

LEXSTAT 15 USC @ 2607

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TITLE 15. COMMERCE AND TRADE

CHAPTER 53. TOXIC SUBSTANCES CONTROL

CONTROL OF TOXIC SUBSTANCES

***GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION***

15 USCS § 2607 (2003)

§ 2607. Reporting and retention of information

(a) Reports.

(1) The Administrator shall promulgate rules under which--

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process--

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this Act [*15 USCS § § 2601 et seq.*].

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this Act [*15 USCS § § 2601 et seq.*]. For purposes of the compilation of the list of chemical substances required under subsection (b), the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after the effective date of this Act [*15 USCS § 2601 effective date note*].

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing data concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.

(3) (A) (i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b).

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture--

(I) subject to a rule proposed or promulgated under section 4, 5(b)(4), or 6 [*15 USCS § 2603, 2604(b)(4), or 2605*], or an order in effect under section 5(e) [*15 USCS § 2604(e)*], or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 5 or 7 [*15 USCS § 2604 or 2606*],

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(b) Inventory.

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 5 [*15 USCS § 2604*] or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1). In the case of a chemical substance for which a notice is submitted in accordance with section 5 [*15 USCS § 2604*], such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after the effective date of this Act [see effective date note to *15 USCS § 2601*]. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this Act [*15 USCS § § 2601 et seq.*], the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) Records. Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies. The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator--

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person; or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this Act [*15 USCS § § 2601 et seq.*]; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks. Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) "Manufacture" and "process" defined. For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

HISTORY: (Oct. 11, 1976, P.L. 94-469, § 8, 90 Stat. 2027.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 11, 1976, § 31, 90 Stat. 2051, which appears as *15 USCS § 2601* note, provided that this section shall take effect on Jan. 1, 1977.

Other provisions:

Asbestos Information Act of 1988. Act Oct. 31, 1988, P.L. 100-577, § § 1-4, 102 Stat. 2901, provides:

"Section 1. Short title

"This Act may be cited as the 'Asbestos Information Act of 1988'.

"Sec. 2. Submission of information by manufacturers

"Within 90 days after the date of the enactment of this Act, any person who manufactured or processed, before the date of the enactment of this Act, asbestos or asbestos-containing material that was prepared for sale for use as surfacing material, thermal system insulation, or miscellaneous material in buildings (or whose corporate predecessor manufactured or processed such asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the types or classes of product, and, to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material. Such person also may submit to the Administrator protocols for samples of asbestos and asbestos-containing material.

"Sec. 3. Publication of information

"Within 30 days after the date of the enactment of this Act, the Administrator shall publish a notice in the Federal Register that explains how, when, and where the information specified in section 2 is to be submitted. The Administrator shall receive and organize the information submitted under section 2 and, within 180 days after the date of the enactment of this Act, shall publish the information. In carrying out this section, the Administrator may not--

"(1) review the information submitted under section 2 for accuracy, or

"(2) analyze such information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

"Sec. 4. Definitions

"In this Act:

"(1) The term 'asbestos' means--

"(A) chrysotile, amosite, or crocidolite, or

"(B) in fibrous form, tremolite, anthophyllite, or actinolite.

"(2) The term 'asbestos-containing material' means any material containing more than one percent asbestos by weight.

"(3) The term 'identifying characteristics' means a description of asbestos or asbestos-containing material, including-

"(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both),

"(B) the types or classes of the product in which the asbestos or material is contained,

"(C) the designs, patterns, or textures of the product in which the asbestos or material is contained, and

"(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos-containing material.

"(4) The term 'miscellaneous material' means building material on structural components, structural members, or fixtures, such as floor and ceiling tiles. The term does not include surfacing material or thermal system insulation.

"(5) The term 'protocol' means any procedure for taking, handling, and preserving samples of asbestos and asbestos-containing material and for testing and analyzing such samples for the purpose of determining the person who manufactured or processed for sale such samples and the identifying characteristics of such samples.

"(6) The term 'surfacing material' means material in a building that is sprayed on surfaces, troweled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members.

"(7) The term 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes."

#### NOTES:

#### CODE OF FEDERAL REGULATIONS

#### Add:

40 CFR Part 745

#### CROSS REFERENCES

This section is referred to in *15 USCS § § 2602, 2604, 2611, 2618, 2620.*

#### RESEARCH GUIDE

#### Am Jur:

61A Am Jur 2d, Pollution Control § 290.

61C Am Jur 2d, Pollution Control § § 1677, 1679.

63B Am Jur 2d, Products Liability § 74.

#### Law Review Articles:

Hanan. Pushing the environmental regulatory focus a step back: controlling the introduction of new chemicals under the Toxic Substances Control Act. *18 Am JL & Med* 395, 1992.

Phillips. Are Trade Secrets Dead? The Effect Of The Toxic Substances Control Act And The Freedom Of Information Act On Trade Secrets. *62 J POS* 652, November, 1980.

Florio. Federalism issues related to the probable emergence of the Toxic Substances Control Act. *54 Md L Rev* 1354, 1995.

Caruso. Protection of Trade Secrets Under the Toxic Substances Control Act. *7 Rutgers J Computers Tech & L* 213, 1979.

Control of Toxic Substances: The Attempt to Harmonize the Notification Requirements of the U.S. Toxic Substances Control Act and the European Community Sixth Amendment. *20 Va J Int L* 414, Winter, 1980.

#### INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Construction
3. Miscellaneous

#### 1. Generally

Administrator of EPA may obtain copies of studies in possession of reporting company regarding all Interagency Testing Committee recommended substances, even if reporting company does not manufacture, process, or distribute

chemical that is subject of study. *Dow Chemical Co. v United States Environmental Protection Agency (1979, CA3) 605 F2d 673, 9 ELR 20640.*

## 2. Construction

Courts need not defer to agency's determination of extent of its authority where resolution of statutory construction is largely unrelated to agency's expertise in regulating possibly toxic substances or nature of its administrative process because court is as qualified as EPA in determining its information-gathering authority, is more disinterested, and construction issue does not relate directly to subject matter that EPA is regulating. *Dow Chemical Co. v United States Environmental Protection Agency (1979, CA3) 605 F2d 673, 9 ELR 20640.*

## 3. Miscellaneous

EPA is authorized to seek information from chemical company concerning manufacture of small quantities of chemicals that company does not propose to offer in commerce, but will use solely for purposes of product research and development because such manufacture is "for commercial purposes." *Dow Chemical Co. v United States Environmental Protection Agency (1979, CA3) 605 F2d 673, 9 ELR 20640.*