

TITLE 15 - COMMERCE AND TRADE
CHAPTER 42 - INTERSTATE LAND SALES

§ 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 Secretary 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 Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, 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 Secretary, each day shall constitute a separate violation.

(b) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. 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 Secretary 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 Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary 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) of this section, 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 Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

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

(c) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (b)(1) of this section, a person aggrieved by a final order of the Secretary 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 Secretary.

(d) Action to collect penalty

If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (b) and (c) of this section, the Secretary 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's determination or order imposing the penalty shall not be subject to review.

(e) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) "Knowingly" defined

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(h) Use of penalties for administration

Civil money penalties collected under this section shall be paid to the Secretary and, upon approval in an appropriation Act, may be used by the Secretary to cover all or part of the cost of rendering services under this chapter.

(Pub. L. 90-448, title XIV, § 1418a, as added Pub. L. 101-235, title I, § 111(a), Dec. 15, 1989, 103 Stat. 2014.)

Effective Date

Section 111(b) of Pub. L. 101-235 provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

"(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

"(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date."