

AMENDMENTS

1986—Par. (1)(D). Pub. L. 99-519 added cl. (D).

§ 2615. Penalties**(a) Civil**

(1) Any person who violates a provision of section 2614 or 2689 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title.

(2)(A) A civil penalty for a violation of section 2614 or 2689 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action,

the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

Any person who knowingly or willfully violates any provision of section 2614 or 2689 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than one year, or both.

(Pub. L. 94-469, title I, §16, Oct. 11, 1976, 90 Stat. 2037; 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)(5), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsecs. (a)(1), (2)(A), (b). Pub. L. 102-550 substituted "section 2614 or 2689 of this title" for "section 2614 of this title" wherever appearing.

§ 2616. Specific enforcement and seizure**(a) Specific enforcement**

(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 2614 or 2689 of this title,

(B) restrain any person from taking any action prohibited by section 2604 of this title, 2605 of this title, or subchapter IV, or by a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV,

(C) compel the taking of any action required by or under this chapter, or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to subchapter IV manufactured or processed in violation of section 2604 of this title, 2605 of this title, or subchapter IV, or a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 2614 of this title occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which

a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) Seizure

Any chemical substance, mixture, or product subject to subchapter IV which was manufactured, processed, or distributed in commerce in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel, for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 94-469, title I, §17, Oct. 11, 1976, 90 Stat. 2037; 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)(6), (7), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, §1021(b)(6), which directed that subsec. (a) be amended “to read as follows” and then set out the subsec. (a) designation and heading, followed by the par. (1) designation and text, without any restatement of par. (2), was executed as a general amendment of par. (1) only, to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: “The district courts of the United States shall have jurisdiction over civil actions to—

“(A) restrain any violation of section 2614 of this title,

“(B) restrain any person from taking any action prohibited by section 2604 or 2605 of this title or by a rule or order under section 2604 or 2605 of this title,

“(C) compel the taking of any action required by or under this chapter, or

“(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 2604 or 2605 of this title or a rule or order under section 2604 or 2605 of this title and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.”

Subsec. (b). Pub. L. 102-550, §1021(b)(7), in first sentence substituted “substance, mixture, or product subject to subchapter IV” for “substance or mixture” and inserted “product,” before “or article” in two places.

§ 2617. Preemption

(a) Effect on State law

(1) Except as provided in paragraph (2), nothing in this chapter shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b)—

(A) if the Administrator requires by a rule promulgated under section 2603 of this title the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish

or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 7401 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) Exemption

Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2), under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this chapter described in subsection (a)(2), and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this chapter described in subsection (a)(2) and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

(Pub. L. 94-469, title I, §18, Oct. 11, 1976, 90 Stat. 2038; renumbered title I, Pub. L. 99-519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

§ 2618. Judicial review

(a) In general

(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e), or 2607 of this title, or under subchapter II or IV, any person may file a petition for judicial review of