

any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this chapter for any act or omission occurring before the issuance of notice.

(b) Individual liability of corporate personnel

Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this chapter, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 8432 of this title, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) Repealed. Pub. L. 100-42, §1(c)(18), May 21, 1987, 101 Stat. 313

(d) Federal agencies

The provisions of sections 8432 and 8433 of this title shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

(Pub. L. 95-620, title VII, §721, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(18), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-42 struck out subsec. (c) which read as follows: "No person shall be subject to any penalty under this part with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

"(1) were unavailable for service—

"(A) due to unit or system outages; or

"(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

"(2) have not been operated other than to meet peakload demand."

§ 8432. Criminal penalties

Any person who willfully violates any provision of this chapter, or any rule or order thereunder, shall be subject to a fine of not more than \$50,000, or to imprisonment for not more than one year, or both, for each violation.

(Pub. L. 95-620, title VII, §722, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(19), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Pub. L. 100-42 struck out "(other than section 8372 of this title)" after "this chapter".

§ 8433. Civil penalties

(a) General civil penalty

Any person who violates any provision of this chapter, or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than \$25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) Civil penalty for operation in excess of exemption

In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed \$10 per barrel of petroleum or \$3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(c) Repealed. Pub. L. 100-42, §1(c)(20)(C), May 21, 1987, 101 Stat. 314

(d) Assessment

(1) Before issuing an order assessing a civil penalty against any person under this chapter, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, or of section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(Pub. L. 95-620, title VII, §723, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(20), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(1), was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(20)(A), struck out "(other than section 8372 of this title)" after "this chapter".

Subsec. (b). Pub. L. 100-42, §1(c)(20)(B), (C), struck out "(1)" before "In the case of" and struck out par. (2) which read as follows: "Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed \$10 per barrel of petroleum or \$3 per Mcf of natural gas which was used in excess of that use allowed by such exemption."

Subsec. (c). Pub. L. 100-42, §1(c)(20)(C), struck out subsec. (c) which set forth civil penalties for violation of section 8372 of this title.

§ 8434. Injunctions and other equitable relief

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this chapter, or any rule or order thereunder, a civil action,¹ may be brought, in accordance with section 7192(c) of this title, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

(Pub. L. 95-620, title VII, §724, Nov. 9, 1978, 92 Stat. 3335.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

§ 8435. Citizens suits

(a) General rule

Except as otherwise provided in subsection (b), any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this chapter if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this chapter which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Notice to Secretary or agency head

No action may be commenced under subsection (a) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) Authority of Secretary to intervene

In any action brought under subsection (a), the Secretary, if not a party, may intervene as a matter of right.

¹ So in original. The comma probably should not appear.