

trator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a) of this section, upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

(Pub. L. 92-574, §10, Oct. 27, 1972, 86 Stat. 1242.)

#### § 4910. Enforcement

##### (a) Criminal penalties

(1) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

##### (b) Separate violations

For the purpose of this section, each day of violation of any paragraph of section 4909(a) of this title shall constitute a separate violation of that section.

##### (c) Actions to restrain violations

The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 4909(a) of this title.

##### (d) Orders issued to protect public health and welfare; notice; opportunity for hearing

(1) Whenever any person is in violation of section 4909(a) of this title, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5.

##### (e) "Person" defined

The term "person," as used in this section, does not include a department, agency, or instrumentality of the United States.

(Pub. L. 92-574, §11, Oct. 27, 1972, 86 Stat. 1242; Pub. L. 95-609, §4, Nov. 8, 1978, 92 Stat. 3081.)

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-609 redesignated existing provisions as par. (1) and added par. (2).

#### § 4911. Citizen suits

##### (a) Authority to commence suits

Except as provided in subsection (b) of this section, any person (other than the United

States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e)<sup>1</sup> of this section), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 44715 of title 49 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

##### (b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 44715 of title 49) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

##### (c) Intervention

In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 44715 of title 49, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

##### (d) Litigation costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including

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