

**(5) Notice and comment**

Except in the case of an application approved under paragraph (9), the application of a State or political subdivision of a State under this subsection shall be subject to public notice and comment.

**(6) Final agency action**

The decision of the Administrator on the application of a State or political subdivision of a State shall be—

- (A) considered to be a final agency action; and
- (B) subject to judicial review.

**(7) Duration of waivers**

A waiver granted under paragraph (2) or approved under paragraph (9) shall remain in effect until such time as the Administrator publishes the risk evaluation under section 2605(b) of this title.

**(8) Judicial review of waivers**

Not later than 60 days after the date on which the Administrator makes a determination on an application of a State or political subdivision of a State under paragraph (1) or (2), any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

**(9) Approval****(A) Automatic approval**

If the Administrator fails to meet the deadline established under paragraph (3)(B), the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved, effective on the date that is 10 days after the deadline.

**(B) Requirements**

Notwithstanding paragraph (6), approval of a waiver application under subparagraph (A) for failure to meet the deadline under paragraph (3)(B) shall not be considered final agency action or be subject to judicial review or public notice and comment.

**(g) Savings****(1) No preemption of common law or statutory causes of action for civil relief or criminal conduct****(A) In general**

Nothing in this chapter, nor any amendment made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any standard, rule, requirement, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this chapter, shall be construed to preempt, displace, or supplant any State or Federal common law rights or any State or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

**(B) Clarification of no preemption**

Notwithstanding any other provision of this chapter, nothing in this chapter, nor any amendments made by the Frank R. Lau-

tenberg Chemical Safety for the 21st Century Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

**(2) No effect on private remedies****(A) In general**

Nothing in this chapter, nor any amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any rules, regulations, requirements, risk evaluations, scientific assessments, or orders issued pursuant to this chapter shall be interpreted as, in either the plaintiff's or defendant's favor, dispositive in any civil action.

**(B) Authority of courts**

This chapter does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this chapter or rules, regulations, requirements, standards of performance, risk evaluations, scientific assessments, or orders issued pursuant to this chapter.

(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; amended Pub. L. 114-182, title I, § 13, June 22, 2016, 130 Stat. 492.)

## REFERENCES IN TEXT

Section 2605(b)(4)(D) of this title, referred to in subsec. (a)(1)(B)(i), (ii), was in the original "section (6)(b)(4)(D)", and was translated as meaning section 6(b)(4)(D) of title I of Pub. L. 94-469 to reflect the probable intent of Congress.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act, referred to in subsecs. (d)(1)(A), (2) and (g)(1), (2)(A), is Pub. L. 114-182, June 22, 2016, 130 Stat. 492. The effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act probably means the date of the enactment of the Act, which was approved June 22, 2016. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 2601 of this title and Tables.

## AMENDMENTS

2016—Subsec. (a). Pub. L. 114-182, § 13(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to effect of chapter on State law.

Subsec. (b). Pub. L. 114-182, § 13(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to exemption from required testing of chemical substances or mixtures.

Subsecs. (c) to (g). Pub. L. 114-182, § 13(3), added subsecs. (c) to (g).

## EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94-469, set out as a note under section 2601 of this title.

**§ 2618. Judicial review****(a) In general**

(1)(A) Except as otherwise provided in this subchapter, not later than 60 days after the date

on which a rule is promulgated under this subchapter, subchapter II, or subchapter IV, or the date on which an order is issued under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title,<sup>1</sup> any person may file a petition for judicial review of such rule or order with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule or order if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Except as otherwise provided in this subchapter, courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under this subchapter, other than an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(C)(i) Not later than 60 days after the publication of a designation under section 2605(b)(1)(B)(ii) of this title, any person may commence a civil action to challenge the designation.

(ii) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28 shall apply to the filing of the record of proceedings on which the Administrator based the rule or order being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

**(b) Additional submissions and presentations; modifications**

If in an action under this section to review a rule, or an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule or order and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule or order being reviewed or make a new rule or order by reason of the additional submissions and presentations and shall file such modified or new rule or order with the return of such submissions and presentations. The court shall thereafter review such new or modified rule or order.

<sup>1</sup> So in original.

**(c) Standard of review**

(1)(A) Upon the filing of a petition under subsection (a)(1) for judicial review of a rule or order, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, and (ii) except as otherwise provided in subparagraph (B), to review such rule or order in accordance with chapter 7 of title 5.

(B) Section 706 of title 5 shall apply to review of a rule or order under this section, except that—

(i) in the case of review of—

(I) a rule under section 2603(a), 2604(b)(4), 2605(a) (including review of the associated determination under section 2605(b)(4)(A)), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record taken as a whole; and

(II) an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such order if the court finds that the order is not supported by substantial evidence in the record taken as a whole; and

(ii) the court may not review the contents and adequacy of any statement of basis and purpose required by section 553(c) of title 5 to be incorporated in the rule or order, except as part of the record, taken as a whole.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule or order reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

**(d) Fees and costs**

The decision of the court in an action commenced under subsection (a), or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

**(e) Other remedies**

The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 94-469, title I, § 19, Oct. 11, 1976, 90 Stat. 2039; renumbered title I and amended Pub. L. 99-519, § 3(b)(2), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102-550, title X, § 1021(b)(8), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114-182, title I, §§ 14, 19(m), June 22, 2016, 130 Stat. 498, 508.)

AMENDMENTS

2016—Subsec. (a)(1)(A). Pub. L. 114-182, § 19(m)(1)(A), substituted “Except as otherwise provided in this subchapter, not later than 60 days after the date on which a rule is promulgated under this subchapter, subchapter II, or subchapter IV, or the date on which an order is issued under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title,” for “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", "such rule or order" for "such rule", and "such a rule or order" for "such a rule".

Subsec. (a)(1)(B). Pub. L. 114-182, §19(m)(1)(B), substituted "Except as otherwise provided in this subchapter, courts" for "Courts" and "this subchapter, other than an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title," for "subparagraph (A) or (B) of section 2605(b)(1) of this title".

Subsec. (a)(1)(C). Pub. L. 114-182, §14(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 114-182, §19(m)(1)(C), substituted "record" for "rulemaking record" and "based the rule or order" for "based the rule".

Subsec. (a)(3). Pub. L. 114-182, §14(2), struck out par. (3) which defined "rulemaking record".

Subsec. (b). Pub. L. 114-182, §19(m)(2), substituted "review a rule, or an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title," for "review a rule", "such rule or order" for "such rule", "the rule or order" for "the rule", "new rule or order" for "new rule" in two places, and "modified rule or order" for "modified rule".

Subsec. (c)(1)(A). Pub. L. 114-182, §19(m)(3)(A)(i), substituted "a rule or order" for "a rule" and "such rule or order" for "such rule".

Subsec. (c)(1)(B). Pub. L. 114-182, §19(m)(3)(A)(ii)(I), substituted "a rule or order" for "a rule" in introductory provisions.

Pub. L. 114-182, §19(m)(3)(A)(ii)(III), struck out concluding provisions which read as follows: "The term 'evidence' as used in clause (i) means any matter in the rulemaking record."

Subsec. (c)(1)(B)(i). Pub. L. 114-182, §19(m)(3)(A)(ii)(II), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "in the case of review of a rule under section 2603(a), 2604(b)(4), 2605(a), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;"

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 114-182, §19(m)(3)(A)(ii)(III), added cl. (ii) and struck out former cls. (ii) and (iii) which related to review of rules under section 2605(a) of this title and statements not subject to court review, respectively.

Subsec. (c)(1)(C). Pub. L. 114-182, §19(m)(3)(A)(iii), struck out subpar. (C) which read as follows: "A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph."

Subsec. (c)(2). Pub. L. 114-182, §19(m)(3)(B), substituted "any rule or order" for "any rule".

1992—Subsec. (a)(1)(A). Pub. L. 102-550, §1021(b)(8)(A), substituted "subchapter II or IV" for "subchapter II".

Subsec. (a)(3)(B). Pub. L. 102-550, §1021(b)(8)(B), inserted before semicolon at end "and in the case of a rule under subchapter IV, the finding required for the issuance of such a rule".

1986—Subsec. (a)(1)(A). Pub. L. 99-519 inserted reference to subchapter II of this chapter.

#### EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94-469, set out as a note under section 2601 of this title.

### § 2619. Citizens' civil actions

#### (a) In general

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

- (1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the ex-

tent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title, or subchapter II or IV, or order issued under section 2603 or 2604 of this title or subchapter II or IV to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

#### (b) Limitation

No civil action may be commenced—

(1) under subsection (a)(1) to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2615(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action;

(2) under subsection (a)(2) before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification, except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 2617(f)(3)(B) of this title; or

(3) in the case of a civil action brought to compel a decision by the Administrator pursuant to section 2617(f)(3)(B) of this title, after