

(2) Any person who possesses, consumes, sells, barter or exchanges, or offers for sale, barter or exchange, any cave resource from a significant cave with knowledge or reason to know that such resource was removed from a significant cave located on Federal lands shall be punished in accordance with subsection (b).

(3) Any person who counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section<sup>1</sup> (b).

(4) Nothing in this section shall be deemed applicable to any person who was in lawful possession of a cave resource from a significant cave prior to November 18, 1988.

**(b) Punishment**

The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with the applicable provisions of title 18, or both. In the case of a second or subsequent violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with the applicable provisions of title 18, or both.

(Pub. L. 100-691, §7, Nov. 18, 1988, 102 Stat. 4549.)

**§ 4307. Civil penalties**

**(a) Assessment**

(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this chapter, any regulation promulgated pursuant to this chapter, or any permit issued under this chapter. Before issuing such an order, the Secretary shall provide such person written notice and the opportunity to request a hearing on the record within 30 days. Each violation shall be a separate offense, even if such violations occurred at the same time.

(2) The amount of such civil penalty shall be determined by the Secretary taking into account appropriate factors, including (A) the seriousness of the violation; (B) the economic benefit (if any) resulting from the violation; (C) any history of such violations; and (D) such other matters as the Secretary deems appropriate. The maximum fine permissible under this section is \$10,000.

**(b) Judicial review**

Any person aggrieved by an assessment of a civil penalty under this section may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation occurred. Such a petition shall be filed within the 30-day period beginning on the date the order assessing the civil penalty was issued.

**(c) Collection**

If any person fails to pay an assessment of a civil penalty—

(1) within 30 days after the order was issued under subsection (a), or

(2) if the order is appealed within such 30-day period, within 10 days after court has entered a final judgment in favor of the Secretary under subsection (b),

the Secretary shall notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount of penalty assessed (plus costs, attorney's fees, and interest at currently prevailing rates from the date the order was issued or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

**(d) Subpoenas**

The Secretary may issue subpoenas in connection with proceedings under this subsection compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

(Pub. L. 100-691, §8, Nov. 18, 1988, 102 Stat. 4550.)

**§ 4308. Miscellaneous provisions**

**(a) Authorization of appropriations**

There are authorized to be appropriated \$100,000 to carry out the purposes of this chapter.

**(b) Effect on land management plans**

Nothing in this chapter shall require the amendment or revision of any land management plan the preparation of which began prior to November 18, 1988.

**(c) Fund**

Any money collected by the United States as permit fees for collection and removal of cave resources; received by the United States as a result of the forfeiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 4306 of this title; or collected by the United States by way of civil penalties or criminal fines for violations of this chapter shall be placed in a special fund in the Treasury. Such moneys shall be available for obligation or expenditure (to the extent provided for in advance in appropriation Acts) as determined by the Secretary for the improved management, benefit, repair, or restoration of significant caves located on Federal lands.

**(d) Existing rights**

Nothing in this chapter shall be deemed to affect the full operation of the mining and mineral leasing laws of the United States, or otherwise affect valid existing rights.

(Pub. L. 100-691, §9, Nov. 18, 1988, 102 Stat. 4550.)

**§ 4309. Savings provision**

**(a) Water**

Nothing in this chapter shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this chapter—

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

<sup>1</sup> So in original. Probably should be "subsection".