

essed 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

§ 2617. Preemption

(a) In general

(1) Establishment or enforcement

Except as otherwise provided in subsections (c), (d), (e), (f), and (g), and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

(A) Development of information

A statute or administrative action to require the development of information about a chemical substance or category of chemical substances that is reasonably likely to produce the same information required under section 2603, 2604, or 2605 of this title in—

(i) a rule promulgated by the Administrator;

(ii) a consent agreement entered into by the Administrator; or

(iii) an order issued by the Administrator.

(B) Chemical substances found not to present an unreasonable risk or restricted

A statute, criminal penalty, or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance—

(i) for which the determination described in section 2605(i)(1) of this title is made, consistent with the scope of the risk evaluation under section 2605(b)(4)(D)¹ of this title; or

(ii) for which a final rule is promulgated under section 2605(a) of this title, after the effective date of the rule issued under section 2605(a) of this title for the chemical substance, consistent with the scope of the risk evaluation under section 2605(b)(4)(D)¹ of this title.

(C) Significant new use

A statute or administrative action requiring the notification of a use of a chemical

¹ See References in Text note below.

substance that the Administrator has specified as a significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 2604 of this title.

(2) Effective date of preemption

Under this subsection, Federal preemption of statutes and administrative actions applicable to specific chemical substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

(b) New statutes, criminal penalties, or administrative actions creating prohibitions or other restrictions

(1) In general

Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title and ending on the date on which the deadline established pursuant to section 2605(b)(4)(G) of this title for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 2605(b)(4)(C) of this title, whichever is earlier, no State or political subdivision of a State may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under section 2605(b)(1)(B)(i) of this title.

(2) Effect of subsection

This subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any statute enacted, criminal penalty assessed, or administrative action taken, prior to the date on which the Administrator defines and publishes the scope of a risk evaluation under section 2605(b)(4)(D) of this title.

(c) Scope of preemption

Federal preemption under subsections (a) and (b) of statutes, criminal penalties, and administrative actions applicable to specific chemical substances shall apply only to—

(1) with respect to subsection (a)(1)(A), the chemical substances or category of chemical substances subject to a rule, order, or consent agreement under section 2603, 2604, or 2605 of this title;

(2) with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 2605(b)(4)(D) of this title;

(3) with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 2605(a) or 2605(i)(1) of this title; or

(4) with respect to subsection (a)(1)(C), the uses of such chemical substances that the Administrator has specified as significant new

uses and for which the Administrator has required notification pursuant to a rule promulgated under section 2604 of this title.

(d) Exceptions

(1) No preemption of statutes and administrative actions

(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 rule, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this chapter, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, risk evaluation, scientific assessment, or any other protection for public health or the environment that—

(i) is adopted or authorized under the authority of any other Federal law or adopted to satisfy or obtain authorization or approval under any other Federal law;

(ii) implements a reporting, monitoring, or other information obligation for the chemical substance not otherwise required by the Administrator under this chapter or required under any other Federal law;

(iii) is adopted pursuant to authority under a law of the State or political subdivision of the State related to water quality, air quality, or waste treatment or disposal, except to the extent that the action—

(I) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

(II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the risk evaluation published pursuant to section 2605(b)(4)(D) of this title, but is inconsistent with the action of the Administrator; or

(bb) would cause a violation of the applicable action by the Administrator under section 2604 or 2605 of this title; or

(iv) subject to subparagraph (B), is identical to a requirement prescribed by the Administrator.

(B) Identical requirements

(i) In general

The penalties and other sanctions applicable under a law of a State or political subdivision of a State in the event of non-compliance with the identical requirement shall be no more stringent than the penalties and other sanctions available to the Administrator under section 2615 of this title.

(ii) Penalties

In the case of an identical requirement—

(I) a State or political subdivision of a State may not assess a penalty for a specific violation for which the Administrator has assessed an adequate penalty under section 2615 of this title; and

(II) if a State or political subdivision of a State has assessed a penalty for a specific violation, the Administrator may not assess a penalty for that violation in an amount that would cause the total of the penalties assessed for the violation by the State or political subdivision of a State and the Administrator combined to exceed the maximum amount that may be assessed for that violation by the Administrator under section 2615 of this title.

(2) Applicability to certain rules or orders

(A) Prior rules and orders

Nothing in this section shall be construed as modifying the preemptive effect under this section, as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued under this chapter prior to that effective date.

(B) Certain chemical substances and mixtures

With respect to a chemical substance or mixture for which any rule or order was promulgated or issued under section 2605 of this title prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act with respect to manufacturing, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, nothing in this section shall be construed as modifying the preemptive effect of this section as in effect prior to the enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act of any rule or order that is promulgated or issued with respect to such chemical substance or mixture under section 2605 of this title after that effective date, unless the latter rule or order is with respect to a chemical substance or mixture containing a chemical substance and follows a designation of that chemical substance as a high-priority substance under section 2605(b)(1)(B)(i) of this title, the identification of that chemical substance under section 2605(b)(2)(A) of this title, or the selection of that chemical substance for risk evaluation under section 2605(b)(4)(E)(iv)(II) of this title.

(e) Preservation of certain laws

(1) In general

Nothing in this chapter, subject to subsection (g) of this section, shall—

(A) be construed to preempt or otherwise affect the authority of a State or political subdivision of a State to continue to enforce any action taken or requirement imposed or requirement enacted relating to a specific chemical substance before April 22, 2016, under the authority of a law of the State or political subdivision of the State that prohibits or otherwise restricts manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance; or

(B) be construed to preempt or otherwise affect any action taken pursuant to a State law that was in effect on August 31, 2003.

(2) Effect of subsection

This subsection does not affect, modify, or alter the relationship between Federal law and laws of a State or political subdivision of a State pursuant to any other Federal law.

(f) Waivers

(1) Discretionary exemptions

Upon application of a State or political subdivision of a State, the Administrator may, by rule, exempt from subsection (a), under such conditions as may be prescribed in the rule, a statute, criminal penalty, or administrative action of that State or political subdivision of the State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A) compelling conditions warrant granting the waiver to protect health or the environment;

(B) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(C) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(D) in the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is designed to address a risk of a chemical substance, under the conditions of use, that was identified—

(i) consistent with the best available science;

(ii) using supporting studies conducted in accordance with sound and objective scientific practices; and

(iii) based on the weight of the scientific evidence.

(2) Required exemptions

Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A)(i) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(ii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iii) the State or political subdivision of the State has a concern about the chemical substance or use of the chemical substance based in peer-reviewed science; or

(B) no later than the date that is 18 months after the date on which the Administrator has initiated the prioritization proc-

ess for a chemical substance under the rule promulgated pursuant to section 2605(b)(1)(A) of this title, or the date on which the Administrator publishes the scope of the risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title, whichever is sooner, the State or political subdivision of the State has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance.

(3) Determination of a waiver request

The duty of the Administrator to grant or deny a waiver application shall be nondelegable and shall be exercised—

(A) not later than 180 days after the date on which an application under paragraph (1) is submitted; and

(B) not later than 110 days after the date on which an application under paragraph (2) is submitted.

(4) Failure to make a determination

If the Administrator fails to make a determination under paragraph (3)(B) during the 110-day period beginning on the date on which an application under paragraph (2) is submitted, the statute or administrative action of the State or political subdivision of the State that was the subject of the application shall not be considered to be an existing statute or administrative action for purposes of subsection (b) by reason of the failure of the Administrator to make a determination.

(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. Lautenberg 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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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,¹ 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.

(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

¹ So in original.