

AMENDMENTS

2010—Pub. L. 111-203 substituted “Director” for “Secretary” in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1717. Penalties for violations

Any person who willfully violates any of the provisions of this chapter, or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

(Pub. L. 90-448, title XIV, §1418, Aug. 1, 1968, 82 Stat. 598; Pub. L. 96-153, title IV, §408, Dec. 21, 1979, 93 Stat. 1132.)

AMENDMENTS

1979—Pub. L. 96-153 substituted “\$10,000” for “\$5,000”.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96-153, set out as a note under section 1701 of this title.

§ 1717a. Civil money penalties**(a) In general****(1) Authority**

Whenever any person knowingly and materially violates any of the provisions of this chapter or any rule, regulation, or order issued under this chapter, the Director may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Director imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Director, may not exceed \$1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed \$1,000,000. Each violation of this chapter, or any rule, regulation, or order issued under this chapter, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Director, each day shall constitute a separate violation.

(b) Agency procedures**(1) Establishment**

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given

an opportunity for a hearing on the record; and

(B) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Director reviews the determination or order, the Director may affirm, modify, or reverse that determination or order. If the Director does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Director may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary’s¹ determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (c) of this section.

(c) Judicial review of agency determination**(1) In general**

After exhausting all administrative remedies established by the Director under subsection (b)(1) of this section, a person aggrieved by a final order of the Director assessing a penalty under this section may seek judicial review pursuant to section 1710 of this title.

(2) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Director.

(d) Action to collect penalty

If any person fails to comply with the determination or order of the Director imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (b) and (c) of this section, the Director may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary’s¹ determination or order imposing the penalty shall not be subject to review.

¹ So in original. Probably should be “Director’s”.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) “Knowingly” defined

The term “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) Regulations

The Director shall issue such regulations as the Director deems appropriate to implement this section.

(h) Use of penalties for administration

Civil money penalties collected under this section shall be paid to the Director and, upon approval in an appropriation Act, may be used by the Director to cover all or part of the cost of rendering services under this chapter.

(Pub. L. 90-448, title XIV, §1418a, as added Pub. L. 101-235, title I, §111(a), Dec. 15, 1989, 103 Stat. 2014; amended Pub. L. 111-203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

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EFFECTIVE DATE

Pub. L. 101-235, title I, §111(b), Dec. 15, 1989, 103 Stat. 2016, provided that: “The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

“(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

“(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date.”

§ 1718. Rules, regulations, and orders

The Director shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this chapter. For the purpose of his rules and regulations, the Director may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

(Pub. L. 90-448, title XIV, §1419, Aug. 1, 1968, 82 Stat. 598; Pub. L. 111-203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

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§ 1719. Jurisdiction of offenses and suits

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this chapter and under the rules and regulations prescribed by the Director pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Director in any proceeding under this chapter brought by or against him in the Supreme Court or such other courts.

(Pub. L. 90-448, title XIV, §1420, Aug. 1, 1968, 82 Stat. 598; Pub. L. 100-628, title X, §1089(b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 111-203, title X, §1098A(1), July 21, 2010, 124 Stat. 2105.)

AMENDMENTS

2010—Pub. L. 111-203 substituted “Director” for “Secretary” in two places.

1988—Pub. L. 100-628 struck out “(a)” after section designation.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1719a. Repealed. Pub. L. 104-66, title I, § 1071(c), Dec. 21, 1995, 109 Stat. 720

Section, Pub. L. 90-448, title XIV, §1421, as added Pub. L. 96-153, title IV, §409, Dec. 21, 1979, 93 Stat. 1132, directed Secretary to submit to Congress biennial reports on administration of this chapter and its impact upon land development industry and purchasers and lessees of undeveloped land.

§ 1720. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90-448, title XIV, §1422, formerly §1421, Aug. 1, 1968, 82 Stat. 599; renumbered §1422, Pub. L. 96-153, title IV, §409, Dec. 21, 1979, 93 Stat. 1132.)

CHAPTER 43—NEWSPAPER PRESERVATION

Sec.

1801. Congressional declaration of policy.