

**(d) Procedure for assessing penalty**

(1) Before issuing an order assessing a civil penalty against any person under this section, 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 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 des-

ignated 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.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 6302 of this title, references in such provisions to "Secretary" and "Department of Energy" shall be considered to be references to the "Commission".

(Pub. L. 94-163, title III, §333, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95-619, title IV, §§423, 425(e), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3262, 3266, 3288; Pub. L. 100-12, §11(b)(6), Mar. 17, 1987, 101 Stat. 125; Pub. L. 114-11, title II, §201(3), Apr. 30, 2015, 129 Stat. 189.)

## AMENDMENTS

2015—Subsec. (a). Pub. L. 114-11 substituted "paragraph (5), (6), (7), or (8) of section 6302(a)" for "section 6302(a)(5)" and "paragraph (1), (2), (5), (6), (7), or (8) of section 6302(a)" for "paragraph (1), (2), or (5) of section 6302(a)".

1987—Pub. L. 100-12 inserted headings for subsecs. (a) to (d).

1978—Subsec. (a). Pub. L. 95-619, §§425(e)(1), 691(b)(2), substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing, and "subsection (c)" for "subsection (b)".

Subsec. (c). Pub. L. 95-619, §425(e)(2), substituted "section 6293(c) of this title" for "section 6293(d)(2) of this title" and inserted provision making an exception from the unfair or deceptive act or practice rule.

Subsec. (d). Pub. L. 95-619, §423, added subsec. (d).

**§ 6304. Injunctive enforcement**

The United States district courts shall have jurisdiction to restrain (1) any violation of section 6302 of this title and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 6294 or 6295 of this title. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 6302(a)(3) of this title which relates to requirements prescribed by the Secretary, any violation of section 6302(a)(4) of this title which relates to requests of the Secretary under section 6296(b)(2) of this title, or any violation of paragraph (5), (6), (7), or (8) of section 6302(a) of this title shall be brought by the Secretary. Any such action to restrain any person

from distributing in commerce a general service incandescent lamp that does not comply with the applicable standard established under section 6295(i) of this title or an adapter prohibited under section 6302(a)(7) of this title may also be brought by the attorney general of a State in the name of the State. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(Pub. L. 94-163, title III, §334, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 110-140, title III, §321(f), Dec. 19, 2007, 121 Stat. 1586; Pub. L. 114-11, title II, §201(4), Apr. 30, 2015, 129 Stat. 189.)

#### AMENDMENTS

2015—Pub. L. 114-11 substituted “paragraph (5), (6), (7), or (8) of section 6302(a)” for “section 6302(a)(5)” and “section 6302(a)(7)” for “section 6302(a)(6)”.

2007—Pub. L. 110-140 inserted after second sentence “Any such action to restrain any person from distributing in commerce a general service incandescent lamp that does not comply with the applicable standard established under section 6295(i) of this title or an adapter prohibited under section 6302(a)(6) of this title may also be brought by the attorney general of a State in the name of the State.”

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

### § 6305. Citizen suits

#### (a) Civil actions; jurisdiction

Except as otherwise provided in subsection (b), any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part;

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary; or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 of this title.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Sec-

retary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary’s compliance with future deadlines for the same covered product.

#### (b) Limitation

No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

#### (c) Right to intervene

In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

#### (d) Award of costs of litigation

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

#### (e) Preservation of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

#### (f) Compliance in good faith

For purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this part, then he shall not be deemed to have violated any provision of this part by reason of the alleged invalidity of such rule.

(Pub. L. 94-163, title III, §335, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95-619, title IV, §425(f), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100-12, §§8, 11(b)(7), Mar. 17, 1987, 101 Stat. 122, 126.)

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-12, §8, added par. (3) and inserted at end “The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary’s compliance with future deadlines for the same covered product.”