

Editorial Notes

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-60 struck out subsec. (d) which directed that any determination made under section 3347(c) of this title be made in accordance with procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case might be).

§ 3413. Repealed. Pub. L. 101-60, § 3(b)(5), July 26, 1989, 103 Stat. 159

Section, Pub. L. 95-621, title V, § 503, Nov. 9, 1978, 92 Stat. 3397, related to various determinations to be made by State or Federal agencies for qualifying under certain categories of natural gas.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1993, see section 3(b) of Pub. L. 101-60, set out as an Effective Date of 1989 Amendment note under section 3372 of this title.

§ 3414. Enforcement**(a) General rule**

It shall be unlawful for any person to violate any provision of this chapter or any rule or order under this chapter.

(b) Civil enforcement**(1) In general**

Except as provided in paragraph (2), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this chapter, or any rule or order thereunder.

(2) Enforcement of emergency orders

Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 3362 of this title or any order or supplemental order issued under section 3363 of this title, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) Repealed. Pub. L. 101-60, § 3(a)(4)(B), July 26, 1989, 103 Stat. 158

(4) Relief available

In any action under paragraph (1) or (2), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

(5) Criminal referral

The Commission may transmit such evidence as may be available concerning any acts

or practices constituting any possible violations of the Federal antitrust laws to the Attorney General who may institute appropriate criminal proceedings.

(6) Civil penalties**(A) In general**

Any person who knowingly violates any provision of this chapter, or any provision of any rule or order under this chapter, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of not more than \$1,000,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than \$1,000,000, in the case of any violation of an order under section 3362 of this title or an order or supplemental order under section 3363 of this title.

(B) “Knowing” defined

For purposes of subparagraph (A) the term “knowing” means the having of—

(i) actual knowledge; or

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

(C) Each day separate violation

For purposes of this paragraph, in the case of a continuing violation, each day of violation shall constitute a separate violation.

(D) Statute of limitations

No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State or Federal agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by, or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) Assessed by Commission

Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, assess¹ such penalty.

(F) Judicial review

If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have au-

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

thority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) Criminal penalties

(1) Violations of chapter

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this chapter shall be subject to—

- (A) a fine of not more than \$1,000,000; or
- (B) imprisonment for not more than 5 years; or
- (C) both such fine and such imprisonment.

(2) Violation of rules or orders generally

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this chapter (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than \$50,000 for each day on which the offense occurs.

(3) Violations of emergency orders

Any person who knowingly and willfully violates an order under section 3362 of this title or an order or supplemental order under section 3363 of this title shall be fined not more than \$50,000 for each violation.

(4) Each day separate violation

For purposes of this subsection, each day of violation shall constitute a separate violation.

(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.)

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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).

Statutory Notes and Related Subsidiaries

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 as an¹ 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

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