

AMENDMENTS

1998—Subsecs. (b) to (e). Pub. L. 105-277 added subsec. (e) which struck out subsec. (b) relating to disbursement of restitutionary amounts as direct restitution to injured persons, subsec. (c) relating to determination of excess amount to be used for indirect restitution, and subsec. (d) relating to disbursement of excess amount as indirect restitution for energy conservation programs.

§ 4503. Deposit of remainder of excess amount into Treasury as indirect restitution

The amount that remains from the excess amount described in section 4502(c)¹ of this title after all disbursements have been made for a fiscal year under section 4502(d)¹ of this title shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

(Pub. L. 99-509, title III, §3004, Oct. 21, 1986, 100 Stat. 1884.)

REFERENCES IN TEXT

Section 4502(c) and (d) of this title, referred to in text, was repealed by section 4502(e) of this title.

§ 4504. Statute of limitation

(a) In general

(1) Except as provided in subsection (b) of this section, the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term “commencement of a civil enforcement action” means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term “civil enforcement action” means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

(b) Exceptions

(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1) of this section, there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 772 of this title, and

such additional period (not to exceed 12 calendar months) after such compliance by the Secretary to consider the results thereof and commence a civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) of this section during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 7194 of title 42, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1) of this section.

(2) The provisions of subsection (a) of this section shall not affect or apply to any civil enforcement action commenced before, on, or after October 21, 1986, and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) of this section shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) of this section or to regulations issued under this chapter, other than a proposed remedial order subject to this section.

(c) Expression of intent

(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of October 21, 1986, and designated by such Administrator as “pre-litigation cases”, unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) of this section to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

¹ See References in Text note below.

(d) End of investigations and audits

Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) of this section for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation conducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1) of this section) before, on, or after October 21, 1986. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

(e) Limitation on review

Any review of a final agency action determined under section 7193 or 7194 of title 42 may not be initiated in any court by any person subject to such action after—

- (1) 60 days after the effective date of that action; or
- (2) 90 days after October 21, 1986,

whichever occurs later.

(f) Oversight

(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

- (A) the reasons for such reduction;
- (B) the impact on the mix of personnel and on all cases, whether or not in litigation, including the subpart V regulation proceedings; and
- (C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotia-

tions, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

(Pub. L. 99-509, title III, §3005, Oct. 21, 1986, 100 Stat. 1884.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(3), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(3), is title II of Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

This chapter, referred to in subsec. (b)(3), was in the original "this Act", which was translated as meaning this subtitle, which enacted this chapter, to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4505. Reports**(a) Report on receipts and disbursements**

The Secretary shall transmit, not later than 60 days after October 21, 1986, a report to the committees referred to in subsection (d) of this section containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of October 21, 1986, by the Secretary pursuant to—

- (1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970; or
- (2) section 155 of Public Law 97-377.

(b) Report on collection of certain deficiency funds

The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court,