

§ 1717. Penalties for violations

Any person who willfully violates any of the provisions of this chapter, or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

(Pub. L. 90-448, title XIV, § 1418, Aug. 1, 1968, 82 Stat. 598; Pub. L. 96-153, title IV, § 408, Dec. 21, 1979, 93 Stat. 1132.)

Editorial Notes**AMENDMENTS**

1979—Pub. L. 96-153 substituted “\$10,000” for “\$5,000”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1979 AMENDMENT**

Amendment by Pub. L. 96-153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96-153, set out as a note under section 1701 of this title.

EFFECTIVE DATE

Section effective upon the expiration of two hundred and seventy days after Aug. 1, 1968, see section 1423 of Pub. L. 90-448, set out as a note under section 1701 of this title.

§ 1717a. Civil money penalties**(a) In general****(1) Authority**

Whenever any person knowingly and materially violates any of the provisions of this chapter or any rule, regulation, or order issued under this chapter, the Director may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Director imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Director, may not exceed \$1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed \$1,000,000. Each violation of this chapter, or any rule, regulation, or order issued under this chapter, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Director, each day shall constitute a separate violation.

(b) Agency procedures**(1) Establishment**

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

(B) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Director reviews the determination or order, the Director may affirm, modify, or reverse that determination or order. If the Director does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Director may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's¹ determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (c).

(c) Judicial review of agency determination**(1) In general**

After exhausting all administrative remedies established by the Director under subsection (b)(1), a person aggrieved by a final order of the Director assessing a penalty under this section may seek judicial review pursuant to section 1710 of this title.

(2) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Director.

(d) Action to collect penalty

If any person fails to comply with the determination or order of the Director imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (b) and (c), the Director may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's¹ determination or order imposing the penalty shall not be subject to review.

¹ So in original. Probably should be “Director’s”.