

(4) Person

The term “person” means any State or local subdivision of a State, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children’s services or any individual who owns or operates or otherwise controls and provides such services.

(5) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(Pub. L. 89–10, title VIII, §8572, formerly title IV, §4302, as added Pub. L. 107–110, title IV, §401, Jan. 8, 2002, 115 Stat. 1773; renumbered title IX, §9562, renumbered title VIII, §8572, Pub. L. 114–95, title IV, §4001(a)(4)(A), (B), (C)(ii), title VIII, §8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

Editorial Notes**REFERENCES IN TEXT**

This subpart, referred to in text, was in the original “this part”, and was translated as reading “this subpart”, to reflect the probable intent of Congress. Pub. L. 114–95 redesignated part C of title IV of Pub. L. 89–10 as subpart 5 of part F of title VIII of Pub. L. 89–10, which is classified to this subpart.

The Child Nutrition Act of 1966, referred to in par. (2), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Social Security Act, referred to in par. (2)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was classified to section 7182 of this title prior to renumbering by Pub. L. 114–95.

§ 7973. Nonsmoking policy for children’s services**(a) Prohibition**

After January 8, 2002, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition**(1) In general**

After January 8, 2002, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood education programs.

(2) Exception

Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(c) Federal agencies**(1) Kindergarten, elementary, or secondary education or library services**

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) Health or day care or early childhood education programs**(A) In general**

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood education programs to children.

(B) Exception

Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) any private residence.

(3) Application of provisions

The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) Notice

The prohibitions in subsections (a) through (c) shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children’s services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after January 8, 2002, whichever occurs first.

(e) Civil penalties**(1) In general**

Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any subchapter of this chapter by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c), the term “person”, as used in this paragraph, shall mean the head of the applicable

Federal agency or the contractor of such agency providing the services to children.

(2) Administrative proceeding

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) Modification

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

(5) Petition for review

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The pe-

tion shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply

If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

(Pub. L. 89-10, title VIII, § 8573, formerly title IV, § 4303, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1774; renumbered title IX, § 9563, renumbered title VIII, § 8573, and amended Pub. L. 114-95, title IV, § 4001(a)(1), (4)(A), (B), (C)(ii), title VIII, § 8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

Editorial Notes

CODIFICATION

Section was classified to section 7183 of this title prior to renumbering by Pub. L. 114-95.

AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114-95, § 4001(a)(1)(A), substituted "early childhood education programs" for "early childhood development (Head Start) services".

Subsec. (c)(2). Pub. L. 114-95, § 4001(a)(1)(B)(i), substituted "education programs" for "development services" in heading.

Subsec. (c)(2)(A). Pub. L. 114-95, § 4001(a)(1)(B)(ii), substituted "education programs" for "development (Head Start) services".

Subsec. (e)(3)(C). Pub. L. 114-95, § 4001(a)(1)(C), added subpar. (C) and struck out former subpar. (C) which was missing an opening parenthesis before the subpar. designation and read as follows: "such other matters as justice may require."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

§ 7974. Preemption

Nothing in this subpart¹ is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this subpart.¹

(Pub. L. 89-10, title VIII, § 8574, formerly title IV, § 4304, as added Pub. L. 107-110, title IV, § 401,

¹ See References in Text note below.