

otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) **STATIONARY SOURCE.**—The term “stationary source” means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, §302, formerly §9, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, §15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95–95, title II, §218(c), title III, §301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95–190, §14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§101(d)(4), 107(a), (b), 108(j), 109(b), title III, §302(e), title VII, §709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

#### CODIFICATION

Section was formerly classified to section 1857h of this title.

#### PRIOR PROVISIONS

Provisions similar to those in subssecs. (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, §6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

#### AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101–549, §107(a)(1), (2), struck out “or” at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101–549, §107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101–549, §108(j)(2), inserted at end “Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ‘air pollutant’ is used.”

Subsec. (h). Pub. L. 101–549, §109(b), inserted before period at end “, whether caused by transformation, conversion, or combination with other air pollutants”.

Subsec. (k). Pub. L. 101–549, §303(e), inserted before period at end “, and any design, equipment, work practice or operational standard promulgated under this chapter.”

Subsec. (q). Pub. L. 101–549, §101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101–549, §107(b), added subsec. (r).  
Subsecs. (s) to (y). Pub. L. 101–549, §108(j)(1), added subssecs. (s) to (y).

Subsec. (z). Pub. L. 101–549, §709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95–95, §218(c), inserted “and includes the Commonwealth of the Northern Mariana Islands” after “American Samoa”.

Subsec. (e). Pub. L. 95–190 substituted “individual, corporation” for “individual corporation”.

Pub. L. 95–95, §301(b), expanded definition of “person” to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95–95, §301(c), expanded definition of “air pollutant” so as, expressly, to include physical, chemical, biological, and radioactive substances or

matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95–95, §301(a), added subssecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91–604, §15(c)(1), substituted definition of “Administrator” as meaning Administrator of the Environmental Protection Agency for definition of “Secretary” as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91–604, §15(a)(1), added subsec. (g) defining “air pollutant”, redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90–148 reenacted section without change.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

### § 7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, §303, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95–95, title III, §302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101–549, title VII, §704, Nov. 15, 1990, 104 Stat. 2681.)

#### CODIFICATION

Section was formerly classified to section 1857h–1 of this title.

#### PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91–604 and is classified to section 7610 of this title.

## AMENDMENTS

1990—Pub. L. 101-549, § 704(2)–(5), struck out subsec. (a) designation before “Notwithstanding any other”, struck out subsec. (b) which related to violation of or failure or refusal to comply with subsec. (a) orders, and substituted new provisions for provisions following first sentence which read as follows: “If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.”

Pub. L. 101-549, § 704(1), which directed that “public health or welfare, or the environment” be substituted for “the health of persons and that appropriate State or local authorities have not acted to abate such sources”, was executed by making the substitution for “the health of persons, and that appropriate State or local authorities have not acted to abate such sources” to reflect the probable intent of Congress.

1977—Pub. L. 95-95 designated existing provisions as subsec. (a), inserted provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter, and added subsec. (b).

## EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

## PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

## MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

## § 7604. Citizen suits

## (a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) shall be provided 180 days before commencing such action.

## (b) Notice

No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil