

§ 2064. Substantial product hazards**(a) “Substantial product hazard” defined**

For purposes of this section, the term “substantial product hazard” means—

(1) a failure to comply with an applicable consumer product safety rule under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer

Every manufacturer of a consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 2058 of this title;

(2) fails to comply with any other rule, regulation, standard, or ban under this chapter or any other Act enforced by the Commission;

(3) contains a defect which could create a substantial product hazard described in subsection (a)(2) of this section; or

(4) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk. A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead.

(c) Notice of defect or failure to comply; mail notice

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(A) To cease distribution of the product.

(B) To notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product.

(C) To notify appropriate State and local public health officials.

(D) To give public notice of the defect or failure to comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.

(E) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(F) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(2) The Commission may require a notice described in paragraph (1) to be distributed in a language other than English if the Commission determines that doing so is necessary to adequately protect the public.

(3) If a district court determines, in an action filed under section 2061 of this title, that the product that is the subject of such action is not an imminently hazardous consumer product, the Commission shall rescind any order issued under this subsection with respect to such product.

(d) Repair; replacement; refunds; action plan

(1) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to provide the notice required by subsection (c) and to take any one or more of the following actions it determines to be in the public interest:

(A) To bring such product into conformity with the requirements of the applicable rule, regulation, standard, or ban or to repair the defect in such product.

(B) To replace such product with a like or equivalent product which complies with the applicable rule, regulation, standard, or ban or which does not contain the defect.

(C) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (i) at the time of public notice under subsection (c) of this section, or (ii) at the time the consumer receives actual notice of the defect or non-compliance, whichever first occurs).

(2) An order under this subsection shall also require the person to whom it applies to submit a plan, for approval by the Commission, for taking action under whichever of the preceding subparagraphs under which such person has been ordered to act. The Commission shall specify in the order the persons to whom refunds must be made if the Commission orders the action described in subparagraph (C).¹ An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(3)(A) If the Commission approves an action plan, it shall indicate its approval in writing.

(B) If the Commission finds that an approved action plan is not effective or appropriate under the circumstances, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, the Commission may, by order, amend, or require amendment of, the action plan. In determining whether an approved plan is effective or appropriate under the circumstances, the Commission shall consider whether a repair or replacement changes the intended functionality of the product.

(C) If the Commission determines, after notice and opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission may revoke its approval of the action plan. The manufacturer, retailer, or distributor to which the action plan applies may not distribute in commerce the product to which the action plan relates after receipt of notice of a revocation of the action plan.

(e) Reimbursement

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) of this section with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) Hearing

(1) Except as provided in paragraph (2), an order under subsection (c) or (d) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5

except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.

(2) The requirement for a hearing in paragraph (1) shall not apply to an order issued under subsection (c) or (d) relating to an imminently hazardous consumer product with regard to which the Commission has filed an action under section 2061 of this title.

(g) Preliminary injunction

(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) of this section with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 2076(b)(7) of this title) or the Attorney General may, in accordance with section 2061(d)(1) of this title, apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28 does not apply with respect to the jurisdiction of a district court of the United States to issue or extend² a preliminary injunction under this subsection.

(h) Cost-benefit analysis of notification or other action not required

Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

¹ So in original. Probably should be "paragraph (1)(C)."

² So in original. Probably should be "extend".

(i) Requirements for recall notices**(1) Guidelines**

Not later than 180 days after August 14, 2008, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required under an order under subsection (c) or (d) of this section or under section 2061 of this title. Such guidelines shall include any information that the Commission determines would be helpful to consumers in—

(A) identifying the specific product that is subject to such an order;

(B) understanding the hazard that has been identified with such product (including information regarding incidents or injuries known to have occurred involving such product); and

(C) understanding what remedy, if any, is available to a consumer who has purchased the product.

(2) Content

Except to the extent that the Commission determines with respect to a particular product that one or more of the following items is unnecessary or inappropriate under the circumstances, the notice shall include the following:

(A) description of the product, including—

(i) the model number or stock keeping unit (SKU) number of the product;

(ii) the names by which the product is commonly known; and

(iii) a photograph of the product.

(B) A description of the action being taken with respect to the product.

(C) The number of units of the product with respect to which the action is being taken.

(D) A description of the substantial product hazard and the reasons for the action.

(E) An identification of the manufacturers and significant retailers of the product.

(F) The dates between which the product was manufactured and sold.

(G) The number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths.

(H) A description of—

(i) any remedy available to a consumer;

(ii) any action a consumer must take to obtain a remedy; and

(iii) any information a consumer needs in order to obtain a remedy or information about a remedy, such as mailing addresses, telephone numbers, fax numbers, and email addresses.

(I) Other information the Commission deems appropriate.

(j) Substantial product hazard list**(1) In general**

The Commission may specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product

hazard under subsection (a)(2), if the Commission determines that—

(A) such characteristics are readily observable and have been addressed by voluntary standards; and

(B) such standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.

(2) Judicial review

Not later than 60 days after promulgation of a rule under paragraph (1), any person adversely affected by such rule may file a petition for review under the procedures set forth in section 2060 of this title.

(Pub. L. 92-573, §15, Oct. 27, 1972, 86 Stat. 1221; Pub. L. 94-284, §12(a), May 11, 1976, 90 Stat. 508; Pub. L. 97-35, title XII, §1211(h)(4), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97-414, §9(j)(3), (m), Jan. 4, 1983, 96 Stat. 2064, 2065; Pub. L. 100-418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §§111(a)(2), 112(a), 113, Nov. 16, 1990, 104 Stat. 3114, 3115, 3117; Pub. L. 110-314, title II, §§214, 223(a), Aug. 14, 2008, 122 Stat. 3052, 3068.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d)(2), 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

2008—Subsec. (a)(1). Pub. L. 110-314, §214(a)(1), inserted “under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission” after “consumer product safety rule”.

Subsec. (b). Pub. L. 110-314, §214(a)(2)(B)–(D), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and inserted “A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead.” at end of concluding provisions.

Pub. L. 110-314, §214(a)(2)(A), substituted “consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce,” for “consumer product distributed in commerce,” in introductory provisions.

Subsec. (c). Pub. L. 110-314, §214(a)(3)(A), (C), (D), designated existing provisions as par. (1), added subpars. (A) to (C), and redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively.

Subsec. (c)(1). Pub. L. 110-314, §214(a)(3)(B), inserted “or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title,” after “such substantial product hazard,” in introductory provisions.

Subsec. (c)(1)(D). Pub. L. 110-314, §214(a)(3)(E), substituted “comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.” for “comply.”

Subsec. (c)(2), (3). Pub. L. 110-314, §214(a)(3)(F), added pars. (2) and (3).

Subsec. (d). Pub. L. 110-314, §214(b)(1), (4), inserted par. (1) designation before “If the Commission” and re-

designated former pars. (1) to (3) as subpars. (A) to (C), respectively.

Subsec. (d)(1). Pub. L. 110-314, § 214(b)(2), (3), in introductory provisions inserted “to provide the notice required by subsection (c) and” after “such product” and substituted “any one or more of the following actions it determines to be in the public interest:” for “whichever of the following actions the person to whom the order is directed elects:”.

Subsec. (d)(1)(A), (B). Pub. L. 110-314, § 214(b)(5), substituted “rule, regulation, standard, or ban” for “consumer product safety rule”.

Subsec. (d)(1)(C). Pub. L. 110-314, § 214(b)(6), (7), substituted “more (i)” for “more (A)” and “or (ii)” for “or (B)”.

Subsec. (d)(2). Pub. L. 110-314, § 214(b)(13), which directed substitution of “described in paragraph (1)(C),” for “described in paragraph (3),” could not be executed because “paragraph (3)” did not appear subsequent to amendment by Pub. L. 110-314, § 214(b)(11). See below.

Pub. L. 110-314, § 214(b)(12), struck out “If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection” before “. An order under this subsection may prohibit”.

Pub. L. 110-314, § 214(b)(11), substituted “if the Commission orders the action described in subparagraph (C)” for “if the person to whom the order is directed elects to take the action described in paragraph (3)”.

Pub. L. 110-314, § 214(b)(9), (10), substituted “for approval by the Commission,” for “satisfactory to the Commission,” and “subparagraphs under which such person has been ordered to act” for “paragraphs of this subsection under which such person has elected to act”.

Pub. L. 110-314, § 214(b)(8), designated concluding provisions of subsec. (d) as par. (2) and substituted “shall also require” for “may also require”. Former par. (2) redesignated (1)(B).

Subsec. (d)(3). Pub. L. 110-314, § 214(b)(14), added par. (3). Former par. (3) redesignated (1)(C).

Subsec. (f). Pub. L. 110-314, § 214(a)(4), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an order” for “An order”, and added par. (2).

Subsec. (i). Pub. L. 110-314, § 214(c), added subsec. (i).

Subsec. (j). Pub. L. 110-314, § 223(a), added subsec. (j). 1990—Subsec. (b). Pub. L. 101-608, § 112(a)(4), (5), in concluding provisions substituted “comply, of such defect, or of such risk” for “comply or of such defect” and “defect, failure to comply, or such risk” for “defect or failure to comply”.

Subsec. (b)(1). Pub. L. 101-608, § 112(a)(1), inserted reference to voluntary consumer product safety standard upon which Commission has relied under section 2058 of this title.

Subsec. (b)(3). Pub. L. 101-608, § 112(a)(2), (3), added par. (3).

Subsec. (f). Pub. L. 101-608, § 113, inserted at end “Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.”

Subsec. (h). Pub. L. 101-608, § 111(a)(2), added subsec. (h).

1988—Subsec. (d). 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 last sentence.

1983—Subsec. (g)(1). Pub. L. 97-414 clarified previous inconsistencies in 1982 amendment by substituting “section 206(d)(1)” for “section 206(c)(1)” and amending Pub. L. 97-35, § 1211(h)(4), so as to strike out direction that par. (1) be amended by inserting “, Science and Transportation” after “on Commerce”.

1981—Subsec. (g)(1). Pub. L. 97-35, § 1211(h)(4), substituted reference to section 2061(c)(1) for reference to section 2061(e)(1), but probably should have substituted instead reference to section 2061(d)(1) in view of the redesignation of section 2061(e)(1) as section 2061(d)(1) by

section 1205(a)(2) of Pub. L. 97-35 and the nonexistence of a section 2061(c)(1) of this title. Provisions of Pub. L. 97-35 directing that “, Science and Transportation” be inserted after “on Commerce” could not be executed in view of lack of such language in text. Section 1211(h)(4) of Pub. L. 97-35 was subsequently amended by Pub. L. 97-414. See 1983 Amendment note above.

1976—Subsec. (d). Pub. L. 94-284, § 12(a)(1), provided, in provision following par. (3), that an order issued under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States, the product for which the order was issued.

Subsec. (g). Pub. L. 94-284, § 12(a)(2), added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 214(a)(2) of Pub. L. 110-314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

REPORTING REQUIREMENTS

Pub. L. 103-267, title I, § 102, June 16, 1994, 108 Stat. 726, provided that:

“(a) REPORTS TO CONSUMER PRODUCT SAFETY COMMISSION.—

“(1) REQUIREMENT TO REPORT.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

“(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

“(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

“(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act [15 U.S.C. 2051 et seq.].

“(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

“(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act [15 U.S.C. 2064(b)] respecting a consumer product.”

§ 2065. Inspection and recordkeeping

(a) Inspection

For purposes of implementing this chapter, or rules or orders prescribed under this chapter, of-