

**§ 2714. Civil enforcement proceedings****(a) Enforcement of orders by district court; referral of civil actions to Attorney General**

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued pursuant to this chapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever he believes that the administration and enforcement of the program would be adequately served by administrative action pursuant to subsection (b) of this section or suitable written notice or warning to any person committing such violations.

**(b) Civil penalty; review by court of appeals; noncompliance with final order; referral to Attorney General**

(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of him thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 or more than \$5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violation or violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review pursuant to the procedures specified in paragraphs (1) and (2) of

this subsection, of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

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

(Pub. L. 93-428, §15, Oct. 1, 1974, 88 Stat. 1177; Pub. L. 96-276, §6, June 17, 1980, 94 Stat. 541.)

**Editorial Notes****AMENDMENTS**

1980—Subsec. (a). Pub. L. 96-276 substituted "civil action authorized to be brought under this subsection" for "civil action authorized to be brought under this chapter", struck out "minor" before "violation of this chapter", and inserted reference to administrative action pursuant to subsection (b).

Subsec. (b). Pub. L. 96-276 substituted provisions authorizing Secretary to assess civil penalty of not less than \$500 or more than \$5,000 per violation, to issue cease and desist orders for violations of regulations or orders issued by Secretary, and, after review in court of appeals, to assess civil penalty of \$500 per offense for failure to abide by duly issued cease and desist order, and authorized actions by Attorney General in appropriate district courts to collect assessed penalties, for provisions authorizing penalties of up to \$1,000 per offense for willful violations of this chapter, recoverable in civil action brought by the United States.

**§ 2715. Certification of organizations; required contents of report as criteria**

The eligibility of any organization to represent commercial egg producers of any egg producing area of the United States to request the issuance of an order under section 2704 of this title, and to participate in the making of nominations under section 2707(b) of this title shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership.

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in each such State.

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies.

(d) Evidence of stability and permanency of the organization.

(e) Sources from which the organization's operating funds are derived.

(f) Functions of the organization, and

(g) The organization's ability and willingness to further the aims and objectives of this chapter: *Provided, however,* That the primary consideration in determining the eligibility of an organization shall be whether its commercial egg producer membership consists of a substantial number of egg producers who produce a substantial volume of commercial eggs. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final. Where more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 2707(b) of this title.

(Pub. L. 93-428, §16, Oct. 1, 1974, 88 Stat. 1178.)

#### § 2716. Regulations

The Secretary is authorized to make regulations with force and effect of law, as may be necessary to carry out the provisions of this chapter and the powers vested in him by this chapter.

(Pub. L. 93-428, §17, Oct. 1, 1974, 88 Stat. 1178.)

#### § 2717. Investigations by Secretary; oaths and affirmations; subpoenas; judicial enforcement; contempt proceedings; service of process

The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this chapter or to determine whether an egg producer, processor, or other seller of commercial eggs or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this chapter, or of any order, or rule or regulation issued under this chapter. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, including an egg producer, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(Pub. L. 93-428, §18, Oct. 1, 1974, 88 Stat. 1178.)

#### § 2718. Authorization of appropriations

There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this chapter. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Egg Board in administering any provisions of any order issued pursuant to the terms of this chapter.

(Pub. L. 93-428, §20, Oct. 1, 1974, 88 Stat. 1179.)

### CHAPTER 61—NOXIOUS WEEDS

Sec.

2801 to 2813. Repealed.

2814. Management of undesirable plants on Federal lands.

#### §§ 2801 to 2813. Repealed. Pub. L. 106-224, title IV, § 438(a)(4), June 20, 2000, 114 Stat. 454

Section 2801, Pub. L. 93-629, §2, Jan. 3, 1975, 88 Stat. 2148, set forth congressional findings regarding importation or distribution in interstate commerce of noxious weeds.

Section 2802, Pub. L. 93-629, §3, Jan. 3, 1975, 88 Stat. 2148; Pub. L. 105-86, title VII, §728, Nov. 18, 1997, 111 Stat. 2108, defined terms as used in this chapter.

Section 2803, Pub. L. 93-629, §4, Jan. 3, 1975, 88 Stat. 2149; Pub. L. 100-449, title III, §301(f)(4), Sept. 28, 1988, 102 Stat. 1869; Pub. L. 103-465, title IV, §431(f), Dec. 8, 1994, 108 Stat. 4968, prohibited movement of noxious weeds into or through the United States or interstate, unless in accordance with regulations to prevent dissemination.

Section 2804, Pub. L. 93-629, §5, Jan. 3, 1975, 88 Stat. 2149, authorized promulgation of quarantines and other regulations requiring inspection of articles and means of conveyance.

Section 2805, Pub. L. 93-629, §6, Jan. 3, 1975, 88 Stat. 2149, authorized Secretary of Agriculture to seize, quarantine, treat, destroy, or otherwise dispose of infested articles or means of conveyance.

Section 2806, Pub. L. 93-629, §7, Jan. 3, 1975, 88 Stat. 2150, authorized warrantless inspections of articles and means of conveyance and searches of premises pursuant to warrants.

Section 2807, Pub. L. 93-629, §8, Jan. 3, 1975, 88 Stat. 2151, set forth penalties for violations of sections 2803, 2804, and regulations promulgated under this chapter.

Section 2808, Pub. L. 93-629, §9, Jan. 3, 1975, 88 Stat. 2151, related to cooperation with Federal, State, and local agencies and appointment of employees thereof as collaborators to assist in administration of provisions of this chapter.

Section 2809, Pub. L. 93-629, §10, Jan. 3, 1975, 88 Stat. 2151, authorized promulgation of regulations necessary to effectuate provisions of this chapter.

Section 2810, Pub. L. 93-629, §11, Jan. 3, 1975, 88 Stat. 2151, authorized appropriations and described availability of sums and limitations on their use.

Section 2811, Pub. L. 93-629, §12, Jan. 3, 1975, 88 Stat. 2152, related to inapplicability of provisions of this chapter to shipments of seed subject to certain other laws.

Section 2812, Pub. L. 93-629, §13, Jan. 3, 1975, 88 Stat. 2152, provided that provisions of this chapter would not invalidate provisions of State and local laws, except as such laws would permit prohibited actions.

Section 2813, Pub. L. 93-629, §14, Jan. 3, 1975, 88 Stat. 2152, related to separability of provisions.

#### Statutory Notes and Related Subsidiaries

##### SHORT TITLE

Pub. L. 93-629, §1, Jan. 3, 1975, 88 Stat. 2148, provided: "That this Act [enacting this chapter] may be cited as the 'Federal Noxious Weed Act of 1974.'"