

(D) personnel data, or

(E) research data (other than data required by this chapter or under a rule promulgated thereunder),

unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) of this section for such inspection.

(c) Subpoenas

In carrying out this chapter, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(Pub. L. 94-469, title I, § 11, Oct. 11, 1976, 90 Stat. 2032; renumbered title I, Pub. L. 99-519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102-550, title X, § 1021(b)(2), (3), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 1021(b)(2), in first sentence, substituted “substances, mixtures, or products subject to subchapter IV of this chapter” for “substances or mixtures” and inserted “such products,” before “or such articles”.

Subsec. (b)(1). Pub. L. 102-550, § 1021(b)(3), substituted “chemical substances, mixtures, or products subject to subchapter IV of this chapter” for “chemical substances or mixtures”.

§ 2611. Exports

(a) In general

(1) Except as provided in paragraph (2) and subsections (b) and (c) of this section, this chapter (other than section 2607 of this title) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 2603 of this

title, testing of any chemical substance or mixture exempted from this chapter by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) Notice

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 2603 or 2604(b) of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 2604 of this title or a rule has been proposed or promulgated under section 2604 or 2605 of this title, or with respect to which an action is pending, or relief has been granted under section 2604 or 2606 of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(c) Prohibition on export of elemental mercury

(1) Prohibition

Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) Inapplicability of subsection (a)

Subsection (a) shall not apply to this subsection.

(3) Report to Congress on mercury compounds

(A) Report

Not later than one year after October 14, 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining

whether to extend the export prohibition to include one or more of these mercury compounds.

(B) Procedure

For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this subchapter, including sections 2609 and 2610 of this title.

(4) Essential use exemption

(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act

under section 2614 of this title, and shall be subject to penalties under section 2615 of this title, injunctive relief under section 2616 of this title, and citizen suits under section 2619 of this title.

(5) Consistency with trade obligations

Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) Export of coal

Nothing in this subsection shall be construed to prohibit the export of coal.

(Pub. L. 94-469, title I, § 12, Oct. 11, 1976, 90 Stat. 2033; renumbered title I, Pub. L. 99-519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 110-414, § 4, Oct. 14, 2008, 122 Stat. 4342.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-414, § 4(1), substituted “subsections (b) and (c)” for “subsection (b)” in introductory provisions.

Subsec. (c). Pub. L. 110-414, § 4(2), added subsec. (c).

FINDINGS

Pub. L. 110-414, § 2, Oct. 14, 2008, 122 Stat. 4341, provided that: “Congress finds that—

“(1) mercury is highly toxic to humans, ecosystems, and wildlife;

“(2) as many as 10 percent of women in the United States of childbearing age have mercury in the blood at a level that could put a baby at risk;

“(3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;

“(4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;

“(5) the Environmental Protection Agency reports that, as of 2004—

“(A) 44 States have fish advisories covering over 13,000,000 lake acres and over 750,000 river miles;

“(B) in 21 States the freshwater advisories are statewide; and

“(C) in 12 States the coastal advisories are statewide;

“(6) the long-term solution to mercury pollution is to minimize global mercury use and releases to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption since uncontaminated fish represents a critical and healthy source of nutrition worldwide;

“(7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);

“(8) the free trade of elemental mercury on the world market, at relatively low prices and in ready supply, encourages the continued use of elemental mercury outside of the United States, often involving highly dispersive activities such as artisanal [probably should be “artisanal”] gold mining;

“(9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;

“(10) the member countries of the European Union collectively are the largest source of elemental mercury exports globally;

“(11) the European Commission has proposed to the European Parliament and to the Council of the Euro-

pean Union a regulation to ban exports of elemental mercury from the European Union by 2011;

“(12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and

“(13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world.”

§ 2612. Entry into customs territory of the United States

(a) In general

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this chapter, or

(B) it is offered for entry in violation of section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or an order issued in a civil action brought under section 2604 of this title, 2606 of this title or subchapter IV of this chapter.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) Rules

The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

(Pub. L. 94-469, title I, §13, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99-519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 100-418, title I, §1214(e)(2), Aug. 23, 1988, 102 Stat.

1156; Pub. L. 102-550, title X, §1021(b)(4), Oct. 28, 1992, 106 Stat. 3923.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102-550 substituted “section 2604 of this title, 2605 of this title, or subchapter IV of this chapter” for “section 2604 or 2605 of this title” in two places and “section 2604 of this title, 2606 of this title or subchapter IV of this chapter” for “section 2604 or 2606 of this title”.

1988—Subsec. (a)(1). Pub. L. 100-418 substituted “general note 2 of the Harmonized Tariff Schedule of the United States” for “general headnote 2 to the Tariff Schedules of the United States” in introductory text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

§ 2613. Disclosure of data

(a) In general

Except as provided by subsection (b) of this section, any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this chapter, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

(1) shall be disclosed to any officer or employee of the United States—

(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or

(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after October 11, 1976, for the performance of work in connection with this chapter and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this chapter, except that disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under section 552(a) of title 5 to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on