

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1152(1), added subsec. (a) and struck out former subsec. (a) which related to grounds for issuance and scope of temporary cease-and-desist orders.

Subsec. (b). Pub. L. 110-289, §1152(2), substituted “director, or entity-affiliated party” for “or director” and “regulated entity” for “enterprise”.

Subsec. (c). Pub. L. 110-289, §1152(3), substituted “regulated entity” for “enterprise” wherever appearing.

Subsec. (d). Pub. L. 110-289, §1152(4), substituted “A regulated entity” for “An enterprise” and “director, or entity-affiliated party” for “or director” in two places.

Subsec. (e). Pub. L. 110-289, §1152(5)(B), which directed the striking of “or may, under the direction and control of the Attorney General, bring such action”, was executed by striking “or may, under the direction and control of the Attorney General, bring such an action” after “such order” to reflect the probable intent of Congress.

Pub. L. 110-289, §1152(5)(A), struck out “request the Attorney General of the United States to” after “Director may”.

§ 4633. Hearings**(a) Requirements****(1) Venue and record**

Any hearing under section 4631, 4636(c), or 4636a of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 or 4636a of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist or removal or prohibition order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order**(1) In general**

After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subchapter.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director

may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102-550, title XIII, §1373, Oct. 28, 1992, 106 Stat. 3989; Pub. L. 110-289, div. A, title I, §1153(b)(1)(B), July 30, 2008, 122 Stat. 2774.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-289, §1153(b)(1)(B)(i), substituted “section 4631, 4636(c), or 4636a of this title” for “section 4631 or 4636(c) of this title”.

Subsec. (a)(2). Pub. L. 110-289, §1153(b)(1)(B)(ii), inserted “or 4636a” after “section 4631”.

Subsec. (a)(4). Pub. L. 110-289, §1153(b)(1)(B)(iii), which directed amendment of par. (4) by inserting “or removal or prohibition” after “cease and desist”, was executed by making the insertion after “cease-and-desist” to reflect the probable intent of Congress.

§ 4634. Judicial review**(a) Commencement**

Any party to a proceeding under section 4631¹ 4513b, 4636, or 4636a of this title may obtain review of any final order issued under this chapter by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102-550, title XIII, §1374, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110-289, div. A, title I, §1153(b)(1)(C), July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XIII of Pub. L.

¹ So in original. Probably should be followed by a comma.

102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289 substituted “4513b, 4636, or 4636a of this title” for “or 4636 of this title” and “this chapter” for “such section”.

§ 4635. Enforcement and jurisdiction

(a) Enforcement

The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subchapter or subchapter II, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619¹ and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, 4513b, 4636, or 4636a of this title, or subchapter II, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102-550, title XIII, §1375, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110-289, div. A, title I, §1154, July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsec. (b), was repealed by Pub. L. 110-289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1154(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subchapter or subchapter II of this chapter or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.”

Subsec. (b). Pub. L. 110-289, §1154(2), substituted “4513b, 4636, or 4636a of this title” for “or 4636 of this title”.

§ 4636. Civil money penalties

(a) In general

The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 4585(a) of this title.

¹ See References in Text note below.

(b) Amount of penalty

(1) First tier

A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which a violation continues, if such regulated entity or party—

(A) violates any provision of this chapter, the authorizing statutes, or any order, condition, rule, or regulation under this chapter or any authorizing statute;

(B) violates any final or temporary order or notice issued pursuant to this chapter;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(D) violates any written agreement between the regulated entity and the Director.

(2) Second tier

Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if—

(A) the regulated entity or entity-affiliated party, respectively—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) the violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to the regulated entity; or

(iii) results in pecuniary gain or other benefit to such party.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

(A) knowingly—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—