, in fact, it has, respectively, not been so inspected or exempted; and

(8) refuse access, at any reasonable time, to any representative of the Secretary of Agriculture or the Secretary of Health and Human Services, to any plant or other place of business subject to inspection under any provisions of this chapter.

(f) No person, while an official or employee of the United States Government or any State or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States Government or any State or other government in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret.

(Pub. L. 91-597, § 8, Dec. 29, 1970, 84 Stat. 1626; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-237, title X, § 1012(c), Dec. 13, 1991, 105 Stat. 1899.)

AMENDMENTS

1991—Subsecs. (c) to (f). Pub. L. 102-237 added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (e)(8) 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.

§ 1038. Cooperation with appropriate State and other governmental agencies; utilization of employees; reimbursement

The Secretary shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with appropriate State and other governmental agencies, in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the Secretary may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. The Secretary shall reimburse the States and other agencies for the costs incurred by them in such cooperative programs.

(Pub. L. 91-597, § 9, Dec. 29, 1970, 84 Stat. 1627.)

§ 1039. Eggs and egg products not intended for use as human food; inspection; denaturing or otherwise identifying

Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in commerce, shall be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Secretary.

(Pub. L. 91-597, § 10, Dec. 29, 1970, 84 Stat. 1627.)

§ 1040. Recordkeeping requirements; persons required to maintain records; scope of disclosure; access to records

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in commerce or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the Secretary of Agriculture or the Secretary of Health and Human Services may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of a duly authorized representative of either of said Secretaries, permit him at reasonable times to have access to and to copy all such records.

(Pub. L. 91-597, § 11, Dec. 29, 1970, 84 Stat. 1627; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

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.

§ 1041. Enforcement provisions**(a) Violations of section 1037; term of imprisonment and fine**

Any person who commits any offense prohibited by section 1037 of this title shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than \$5,000, or both such imprisonment and fine, but if such violation involves intent to defraud, or any distribution or attempted distribution of any article that is known to be adulterated (except as defined in section 1033(a)(8) of this title), such person shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000, or both.

(b) Persons preventing enforcement of chapter; term of imprisonment and fine

Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than \$5,000 or imprisoned not more than three years or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punished as provided under sections 1111 and 1112 of title 18.

(c) Civil penalty

(1)(A) Except as otherwise provided in this subsection, any person who violates any provision of this chapter or any regulation issued under this chapter, other than a violation for which a criminal penalty has been imposed under this chapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation to which this subparagraph applies shall be considered a separate offense.

(B) No penalty shall be assessed against any person under this subsection unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5.

(C) The amount of the civil penalty imposed under this subsection—

(i) shall be assessed by the Secretary, by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and

(ii) may be reviewed only as provided in paragraph (2).

(2)(A) The determination and order of the Secretary under this subsection shall be final and conclusive unless the person against whom such 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).