

(5) “Knowingly” defined

For purposes of this subsection, the term “knowingly”, when used with respect to any act or omission by any person, means such person—

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(Pub. L. 95–621, title V, § 504, Nov. 9, 1978, 92 Stat. 3401; Pub. L. 101–60, § 3(a)(4), (b)(6), July 26, 1989, 103 Stat. 158, 159; Pub. L. 109–58, title III, § 314(a)(2), (b)(2), Aug. 8, 2005, 119 Stat. 690, 691.)

AMENDMENTS

2005—Subsec. (b)(6)(A). Pub. L. 109–58, § 314(b)(2), substituted “\$1,000,000” for “\$5,000” in cl. (i) and “\$1,000,000” for “\$25,000” in cl. (ii).

Subsec. (c)(1). Pub. L. 109–58, § 314(a)(2)(A), substituted “\$1,000,000” for “\$5,000” in subpar. (A) and “5 years” for “two years” in subpar. (B).

Subsec. (c)(2). Pub. L. 109–58, § 314(a)(2)(B), substituted “\$50,000 for each day on which the offense occurs” for “\$500 for each violation”.

1989—Subsec. (a). Pub. L. 101–60, § 3(b)(6), struck out par. (2) designation and par. (1) making it unlawful to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this chapter.

Subsec. (b). Pub. L. 101–60, § 3(a)(4), substituted “paragraph (2)” for “paragraphs (2) and (3)” in par. (1), struck out par. (3) which related to enforcement of incremental pricing, and substituted “paragraph (1) or (2)” for “paragraph (1), (2), or (3)” in par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 3(b)(6) of Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

§ 3415. Intervention**(a) Authority to intervene****(1) Intervention as matter of right**

The Secretary of Energy may intervene as a matter of right in any proceeding relating to the prorationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.

(2) Enforcement of right to intervene

The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).

(3) Access to information

As an intervenor in a proceeding described in subsection (a), the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.

(b) Access to State courts**(1) Review in State courts**

The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) in the appropriate State court if the Secretary intervened or otherwise

participated in the original proceeding or if State law otherwise permits such review.

(2) Participation as amicus curiae

In addition to his authority to obtain review under paragraph (1), the Secretary may also participate as¹ amicus curiae in any judicial review of any proceeding described in subsection (a)(1).

(Pub. L. 95–621, title V, § 505, Nov. 9, 1978, 92 Stat. 3403.)

§ 3416. Judicial review**(a) Orders****(1) In general**

The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5 (other than an order assessing a civil penalty under section 3414(b)(4) of this title or any order under section 3362 of this title or any order under section 3363 of this title), issued under this chapter and to any final agency action under this chapter required to be made on the record after an opportunity for an agency hearing.

(2) Rehearing

Any person aggrieved by any order issued by the Commission in a proceeding under this chapter to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—

(A) such person shall have made application to the Commission for rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) Authority to modify orders

At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this chapter.

(4) Judicial review

Any person who is a party to a proceeding under this chapter aggrieved by any final order issued by the Commission in such pro-

¹ So in original. Probably should be “as”.

ceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Orders remain effective

The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(b) Review of rules and orders

Except as provided in subsections (a) and (c), judicial review of any rule or order, within the meaning of section 551(4) of title 5, issued under this chapter may be obtained in the United States Court of Appeals for any appropriate cir-

cuit pursuant to the provisions of chapter 7 of title 5, except that the second sentence of section 705 thereof shall not apply.

(c) Judicial review of emergency orders

Except with respect to enforcement of orders or subpoenas under section 3364(a) of this title, the United States Court of Appeals for the Federal Circuit shall have exclusive original jurisdiction to review all civil cases and controversies under section 3361, 3362 or 3363 of this title, including any order issued, or other action taken, under such section. The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 3364(a)(2) of this title; such appeals shall be taken by the filing of a notice of appeal with the United States Court of Appeals for the Federal Circuit within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 3361, 3362, or 3363 of this title.

(Pub. L. 95-621, title V, § 506, Nov. 9, 1978, 92 Stat. 3404; Pub. L. 101-60, § 3(a)(5), July 26, 1989, 103 Stat. 158; Pub. L. 102-572, title I, § 102(b), Oct. 29, 1992, 106 Stat. 4506.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-572 substituted “the United States Court of Appeals for the Federal Circuit” for “the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended,” before “shall have exclusive original jurisdiction” and substituted “United States Court of Appeals for the Federal Circuit” for “Temporary Emergency Court of Appeals” in two places.

1989—Subsec. (d). Pub. L. 101-60 struck out subsec. (d) which related to judicial review of certain incremental pricing determinations.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

§ 3417. Repealed. Pub. L. 101-60, § 3(a)(6), July 26, 1989, 103 Stat. 158

Section, Pub. L. 95-621, title V, § 507, Nov. 9, 1978, 92 Stat. 3406, related to congressional review of Presidential reimposition of maximum lawful prices under section 3332 of this title, congressional reimposition of maximum lawful prices under section 3332 of this title, and congressional disapproval of incremental pricing under section 3342(c) or 3346(d)(2) of this title.

§ 3418. Applicability of other Federal statutory provisions relating to information-gathering

In order to obtain information for the purpose of carrying out its functions under this chapter, the Commission shall have the same authority as is vested in the Secretary under 7151(a) of title 42 with respect to the exercise of authority under section 796(b) of this title and section 772(b), (c), and (d) of this title.

(Pub. L. 95-621, title V, § 508(b), Nov. 9, 1978, 92 Stat. 3408.)