

blade three inches or less in length by any individual who has only one arm; or

(5) a knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife.

(Pub. L. 85-623, §4, Aug. 12, 1958, 72 Stat. 562; Pub. L. 111-83, title V, §562, Oct. 28, 2009, 123 Stat. 2183.)

AMENDMENTS

2009—Par. (5). Pub. L. 111-83 added par. (5).

§ 1245. Ballistic knives

(a) Prohibition and penalties for possession, manufacture, sale, or importation

Whoever in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, or imprisoned not more than ten years, or both.

(b) Prohibition and penalties for possession or use during commission of Federal crime of violence

Whoever possesses or uses a ballistic knife in the commission of a Federal crime of violence shall be fined as provided in title 18, or imprisoned not less than five years and not more than ten years, or both.

(c) Exceptions

The exceptions provided in paragraphs (1), (2), and (3) of section 1244 of this title with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

(d) “Ballistic knife” defined

As used in this section, the term “ballistic knife” means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(Pub. L. 85-623, §7, as added Pub. L. 99-570, title X, §10002, Oct. 27, 1986, 100 Stat. 3207-167; amended Pub. L. 100-690, title VI, §6472, Nov. 18, 1988, 102 Stat. 4379.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-690, §6472(1), substituted “in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports” for “knowingly possesses, manufactures, sells, or imports”.

Subsec. (b). Pub. L. 100-690, §6472(2), struck out “or State” after “Federal”.

EFFECTIVE DATE

Pub. L. 99-570, title X, §10004, Oct. 27, 1986, 100 Stat. 3207-167, provided that: “The amendments made by this title [enacting this section, amending section 1716 of Title 18, Crimes and Criminal Procedure, and enacting

provisions set out as a note under section 1241 of this title] shall take effect 30 days after the date of enactment of this title [Oct. 27, 1986].”

CHAPTER 30—HAZARDOUS SUBSTANCES

Sec.	Definitions.
1261.	Declaration of hazardous substances.
1262.	Prohibited acts.
1263.	Penalties; exceptions.
1264.	Seizures.
1265.	Hearing before report of criminal violation.
1266.	Injunctions; criminal contempt; trial by court or jury.
1267.	Proceedings in name of United States; subpoenas.
1268.	Regulations.
1269.	Examinations and investigations.
1270.	Records of interstate shipment.
1271.	Publicity; reports; dissemination of information.
1272.	Imports.
1273.	Remedies respecting banned hazardous substances.
1274.	Toxicological Advisory Board.
1275.	Congressional veto of hazardous substances regulations.
1276.	Labeling of art materials.
1277.	Requirements for labeling certain toys and games.
1278.	Children’s products containing lead; lead paint rule.
1278a.	

§ 1261. Definitions

For the purposes of this chapter—

(a) The term “territory” means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term “interstate commerce” means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

(c) The term “Commission” means the Consumer Product Safety Commission.

(d) Repealed. Pub. L. 110-314, title II, §204(b)(4)(A), Aug. 14, 2008, 122 Stat. 3041

(e) The term “person” includes an individual, partnership, corporation, and association.

(f) The term “hazardous substance” means:

(1)(A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Commission by regulation finds, pursuant to the provisions of section 1262(a) of this title, meet the requirements of subparagraph (1)(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Commission determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.

(D) Any toy or other article intended for use by children which the Commission by regulation determines, in accordance with section 1262(e) of this title, presents an electrical, mechanical, or thermal hazard.

(E) Any solder which has a lead content in excess of 0.2 percent.

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph (1) of this paragraph by reason of bearing or containing such a pesticide.

(3) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Commission finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Commission. Before designating any substance as a strong sensitizer, the Commission, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(l)(1) The terms "extremely flammable", "flammable", and "combustible" as applied to any substance, liquid, solid, or the content of a self-pressurized container shall be defined by regulations issued by the Commission.

(2) The test methods found by the Commission to be generally applicable for defining the flammability or combustibility characteristics of any such substance shall also be specified in such regulations.

(3) In establishing definitions and test methods related to flammability and combustibility, the Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and to the extent possible, shall establish compatible definitions and test methods.

(4) Until such time as the Commission issues a regulation under paragraph (1) defining the term "combustible" as applied to liquids, such term shall apply to any liquid which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child

to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance, except as otherwise provided by or pursuant to section 1262 of this title, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Commission by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Commission pursuant to section 1262 of this title; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 1471(2)(D)¹ of this title if it is a substance described in paragraph (1) of subsection (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Commission by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that sub-

stance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Commission, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that it determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if the Commission finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, it may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5) from lack or insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(Pub. L. 86-613, §2, July 12, 1960, 74 Stat. 372; Pub. L. 89-756, §§2(a)-(c), 3(a), Nov. 3, 1966, 80

¹ See References in Text note below.

Stat. 1303, 1304; Pub. L. 91-113, §§2(a), (c), (d), 3, Nov. 6, 1969, 83 Stat. 187-189; Pub. L. 91-601, §6(a), formerly §7(a), Dec. 30, 1970, 84 Stat. 1673, renumbered Pub. L. 97-35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716; Pub. L. 92-516, §3(1), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94-284, §3(c), May 11, 1976, 90 Stat. 503; Pub. L. 95-631, §9, Nov. 10, 1978, 92 Stat. 3747; Pub. L. 99-339, title I, §109(d)(1), June 19, 1986, 100 Stat. 653; Pub. L. 110-314, title II, §204(b)(2), (4)(A), (B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 86-613. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (f)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 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 2011 of Title 42 and Tables.

Section 1471(2)(D) of this title, referred to in subsec. (p), was redesignated section 1471(2)(C) by Pub. L. 94-284, §3(a)(2), May 11, 1976, 90 Stat. 503.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-314, §204(b)(4)(A), added subsec. (c) and struck out former subsec. (c) which read as follows: "The term 'Department' means the Department of Health, Education, and Welfare."

Subsec. (d). Pub. L. 110-314, §204(b)(4)(A), struck out subsec. (d) which read as follows: "The term 'Secretary' means the Secretary of Health, Education, and Welfare."

Subsecs. (f)(1)(B) to (D), (h)(2), (k), (p)(1). Pub. L. 110-314, §204(b)(4)(B), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (q). Pub. L. 110-314, §204(b)(4)(B), (D), substituted "Commission" for "Secretary" wherever appearing and "it" for "he" in two places.

Subsec. (q)(2). Pub. L. 110-314, §204(b)(2), substituted "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if" for "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of paragraph (1) of this subsection shall be governed by the provisions of sections 371(e), (f), and (g) of title 21: *Provided, That if*".

1986—Subsec. (f)(1)(E). Pub. L. 99-339 added subpar. (E).

1978—Subsec. (l). Pub. L. 95-631 transferred the duties hereunder to the Commission from the Secretary; incorporated in provisions designated par. (1) existing text, authorized regulations to be applicable to liquids, and struck out definition of "extremely flammable" as substance with flash point at or below twenty degrees

Fahrenheit and "flammable" as substance with a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; incorporated in provisions designated par. (2) existing text extended to liquids covered in term "substance"; added par. (3); and incorporated in provisions designated par. (4) existing text applicable until superseded by regulation.

1976—Subsec. (f)(2). Pub. L. 94-284 inserted "nor to tobacco and tobacco products," after "or refrigeration system of a house".

1972—Subsec. (f)(2). Pub. L. 92-516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing.

1970—Subsec. (p). Pub. L. 91-601 substituted in text preceding par. (1) "if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance" for "which substance" and inserted following and below par. (2) provision including in "misbranded hazardous substance" a household substance as defined in section 1471(2)(D) of this title if it is a substance described in par. (1) of subsec. (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

1969—Subsec. (f)(1)(A). Pub. L. 91-113, §3(a), inserted "or combustible" after "is flammable".

Subsec. (f)(1)(D). Pub. L. 91-113, §2(a), added subsec. (f)(1)(D).

Subsec. (l). Pub. L. 91-113, §3(b), inserted definition of term "combustible" and expanded references to "flammability" and "flammable" to include "combustibility" and "combustible", respectively.

Subsec. (p)(1)(E). Pub. L. 91-113, §3(c), inserted "Combustible" to the enumerated affirmative statements of the principal hazard or hazards required to be stated on the label of a hazardous substance.

Subsec. (q)(1). Pub. L. 91-113, §2(c), inserted "or necessarily present an electrical, mechanical, or thermal hazard" after "hazardous substance involved".

Subsecs. (r) to (t). Pub. L. 91-113, §2(d), added subsecs. (r) to (t).

1966—Subsec. (f). Pub. L. 89-756, §2(a), provided that "hazardous substances" shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazard substance within the meaning of par. (1) of this subsec. by reason of its bearing or containing an economic poison.

Subsec. (n). Pub. L. 89-756, §2(b), enlarged term "label" to include, where the article is unpackaged or is packaged in an immediate container not intended or suitable for delivery to the ultimate consumer, a display of written, printed or graphic matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

Subsec. (p). Pub. L. 89-756, §2(c), in introductory text preceding par. (1) substituted "misbranded hazardous substance" for "misbranded package" and "misbranded package of a hazardous substance" and as so retermed enlarged applicability to include toys and other articles intended for use by children, which are hazardous substances, or which bear or contain hazardous substances when susceptible of access by children, and in par. (1), clause (J) inserted further category of "misbranded hazardous substance" where the article is intended for use by children and is not a banned hazardous substance and fails to bear a label with adequate directions for the protection of children from the hazard.

Subsec. (q). Pub. L. 89-756, §3(a), added subsec. (q).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-339, title I, §109(d)(3), June 19, 1986, 100 Stat. 653, provided that: "The amendments made by this subsection [amending this section and section 1263 of this title] shall become effective 24 months after the enactment of this Act [June 19, 1986]."

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-516 effective at close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92-516 and regulations thereunder, see section 4 of Pub. L. 92-516, set out as a note under section 136 of Title 7, Agriculture.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-601 effective Dec. 30, 1970, and regulations establishing special packaging standards effective no sooner than 180 days or later than one year from date regulations are final, or an earlier date published in Federal Register, see section 8 of Pub. L. 91-601, set out as a note under section 1471 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-113, §5, Nov. 6, 1969, 83 Stat. 190, provided that: "The amendments made by this Act [see Short Title of 1969 Amendment note below] shall take effect on the sixtieth day following the date of the enactment of this Act [Nov. 6, 1969]."

EFFECTIVE DATE

Pub. L. 86-613, §17, formerly §16, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189, and amended by Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041, provided that: "This Act [enacting this chapter and repealing sections 401 to 411 of this title] shall take effect upon the date of its enactment [July 12, 1960]; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

"(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted [July 1960], or

"(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act [July 1960], as the Commission may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided*, That the Commission may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-267, §1, June 16, 1994, 108 Stat. 722, provided that: "This Act [enacting sections 1278 and 6001 to 6006 of this title and provisions set out as notes under this section and sections 1278, 2064, and 6001 of this title] may be cited as the 'Child Safety Protection Act'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-491, §1, Oct. 17, 1984, 98 Stat. 2269, provided: "That this Act [amending section 1274 of this title] may be cited as the 'Toy Safety Act of 1984'."

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91-113, §1, Nov. 6, 1969, 83 Stat. 187, provided that: "This Act [enacting section 1274 of this title, amending this section and section 1262 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 401 of this title] may be cited as the 'Child Protection and Toy Safety Act of 1969'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-756, §1, Nov. 3, 1966, 80 Stat. 1303, provided that: "This title [probably means this "Act", amending this section, sections 1262, 1263, 1264, 1265, 1273 of this

title, and provisions set out as a note under this section] may be cited as the 'Child Protection Act of 1966'."

SHORT TITLE

Pub. L. 86-613, §1, July 12, 1960, 74 Stat. 372, as amended by Pub. L. 89-756, §5, Nov. 3, 1966, 80 Stat. 1305, provided: "This Act [enacting this chapter, repealing sections 401 to 411 of this title, and enacting notes set out under this section] may be cited as the 'Federal Hazardous Substances Act'."

SEPARABILITY

Pub. L. 86-613, §16, formerly §15, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189, provided that: "If any provision of this Act [enacting this chapter and repealing sections 401 to 411 of this title] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby."

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

EFFECT UPON FEDERAL AND STATE LAW

Pub. L. 86-613, §18, formerly §17, July 12, 1960, 74 Stat. 380, as amended by Pub. L. 89-756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended by Pub. L. 91-113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 189, 190; Pub. L. 94-284, §17(a), May 11, 1976, 90 Stat. 510; Pub. L. 110-314, title II, §204(b)(4)(J), Aug. 14, 2008, 122 Stat. 3042, provided that:

"(a) Nothing in this act [enacting this chapter and repealing sections 401 to 411 of this title] shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191 to 1200) [sections 1191 to 1204 of this title], or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder or under sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended [section 31502 of Title 49, Transportation] (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 [section 1472 of former Title 49] or regulations promulgated under section 601 of the Federal Aviation Act of 1958 [section 1421 of former Title 49] (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act [chapter 9 of Title 21, Food and Drugs]; or of the Public Health Service Act [chapter 6A of Title 42, The Public Health and Welfare]; or of the Federal Insecticide, Fungicide, and Rodenticide Act [section 136 et seq. of Title 7, Agriculture]; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes', approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19 [set out as a note under sections 401 to 411 of this title].

"(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the la-

being requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title].

“(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) [subsec. (q) of this section] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

“(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

“(3)(A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

“(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

“(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act [this chapter] for such substance (or its packaging).

“(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

“(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with firework devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.”

[The provisions of section 18 of Pub. L. 86-613, set out above, establishing the extent to which the Federal Hazardous Substances Act [see Short Title note above] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law

not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Federal Hazardous Substances Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110-314, set out as a note under section 2051 of this title.]

SMALL BALLS AS BANNED HAZARDOUS SUBSTANCES

Pub. L. 103-267, title I, §101(b), June 16, 1994, 108 Stat. 725, provided that: “A small ball—

“(1) intended for children under the age of 3 years of age, and

“(2) with a diameter of 1.75 inches or less,

shall be considered a banned hazardous substance under section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).”

[Section 101(b) of Pub. L. 103-267, set out above, effective Jan. 1, 1995, see section 101(d) of Pub. L. 103-267, set out as an Effective Date note under section 1278 of this title.]

§ 1262. Declaration of hazardous substances

(a) Rulemaking

(1) In general

Whenever in the judgment of the Commission such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the Commission may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances, which it finds meets the requirements of section 1261(f)(1)(A) of this title.

(2) Procedure

Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall be governed by the provisions of subsections (f) through (i) of this section.

(b) Reasonable variations or additional label requirements

If the Commission finds that the requirements of section 1261(p)(1) of this title are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, it may by regulation establish such reasonable variations or additional label requirements as it finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) Exemption from requirements by regulation

If the Commission finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Commission shall promulgate regulations exempting such substance from these requirements to the extent it determines to be

consistent with adequate protection of the public health and safety.

(d) Exemption from requirements of this chapter of substances or containers adequately regulated by other provisions of law

The Commission may exempt from the requirements established by or pursuant to this chapter any hazardous substance or container of a hazardous substance with respect to which it finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other Act of Congress.

(e) Regulation of toys or articles intended for use by children

(1) A determination by the Commission that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 of title 21 shall apply to the making of such determination. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the Commission finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and it, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the Commission, in accordance with section 553 of title 5, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him¹ for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its determination, as provided in section 2112 of title 28.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court

may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of the second sentence of section 706 of title 5. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the Secretary's² determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of title 5.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the Commission 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.

(f) Commencement of proceeding for promulgation of regulation; notice

A proceeding for the promulgation of a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section may be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the article or substance and the nature of the risk of injury associated with the article or substance;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and

¹ So in original. Probably should be "it".

² So in original. Probably should be "Commission's".

other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation under section 1261(q)(1) of this title or subsection (e) of this section; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(g) Publication of standard; termination of proceeding for promulgation of regulation; monitoring of compliance

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (f)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation under section 1261(q)(1) of this title or subsection (e) of this section, as the case may be, would eliminate or adequately reduce the risk of injury identified in a notice provided under subsection (f)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under such section or subsection.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 1261(q)(1) of this title or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, ir-

respective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(h) Publication of proposed rule together with preliminary regulatory analysis

No regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance and no regulation under subsection (e) of this section may be proposed by the Commission unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (f)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (f)(6) and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (f)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.

(i) Publication of final regulatory analysis with regulation; required findings; judicial review

(1) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned

hazardous substance or a regulation under subsection (e) of this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (h) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(j) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not

deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(Pub. L. 86-613, §3, July 12, 1960, 74 Stat. 374; Pub. L. 89-756, §2(d), (e), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91-113, §2(b), Nov. 6, 1969, 83 Stat. 187; Pub. L. 97-35, title XII, §1203(b)(1), Aug. 13, 1981, 95 Stat. 708; Pub. L. 101-608, title I, §§107(b), 108(b), 110(b), Nov. 16, 1990, 104 Stat. 3112, 3113; Pub. L. 110-314, title II, §204(b)(1), (3), (4)(B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Commission to declare hazardous substances by regulation and detailed proceedings for the issuance, amendment, or repeal of such regulations.

Subsecs. (b) to (e). Pub. L. 110-314, §204(b)(4)(D), substituted “it” for “he” and “its” for “his” wherever appearing in reference to the Secretary of Health, Education, and Welfare.

Pub. L. 110-314, §204(b)(4)(B), substituted “Commission” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 110-314, §204(b)(3)(A), substituted “may be commenced” for “shall be commenced” in introductory provisions.

Subsec. (g)(1). Pub. L. 110-314, §204(b)(3)(B), substituted “identified in a notice” for “identified in the notice”.

Subsec. (h). Pub. L. 110-314, §204(b)(3)(C), (D), in introductory provisions, substituted “unless the” for “unless, not less than 60 days after publication of the notice required in subsection (f) of this section, the” and in concluding provisions, substituted “appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.” for “Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.”

1990—Subsec. (g)(2). Pub. L. 101-608, §108(b), struck out period at end and inserted “, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.”

Subsec. (g)(3). Pub. L. 101-608, §107(b), added par. (3).

Subsec. (j). Pub. L. 101-608, §110(b), added subsec. (j).

1981—Subsecs. (f) to (i). Pub. L. 97-35 added subsecs. (f) to (i).

1969—Subsec. (e). Pub. L. 91-113 added subsec. (e).

1966—Subsec. (b). Pub. L. 89-756, §2(d), substituted “any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance” for “any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such

regulations shall be deemed to be a misbranded package of a hazardous substance”.

Subsec. (d). Pub. L. 89-756, §2(e), inserted “hazardous substance or” before “container of a hazardous substance”.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 25 and 47 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-113 effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as a note under section 1261 of this title.

NATIONAL COMMISSION ON PRODUCT SAFETY

Pub. L. 90-146, Nov. 20, 1967, 81 Stat. 466, as amended by Pub. L. 91-51, Aug. 4, 1969, 83 Stat. 86, established a National Commission on Product Safety to study and investigate the scope and adequacy of measures to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products and required the Commission to transmit its final report to the President and to the Congress by June 30, 1970. Ninety days after submission of its final report the Commission ceased to exist by the express terms of Pub. L. 90-146.

§ 1263. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 1264(b)(2) of this title which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 1270(b) of this title or to

permit access to and copying of any record as authorized by section 1271 of this title.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms “food”, “drug”, and “cosmetic” shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Commission or officers or employees of the Commission, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 1270 of this title concerning any method of process which as a trade secret is entitled to protection.

(i) The failure to notify the Commission with respect to exports, pursuant to section 1273(d) of this title.

(j) The failure to comply with an order issued under section 1274 of this title.

(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.

(Pub. L. 86-613, §4, July 12, 1960, 74 Stat. 375; Pub. L. 89-756, §§2(f), 3(b), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95-631, §7(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-35, title XII, §1211(f)(2), Aug. 13, 1981, 95 Stat. 723; Pub. L. 99-339, title I, §109(d)(2), June 19, 1986, 100 Stat. 653; Pub. L. 110-314, title II, §204(b)(4)(B), (C), (H), Aug. 14, 2008, 122 Stat. 3041, 3042.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110-314, §204(b)(4)(B), (C), substituted “Commission or officers or employees of the Commission” for “Secretary or officers or employees of the Department”.

Subsec. (i). Pub. L. 110-314, §204(b)(4)(H), substituted “Commission” for “Consumer Product Safety Commission”.

1986—Subsec. (k). Pub. L. 99-339 added subsec. (k).

1981—Subsec. (j). Pub. L. 97-35 added subsec. (j).

1978—Subsec. (i). Pub. L. 95-631 added subsec. (i).

1966—Subsec. (a). Pub. L. 89-756, §§2(f)(1), 3(b), substituted “misbranded hazardous substance or banned hazardous substance” for “misbranded package of a hazardous substance”.

Subsec. (b). Pub. L. 89-756, §§2(f)(2), 3(b), substituted “being a misbranded hazardous substance or banned hazardous substance” for “being in a misbranded package”.

Subsec. (c). Pub. L. 89-756, §§2(f)(1), 3(b), substituted “misbranded hazardous substance or banned hazardous substance” for “misbranded package of a hazardous substance”.

Subsec. (f). Pub. L. 89-756, §2(f)(2), substituted “being a misbranded hazardous substance” for “being in a misbranded package”.

Subsec. (g). Pub. L. 89-756, §§2(f)(1), 3(b), substituted “misbranded hazardous substance or banned hazardous substance” for “misbranded package of a hazardous substance”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-339 effective 24 months after June 19, 1986, see section 109(d)(3) of Pub. L. 99-339, set out as a note under section 1261 of this title.

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.

§ 1264. Penalties; exceptions

(a) Criminal penalties

Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than 5 years, a fine determined under section 3571 of title 18, or both.

(b) Exceptions

No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Commission, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he established a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold

or offered for sale in domestic commerce or if the Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

(c) Civil penalties

(1) Any person who knowingly violates section 1263 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 1263 of this title shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations. A violation of section 1263(e) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 1263(e) of this title; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 1263 of this title—

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 1263 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including,¹ the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on com-

¹ So in original. The comma probably should not appear.

promise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term “knowingly” means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(d) Civil action for injunction

In the case of an attorney general of a State alleging a violation that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce any requirement of this chapter relating to misbranded or banned hazardous substances. The procedural requirements of section 2073 of this title shall apply to any such action.

(Pub. L. 86-613, §5, July 12, 1960, 74 Stat. 376; Pub. L. 89-756, §§2(g), 3(c), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95-631, §7(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 101-608, title I, §§115(b), 118(a), Nov. 16, 1990, 104 Stat. 3119, 3121; Pub. L. 110-314, title II, §§204(b)(4)(B), (H), 217(a)(2), (b)(1)(B), (c)(3), Aug. 14, 2008, 122 Stat. 3041, 3042, 3058, 3059, 3060.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §217(c)(3), substituted “5 years, a fine determined under section 3571

of title 18, or both.” for “one year, or a fine of not more than \$3,000, or both such imprisonment and fine.”

Subsec. (b). Pub. L. 110-314, §204(b)(4)(B), (H), substituted “Commission” for “Secretary” in cl. (1) and “Commission” for “Consumer Product Safety Commission” in cl. (3).

Subsec. (c)(1). Pub. L. 110-314, §217(a)(2)(A), (B), substituted “\$100,000” for “\$5,000” and substituted “\$15,000,000” for “\$1,250,000” in two places.

Subsec. (c)(3). Pub. L. 110-314, §217(b)(1)(B)(i), inserted “the nature, circumstances, extent, and gravity of the violation, including” after “shall consider”, substituted “substance distributed,” for “substance distributed, and”, and inserted “, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate” before period at end.

Subsec. (c)(4). Pub. L. 110-314, §217(b)(1)(B)(ii)(II), inserted “, and such other factors as appropriate” after “substance distributed”.

Pub. L. 110-314, §217(b)(1)(B)(ii)(I), which directed insertion of “, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including” after “person charged”, was executed by making the insertion after “persons charged” to reflect the probable intent of Congress.

Subsec. (c)(6)(B). Pub. L. 110-314, §217(a)(2)(C), which directed substitution of “December 1, 2011,” for “December 1, 1994,” in par. (6)(B) of subsec. (c)(1), was executed by making the substitution in subsec. (c)(6)(B) to reflect the probable intent of Congress.

1990—Subsec. (c). Pub. L. 101-608, §115(b), added subsec. (c).

Subsec. (d). Pub. L. 101-608, §118(a), added subsec. (d).

1978—Subsec. (b)(3). Pub. L. 95-631 substituted “with respect to” for “in respect of” and made cl. (3) inapplicable when the Consumer Product Safety Commission determines that exportation of the substance presents an unreasonable risk of injury to persons residing within the United States.

1966—Subsec. (b). Pub. L. 89-756 substituted “a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms” for “in misbranded packages within the meaning of that term”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(2) of Pub. L. 110-314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110-314, set out as a note under section 2069 of this title, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110-314, set out as a note under section 1194 of this title.

CIVIL PENALTY CRITERIA

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (c)(3) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110-314, set out as a note under section 2069 of this title.

§ 1265. Seizures

(a) Grounds and jurisdiction

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of in-

formation and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

(b) Procedure; multiplicity of pending proceedings

Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Disposition of goods after decree of condemnation

Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided*, That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of

this chapter under the supervision of an officer or employee duly designated by the Commission, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) Costs and fees

When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (b)—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86-613, §6, July 12, 1960, 74 Stat. 376; Pub. L. 89-756, §§2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-314 substituted “Commission” for “Secretary”.

1966—Subsec. (a). Pub. L. 89-756 substituted “Any misbranded hazardous substance or banned hazardous substance” for “Any hazardous substance that is in a misbranded package”.

§ 1266. Hearing before report of criminal violation

Before any violation of this chapter is reported by the Commission to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 86-613, §7, July 12, 1960, 74 Stat. 377; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Pub. L. 110-314 substituted “Commission” for “Secretary”.

§ 1267. Injunctions; criminal contempt; trial by court or jury

(a) Jurisdiction

The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

(b) Trials

In any proceeding for criminal contempt for violation of an injunction or restraining order

issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(Pub. L. 86-613, §8, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§ 1268. Proceedings in name of United States; subpoenas

All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

(Pub. L. 86-613, §9, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§ 1269. Regulations

(a) Authority

The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Commission.

(b) Joint regulations

The Secretary of the Treasury and the Commission shall jointly prescribe regulations for the efficient enforcement of the provisions of section 1273 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Commission shall determine.

(Pub. L. 86-613, §10, July 12, 1960, 74 Stat. 378; Pub. L. 110-314, title II, §204(b)(4)(B), (E), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), substituted “Commission” for “Secretary”.

Subsec. (b). Pub. L. 110-314, §204(b)(4)(E), substituted “Commission” for “Secretary of Health, Education, and Welfare” in two places.

§ 1270. Examinations and investigations

(a) Authority to conduct

The Commission is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Commission or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Commission as an officer of the Commission.

(b) Inspection; notice; samples

For purposes of enforcement of this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Receipt for sample; results of analysis

If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(Pub. L. 86-613, §11, July 12, 1960, 74 Stat. 378; Pub. L. 110-314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), (C), substituted “Commission is authorized” for “Secretary is authorized”, “employees of the Commission” for “employees of the Department”, “commissioned by the Commission” for “commissioned by the Secretary”, and “officer of the Commission” for “officer of the Department”.

Subsec. (b). Pub. L. 110-314, §204(b)(4)(B), substituted “Commission” for “Secretary”.

§ 1271. Records of interstate shipment

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Commission, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evi-

dence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

(Pub. L. 86-613, §12, July 12, 1960, 74 Stat. 379; Pub. L. 91-452, title II, §219, Oct. 15, 1970, 84 Stat. 929; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Pub. L. 110-314 substituted “Commission” for “Secretary”.

1970—Pub. L. 91-452 inserted “, or any evidence which is directly or indirectly derived from such evidence,” after “under this section”.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 1272. Publicity; reports; dissemination of information

(a) Summaries of judgments, decrees, orders

The Commission may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) Information as to health dangers and investigations

The Commission may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Commission, imminent danger to health. Nothing in this section shall be construed to prohibit the Commission from collecting, reporting, and illustrating the results of the investigations of the Commission.

(Pub. L. 86-613, §13, July 12, 1960, 74 Stat. 379; Pub. L. 110-314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), substituted “Commission” for “Secretary”.

Subsec. (b). Pub. L. 110-314, §204(b)(4)(B), (C), substituted “Commission” for “Department” after “investigations of the” and for “Secretary” wherever appearing.

§ 1273. Imports

(a) Delivery of samples to Commission; examination; refusal of admission

The Secretary of the Treasury shall deliver to the Commission, upon its request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Commission and have the right to introduce testimony. If it appears from the examination of such samples or

otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Disposition of refused articles

Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Commission that the hazardous substance can, by relabeling or other action, be brought into compliance with this chapter, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary¹ may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's² authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Commission designated by the Secretary¹, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) Expenses in connection with refused articles

All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(d) Statement of exportation; filing period; information; notification of foreign country; petition for minimum filing period; good cause

Not less than thirty days before any person exports to a foreign country any misbranded haz-

¹ So in original. Probably should be “Commission”.

² So in original. Probably should be “Commission's”.

ardous substance or banned hazardous substance, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this chapter. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(Pub. L. 86-613, §14, July 12, 1960, 74 Stat. 379; Pub. L. 89-756, §§2(i), 3(e), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95-631, §7(c), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110-314, title II, §204(b)(4)(D), (F)–(I), Aug. 14, 2008, 122 Stat. 3042.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(b)(4)(D), (F), substituted “upon its request” for “upon his request” and substituted “Commission” for “Secretary of Health, Education, and Welfare” in two places.

Subsec. (b). Pub. L. 110-314, §204(b)(4)(F), (G), substituted “appears to the Commission” for “appears to the Secretary of Health, Education, and Welfare” and “Commission designated by” for “Department of Health, Education, and Welfare designated by”.

Subsec. (d). Pub. L. 110-314, §204(b)(4)(H), (I), substituted “statement with the Commission” for “statement with the Consumer Product Safety Commission” and struck out “(hereinafter in this section referred to as the ‘Commission’)” before “notifying”.

1978—Subsec. (d). Pub. L. 95-631 added subsec. (d).

1966—Subsec. (a). Pub. L. 89-756 substituted “a misbranded hazardous substance or banned hazardous substance” for “in misbranded packages”.

§ 1274. Remedies respecting banned hazardous substances

(a) Notice to protect public; form and contents

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that notification is required to adequately protect the public from such article or substance, the Commission may order the manufacturer or any distributor or dealer of the article or substance to take any one or more of the following actions:

(1) To give public notice that the article or substance is a banned hazardous substance.

(2) To mail such notice to each person who is a manufacturer, distributor, or dealer of such article or substance.

(3) To mail such notice to every person to whom the person giving the notice knows such article or substance was delivered or sold.

An order under this subsection shall specify the form and content of any notice required to be given under the order.

(b) Order of Commission; repair, replacement, or refund

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this subsection is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(1) If repairs to or changes in the article or substance may be made so that it will not be a banned hazardous substance, to make such repairs or changes.

(2) To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.

(3) To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more—

(A) at the time of public notice under subsection (a), or

(B) at the time the consumer receives actual notice that the article or substance is a banned hazardous substance,

whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). 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. 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, with respect to the article or substance with respect to which the order was issued.

(c) Discretionary remedial activities available to Commission; orders; contents

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of

the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of such toy or article to take any one or more of the following actions:

(A) To give public notice that such defective toy or article contains a defect which creates a substantial risk of injury to children.

(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

(2) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs ter-

ritory 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, with respect to the toy or article with respect to which the order was issued.

(d) Charge for remedy; reimbursement for expenses

(1) No charge shall be made to any person (other than a manufacturer, distributor, or dealer) who avails himself of any remedy provided under an order issued under subsection (b) or (c), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or dealer) 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 (a), (b), or (c) with respect to a toy, article or substance may require any person who is a manufacturer, distributor, or dealer of the toy, article or substance to reimburse any other person who is a manufacturer, distributor, or dealer of such toy, article or substance 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.

(e) Hearing; representative of class

An order under subsection (a), (b), or (c) 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).

(f) "Manufacturer" defined

For purposes of this section (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

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

Nothing in this section shall be construed to require the Commission, in determining that an article or substance 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.

(Pub. L. 86-613, §15, as added Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189; amended Pub. L. 97-35, title XII, §1211(f)(1), Aug. 13, 1981, 95 Stat. 721; Pub. L. 97-414, §9(l), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 98-491, §2, Oct. 17, 1984, 98 Stat. 2269; Pub. L. 100-418, title I, §1214(c), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §111(b), Nov. 16, 1990, 104 Stat. 3114; Pub. L. 110-314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b) and (c)(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. (b). Pub. L. 110-314 substituted “Commission may order” for “Consumer Product Safety Commission may order” in introductory provisions.

1990—Subsec. (g). Pub. L. 101-608 added subsec. (g).

1988—Subsecs. (b), (c)(2). 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”.

1984—Subsec. (c). Pub. L. 98-491, §2(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-491, §2(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98-491, §2(b), inserted “or (c)” after “subsection (b)”.

Subsec. (d)(2). Pub. L. 98-491, §2(c), (d), substituted “a toy, article” for “an article”, “toy, article” for “article” in two places, and “subsection (a), (b), or (c)” for “subsection (a) or (b)”.

Subsec. (e). Pub. L. 98-491, §2(a)(2), (d), redesignated subsec. (d) as (e) and substituted “subsection (a), (b), or (c)” for “subsection (a) or (b)”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-491, §2(a)(1), redesignated subsec. (e) as (f).

1983—Subsec. (e). Pub. L. 97-414 added subsec. (e).

1981—Pub. L. 97-35 revised section generally and substituted provisions authorizing the Commission to require the manufacturers, distributors, or dealers as the case may be to notify the public that the article or substance was a banned hazardous one, and to repair, replace or refund the purchase price, when the Commission determines after providing the manufacturer, distributor, or dealer an opportunity for a hearing that banned hazardous substances were sold for provisions requiring the manufacturer, distributor or dealer to repurchase the banned hazardous article or substance.

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.

EFFECTIVE DATE

Section effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as an Effective Date of 1969 Amendment note under section 1261 of this title.

§ 1275. Toxicological Advisory Board

(a) Establishment; functions; review and recommendations

(1) Within 180 days after November 10, 1978, the Commission shall establish, in accordance with subsection (b), a Toxicological Advisory Board (hereinafter in this section referred to as the “Board”) to advise the Commission on precautionary labeling for hazardous substances. The Board shall provide scientific and technical advice to the Commission concerning—

(A) proper labeling under sections 1261(p)(1) and 1262(b) of this title, with special attention to—

(i) the description of precautionary measures required under section 1261(p)(1)(F) of this title;

(ii) the statement describing the hazards associated with a hazardous substance as required under section 1261(p)(1)(E) of this title; and

(iii) instructions for first-aid treatment under section 1261(p)(1)(G) of this title; and

(B) the exemption of certain substances from labeling requirements under this chapter as permitted under section 1262(c) of this title.

(2) In carrying out its duties under paragraph (1)(A), the Board shall review any labeling requirements or guidelines which have been established by the Commission under section 1261(p)(1) or 1262(b) of this title. Based upon its review the Board shall develop and submit to the Commission, within one year after the date that the Board is established, any recommendations for revisions in such labeling requirements or guidelines which the Board considers to be appropriate, including any general recommendations which may be of assistance to the Commission in carrying out its responsibilities under section 1261(p)(1) or 1262(b) of this title. The Board shall periodically review the labeling requirements and guidelines established by the Commission under such sections to determine whether such requirements and guidelines reflect relevant changes in scientific knowledge and shall revise any general recommendations submitted to the Commission under this paragraph to reflect such changes.

(b) Membership; appointment; qualifications; Chairman; term of office; reappointment; vacancies; meetings; compensation and travel expenses; Federal nonemployee status

(1) The Board shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Chairman of the Board shall be elected by the Board from among its members.

(2) The members of the Board shall be appointed for terms of three years. Members of the Board may be reappointed.

(3) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term.

(4) The Board shall meet at such times and places as may be designated by the Commission in consultation with the Chairman, but not less than two times each year.

(5) Members of the Board who are not officers or employees of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5. While

away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703(b)¹ of such title. Individuals serving as members on the Board shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

(c) Termination

The Board shall terminate on the date six years after the date it is established under this section.

(Pub. L. 86-613, § 20, as added Pub. L. 95-631, § 10, Nov. 10, 1978, 92 Stat. 3747; amended Pub. L. 110-314, title II, § 204(b)(4)(H), (I), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(5), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-314 substituted “Commission” for “Consumer Product Safety Commission” after “November 10, 1978, the” and struck out “(hereinafter in this section referred to as the ‘Commission’)” immediately thereafter.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 1276. Congressional veto of hazardous substances regulations

(a) Transmission to Congress

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any regulation promulgated by the Commission under section 1261(q)(1) of this title or subsection (e) of section 1262 of this title.

(b) Disapproval by concurrent resolution

Any regulation specified in subsection (a) shall not take effect if—

- (1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): “That the Congress disapproves the regulation which was promulgated under the Federal Hazardous Substances Act by the Consumer Product Safety Commission with respect to _____ and which was transmitted to the Congress on _____ and disapproves the regulation for the following reasons: _____.”; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b).

(Pub. L. 86-613, § 21, as added Pub. L. 97-35, title XII, § 1207(c), Aug. 13, 1981, 95 Stat. 718; amended Pub. L. 110-314, title II, § 204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (b), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110-314, which directed the substitution of “Commission” for “Consumer Product Safety Commission” in this section, was executed by making the substitution in subsec. (a), before “shall transmit”, but not in subsec. (b)(1), to reflect the probable intent of Congress.

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 25 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§ 1277. Labeling of art materials

(a) Regulation status of standard D-4236 of American Society for Testing and Materials

On and after the last day of the 2-year period beginning on November 18, 1988, the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials designated D-4236 that is in effect on November 18, 1988, and as modified by subsection (b) shall be deemed to be a regulation issued by the Commission under section 1262(b) of this title.

¹ See References in Text note below.

(b) Requirements applicable to standard D-4236

The following shall apply with respect to the standard of the American Society for Testing and Materials referred to in subsection (a):

(1) The term "art material or art material product" shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act [21 U.S.C. 301 et seq.].

(2) The standard referred to in subsection (a) as modified by this subsection applies to art materials intended for users of any age.

(3) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall be responsible for submitting to the Commission these criteria and a list of art materials that require hazard warning labels under this section.

(4) Upon the request of the Commission, a producer or repackager of art materials shall submit to the Commission product formulations and the criteria used to determine whether the art material or its ingredients have the potential for producing chronic adverse health effects.

(5) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and address of the producer or repackager of the art materials and an appropriate telephone number and a statement signifying that such art materials are inappropriate for use by children.

(6) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard referred to in subsection (a) as modified by this subsection.

(7) If the Commission determines that an art material in a container equal to or smaller than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) has the potential for producing chronic adverse health effects with customary or reasonably foreseeable use despite its small size, the Commission may require the art material to carry a label which conveys all the information required under the standard referred to in subsection (a) as modified by this subsection for art materials in a container greater than one fluid ounce or one ounce net weight. If the information cannot fit on the package label, the Commission shall require the art material to have a package insert which conveys all this information. If the art material has a package in-

sert, the label on the product shall include a signal word in conformance with paragraph 5 of the standard referred to in subsection (a), a list of potentially harmful or sensitizing components, and the statement "see package insert before use". For purposes of this subsection, the term "package insert" means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art material. This requirement is in addition to, and is not meant to supersede, the requirement of paragraph 5.8 of the standard designated D-4236.

(8) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, a toxicologist shall take into account opinions of various regulatory agencies and scientific bodies.

(c) Revisions incorporated into standard D-4236; notice and hearing; amendment; opportunity for comment; transcript of proceedings

If the Commission determines that a revision proposed by the American Society for Testing and Materials is in the public interest, it shall incorporate the revision into the standard referred to in subsection (a) as modified by subsection (b) after providing notice and an opportunity for comment. If at any time the Commission finds that the standard referred to in subsection (a) as modified by subsection (b) is inadequate for the protection of the public interest, it shall promulgate an amendment to the standard which will adequately protect the public interest. Such final standard shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(d) Guidelines for determining chronically hazardous art materials; issuance; public hearing; scope of criteria; review; amendment

(1) Within 1 year of November 18, 1988, the Commission shall issue guidelines which specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. In developing such guidelines the Commission shall conduct a public hearing and provide reasonable opportunity for the submission of comments.

(2) The guidelines established under paragraph (1) shall include—

(A) criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults,

(B) criteria for determining which substances contained in art materials have the potential for producing chronic adverse health effects and what those effects are,

(C) criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and

(D) criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials.

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

(e) Informational and educational materials; development and distribution

The Commission shall develop informational and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

(f) Injunctions

The Commission may bring an action under section 1267 of this title to enjoin the purchase of any art material required to be labeled under this chapter which is for use by children in pre-kindergarten, kindergarten, or grades 1 through 6.

(Pub. L. 86-613, §23, as added Pub. L. 100-695, Nov. 18, 1988, 102 Stat. 4568.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Pub. L. 100-695 enacted section 23 of Pub. L. 86-613, classified to this section, without a prior enactment of a section 22 of Pub. L. 86-613.

§ 1278. Requirements for labeling certain toys and games

(a) Toys or games for children who are at least 3

(1) Requirement

The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—

(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and

(B) includes a small part, as defined by the Commission.

(2) Label

The cautionary statement required by paragraph (1) for a toy or game shall be as follows:



WARNING:

**CHOKING HAZARD—Small parts.
Not for children under 3 yrs.**

(b) Balloons, small balls, and marbles

(1) Requirement

In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—

(A) the packaging of such balloon, ball, marble, toy, or game,

(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and

(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,

shall bear or contain the cautionary statement described in paragraph (2).

(2) Label

The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:

(A) Balloons

In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:



WARNING:

CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

**Keep uninflated balloons from children.
Discard broken balloons at once.**

(B) Balls

In the case of balls, the following cautionary statement applies:



WARNING:

**CHOKING HAZARD—This toy is a small ball.
Not for children under 3 yrs.**

(C) Marbles

In the case of marbles, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—This toy is a marble.
Not for children under 3 yrs.**

(D) Toys and games

In the case of toys or games containing balls, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—Toy contains a small ball.
Not for children under 3 yrs.**

In the case of toys or games containing marbles, the following cautionary statement applies:

**WARNING:**

**CHOKING HAZARD—Toy contains a marble.
Not for children under 3 yrs.**

(c) Advertising**(1) Requirement****(A) Cautionary statement**

Any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (including advertisements on Internet websites or in catalogues or other printed materials) that provides a direct means for the purchase or order of a product for which a cautionary statement is required under subsection (a) or (b) shall include the appropriate cautionary statement displayed on or immediately adjacent to that advertisement, as modified by regulations issued under paragraph (3).

(B) Application to retailers**(i) Requirement to inform**

A manufacturer, importer, distributor, or private labeler that provides such a product to a retailer shall inform the retailer of any cautionary statement requirement applicable to the product.

(ii) Retailer's requirement to inquire

A retailer is not in violation of subparagraph (A) if the retailer requested information from the manufacturer, importer, distributor, or private labeler as to whether the cautionary statement required by subparagraph (A) applies to the product that is the subject of the advertisement and the manufacturer, importer, distributor, or private labeler provided false information or did not provide such information.

(C) Display

The cautionary statement required by subparagraph (A) shall be prominently displayed—

- (i) in the primary language used in the advertisement;
- (ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and
- (iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

(D) Definitions

In this subsection:

- (i) The terms “manufacturer”, “distributor”, and “private labeler” have the meaning given those terms in section 2052 of this title.
- (ii) The term “retailer” has the meaning given that term in section 2052 of this title, but does not include an individual whose selling activity is intermittent and does not constitute a trade or business.

(2) Effective date

The requirement in paragraph (1) shall take effect—

- (A) with respect to advertisements on Internet websites, 120 days after August 14, 2008; and
- (B) with respect to catalogues and other printed materials, 180 days after August 14, 2008.

(3) Rulemaking

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Commission shall, not later than 90 days after August 14, 2008, promulgate regulations to effectuate this section with respect to catalogues and other printed material. The Commission may, under such regulations, provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of paragraph (1) during which time distribution of such catalogues and other printed material shall not be considered a violation of such paragraph. The Commission may promulgate regulations concerning the size and placement of the cautionary statement required by paragraph (1) of this subsection as appropriate relative to the size and placement of the advertisements in such catalogues and other printed material. The Commission shall promulgate regulations that clarify the applicability of these requirements to catalogues and other printed material distributed solely between businesses and not to individual consumers.

(4) Enforcement

The requirements in paragraph (1) shall be treated as a consumer product safety standard promulgated under section 2058 of this title. The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section 2068(a)(1) of this title.

(d) General labeling requirements**(1) In general**

Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) shall be—

(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and

(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).

(2) Exception for products manufactured outside United States

In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.

(3) Special rules for certain packages

(A) A cautionary statement required by subsection (a) or (b) may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—

(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and

(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) appears.

(B)(i) In the case of a product to which subsection (a), subsection (b)(2)(B), subsection (b)(2)(C), or subsection (b)(2)(D) applies, the statement specified by this subparagraph is as follows:

**SAFETY WARNING**

(ii) In the case of a product to which subsection (b)(2)(A) applies, the statement specified by this subparagraph is as follows:

**WARNING—CHOKING HAZARD****(e) Treatment as misbranded hazardous substance**

A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this subsection¹ shall be considered a misbranded hazardous substance under section 1261(p) of this title.

(Pub. L. 86-613, §24, as added Pub. L. 103-267, title I, §101(a), June 16, 1994, 108 Stat. 722; amended Pub. L. 110-314, title I, §105, Aug. 14, 2008, 122 Stat. 3031.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (c)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110-314 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE

Pub. L. 103-267, title I, §101(d), June 16, 1994, 108 Stat. 725, provided that: "Subsections (a) and (b) [enacting this section and provisions set out as a note under section 1261 of this title] shall take effect January 1, 1995, and section 24 of the Federal Hazardous Substances Act [this section] shall apply only to products entered into commerce on or after January 1, 1995."

REGULATIONS

Pub. L. 103-267, title I, §101(c), June 16, 1994, 108 Stat. 725, provided that: "The Consumer Product Safety Commission (hereinafter referred to as the 'Commission') shall promulgate regulations, under section 553 of title 5, United States Code, for the implementation of this section [enacting this section and provisions set out as notes under this section and section 1261 of this title] and section 24 of the Federal Hazardous Substances Act [this section] by July 1, 1994, or the date that is 6 months after the date of enactment of this Act [June 16, 1994], whichever occurs first. Subsections (f) through (i) of section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) shall not apply with respect to the issuance of regulations under this subsection."

PREEMPTION

Pub. L. 103-267, title I, §101(e), June 16, 1994, 108 Stat. 725, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), a State or political subdivision of a State may not establish or enforce a requirement relating to cautionary labeling of small parts hazards or choking hazards in any toy, game, marble, small ball, or balloon intended or suitable for use by children unless such requirement is identical to a requirement established by amendments made by this section to the Federal Hazardous Substances Act [enacting this section] or by regulations promulgated by the Commission.

"(2) EXCEPTION.—A State or political subdivision of a State may, until January 1, 1995, enforce a requirement described in paragraph (1) if such requirement was in effect on October 2, 1993."

¹ So in original. Probably should be "this section".

§ 1278a. Children’s products containing lead; lead paint rule

(a) General lead ban

(1) Treatment as a banned hazardous substance

Except as expressly provided in subsection (b) beginning on the dates provided in paragraph (2), any children’s product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that contains more lead than the limit established by paragraph (2) shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(2) Lead limit

(A) 600 parts per million

Except as provided in subparagraphs (B), (C), (D), and (E), beginning 180 days after August 14, 2008, the lead limit referred to in paragraph (1) is 600 parts per million total lead content by weight for any part of the product.

(B) 300 parts per million

Except as provided by subparagraphs (C), (D), and (E), beginning on the date that is 1 year after August 14, 2008, the lead limit referred to in paragraph (1) is 300 parts per million total lead content by weight for any part of the product.

(C) 100 parts per million

Except as provided in subparagraphs (D) and (E), beginning on the date that is 3 years after August 14, 2008, subparagraph (B) shall be applied by substituting “100 parts per million” for “300 parts per million” unless the Commission determines that a limit of 100 parts per million is not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children’s products.

(D) Alternate reduction of limit

If the Commission determines under subparagraph (C) that the 100 parts per million limit is not technologically feasible for a product or product category, the Commission shall, by regulation, establish an amount that is the lowest amount of lead, lower than 300 parts per million, the Commission determines to be technologically feasible to achieve for that product or product category. The amount of lead established by the Commission under the preceding sentence shall be substituted for the 300 parts per million limit under subparagraph (B) beginning on the date that is 3 years after August 14, 2008.

(E) Periodic review and further reductions

The Commission shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth in this subsection, no less frequently than every 5 years after promulgation of the limit under subpara-

graph (C) or (D) to require the lowest amount of lead that the Commission determines is technologically feasible to achieve. The amount of lead established by the Commission under the preceding sentence shall be substituted for the lead limit in effect immediately before such revision.

(3) Application

Each limit set forth in paragraph (2) (except for the limit set forth in subparagraphs (A) and (B)) shall apply only to a children’s product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that is manufactured after the effective date of such respective limit.

(b) Exclusion of certain materials or products and inaccessible component parts

(1) Functional purpose exception

(A) In general

The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that—

(i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;

(ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

(iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

(B) Measurement

For purposes of subparagraph (A)(iii), there is no measurable adverse effect on public health or safety if the exception described in subparagraph (A) will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

(C) Procedures for granting exception

(i) Burden of proof

A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.

(ii) Grounds for decision

In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the exception and any materials received through notice and a hearing.

(iii) Admissible evidence

In demonstrating that it meets the requirements of subparagraph (A), a party seeking an exception under such subparagraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the party that relies on that information.

(iv) Scope of exception

If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in subparagraph (A) are met with respect to every accessible component or accessible material of the product.

(D) Limitation on exception

If the Commission grants an exception for a product, class of product, material, or component part under subparagraph (A), the Commission may, as necessary to protect public health or safety—

(i) establish a lead limit that such product, class of product, material, or component part may not exceed; or

(ii) place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under clause (i) or the limit set forth in subsection (a).

(E) Application of exception

An exception under subparagraph (A) for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

(F) Previously submitted petitions

A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all requirements of this paragraph as required by subparagraph (C)(i).

(2) Exception for inaccessible component parts**(A) In general**

The limits established under subsection (a) shall not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component

part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(B) Inaccessibility proceeding

Within 1 year after August 14, 2008, the Commission shall promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).

(C) Application pending CPSC guidance

Until the Commission promulgates a rule pursuant to subparagraph (B), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in subparagraph (A) for considering a component to be inaccessible to a child.

(3) Certain barriers disqualified

For purposes of this subsection, paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate inaccessible to a child, or to prevent absorption of any lead into the human body, through normal and reasonably foreseeable use and abuse of the product.

(4) Certain electronic devices

If the Commission determines that it is not technologically feasible for certain electronic devices, including devices containing batteries, to comply with subsection (a), the Commission, by regulation, shall—

(A) issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, which may include requirements that such electronic devices be equipped with a child-resistant cover or casing that prevents exposure to and accessibility of the parts of the product containing lead; and

(B) establish a schedule by which such electronic devices shall be in full compliance with the limits in subsection (a), unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission.

(5) Exception for off-highway vehicles**(A) In general**

Subsection (a) shall not apply to an off-highway vehicle.

(B) Off-highway vehicle defined

For purposes of this section, the term "off-highway vehicle"—

(i) means any motorized vehicle—

(I) that is manufactured primarily for use off public streets, roads, and highways;

(II) designed to travel on 2, 3, or 4 wheels; and

(III) that has either—

(aa) a seat designed to be straddled by the operator and handlebars for steering control; or

(bb) a nonstraddle seat, steering wheel, seat belts, and roll-over protective structure; and

(ii) includes a snowmobile.

(6) Bicycles and related products

In lieu of the lead limits established in subsection (a)(2), the limits set forth for each respective material in the notice of the Commission entitled “Notice of Stay of Enforcement Pertaining to Bicycles and Related Products”, published June 30, 2009 (74 Fed. Reg. 31254), shall apply to any metal component part of the products to which the stay of enforcement described in such notice applies, except that after December 31, 2011, the limits set forth in such notice shall not be more than 300 parts per million total lead content by weight for any metal component part of the products to which such stay pertains.

(7) Exclusion of certain used children’s products

(A) General exclusion

The lead limits established under subsection (a) shall not apply to a used children’s product.

(B) Definition

In this paragraph, the term “used children’s product” means a children’s product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))¹ that was obtained by the seller for use and not for the purpose of resale or was obtained by the seller, either directly or indirectly, from a person who obtained such children’s product for use and not for the purpose of resale. Such term also includes a children’s product that was donated to the seller for charitable distribution or resale to support charitable purposes. Such term shall not include—

- (i) children’s metal jewelry;
- (ii) any children’s product for which the donating party or the seller has actual knowledge that the product is in violation of the lead limits in this section; or
- (iii) any other children’s product or product category that the Commission determines, after notice and a hearing.

For purposes of this definition, the term “seller” includes a person who lends or donates a used children’s product.

(8) Periodic review

The Commission shall, based on the best available scientific and technical information, periodically review and revise the regulations promulgated pursuant to this subsection no less frequently than every 5 years after the first promulgation of a regulation under this subsection to make them more stringent and to require the lowest amount of lead the Commission determines is technologically feasible to achieve.

(c) Application with ASTM F963

To the extent that any regulation promulgated by the Commission under this section (or any section of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] or any other Act enforced by the Commission, as such Acts are affected by this section) is inconsistent with the ASTM F963 standard, such promulgated regulation shall supersede the ASTM F963 standard to the extent of the inconsistency.

(d) Technological feasibility defined

For purposes of this section, a limit shall be deemed technologically feasible with regard to a product or product category if—

(1) a product that complies with the limit is commercially available in the product category;

(2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

(e) Pending rulemaking proceedings to have no effect

The pendency of a rulemaking proceeding to consider—

(1) a delay in the effective date of a limit or an alternate limit under this section related to technological feasibility,

(2) an exception for certain products or materials or inaccessibility guidance under subsection (b) of this section, or

(3) any other request for modification of or exemption from any regulation, rule, standard, or ban under this Act or any other Act enforced by the Commission,

shall not delay the effect of any provision or limit under this section nor shall it stay general enforcement of the requirements of this section.

(f) More stringent lead paint ban

(1) In general

Effective on the date that is 1 year after August 14, 2008, the Commission shall modify section 1303.1 of its regulations (16 C.F.R. 1301.1) by substituting “0.009 percent” for “0.06 percent” in subsection (a) of that section.

(2) Periodic review and reduction

The Commission shall, no less frequently than every 5 years after the date on which the Commission modifies the regulations pursuant to paragraph (1), review the limit for lead in paint set forth in section 1303.1 of title 16, Code of Federal Regulations (as revised by paragraph (1)), and shall by regulation revise downward the limit to require the lowest amount of lead that the Commission determines is technologically feasible to achieve.

(3) Methods for screening lead in small painted areas

In order to provide for effective and efficient enforcement of the limit set forth in section

¹ So in original. Probably should be “2052(a)”).”

1303.1 of title 16, Code of Federal Regulations, the Commission may rely on x-ray fluorescence technology or other alternative methods for measuring lead in paint or other surface coatings on products subject to such section where the total weight of such paint or surface coating is no greater than 10 milligrams or where such paint or surface coating covers no more than 1 square centimeter of the surface area of such products. Such alternative methods for measurement shall not permit more than 2 micrograms of lead in a total weight of 10 milligrams or less of paint or other surface coating or in a surface area of 1 square centimeter or less.

(4) Alternative methods of measuring lead in paint generally

(A) Study

Not later than 1 year after August 14, 2008, the Commission shall complete a study to evaluate the effectiveness, precision, and reliability of x-ray fluorescence technology and other alternative methods for measuring lead in paint or other surface coatings when used on a children's product or furniture article in order to determine compliance with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection.

(B) Rulemaking

If the Commission determines, based on the study in subparagraph (A), that x-ray fluorescence technology or other alternative methods for measuring lead in paint are as effective, precise, and reliable as the methodology used by the Commission for compliance determinations prior to August 14, 2008, the Commission may promulgate regulations governing the use of such methods in determining the compliance of products with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection. Any regulations promulgated by the Commission shall ensure that such alternative methods are no less effective, precise, and reliable than the methodology used by the Commission prior to August 14, 2008.

(5) Periodic review

The Commission shall, no less frequently than every 5 years after the Commission completes the study required by paragraph (4)(A), review and revise any methods for measurement utilized by the Commission pursuant to paragraph (3) or pursuant to any regulations promulgated under paragraph (4) to ensure that such methods are the most effective methods available to protect children's health. The Commission shall conduct an ongoing effort to study and encourage the further development of alternative methods for measuring lead in paint and other surface coating that can effectively, precisely, and reliably detect lead levels at or below the level set forth in part 1303 of title 16, Code of Federal Regulations, or any lower level established by regulation.

(6) No effect on legal limit

Nothing in paragraph (3), nor reliance by the Commission on any alternative method of

measurement pursuant to such paragraph, nor any rule prescribed pursuant to paragraph (4), nor any method established pursuant to paragraph (5) shall be construed to alter the limit set forth in section 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection, or provide any exemption from such limit.

(7) Construction

Nothing in this subsection shall be construed to affect the authority of the Commission or any other person to use alternative methods for detecting lead as a screening method to determine whether further testing or action is needed.

(g) Treatment as a regulation under the FHSA

Any ban imposed by subsection (a) or rule promulgated under subsection (a) or (b) of this section, and section 1303.1 of title 16, Code of Federal Regulations (as modified pursuant to subsection (f)(1) or (2)), or any successor regulation, shall be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).

(Pub. L. 110-314, title I, §101, Aug. 14, 2008, 122 Stat. 3017; Pub. L. 112-28, §§1, 10(b), Aug. 12, 2011, 125 Stat. 273, 283.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (a)(1), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Consumer Product Safety Act, referred to in subsec. (c), is Pub. L. 92-573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

This Act, referred to in subsec. (e)(3), is Pub. L. 110-314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Federal Hazardous Substances Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112-28, §10(b), substituted “(as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)))” for “(as defined in section 3(a)(16) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(16)))”.

Subsec. (a)(3). Pub. L. 112-28, §1(a), added par. (3).

Subsec. (b)(1). Pub. L. 112-28, §1(b)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The Commission may, by regulation, exclude a specific product or material from the prohibition in subsection (a) if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither—

“(A) result in the absorption of any lead into the human body, taking into account normal and reasonable foreseeable use and abuse of such product by a

child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor

“(B) have any other adverse impact on public health or safety.”

Subsec. (b)(2)(A). Pub. L. 112-28, §1(b)(2), substituted “include” for “include to.”

Subsec. (b)(5) to (8). Pub. L. 112-28, §1(b)(3), added pars. (5) to (7) and redesignated former par. (5) as (8).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-28, §11, Aug. 12, 2011, 125 Stat. 283, provided that: “Except as provided otherwise, the amendments made by this Act [amending this section and sections 2055a, 2056a, 2056b, 2057c, 2063, 2068, and 2076 of this title and enacting provisions set out as a note under section 2089 of this title] shall take effect on the date of enactment of this Act [Aug. 12, 2011].”

DEFINITION

For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

CHAPTER 31—DESTRUCTION OF PROPERTY MOVING IN COMMERCE

§§ 1281, 1282. Repealed. Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1281, Pub. L. 87-221, §1, Sept. 13, 1961, 75 Stat. 494, related to willful destruction or injury, or attempted destruction or injury, of property moving in interstate or foreign commerce in possession of common or contract carriers, penalties for such acts, and proof of interstate or foreign nature of property. See section 80501 of Title 49, Transportation.

Section 1282, Pub. L. 87-221, §2, Sept. 13, 1961, 75 Stat. 494, provided that judgment of conviction or acquittal on merits under laws of any State or possession, District of Columbia, or Puerto Rico, was bar to prosecution under this chapter for same acts. See section 80501 of Title 49.

CHAPTER 32—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

Sec.

- 1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues.
- 1292. Area telecasting restriction limitation.
- 1293. Intercollegiate and interscholastic football contest limitations.
- 1294. Antitrust laws unaffected as regards to other activities of professional sports contests.
- 1295. “Persons” defined.

§ 1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as

the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

(Pub. L. 87-331, §1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(1), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1966—Pub. L. 89-800 extended exemption from antitrust laws to include a joint agreement by which the member clubs of two or more professional football leagues combine their operations in an expanded single league.

SHORT TITLE

Pub. L. 87-331, Sept. 30, 1961, 75 Stat. 732, as amended, which enacted this chapter, is popularly known as the Sports Broadcasting Act of 1961.

SAVINGS PROVISION

Pub. L. 87-331, §6, Sept. 30, 1961, 75 Stat. 732, provided that: “Nothing in this Act [this chapter] shall affect any cause of action existing on the effective date hereof [Sept. 30, 1961] in respect to the organized professional team sports of baseball, football, basketball, or hockey.”

§ 1292. Area telecasting restriction limitation

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

(Pub. L. 87-331, §2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89-800 substituted “described in the first sentence of such section” for “described in such section”.

§ 1293. Intercollegiate and interscholastic football contest limitations

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock post-meridian or on any Saturday during the period