of such product under subsection (b)(2), or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term ''imminently hazardous consumer product'' means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) Relief; product condemnation and seizure

(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Consumer product safety rule

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) Jurisdiction and venue; process; subpena

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(e) Employment of attorneys by Commission

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

(g)[1] Cost-benefit analysis of compliance with relief ordered in action for judicial review of consumer product safety rule not required

Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product or a person under this section, to prepare a comparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.

(Pub. L. 92–573, §12, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 97–35, title XII, §1205(a)(2), Aug. 13, 1981, 95 Stat. 716; Pub. L. 101–608, title I, §111(a)(1), Nov. 16, 1990, 104 Stat. 3114.)

Editorial Notes

AMENDMENTS

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

1981—Subsecs. (d) to (f). Pub. L. 97–35 redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which provided for consultation with the Product Safety Advisory Council by the Commission prior to commencing an action, was struck out.

Statutory Notes and Related Subsidiaries

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 the sixtieth day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

§ 2062. Repealed. Pub. L. 97–35, title XII, § 1211(b), Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92–573, §13, Oct. 27, 1972, 86 Stat. 1219, provided that Commission could prescribe procedures to insure that manufacturer of a new consumer product notify Commission of new product prior to its distribution.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective 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.

§ 2063. Product certification and labeling

(a) Certification accompanying product; products with more than one manufacturer

(1) GENERAL CONFORMITY CERTIFICATION.—Except as provided in paragraphs (2) and (3), every manufacturer of a product which is subject to a consumer product safety rule under this chapter or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and

[1] So in original. No subsec. (f) has been enacted.

the private labeler of such product if such product bears a private label) shall issue a certificate which—

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this chapter or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

(2) THIRD PARTY TESTING REQUIREMENT.—Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer of such children's product (and the private labeler of such children's product if such children's product bears a private label) shall—

(A) submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children's product safety rule; and

(B) based on such testing, issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests.

A manufacturer or private labeler shall issue either a separate certificate for each children's product safety rule applicable to a product or a combined certificate that certifies compliance with all applicable children's product safety rules, in which case each such rule shall be specified.

(3) SCHEDULE FOR IMPLEMENTATION OF THIRD PARTY TESTING.—

(A) GENERAL APPLICATION.—Except as provided under subparagraph (F), the requirements of paragraph (2) shall apply to any children's product manufactured more than 90 days after the Commission has established and published notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is subject.

(B) TIME LINE FOR ACCREDITATION.—

(i) LEAD PAINT.—Not later than 30 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1303 of title 16, Code of Federal Regulations.

(ii) FULL-SIZE CRIBS; NON FULL-SIZE CRIBS; PACIFIERS.—Not later than 60 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1508, 1509, and 1511 of such title.

(iii) SMALL PARTS.—Not later than 90 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1501 of such title.

(iv) CHILDREN'S METAL JEWELRY.—Not later than 120 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with the requirements of section 1278a(a)(2) of this title with respect to children's metal jewelry.

(v) BABY BOUNCERS, WALKERS, AND JUMPERS.—Not later than 210 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1500.18(a)(6) and 1500.86(a) of such title.[1]

(vi) ALL OTHER CHILDREN'S PRODUCT SAFETY RULES.—The Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with other children's product safety rules at the earliest practicable date, but in no case later than 10 months after August 14, 2008, or, in the case of children's product safety rules established or revised 1 year or more after such date, not later than 90 days before such rules or revisions take effect.

(C) ACCREDITATION.—Accreditation of third party conformity assessment bodies pursuant to the requirements established under subparagraph (B) may be conducted either by the Commission or by an independent accreditation organization designated by the Commission.

(D) PERIODIC REVIEW.—The Commission shall periodically review and revise the accreditation requirements established under subparagraph (B) to ensure that the requirements assure the highest conformity assessment body quality that is feasible.

(E) PUBLICATION OF ACCREDITED ENTITIES.—The Commission shall maintain on its Internet website an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules in accordance with the requirements published by the Commission under this paragraph.

(F) EXTENSION.—If the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule under the accelerated schedule required by this paragraph, the Commission may extend the deadline for certification to such rule by not more than 60 days.

(G) RULEMAKING.—Until the date that is 3 years after August 14, 2008, Commission proceedings under this paragraph shall be exempt from the requirements of sections 553 and 601 through 612 of title 5.

(4) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufac-

[1] So in original. Such title refers to title 16, Code of Federal Regulations.

turers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required under paragraph (1), (2), or (3), and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1), (2), or (3) to issue a certificate with respect to such product.

(5)(A) Effective 1 year after August 14, 2008, the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable—

(i) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(ii) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic).

(B) The Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) if the Commission determines that it is not practicable for such product or class of products to bear the marks required by such subparagraph. The Commission may establish alternative requirements for any product or class of products excluded under the preceding sentence consistent with the purposes described in clauses (i) and (ii) of subparagraph (A).

(b) Rules to establish reasonable testing programs

The Commission may by rule prescribe reasonable testing programs for any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission, and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests, unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products.

(c) Form and contents of labels

The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) The cohort information (including the batch, run number, or other identifying characteristic) of the product.

(3) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(4) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

(d) Additional regulations for third party testing

(1) Audit

Not later than 10 months after August 14, 2008, the Commission shall by regulation establish requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies under subsection (a)(3)(C).

(2) Compliance; continuing testing

Not later than 15 months after August 14, 2008, the Commission shall by regulation—

(A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and

(B) establish protocols and standards—

(i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;

(ii) for the testing of representative samples to ensure continued compliance;

(iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and

(iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

(3) Reducing third party testing burdens

(A) Assessment

Not later than 60 days after August 12, 2011, the Commission shall seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. The request for public comment shall include the following:

(i) The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.

(ii) The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.

(iii) The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.

(iv) The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.

(v) The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this chapter.

(vi) The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.

(vii) Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(B) Regulations

Following the public comment period described in subparagraph (A), but not later than 1 year after August 12, 2011, the Commission shall review the public comments and may prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(C) Report

If the Commission determines that it lacks authority to implement an opportunity for reducing the costs of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations, it shall transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation.

(4) Special rules for small batch manufacturers

(A) Special consideration; exemption

(i) Consideration; alternative requirements

Subject to subparagraph (C), in implementing third party testing requirements under this section, the Commission shall take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements and shall, after notice and a hearing, provide alternative testing requirements for covered products manufactured by small batch manufacturers in lieu of those required under subsection (a) or (b). Any such alternative requirements shall provide for reasonable methods to assure compliance with any applicable consumer product safety rule, ban, standard, or regulation. The Commission may allow such alternative testing requirements for small batch manufacturers with respect to a specific product or product class or with respect to a specific safety rule, ban, standard, or regulation, or portion thereof.

(ii) Exemption

If the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt small batch manufacturers from third party testing requirements under subsections (a) and (b).

(iii) Certification

In lieu of or as part of any alternative testing requirements provided under clause (i), the Commission may allow certification of a product to an applicable consumer product safety rule, ban, standard, or regulation, or portion thereof, based on documentation that the product complies with another national or international governmental standard or safety requirement that the Commission determines is the same or more stringent than the consumer product safety rule, ban, standard, or regulation, or portion thereof. Any such certification shall only be allowed to the extent of the equivalency with a consumer product safety rule, ban, standard, or regulation and not to any other part of the consumer product safety rule, ban, standard, or regulation.

(iv) Restriction

Except as provided in subparagraph (C), and except where the Commission determines that the manufacturer does not meet the definition of a small batch manufacturer, for any small batch manufacturer registered pursuant to subparagraph (B), the Commission may not require third party testing of a covered product by a third party conformity assessment body until the Commission has provided either an alternative testing requirement or an exemption in accordance with clause (i) or (ii), respectively.

(B) Registration

Any small batch manufacturer that utilizes alternative requirements or an exemption under this paragraph shall register with the Commission prior to using such alternative requirements or exemptions pursuant to any guidelines issued by the Commission to carry out this requirement.

(C) Limitation

The Commission shall not provide or permit to continue in effect any alternative requirements or exemption from third party testing requirements under this paragraph where it determines, based on notice and a hearing, that full compliance with subsection (a) or (b) is reasonably necessary to protect public health or safety. The Commission shall not provide any alternative requirements or exemption for—

(i) any of the third party testing requirements described in clauses (i) through (v) of subsection (a)(3)(B); or

(ii) durable infant or toddler products, as defined in section 2056a(f) of this title.

(D) Subsequent manufacturer

Nothing in this paragraph shall be construed to affect third party testing or any other requirements with respect to a subsequent manufacturer or other entity that uses components provided by one or more small batch manufacturers.

(E) Definitions

For purposes of this paragraph—

(i) the term ''covered product'' means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year; and

(ii) the term ''small batch manufacturer'' means a manufacturer that had no more than $1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year. The dollar amount contained in this paragraph shall be adjusted annually by the percentage increase in the Consumer Price Index for all urban consumers published by the Department of Labor.

For purposes of determining the total gross revenue for all sales of all consumer products of a manufacturer under this subparagraph, such total gross revenue shall be considered to include all gross revenue from all sales of all consumer products of each entity that controls, is controlled by, or is under common control with such manufacturer. The Commission shall take steps to ensure that all relevant business affiliations are considered in determining whether or not a manufacturer meets this definition.

(5) Exclusion from third party testing

(A) Certain printed materials

(i) In general

The third party testing requirements established under subsection (a) shall not apply to ordinary books or ordinary paper-based printed materials.

(ii) Definitions

(I) Ordinary book

The term ''ordinary book'' means a book printed on paper or cardboard, printed with inks or toners, and bound and finished using a conventional method, and that is intended to be read or has educational value. Such term does not include books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book.

(II) Ordinary paper-based printed materials

The term ''ordinary paper-based printed materials'' means materials printed on paper or cardboard, such as magazines, posters, greeting cards, and similar products, that are printed with inks or toners and bound and finished using a conventional method.

(III) Exclusions

Such terms do not include books or printed materials that contain components that are printed on material other than paper or cardboard or contain nonpaper-based components such as metal or plastic parts or accessories that are not part of the binding and finishing materials used in a conventional method.

(B) Metal component parts of bicycles

The third party testing requirements established under subsection (a) shall not apply to metal component parts of bicycles with respect to compliance with the lead content limits in place pursuant to section 1278a(b)(6) of this title.

(e) Withdrawal of accreditation

(1) In general

The Commission may withdraw its accreditation or its acceptance of the accreditation of a third party conformity assessment body accredited under this section if the Commission finds, after notice and investigation, that—

(A) a manufacturer, private labeler, or governmental entity has exerted undue influence on such conformity assessment body or otherwise interfered with or compromised the integrity of the testing process with respect to the certification of a children's product under this section; or

(B) such conformity assessment body failed to comply with an applicable protocol, standard, or requirement established by the Commission under subsection (d).

(2) Procedure

In any proceeding to withdraw the accreditation of a conformity assessment body, the Commission—

(A) shall consider the gravity of the conformity assessment body's action or failure to act, including—

(i) whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) whether and when the conformity assessment body initiated remedial action; and

(B) may—

(i) withdraw its acceptance of the accreditation of the conformity assessment body on a permanent or temporary basis; and

(ii) establish requirements for reaccreditation of the conformity assessment body.

(3) Failure to cooperate

The Commission may suspend the accreditation of a conformity assessment body if it fails to cooperate with the Commission in an investigation under this section.

(f) Definitions

In this section:

(1) Children's product safety rule

The term ''children's product safety rule'' means a consumer product safety rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.

(2) Third party conformity assessment body

(A) In general

The term ''third party conformity assessment body'' means a conformity assessment body that, except as provided in subparagraph (D), is not owned, managed, or controlled by the manufacturer or private labeler of a product assessed by such conformity assessment body.

(B) Governmental participation

Such term may include an entity that is owned or controlled in whole or in part by a government if—

(i) to the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) the entity's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) the entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under this section;

(iv) the entity's testing results are accorded no greater weight by other governmental authorities than those of other third party conformity assessment bodies accredited under this section; and

(v) the entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

(C) Testing and certification of art materials and products

A certifying organization (as defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations (or any successor regulation or ruling)) meets the requirements of subparagraph (A) with respect to the certification of art material and art products required under this section or by regulations prescribed under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(D) Firewalled conformity assessment bodies

Upon request, the Commission may accredit a conformity assessment body that is owned, managed, or controlled by a manufacturer or private labeler as a third party conformity assessment body if the Commission by order finds that—

(i) accreditation of the conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and

(ii) the conformity assessment body has established procedures to ensure that—

(I) its test results are protected from undue influence by the manufacturer, private labeler or other interested party;

(II) the Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and

(III) allegations of undue influence may be reported confidentially to the Commission.

(g) Requirements for certificates

(1) Identification of issuer and conformity assessment body

Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

(2) English language

Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.

(3) Availability of certificates

Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.

(4) Electronic filing of certificates for imported products

In consultation with the Commissioner of U.S. Customs and Border Protection, the Com-

mission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of U.S. Customs and Border Protection.

(h) Rule of construction

Compliance of any children's product with third party testing and certification or general conformity certification requirements under this section shall not be construed to exempt such children's product from any requirement that such product actually be in conformity with all applicable rules, regulation, standards, or ban under any Act enforced by the Commission.

(i) Requirement for advertisements

No advertisement for a consumer product or label or packaging of such product may contain a reference to a consumer product safety rule or a voluntary consumer product safety standard unless such product conforms with the applicable safety requirements of such rule or standard.

(Pub. L. 92–573, §14, Oct. 27, 1972, 86 Stat. 1220; Pub. L. 110–314, title I, §§102(a)(1)(A), (2), (3), (b), (d), 103, Aug. 14, 2008, 122 Stat. 3022, 3024, 3027, 3028; Pub. L. 112–28, §§2(a), 6, 10(a), Aug. 12, 2011, 125 Stat. 276, 281, 283; Pub. L. 114–125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

Editorial Notes

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (f)(2)(C), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2011—Subsec. (a)(5). Pub. L. 112–28, §6, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (d). Pub. L. 112–28, §10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

Subsec. (d)(2)(B)(ii). Pub. L. 112–28, §2(a)(1), substituted ''representative'' for ''random''.

Subsec. (d)(3) to (5). Pub. L. 112–28, §2(a)(2), added pars. (3) to (5).

Subsec. (i). Pub. L. 112–28, §10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

2008—Subsec. (a)(1). Pub. L. 110–314, §102(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.''

Subsec. (a)(2), (3). Pub. L. 110–314, §102(a)(2), which directed amendment of par. (2) of this section by adding pars. (2) and (3), was executed by adding pars. (2) and (3) to subsec. (a) of this section, to reflect the probable intent of Congress. Former par. (2) redesignated (4).

Subsec. (a)(4). Pub. L. 110–314, §102(a)(3), substituted ''required under paragraph (1), (2), or (3)'' for ''required by paragraph (1) of this subsection'' and ''requirement under paragraph (1), (2), or (3)'' for ''requirement under paragraph (1)''.

Pub. L. 110–314, §102(a)(2), which directed amendment of par. (2) of this section by redesignating par. (2) as (4), was executed to subsec. (a) of this section, to reflect the probable intent of Congress.

Subsec. (a)(5). Pub. L. 110–314, §103(a), added par. (5).

Subsec. (b). Pub. L. 110–314, §102(d), substituted ''any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission,'' for ''consumer products which are subject to consumer product safety standards under this chapter'' and '', unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products.'' for ''or testing programs.''

Subsec. (c)(2) to (4). Pub. L. 110–314, §103(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 110–314, §103(c), added subsec (d) relating to requirement for advertisements.

Pub. L. 110–314, §102(b), added subsec. (d) relating to additional regulations for third party testing.

Subsecs. (e) to (h). Pub. L. 110–314, §102(b), added subsecs. (e) to (h).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

''Commissioner of U.S. Customs and Border Protection'' substituted for ''Commissioner of Customs'' in two places in subsec. (g)(4) on authority of section 802(d)(2) of Pub. L. 114–125, set out as a note under section 211 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title I, §102(a)(1)(B), Aug. 14, 2008, 122 Stat. 3022, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect 90 days after the date of enactment of this Act [Aug. 14, 2008].''

Amendment by section 103(c) of Pub. L. 110–314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

EFFECTIVE DATE

Section effective on the sixtieth day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

CPSC CONSIDERATION OF EXISTING REQUIREMENTS

Pub. L. 110–314, title I, §102(c), Aug. 14, 2008, 122 Stat. 3027, provided that: ''In establishing standards for accreditation of a third party conformity assessment body under section 14(a)(3) of the Consumer Product Safety Act [15 U.S.C. 2063(a)(3)], as added by subsection (a), the [Consumer Product Safety] Commission may consider standards and protocols for accreditation of such conformity assessment bodies by independent accreditation organizations that are in effect on the date of enactment of this Act [Aug. 14, 2008], but shall ensure that the protocols, standards, and requirements prescribed under such section 14(a)(3) incorporate, as the standard for accreditation, the most current scientific and technological standards and techniques available.''

§ 2064. Substantial product hazards

(a) "Substantial product hazard" defined

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

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

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

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

Every manufacturer of a consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49[1]), distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

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

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

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

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

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

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

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

(A) To cease distribution of the product.

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

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

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

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

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

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

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

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

(d) Repair; replacement; refunds; action plan

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

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

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

(C) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (i) at the time of public notice under subsection (c), or (ii) at

[1] See References in Text note below.