

and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 2437. Civil penalties

#### (a) Assessment of penalties

(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with subsection (b) of this section, to have committed any act prohibited by section 2435 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed \$10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary.

(2) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section, until such time as the matter is referred to the Attorney General under subsection (c) of this section.

#### (b) Hearings

Hearings for the assessment of civil penalties under subsection (a) of this section shall be conducted in accordance with section 554 of title 5. For the purposes of conducting any such hearing, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

#### (c) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of

appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5.

#### (d) Recovery of civil penalties

The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate Court.

#### (e) Penalties under other laws

The assessment of a civil penalty under subsection (a) of this section for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

(Pub. L. 98-623, title III, §308, Nov. 8, 1984, 98 Stat. 3401.)

### § 2438. Criminal offenses

#### (a) Offenses

A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 2435 of this title.

#### (b) Punishment

Any offense described in subsection (a) of this section is punishable by a fine of \$50,000, or imprisonment for not more than ten years, or both.

#### (c) Offenses under other laws

A conviction under subsection (a) of this section for any act shall not be deemed to preclude a conviction for such act under any other law.

(Pub. L. 98-623, title III, §309, Nov. 8, 1984, 98 Stat. 3403.)

### § 2439. Enforcement

#### (a) Responsibility

The provisions of this chapter shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

#### (b) Powers of authorized officers and employees

Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States