

"SEC. 415. CIVIL PENALTIES.**"(a) IN GENERAL.--**

"(1) ACTS SUBJECT TO PENALTY; PENALTY AMOUNT.--Any person that commits an act that violates this Act with respect to food or the Consumer Food Safety Act of 1998 may be assessed a civil penalty by the Secretary of not more than \$100,000 for each such act. Each such act and each day during which such act continues shall be a separate offense.

"(2) NOTICE AND HEARING.--No penalty shall be assessed by the Secretary under this section unless such person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

"(3) OTHER REQUIREMENTS.--The amount of such civil penalty shall be assessed by the Secretary by written order, taking into account the gravity of the violation, degree of culpability, size and type of business, and any history of prior offenses; and may be reviewed only as provided in subsection (b).

*Food Safety
Enforcement*

§ 203(g)(2)(A)

1997 version

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trolled Substances Act for the purposes of forfeiture under section 413 of such Act.

(4) As used in this subsection the term "human growth hormone" means somatrem, somatropin, or an analogue of either of them.

(5) The Drug Enforcement Administration is authorized to investigate offenses punishable by this subsection.

(g)(1)(A) Except as provided in subparagraph (B), any person who violates a requirement of this Act which relates to devices shall be liable to the United States for a civil penalty in an amount not to exceed \$15,000 for each such violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding.

(B) Subparagraph (A) shall not apply—

(i) to any person who violates the requirements of section 519(a) or 520(f) unless such violation constitutes (I) a significant or knowing departure from such requirements, or (II) a risk to public health,

(ii) to any person who commits minor violations of section 519(e) or 519(f) (only with respect to correction reports) if such person demonstrates substantial compliance with such section, or

(iii) to violations of section 501(a)(2)(A) which involve one or more devices which are not defective.

(2)(A) Any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated within the meaning of section 402(a)(1) shall be subject to a civil money penalty of not more than \$50,000 in the case of an individual and \$250,000 in the case of any other person for such introduction or delivery, not to exceed \$500,000 for all such violations adjudicated in a single proceeding.

(B) This paragraph shall not apply to any person who grows the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the criminal authorities under this section to sanction such person for the introduction or delivery for introduction into interstate commerce of the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the seizure authorities of section 304 or the injunction authorities of section 302 with respect to the article of food that is adulterated.

(C) In a hearing to assess a civil penalty under this paragraph, the presiding officer shall have the same authority with regard to compelling testimony or production of documents as a presiding officer has under section 408(g)(2)(B). The third sentence of paragraph (3)(A) shall not apply to any investigation under this paragraph.

(3)(A) A civil penalty under paragraph (1) or (2) shall be assessed by the Secretary by an order made on the record after opportunity for a hearing provided in accordance with this subparagraph and section 554 of title 5, United States Code. Before issuing such an order, the Secretary shall give written notice to the person to be assessed a civil penalty under such order of the Secretary's proposal to issue such order and provide such person an oppor-

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tunity for a hearing. If, after a hearing, the Secretary determines that the violation is willful, the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter.

(B) In determining the civil penalty, the Secretary shall take into account the gravity of the violation, the person's ability to pay, the effect of the violation on the public, and any other matters as justice may require.

(C) The Secretary shall not assess a civil penalty under paragraph (1) or (2) if the person has been convicted of a crime under this Act, or if the person has been convicted of a crime under any other law, or if the person has been convicted of a crime under any other law, or if the person has been convicted of a crime under any other law.

(4) Any person who is aggrieved by a final order of the Secretary may petition for judicial review of such order in any court of appeals for the circuit in which the person is located. Such a petition may be filed on the date the order is issued.

(5) If any person is found to be in violation of this section, the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter.

(A) after the order is issued, and if such order is not appealed, the order shall be final. (B) after a person has entered a final order of the Secretary, the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (C) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (D) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (E) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (F) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (G) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (H) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (I) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (J) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (K) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (L) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (M) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (N) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (O) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (P) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (Q) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (R) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (S) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (T) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (U) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (V) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (W) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (X) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (Y) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter. (Z) the Secretary may, in addition to the civil penalty, suspend or revoke the registration of the person who is liable to the matter.

SEC. 304. [334] That is adulterated (interstate commerce sale) after shipment under the provisions of this Act, shall be subject to seizure and condemnation under this Act, and the article is found under this Act, for any court a libel for upon the same article proceeding shall be

Opinions on Daschle Bill

1. Uncapped punitive and compensatory damages

In favor of uncapped (no caps): Department of Labor, Department of Justice (with the exception that punitives not be available against the Government); EEOC (only view of Commissioner Igasaki); Treasury (as long as no accompanying change to EEO-1 form or collection of wage data)

Against uncapped: CEA { Commerce } SBA

2. Data collection

Problems with current Daschle bill: OMB, Commerce, Treasury

The other agencies had no comment on the data collection.

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