code of federal regulations

Commercial Practices

16

PART 1100 TO 1406

Revised as of January 1, 1999

Subchapter B—Consumer Product Safety Act Regulations

U. S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Fax Message Cover Sheet

Date: 04/13/00 **Time:** 3:45 p.m.

☐ **Fax To (Name):** Heather Howard

☐ **Fax Number:** (202) 456-2878

☐ **Voice Phone Number:**

From: Office of the Executive Director

Name: Pamela Gilbert

Voice Phone Number: (301) 504-0550

Fax Number: (301) 504-0121

Subject: Consumer Product Safety Act (Civil Penalties and Criminal Penalties)

Number of Pages to Follow: 4

records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this Act or rule thereunder;

(4) fail to furnish information required by section 15(b);

(5) fail to comply with an order issued under section 15 (c) or (d) (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by section 14 or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c) (relating to labeling);

(7) fail to comply with any rule under section 9(g)(2) (relating to stockpiling);

(8) fail to comply with any rule under section 13

(8) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data); and

(9) fail to comply with any rule or requirement under section 35 (relating to labeling and testing of cellulose insulation).

(10) fail to file a statement with the Commission pursuant to section 18(b).

(11) fail to furnish information required by section 37.

(b) Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 14(a) to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

CIVIL PENALTIES

SEC. 20. [15 U.S.C. 2069] {penalties increased; see 59 FR 68523}

(a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a)—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(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, 1994, 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.

(b) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 19(a), the Commission shall consider the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(c) Any civil penalty under this section 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 person charged, the nature of the product defect, the severity of the risk of injury, the occurence or absence of injury, and the number of defective products distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

REPORT ON CIVIL PENALTIES

[Sec. 115(d) of Pub.L. 101-608]
{Not technically part of the Consumer Product Safety Act}

(1) Beginning 1 year after the date of enactment of this Act, and every year thereafter, the Consumer Product Safety Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce **{now Committee on Commerce}** of the House of Representatives the information specified in paragraph (2) of this subsection. Such information may be included in the annual report to the Congress submitted by the Commission.

(2) The Commission shall submit information with respect to the imposition of civil penalties under the statutes which it administers. The information shall include the number of civil penalties imposed, and identification of the violations that led to the imposition of such penalties, and the amount of revenue recovered from the imposition of such penalties.

CONSUMER PRODUCT SAFETY ACT

CRIMINAL PENALTIES

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SEC. 21. [15 U.S.C. 2070]

(a) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission ~~shall be fined not more than $50,000~~ or be imprisoned not more than one year, or both.
{**Government-wide legislation provides for higher maximum penalties.**}

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 19, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. [15 U.S.C. 2071]

(a) The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 19.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 27(b)(7)(A)) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d),

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1978 Acts. House Report No. 95-1164, see 1978 U.S. Code Cong. and Adm. News, p. 9434.

Amendments

1978 Amendments. Subsec. (a). Pub.L. 95-631, designated existing text as subsec. (a) and clause (A) and in subsec. (a), as so designated, added clause (B), and added subsec. (b).

LIBRARY REFERENCES

Administrative Law

Omnidirectional citizens band base station antennas, see 16 CFR § 1204.1.

Procedures for export of noncomplying products, see 16 CFR § 1019.1 et seq.

American Digest System

Consumer Protection ⚷11.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Construction with other laws 1

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1. Construction with other laws

This section does not preclude the President from imposing export controls on substances for foreign policy purposes under the Export Administration Act. 1980 (Counsel-Inf. Op.) 4B Op. O.L.C. 802.

§ 2068. Prohibited acts

(a) Designation

It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

TATUTORY NOTES

Amendments

1978 Amendments. Subsec. (a). Pub.L. 95-631, designated existing text as subsec. (a) and clause (A) and in subsec. (a), as so designated, added clause (B), and added subsec. (b).

EFERENCES

ion antennas, see 16 CFR § 1204.1.
products, see 16 CFR § 1019.1 et seq.

Unfair Competition § 237.

RONIC RESEARCH

planation pages of this volume.

DECISIONS

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(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);

(7) fail to comply with any rule under section 2058(g)(2) of this title (relating to stockpiling); or [1]

(8) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data); and [1]

(9) fail to comply with any rule or requirement under section 2082 of this title (relating to labeling and testing of cellulose insulation).[1]

(10) fail to file a statement with the Commission pursuant to section 2067(b) of this title.[1]

(11) fail to furnish information required by section 2084 of this title.

(b) Exception

Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub.L. 92-573, § 19, Oct. 27, 1972, 86 Stat. 1224; Pub.L. 94-284, §§ 12(b), 13(a), May 11, 1976, 90 Stat. 508, 509; Pub.L. 95-319, § 3(b), July 11, 1978, 92 Stat. 390; Pub.L. 95-631, § 6(b), Nov. 10, 1978, 92 Stat. 3745; Pub.L. 97-414, § 9(j)(4), Jan. 4, 1983, 96 Stat. 2064; Pub.L. 101-608, Title I, § 112(d), Nov. 16, 1990, 104 Stat. 3117.)

[1] So in original. Words "or" and "and" probably should not appear at the end of pars. (7) and (8). The period at the end of par. (9) probably should be a semicolon, and the period at the end of par. (10) probably should be a semicolon followed by "or".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94-251 and House Conference Report No. 94-1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1978 Acts. House Report No. 95-1116 and House Conference Report No. 95-1322, see 1978 U.S. Code Cong. and Adm. News, p. 1044.

1983 Acts. House Report No. 97-840, see 1982 U.S. Code Cong. and Adm. News, p. 3577.

1990 Acts. Senate Report No. 101-37, House Conference Report No. 101-914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

Amendments

1990 Amendments. Subsec. (a)(11). Pub.L. 101-608 added par. (11).

1983 Amendments. Subsec. (a)(7). Pub.L. 97-414, § 9(j)(4)(A), substituted "section 2058(g)(2)" for "section 2058(d)(2)".

Subsec. (a)(8). Pub.L. 97-414, § 9(j)(4)(B), redesignated par. (9) as (8) and struck out former par. (8) which made it unlawful for any person to fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products).

Subsec. (a)(9), (10). Pub.L. 97-414, § 9(j)(4)(B), redesignated par. (10), as added by Pub.L. 95-319, as (9). Former par. (9) redesignated (8).

1978 Amendments. Subsec. (a)(10). Pub.L. 95-631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to § 2067(b) of this title.

Pub.L. 95-319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under § 2082 of this title.

1976 Amendments. Subsec. (a). Pub.L. 94-284 substituted "to" for "and to" and inserted ", and to prohibited acts" after "refund" in par. (5), inserted "or fail or refuse to establish or maintain records," following "copying of records," in par. (3), and added pars. (8) and (9).

Duty to Report Choking Incidents Caused by Children's Toys or Games

For purposes of subsec. (a)(3) of this section, requirement to report information relating to choking incidents caused by children's toys or games to Consumer Product Safety Commission deemed a requirement under this chapter, see section 102 of Pub. L. 103-267, set out as a Reporting Requirements note under section 2064 of this title.

LIBRARY REFERENCES

Administrative Law

Additional prohibited acts and reporting requirements, see 16 CFR § 1115.1 et seq.
Architectural glazing materials, see 16 CFR § 1201.1 et seq.
Automatic garage door operators, certification, see 16 CFR § 1211.23.
Choking incidents, reporting, see 16 CFR § 1117.9.
Equal Access to Justice Act, implementation, see 16 CFR § 1025.70.
Information disclosure, see 16 CFR § 1101.11.
Investigations, inspections, and inquiries, see 16 CFR § 1118.1 et seq.
Matchbooks, see 16 CFR § 1202.1 et seq.
Omnidirectional citizens band base station antennas, see 16 CFR § 1204.1 et seq.
Procedures for export of noncomplying products, see 16 CFR § 1019.1 et seq.
Rules of practice and proceedings, see 16 CFR § 1025.1.
Walk-behind power lawn mowers, see 16 CFR § 1205.1 et seq.

American Digest System

Consumer Protection ⚯50.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

.dded by Pub.L. 95–319, as (9). Former par. (9) redesignated (8).

1978 Amendments. Subsec. (a)(10). Pub.L. 95–631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to § 2067(b) of this title.

Pub.L. 95–319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under § 2082 of this title.

1976 Amendments. Subsec. (a). Pub.L. 94–284 substituted "to" for "and to", and inserted ", and to prohibited acts" after "refund" in par. (5), inserted "or fail or refuse to establish or maintain records," following "copying of records," in par. (3), and added pars. (8) and (9).

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ERENCES

requirements, see 16 CFR § 1115

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CFR § 1205.1 et seq.

nfair Competition §§ 237, 238.

NIC RESEARCH

nation pages of this volume.

NOTES OF DECISIONS

1. Hazardous products

Musical toys sold by importer, distributor and retailer were banned hazardous products under the Consumer Product Safety Act; toys contained an excess of permissible amount of lead paint, and retailer did not have sufficient certification that products conformed to applicable product safety standards as required for statutory exception to apply. U.S. v. Toys 'R' Us, Inc., D.N.J.1991, 754 F.Supp. 1050.

2. Cigarette lighters

Even though the Consumer Products Safety Commission is authorized to regulate disposable lighters as a "package" containing a "hazardous substance," the Commission is without authority to regulate under the Poison Prevention Packaging Act (PPPA) against designs which would too easily allow children to operate a lighter, so that there was no cause of action against manufacturer under the Consumer Products Safety Act for violation of PPPA regulations. Carlson v. Bic Corp., E.D.Mich.1993, 840 F.Supp. 457.

§ 2069. Civil penalties

(a) Amount of penalty

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; 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 $1,250,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(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, 1994, 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.

(b) Relevant factors in determining amount of penalty

In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 2068(a) of this title, the Commission shall consider the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(c) Compromise of penalty; deductions from penalty

Any civil penalty under this section 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 person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed. The amount of

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such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) "Knowingly" defined

As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub.L. 92–573, § 20, Oct. 27, 1972, 86 Stat. 1225; Pub.L. 94–284, § 13(b), May 11, 1976, 90 Stat. 509; Pub.L. 95–631, § 6(c), Nov. 10, 1978, 92 Stat. 3745; Pub.L. 97–35, Title XII, § 1211(c), Aug. 13, 1981, 95 Stat. 721; Pub.L. 101–608, Title I, §§ 112(e), 115(a), Nov. 16, 1990, 104 Stat. 3117, 3118.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94–251 and House Conference Report No. 94–1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1978 Acts. House Report No. 95–1164, see 1978 U.S. Code Cong. and Adm. News, p. 9434.

1981 Acts. Senate Report No. 97–139 and House Conference Report No. 97–208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1990 Acts. Senate Report No. 101–37, House Conference Report No. 101–914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

Amendments

1990 Amendments. Subsec. (a)(1). Pub.L. 101–608, §§ 112(e), 115(a)(1), (2), substituted "$5,000" for "$2,000", and "(10), or (11)" for "or (10)", and substituted "$1,250,000" for "$500,000" in two places.

Subsec. (a)(3). Pub.L. 101–608, § 115(a)(3), added par. (3).

1981 Amendments. Subsecs. (b) to (d). Pub.L. 97–35 added subsec. (b), redesignated former subsec. (b) as (c), substituted "the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed" for "the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered", and redesignated subsec. (c) as (d).

1978 Amendments. Subsec. (a)(1). Pub.L. 95–631 made violation of § 2068(a)(10) of this title a separate offense.

1976 Amendments. Subsec. (a)(1). Pub.L. 94–284 inserted reference to pars. (8) and (9).

Effective Dates

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

LIBRARY REFERENCES

Administrative Law

Choking incidents, reporting, see 16 CFR § 1117.9.
Information disclosure, see 16 CFR § 1101.45.
Rules of practice and procedure, see 16 CFR § 1025.1 et seq.
Substantial product hazard reports, see 16 CFR § 1115.1 et seq.

American Digest System

Consumer Protection ⚫=50.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Constitutionality

Civil penalty which Commission is authorized to assess under this section does not constitute a criminal penalty which the Commission would be prohibited by U.S.C.A.Const. Amends. 5 and 6 from imposing. Advance Mach. Co. v. Consumer Product Safety Commission, D.C.Minn. 1981, 510 F.Supp. 360, remanded 666 F.2d 1166.

2. Purpose

It was not the intent of Congress to prevent private parties from seeking imposition of the statutory penalty authorized by this chapter for each violation of the applicable consumer products safety standard. Plaskolite, Inc. v. Baxt Industries, Inc., N.D.Ga.1980, 486 F.Supp. 213.

3. Retroactive effect

Amendment to this chapter which took effect during pendency of appeal from order of district court would be applied on appeal. Advance Mach. Co. v. Consumer Product Safety Commission, C.A.8 (Minn.) 1981, 666 F.2d 1166.

4. Administrative authority

The Consumer Product Safety Commission lacked statutory authority to assess civil penalties in an administrative proceeding. Athlone Industries, Inc. v. Consumer Product Safety Com'n, C.A.D.C. 1983, 707 F.2d 1485, 228 U.S.App.D.C. 80.

Following 1981 amendments to this chapter, Commission did not have authority to proceed administratively to assess civil penalties for alleged violation of this chapter. Advance Mach. Co. v. Consumer Product Safety Commission, C.A.8 (Minn.) 1981, 666 F.2d 1166.

5. Abstention

Abstention on ripeness grounds was not appropriate with respect to plaintiff manufacturer's action challenging Commission's power to proceed administratively for purpose of assessing civil penalties against manufacturer, since such issue was ripe for judicial decision, manufacturer might otherwise suffer expense and inconvenience of participation in proceedings, and if issue were not decided soon, administrative hearings would have been held and the issue would be moot; however, manufacturer's request that court enjoin Commission from assessing civil penalty was not ripe for adjudication, since manufacturer would not suffer hardship if court withheld consideration of that issue. Advance Mach. Co. v. Consumer Product Safety Commission, D.C.Minn.1981, 510 F.Supp. 360, remanded 666 F.2d 1166.

6. Res judicata

Action by Commission to have defendant manufacturer's baseball pitching machines declared imminently hazardous under this chapter and to compel defendants to cease manufacture, sale and distribution of the machines and to engage in advertising and mailings to notify purchasers was not res judicata of subsequent action charging the manufacturer with violating this chapter's defect reporting requirements. U.S. v. Advance Mach. Co., D.C.Minn.1982, 547 F.Supp. 1085.

7. Exhaustion of administrative remedies

Distributor of automatic baseball pitching machines was not required to [illegible] administrative remedies before bringing action to enjoin the Commission from assessing civil penalties in an administrative proceeding against it since scope of Commission's statutory authority was strictly a legal issue, no factual development or application of agency expertise would aid the court's decision, it was highly unlikely that the Commission would change its position if case were remanded to it, and manufacturer of pitching machines had brought a similar action in another circuit and had been granted an injunction. Athlone Industries, Inc. v. Consumer Product Safety Com'n, C.A.D.C.1983, 707 F.2d 1485, 228 U.S.App.D.C. 80.

8. Summary judgment

In civil penalties action against automatic baseball pitching machine manufacturer, question existed as to whether Commission fulfilled its duty pursuant to this section of determining amount of penalty before commencing action, precluding summary judgment. U.S. v. Athlone Industries, Inc., C.A.3 (N.J.) 1984, 746 F.2d 977.

§ 2070. Criminal penalties

(a) Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.

(Pub.L. 92-573, § 21, Oct. 27, 1972, 86 Stat. 1225.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

LIBRARY REFERENCES

Administrative Law

Choking incidents, reporting, see 16 CFR § 1117.9.

Substantial product hazard reports, see 16 CFR § 1115.1 et seq.

American Digest System

Consumer Protection ⇐50.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2071. Injunctive enforcement and seizure

(a) Jurisdiction

The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 2068 of this title.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 2064(d) of this title.

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 2076(b)(7)(A) of this title) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Products liable to proceeding

Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 2064(d) of this title,

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of 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.

(Pub.L. 92–573, § 22, Oct. 27, 1972, 86 Stat. 1225; Pub.L. 94–284, §§ 11(b), 12(c), May 11, 1976, 90 Stat. 507, 508.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94–251 and House Conference Report No. 94–1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

Amendments

1976 Amendments. Subsec. (a). Pub.L. 94–284, §§ 11(b), 12(c)(1), designated existing provision as par. (1) and (3), added par. (2), and in the provision following par. (3) substituted "(without regard to section 2076(b)(7)(A) of this title)" for "(with the concurrence of the Attorney General)".

Subsec. (b). Pub.L. 94–284, § 12(c)(2), amended subsec. (b) generally, inserting provision designated as par. (2), which included within consumer products liable to proceedings, a product of which the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States has been prohibited.

CROSS REFERENCES

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1996, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

Civil and admiralty procedures in district courts, see Supplemental Admiralty and Maritime Claims Rule 1 et seq., 28 USCA.

LIBRARY REFERENCES

Administrative Law

Substantial product hazard reports, see 16 CFR § 1115.1 et seq.

American Digest System

Consumer Protection ⚷41.

Encyclopedias

C.J.S. Trade–Marks, Trade–Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Exhaustion of administrative remedies 1
Three-judge court 2

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1. Exhaustion of administrative remedies

Generally no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedies have been exhausted. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex.1975, 391 F.Supp. 841.

Manufacturer of arc welder was not entitled to a preenforcement judicial review and an injunction against the Commission enjoining it from taking any further action against manufacturer with respect to alleged defect in the product where there had been neither an administrative hearing nor a final agency determination and the sole application of this chapter had been the issuance of a public warning. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex. 1975, 391 F.Supp. 841.

2. Three-judge court

Three-judge court was not required to hear manufacturer's challenge to constitutionality of this chapter where no final administrative determination had been made toward manufacturer and the substantive provision complained of had yet to be applied to the manufacturer. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex.1975, 391 F.Supp. 841.

Where manufacturer of arc welder had not availed itself of the administrative procedures afforded by this chapter and had not been compelled to take any action or refrain therefrom concerning the safety of the welder, a single judge alone was entitled to refuse to hear the constitutional attack and could dismiss for failure to exhaust remedies and for lack of justiciability. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex. 1975, 391 F.Supp. 841.

§ 2072. Suits for damages

(a) Persons injured; costs; amount in controversy

Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, shall recover damages sustained and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees: *Provided*, That the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, unless such action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Denial and imposition of costs

Except when express provision is made in a statute of the United States, in any case in which the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) Remedies available

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

(Pub.L. 92–573, § 23, Oct. 27, 1972, 86 Stat. 1226; Pub.L. 94–284, [illegible] May 11, 1976, 90 Stat. 507; Pub.L. 96–486, § 3, Dec. 1, 1980, 94 Stat. [illegible] Pub.L. 97–35, Title XII, § 1211(h)(3)(B), Aug. 13, 1981, 95 Stat. [illegible]

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94-251 and House Conference Report No. 94-1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1980 Acts. House Report No. 96-1461, see 1980 U.S. Code Cong. and Adm. News, p. 5063.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

Amendments

1981 Amendments. Subsec. (a). Pub.L. 97-35 substituted "section 2060(f) of this title" for "section 2059(e)(4) of this title".

1980 Amendments. Subsec. (a). Pub.L. 96-486, § 3(a), struck out provision subjecting actions under this section to § 1331 of Title 28 as to the amount in controversy and inserted proviso establishing minimum amount in controversy and excepting actions brought against the United States, or agencies, officers, or employees thereof.

Subsecs. (b), (c). Pub.L. 96-486, § 3(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1976 Amendments. Subsec. (a). Pub.L. 94-284 substituted "shall" for "and shall" and provision permitting the court to award costs in the interest of justice for a prior provision which permitted the court to award costs in its discretion.

Effective Dates

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

1980 Acts. For effective date and applicability of amendment by Pub.L. 96-486, see § 4 of Pub.L. 96-486, set out as an Effective Date of 1980 Amendment note under § 1331 of Title 28, Judiciary and Judicial Procedure.

LIBRARY REFERENCES

American Digest System

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C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.

Forms

Diversity of citizenship and federal question, see West's Federal Forms § 1041.

Law Review and Journal Commentaries

Constitutional right to expert assistance for indigents in civil cases. David Medine, 41 Hastings L.J. 281 (1990).

Remedies provided by the Magnuson-Moss Warranty Act. Alphonse M. Squillante, 92 Com.L.J. 366 (1987).

Texts and Treatises

Federal court jurisdiction, requirement of amount in controversy, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3561.1.

Jurisdiction of federal courts in actions arising under Act regulating commerce, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3574.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Law governing

Although provision of Consumer Product Safety Act [15 U.S.C.A. § 2072(a)] governing suits for damages limits recovery to compensatory damages, where Congress did not specify breadth and scope of compensatory damages available, measure of recovery under Act is function of state rather than federal law. Baas v. Hoye, C.A.8 (Iowa) 1985, 766 F.2d 1190.

R.C. § 2305.09 providing a four-year statute of limitations for fraud or for torts not specifically listed applied to cause of action under this section against manufacturers of water heater and gas control unit for personal and derivative injuries plaintiffs suffered when water heater exploded in their home. Payne v. A.O. Smith Corp., S.D.Ohio 1983, 578 F.Supp. 733.

New York's prohibition against punitive damages in wrongful death or survival actions was not so inconsistent with or inimical to federal interests that federal district court would be required to supersede it with judicially fabricated federal common law in suit for damages under this section. Wahba v. H & N Prescription Center, Inc., E.D.N.Y.1982, 539 F.Supp. 352.

Since cause of action under the Consumer Product Safety Act [15 U.S.C.A. § 2051 et seq.] would arise from same occurrences that give rise to liability under state common law, and there is no apparent overriding federal need for uniform limitations period, analogous state statute of limitations applied to action. Swenson v. Emerson Elec. Co., Minn. 1985, 374 N.W.2d 690, rehearing denied, certiorari denied 106 S.Ct. 1998, 476 U.S. 1130, 90 L.Ed.2d 678.

2. Knowledge or intent

In the absence of allegation in complaint that any of the defendants knowingly or willfully violated any rule or order issued by the Consumer Product Safety Commission, there was no private cause of action under the Consumer Product Safety Act which could provide court with cases for federal question jurisdiction. Russom v. Kilgore Corp., W.D.Tenn.1988, 692 F.Supp. 796.

3. Safety violations

Diver's injuries as result of hitting head on bottom of pool were not caused by violation by pool excavator and component manufacturers of consumer product safety rule that required reporting of product defects capable of creating substantial product hazards, and, thus, manufacturers and supplier were not liable pursuant to statute, which authorizes suit by anyone injured by reason of knowing violation of consumer product safety rule. Zepik v. Tidewater Midwest, Inc., C.A.7 (Ind.) 1988, 856 F.2d 936, on remand 719 F.Supp. 751.

Failure of manufacturers of above-ground swimming pool to report to Consumer Product Safety Commission that head-first dives into pools had caused serious bodily injury did not render manufacturers liable for injuries sustained by adult when he dove into four feet of water from height of eight feet, absent evidence that adult's injury occurred by reason of any failure to disclose. Kelsey v. Muskin Inc., C.A.2 (N.Y.) 1988, 848 F.2d 39, certiorari denied 109 S.Ct. 838, 488 U.S. 1030, 102 L.Ed.2d 971.

Failure to comply with the product hazard reporting rules issued by the Consumer Products Safety Commission does not give rise to a private cause of action under the Consumer Product Safety Act disagreeing with *Wilson v. Robertshaw Controls Co.*, 600 F.Supp. 671 (N.D.Ind.); *Payne v. A.O. Smith Corp.*, 578 F.Supp. 733 (S.D.Ohio); *Young v. Robertshaw Controls Co.*, 560 F.Supp. 288 (N.D.N.Y.); *Butcher v. Robertshaw Controls Co.*, 550 F.Supp. 692 (D.Md.); and *Swenson v. Emerson Electric Co.*, 374 N.W.2d 690 (Minn.). Drake v. Honeywell, Inc., C.A.8 (Minn.) 1986, 797 F.2d 603.

There was no sufficient causal connection between a child's being shot in the eye with a BB when air rifle accidentally went off and manufacturer's [illegible]

Knowledge or intent

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lawful failure to comply with product hazard reporting rule to warrant private action against manufacturer under Consumer Product Safety Act. Brown v. Daisy Mfg. Co., N.D.N.Y.1989, 724 F.Supp. 44.

No private cause of action exists under the Consumer Product Safety Act for violation of the defect notification requirement of the Act or of the rules of the Consumer Products Safety Commission defining the time, place, and manner of notification. Crouse v. Kawasaki Heavy Industries Ltd., N.D.N.Y.1989, 716 F.Supp. 723.

Allegations by buyers of mobile home that manufacturer and suppliers used wood products in home, releasing formaldehyde gas which could create substantial product hazard stated cause of action under § 2072 of the Consumer Product Safety Act, which does not authorize suits based upon allegation that products contained substantial hazard, but allows suits based upon knowing violations of safety rules, since alleged conduct violated federal regulation, 16 C.F.R. § 1115. Hughes v. Segal Enterprises, Inc., W.D.Ark.1986, 627 F.Supp. 1231.

Provision of Consumer Product Safety Act that anyone who sustains injury by reason of a violation of a consumer product safety rule or any other rule or order issued by Consumer Products Safety Commission has a cause of action against the violator was intended only to give a cause of action for violation of a substantive rule promulgated by the Commission and not to any administrative rule which simply interprets the statute with respect to filing information with the Commission, and such provision did not give private right of action against fun-kart manufacturer and seller on ground that seller and assembler failed to notify any governmental agency that they had noticed that the carts were unsafe and failed to comply with applicable products safety rules; declining to follow *Young v. Robertshaw Controls Co.*, 560 F.Supp. 288 and *Butcher v. Robertshaw Controls Co.*, 550 F.Supp. 692. Kahn v. Sears, Roebuck and Co., U.S.A., N.D.Ga.1985, 607 F.Supp. 957.

Where lawn darts manufacturer took number of precautions in distributing lawn darts, made it clear in its catalogue, notices and cartons, that darts were not to be sold with toys, purposely determined not to sell its product to toy stores, and retailer, to which it did sell, dealt primarily in drugs, cosmetics, and adult items, manufacturer was not liable for injury to two and one-half-year-old child hit in head with dart thrown by eight-year-old girl on ground that manufacturer did not monitor retailer's bargaining practices to insure compliance with regulation requiring that lawn darts not be sold with toys or other children's articles. Aimone by Aimone v. Walgreen's Co., N.D.Ill.1985, 601 F.Supp. 507, reconsideration denied.

A private right of action existed for violations of disclosure requirements of nonbinding interpretive rules of the Consumer Product Safety Commission. Wilson By and Through Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Robertshaw Controls Co., N.D.Ind.1985, 600 F.Supp. 671.

Private damages remedy provision of this section was not available to allow private damages action by manufacturer of children's sleepwear against fiber manufacturer for alleged violation of Federal Hazardous Substances Act, § 1261 et seq. of this title. Riegel Textile Corp. v. Celanese Corp., S.D.N.Y.1980, 493 F.Supp. 511, affirmed 649 F.2d 894.

4. Requisite regulatory action

There is no cause of action for manufacturer's failure to report information concerning possible defective products to the Consumer Product Safety Commission. Benitez-Allende v. Alcan Aluminio do Brasil, S.A., C.A.1 (Puerto Rico) 1988, 857 F.2d 26, rehearing denied, certiorari denied 109 S.Ct. 1135, 489 U.S. 1018, 103 L.Ed.2d 196.

No cause of action exists under Consumer Product Safety Act for violation of regulations requiring prescription drugs to be dispensed only in child-proof containers; Consumer Product Safety Commission has not acted to regulate prescription drugs under Act. Deck by Deck v. McBrien, C.D.Ill.1991, 759 F.Supp. 454.

Private right of action cannot be asserted for alleged violations of Consumer Product Safety Act, which requires that Consumer Product Safety Commission be informed of substantial risk of harm from products, or its implementing rules. Sara Lee Corp. v. Homasote Co., D.Md. 1989, 719 F.Supp. 417.

Private cause of action created by this section does not arise in the absence of valid regulatory action by the Commission. Riegel Textile Corp. v. Celanese Corp., S.D.N.Y.1980, 493 F.Supp. 511, affirmed 649 F.2d 894.

5. Other rules issued by Commission

Product hazard reporting rules issued by Consumer Product Safety Commission do not fall with term "any other rule," within meaning of Consumer Product Safety Act, which grants private right of action for damages to any person who shall sustain injury by reason of any knowing violation of consumer product safety rule, or "any other rule" or order issued by Commission. Lundquist v. American Honda Motor Co., Inc., W.D.Wis.1988, 773 F.Supp. 1195.

"Any other rule issued by the Commission," within meaning of statute stating that any person who shall sustain injury by reason of any knowing violation of consumer product safety rule, or any other rule or order issued by Consumer Product Safety Commission, may sue any person who knowingly violated any such rule or order, refers to legislative, not interpretative, rules. Sara Lee Corp. v. Homasote Co., D.Md.1989, 719 F.Supp. 417.

6. Nature of rules

That rules promulgated under Consumer Product Safety Act (CPSA) listed as authority several sections of CPSA specifically authorizing substantive rules did not compel conclusion that rules were substantive rather than interpretive; at most, authoritative sections gave Consumer Product Safety Commission choice of interpretative or substantive rules. Klingler v. Yamaha Motor Corp., U.S.A., E.D.Pa.1990, 738 F.Supp. 898.

7. Remedies

Provision of this section stating that "remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under federal or state law" preserves federal character of cause of action created by express provision for damages in this section, essentially one of strict liability, notwithstanding possible state law restrictions on theories of liability. Wahba v. H & N Prescription Center, Inc., E.D.N.Y.1982, 539 F.Supp. 352.

8. Persons entitled to sue

Buyer of infant "plush" toys for resale lacked standing to bring action against seller for failure of toys to comply with Consumer Product Safety Commission rules and regulations, in that buyer was not injured consumer. Sanitoy, Inc. v. Shapiro, S.D.N.Y.1989, 705 F.Supp. 152.

Plaintiffs failed to show that claimed injury and death resulting from propane gas explosion in laundry room of apartment building would not have occurred "but for" alleged failure of manufacturers of products that were used in gas clothes dryer to disclose to Consumer Product Safety Commission unfavorable information about dryer and its valve assembly prior to explosion; therefore, plaintiffs lacked standing to bring action under Consumer Product Safety Act seeking actual and punitive damages for violation of Commission reporting rules. Martin v. International Dryer Corp., E.D.N.C.1986, 637 F.Supp. 101.

Violation of consumer product safety rule requiring disclosure of information regarding defect to the Consumer Product Safety Commission entitled widow to maintain private action to recover damages for injuries to her decedent. Young v. Robertshaw Controls Co., N.D.N.Y. 1983, 560 F.Supp. 288.

Under this chapter, insulation installer and wholesaler could maintain action alleging that defendants sold it cellulose insulation that did not conform to minimum safety standards. Griswold Insulation Co., Inc. v. Lula Cotton Processing Co., Inc., M.D.Tenn.1982, 540 F.Supp. 1334.

The Consumer Product Safety Act [15 U.S.C.A. § 2051 et seq.], provides private cause of action for violation of the Consumer Product Safety Commission's substantial product hazard reporting regulations under 15 U.S.C.A. § 2072. Swenson v. Emerson Elec. Co., Minn. 1985, 374 N.W.2d 690, rehearing denied, certiorari denied 106 S.Ct. 1998, 476 U.S. 1130, 90 L.Ed.2d 678.

This chapter authorizes a private cause of action under specified circumstances. Swenson v. Emerson Elec. Co., Minn. App.1984, 356 N.W.2d 313, review granted 361 N.W.2d 406, affirmed 374 N.W.2d 690, rehearing denied, certiorari denied 106 S.Ct. 1998, 476 U.S. 1130, 90 L.Ed.2d 678.

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This chapter authorizes a private [illegible] of action under specified circumstances. Swenson v. Emerson Elec. Co., Minn. App.1984, 356 N.W.2d 313, review [illegible] ed 361 N.W.2d 406, affirmed 37[illegible] 690, rehearing denied, certiorari [illegible] 106 S.Ct. 1998, 476 U.S. [illegible] L.Ed.2d 678.

9. Evidence

Whether manufacturer of acid-based drain declogger, contents of which spilled on two-year-old child when he opened the cap, was in compliance with the Special Packaging of Household Substance for Protection of Children Act, Section 1471 et seq. of this title, or with other federal safety statutes was relevant in products liability action but was not conclusive of product defectiveness or its fitness. Ellis v. K-Lan Co., Inc., C.A.5 (Tex.) 1983, 695 F.2d 157.

10. Punitive damages

Although administrator of estate of infant who ingested prescription drug dispensed in nonchildproof container arguably pled both federal cause of action under Consumer Product Safety Act [15 U.S.C.A. § 2072] and state common-law negligence action, where only theory of recovery submitted to jury was based on federal statute, punitive damages were not recoverable. Baas v. Hoye, C.A.8 (Iowa) 1985, 766 F.2d 1190.

Congress did not intend treble or punitive damages to be awarded under Consumer Product Safety Act § 2072 as matter of federal law. Drake v. Lochinvar Water Heater, Inc., D.C.Minn.1985, 618 F.Supp. 549, reversed 797 F.2d 603.

Treble and punitive damages are not provided for in this chapter, and thus cannot be requested by plaintiffs. Payne v. A.O. Smith Corp., S.D.Ohio 1983, 578 F.Supp. 733.

Punitive damages were not recoverable in action brought by widow to recover for personal injuries and subsequent death of her decedent, based upon manufacturer's failure to disclose information regarding defects in product to the Consumer Product Safety Commission. Young v. Robertshaw Controls Co., N.D.N.Y.1983, 560 F.Supp. 288.

Under Maryland law, claim for punitive damages was properly included in count of plaintiffs' complaint alleging loss of consortium resulting from violation by defendant manufacturers of a consumer product safety rule. Butcher v. Robertshaw Controls Co., D.C.Md.1981, 550 F.Supp. 692.

Promotion of federal policy in favor of consumer protection embodied in this chapter does not require such uniformity with respect to punitive damages as would justify displacing existing state law on such subject, notwithstanding continuation of serious enforcement problems. Wahba v. H & N Prescription Center, Inc., E.D.N.Y.1982, 539 F.Supp. 352.

11. Attorney fees

Assessment of legal fees and experts' fees under this section is such unusual and heavy burden in light of American practice against shifting litigation costs as to warrant conclusion that Congress considered such sanctions in private suit sufficient incentive to prospective plaintiffs and disincentive to possible defendants and to warrant conclusion that Congress did not intend punitive damages to be awarded as matter of federal law. Wahba v. H & N Prescription Center, Inc., E.D.N.Y.1982, 539 F.Supp. 352.

12. Due process

Allowing jury to conclude that manufacturer violated regulations of the Consumer Product Safety Commission regarding disclosure of defects before Commission determines that product did, in fact, present a substantial product safety hazard was not a denial to manufacturer of due process of law, in that the jury only would be called upon to evaluate information which manufacturer allegedly failed to disclose to Commission. Young v. Robertshaw Controls Co., N.D.N.Y.1983, 560 F.Supp. 288.

13. Amended complaint

Buyers of mobile home would be permitted to amend complaint to assert Consumer Product Safety Act claims against suppliers of wood products used in mobile home, which products allegedly released formaldehyde gas, because suppliers had been brought into action by cross claim shortly after action was commenced against manufacturer, their defenses to cross claim would be substantially similar to defenses involved in buyer's claims, and no objection to personal jurisdiction was made by suppliers. Hughes v. Segal Enterprises, Inc., W.D.Ark.1986, 627 F.Supp. 1231.

Where widow's original complaint did not allege a violation of this chapter or it's regulations, but did claim negligent failure to provide reasonable warning of product defect and hazard and sought punitive damages under state law, widow's negligent failure to provide claim was directly related to the alleged violation of the Act and corresponding regulation, namely, the failure to report substantial product hazards; thus, water heater manufacturer and maker of thermostatic gas controls had notice of the conduct asserted in widow's amended complaint alleging a cause of action under this chapter, and the amendment related back to the original complaint. Swenson v. Emerson Elec. Co., Minn. App.1984, 356 N.W.2d 313, review granted 361 N.W.2d 406, affirmed 374 N.W.2d 690, rehearing denied, certiorari denied 106 S.Ct. 1998, 476 U.S. 1130, 90 L.Ed.2d 678.

14. Jurisdiction

Firing of bottle rockets did not violate any safety rule or order promulgated by Consumer Products Safety Commission so as to trigger subject matter jurisdiction under Consumer Product Safety Act and allow party injured by bottle rocket to sue in federal court for his injury; although bottle rockets were considered hazardous substance because of their flammable nature, they were not specifically banned under federal regulations. Bivona v. Trollio, E.D.N.Y.1991, 758 F.Supp. 125.

Foreign manufacturers' designation of American corporation to market and distribute manufacturers' products throughout United States was affirmative action to insure that products reached all 50 states, which was sufficient to subject manufacturers to district court's personal jurisdiction under Kansas' long-arm statute in products liability suit. Bohannon v. Honda Motor Co., Ltd., D.Kan.1988, 682 F.Supp. 42.

Under § 2072 of the Consumer Product Safety Act, which states that suit may be brought in district in which defendant resides or is found or has an agent, defendant manufacturer would be found in any state in which it would be subject to personal jurisdiction, and thus, defendant, which waived any defense of lack of personal jurisdiction by not raising such defense, could be "found" in Arkansas, and suit could be brought against defendant in Arkansas, even though defendant was Alabama corporation. Hughes v. Segal Enterprises, Inc., W.D.Ark.1986, 627 F.Supp. 1231.

15. Persons liable

Plaintiffs, who sustained injuries in boat accident, could not maintain against boat manufacturers action under Consumer Product Safety Act, § 23, 15 U.S.C.A. § 2072, in that Coast Guard or Department of Transportation, and not Consumer Product Safety Commission, had authority to regulate boats involved in accident. Pitcavage v. Mastercraft Boat Co., M.D.Pa.1985, 632 F.Supp. 842.

16. Contribution

Knowing violation of Consumer Product Safety Commission product hazard reporting rules did not preclude negligent manufacturer of defective gas control valve from obtaining contribution from joint tort-feasor gas company for settlement with woman who was seriously burned when gas leaked from her furnace and ignited, where there was no evidence to demonstrate that manufacturer consciously intended its valve to fail, causing gas explosions and injury to woman or any other consumer, even though manufacturer's negligence was significantly more serious than conduct of gas company, with jury finding manufacturer 90% at fault and gas company four percent at fault. Jendro v. Honeywell, Inc., Minn. App.1986, 392 N.W.2d 688, review denied.

§ 2073. Private enforcement

Any interested person (including any individual or nonprofit, business, or other entity) may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice [illegible] personal jurisdiction, and thus, defendant, which waived any defense of lack of personal jurisdiction by not raising such defense, could be "found" in Arkansas, and suit could be brought against defendant in Arkansas, even though defendant was Alabama corporation. Hughes v. Segal Enterprises, Inc., W.D.Ark.1986, 627 F.Supp. 1231.

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state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees.

(Pub.L. 92–573, § 24, Oct. 27, 1972, 86 Stat. 1226; Pub.L. 94–284, § 10(d), May 11, 1976, 90 Stat. 507; Pub.L. 97–35, Title XII, § 1211(a), (h)(3)(C), Aug. 13, 1981, 95 Stat. 721, 723.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94–251 and House Conference Report No. 94–1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1981 Acts. Senate Report No. 97–139 and House Conference Report No. 97–208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

Amendments

1981 Amendments. Pub.L. 97–35 substituted "Any interested person (including any individual or nonprofit, business, or other entity)" for "Any interested person", and "section 2060(f) of this title" for "2059(e)(4) of this title".

1976 Amendments. Pub.L. 94–284 substituted provision permitting the court to award costs in the interest of justice for the provision which permitted costs to be demanded as part of the complaint and the court to award them to the prevailing party.

Effective Dates

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

LIBRARY REFERENCES

Administrative Law

Substantial product hazard reports, see 16 CFR § 1115.1 et seq.
Testimony of Commission employees, see 16 CFR § 1016.1 et seq.

American Digest System

Consumer Protection ⚷36.

Encyclopedias

C.J.S. Trade–Marks, Trade–Names, and Unfair Competition §§ 237, 238.

Texts and Treatises

Standing, congressional and administrative augmentation, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3531.13.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Interested person

Term "interested person," within this section granting any interested person the right to bring a private enforcement action in federal district court to enforce a consumer products safety rule or order and to obtain appropriate injunctive relief, cannot be defined in the abstract and must necessarily be defined by the context in which it is placed. Plaskolite, Inc. v. Baxt Industries, Inc., N.D.Ga.1980, 486 F.Supp. 213.

Plaintiff, as a manufacturer and extruder of acrylic plastics, was not an "interested person" under this section and, hence, could not bring a private enforcement action for injunctive relief and imposition of a statutory penalty against defendants in their capacities as a competing manufacturer, a supplier, and a distributor for alleged violations of a consumer product safety standard for architectural glazing materials inasmuch as purpose of this chapter was to protect interests of consuming public in safe consumer products and plaintiff's interest in bringing action was to retain its competitive position and to ensure that others complied with standards with which it had complied. Plaskolite, Inc. v. Baxt Industries, Inc., N.D.Ga.1980, 486 F.Supp. 213.

Where the purpose to be served by this section is to enforce the consumer products safety rule so that the goals of the legislation will not be frustrated, and the goals of the legislation are shown to be ones of consumer protection by means of regulation, the interest held by a manufacturer in retaining its economic position in the marketplace is not sufficient to bring it within the zone of interest contemplated by this section. Plaskolite, Inc. v. Baxt Industries, Inc., N.D.Ga. 1980, 486 F.Supp. 213.

2. Persons entitled to sue

Member of the general public could maintain a private action for damages against manufacturer for fraudulent compliance with disclosure rule promulgated by Consumer Product Safety Commission even though Commission had not cited manufacturer for violating the rule. Butcher v. Robertshaw Controls Co., D.C.Md.1981, 550 F.Supp. 692.

3. Notice

Buyers of mobile home were required to allege notice in order to state claim under § 2073 of the Consumer Product Safety Act, which allows interested person to bring action to enforce consumer product safety rule or order and to obtain appropriate injunctive relief, and such defect would not be cured by amended complaint, thus requiring dismissal of § 2073 claims. Hughes v. Segal Enterprises, Inc., W.D.Ark.1986, 627 F.Supp. 1231.

§ 2074. Private remedies

(a) Liability at common law or under State statute not relieved by compliance

Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) Evidence of Commission's inaction inadmissible in actions relating to consumer products

The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

DECISIONS

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(c) Public information

Subject to sections 2055(a)(2) and 2055(b) of this title but notwithstanding section 2055(a)(1) of this title, (1) any accident or investigation report made under this chapter by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

(Pub.L. 92–573, § 25, Oct. 27, 1972, 86 Stat. 1227.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

LIBRARY REFERENCES

Administrative Law

Disclosure and certification of information and records, see 16 CFR § 1016.3.
Omnidirectional citizens band base station antennas, see 16 CFR § 1204.1 et seq.
Policies and procedures implementing the Privacy Act, see 16 CFR § 1014.12.

American Digest System

Consumer Protection ⚩36.

Encyclopedias

C.J.S. Trade–Marks, Trade–Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Causation

Jet Ski renter could not maintain private action against Jet Ski distributor for distributor's alleged failure to report Jet Ski's alleged defect to Consumer Product Safety Commission; although Consumer Product Safety Act does provide for private remedies, those remedies do not apply to violation of reporting rules of Act. O'Connor v. Kawasaki Motors Corp., U.S.A., S.D.Fla.1988, 699 F.Supp. 1538.

Agency relationship exists, as a creature of statute, between the Consumer Product Safety Commission and members of the consuming public so as to permit maintenance of an action for fraud and deceit by consumers injured by fraud and deceit allegedly practiced on Commission, provided that requisite degree of causation may be established. Butcher v. Robertshaw Controls Co., D.C.Md.1981, 550 F.Supp. 692.

2. Jurisdiction

Jurisdiction over gas and water company did not exist on basis of "pendent party" jurisdiction in plaintiffs' action seeking damages for severe burns sustained as result of an explosion of a gas run hot water heater brought against defendant manufacturers and gas and water company where gas and water company was only named in counts based on state law, and where claim that defendant manufacturers violated this chapter was not brought against gas and water company. Butcher v. Robertshaw Controls Co., D.C.Md.1981, 550 F.Supp. 692.

§ 2075. State standards

(a) State compliance to Federal standards

Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

(b) Consumer product safety requirements which impose performance standards more stringent than Federal standards

Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this chapter if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this chapter.

(c) Exemptions

Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this chapter if the State or political subdivision standard or regulation—

(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this chapter, and

(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation 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 standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this chapter for such consumer product.

(Pub.L. 92–573, § 26, Oct. 27, 1972, 86 Stat. 1227; Pub.L. 94–284, § 17(d), May 11, 1976, 90 Stat. 514.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94–251 and House Conference Report No. 94–1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

Amendments

1976 Amendments. Subsec. (b). Pub.L. 94–284 substituted provision that a standard provide a significantly higher degree of protection from the risk of injury for the provision that the standard imposes a higher level of performance.

Subsec. (c). Pub.L. 94–284 substituted the requirement that a state standard provide a significantly higher degree of protection from the risk of injury than the standard under this chapter for the requirement that the state standard impose a higher level of performance, eliminated the requirement of a compelling local condition, and inserted the requirement that the Commission make specific findings in determining the burden on interstate commerce.

LIBRARY REFERENCES

Administrative Law

Exemption from preemption, see 16 CFR § 1061.1 et seq.

American Digest System

Consumer Protection ⚷11.

Encyclopedias

C.J.S. Trade–Marks, Trade–Names, and Unfair Competition § 237.

Law Review and Journal Commentaries

Case for a "strong" regulatory compliance defense. Richard C. Ausness, 55 Md.L.Rev. 1210 (1996).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. State regulation or control

Consumer Product Safety Act (CPSA) preempted claim that manufacturer of walk-behind, self-propelled lawn mower failed to adequately warn users that control cable for blade brake/clutch system might fray; risk of injury contemplated by such warning was same as that addressed by labeling requirements in safety standard for walk-behind power lawn mowers promulgated under CPSA, i.e., injury to hands by cutting blade, and success on failure-to-warn claim would create state standard requiring additional warnings. Moe v. MTD Products, Inc., C.A.8 (Minn.) 1995, 73 F.3d 179.

2. **Preemption**

Wording of preemption clause of Consumer Product Safety Act (CPSA) makes it apparent that Congress intended to preempt positive enactments, such as statutes and regulations, by states that address the same risks of injury that are addressed by operative federal standards. Cortez v. MTD Products, Inc., N.D.Cal. 1996, 927 F.Supp. 386.

3. **Failure to warn claims**

State law failure to warn claim asserted against manufacturer of lawn mower which contained warning label which fully conformed with federal regulations applicable at time of manufacture was preempted under Consumer Product Safety Act (CPSA); effect of permitting recovery on such a theory would be to subject manufacturers to two different regulations on exactly the same subject, which Congress sought to prevent through CPSA's preemption clause. Cortez v. MTD Products, Inc., N.D.Cal.1996, 927 F.Supp. 386.

4. **Design defects**

State law claim that lawn mower was defectively designed due to lack of blade control system asserted against manufacturer of lawn mower which had been made at time when Congress had postponed effective date of regulations requiring mowers of type in question to have blade control systems was not preempted by Consumer Product Safety Act; decision to postpone effective date of regulations was not decision not to regulate but rather was decision about when to begin regulating, and because no regulation was in effect at time of manufacture, no preemption was possible. Cortez v. MTD Products, Inc., N.D.Cal.1996, 927 F.Supp. 386.

5. **Common law causes of action**

Preemption clause of Consumer Product Safety Act (CPSA) extends possible reach of federal preemption under CPSA to include common law causes of action. Cortez v. MTD Products, Inc., N.D.Cal. 1996, 927 F.Supp. 386.

§ 2076. Additional functions of Consumer Product Safety Commission

(a) Authority to conduct hearings or other inquiries

The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) Commission powers; orders

The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe to carry out a specific regulatory

regulations on exactly the same subject, which Congress sought to prevent through CPSA's preemption clause. Cortez v. MTD Products, Inc., N.D.Cal.1996, 927 F.Supp. 386.

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enforcement function of the Commission; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 1342 of Title 31;

(7) to—

(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction;

(8) to lease buildings or parts of buildings in the District of Columbia, without regard to the Act of March 3, 1877 (40 U.C.A. § 34), for the use of the Commission; and

(9) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3), to any officer or employee of the Commission.

An order issued under paragraph (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or enforcement function of the Commission. Such an order shall be designed to place the least burden on the person subject to the order as is practicable taking into account the purpose for which the order was issued.

(c) Noncompliance with subpena or Commission order; contempt

Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission (subject to subsection (b)(7) of this section) or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) Disclosure of information

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) Performance and technical data

The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this chapter, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this chapter.

(f) Purchase of consumer products by Commission

For purposes of carrying out this chapter, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) Contract authority

The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this chapter.

(h) Research, development, and testing facilities

The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this chapter.

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Commission order; contempt

within the jurisdiction of which on petition by the Commission is section) or by the Attorney y a subpena or order of the n (b) of this section, issue an h; and any failure to obey the d by the court as a contempt

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(i) Recordkeeping; audit

(1) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this chapter under other than competitive bidding procedures.

(j) Report to President and Congress

The Commission shall prepare and submit to the President and the Congress at the beginning of each regular session of Congress a comprehensive report on the administration of this chapter for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this chapter, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission;

(10) with respect to voluntary consumer product safety standards for which the Commission has participated in the development through monitoring or offering of assistance and with respect to voluntary consumer product safety standards relating to risks of injury that are the subject of regulatory action by the Commission, a description of—

(A) the number of such standards adopted;

(B) the nature and number of the products which are the subject of such standards;

(C) the effectiveness of such standards in reducing potential harm from consumer products;

(D) the degree to which staff members of the Commission participate in the development of such standards;

(E) the amount of resources of the Commission devoted to encouraging development of such standards; and

(F) such other information as the Commission determines appropriate or necessary to inform the Congress on the current status of the voluntary consumer product safety standard program; and

(11) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this chapter.

(k) Budget estimates and requests; legislative recommendations; testimony; comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval,

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comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(Pub.L. 92–573, § 27, Oct. 27, 1972, 86 Stat. 1227; Pub.L. 94–273, § 31, Apr. 21, 1976, 90 Stat. 380; Pub.L. 94–284, §§ 8(b), 11(c), (d), 14, May 11, 1976, 90 Stat. 506 to 509; Pub.L. 95–631, § 11, Nov. 10, 1978, 92 Stat. 3748; Pub.L. 97–35, Title XII, §§ 1207(b), 1208, 1209(c), 1211(d), Aug. 13, 1981, 95 Stat. 718, 720, 721.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. House Report No. 94–1000, see 1976 U.S. Code Cong. and Adm. News, p. 690.

Senate Report No. 94–251 and House Conference Report No. 94–1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1978 Acts. House Report No. 95–1164, see 1978 U.S. Code Cong. and Adm. News, p. 9434.

1981 Acts. Senate Report No. 97–139 and House Conference Report No. 97–208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

Codifications

In subsec. (b)(6), "section 1342 of Title 31" was substituted for "section 3679 of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub.L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Amendments

1981 Amendments. Subsec. (b). Pub.L. 97–35, § 1208, substituted in par. (1) "may prescribe to carry out a specific regulatory or enforcement function of the Commission" for "may prescribe" and in provision following par. (9) inserted requirement that an order issued under par. (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or enforcement function of the commission, and that such an order shall be designed to place the least burden on the person subject to the order as is practicable, taking into account the purposes for which the order was issued.

Subsec. (j)(10), (11). Pub.L. 97–35, § 1209(c), added par. (10) and redesignated former par. (10) as (11).

Subsec. (*l*). Pub.L. 97–35, § 1207(b), struck out subsec. (*l*) which provided for reports to the House of Representatives and the Senate of proposed consumer product safety rules and regulations.

Subsec. (m). Pub.L. 97–35, § 1211(d), struck out subsec. (m), which defined "rule", and which provided for a study of all the rules in effect on Nov. 10, 1978, and required a report be made to Congress recommending deletion of particular rules or parts of particular rules and initiation of particular rulemaking proceedings.

1978 Amendments. Subsec. (m). Pub.L. 95–631 added subsec. (m).

1976 Amendments. Subsec. (b)(7). Pub.L. 94–284, § 11(c), permitted the Commission to initiate, defend, prosecute, or appeal any civil action through its own legal representative provided that the Commission make a written request to the Attorney General for such representation and the Attorney General fail within a 45 day period to notify the Commission in writing that the Attorney General will represent the Commission, and with regard to criminal action, permitted the Commission to initiate, prosecute, or appeal with its own legal representative, with the concurrence of the Attorney General, or through the Attorney General.

Subsec. (b)(8), (9). Pub.L. 94–284, § 8(b), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub.L. 94–284, § 11(d), substituted "(subject to subsection (b)(7) of this section)" for "with the concurrence of the Attorney General".

Subsec. (j). Pub.L. 94–273 substituted "at the beginning of each regular session of Congress" for "on or before October 1 of each year".

Subsec. (*l*). Pub.L. 94–284, § 14, added subsec. (*l*).

Effective Dates

1981 Acts. Amendment by § 1207(b) of Pub.L. 97–35 applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, and amendment by sections 1208, 1209(c) and 1211(d) of Pub.L. 97–35 effective Aug. 13, 1981, see § 1215 of Pub.L. 97–35, set out as a note under § 2052 of this title.

User Fee Study

Pub.L. 101–608, Title I, § 119, Nov. 16, 1990, 104 Stat. 3122, provided that: "The Consumer Product Safety Commission shall conduct a study of the feasibility of requiring entities subject to the Consumer Product Safety Act [15 U.S.C.A. § 2051 et seq.] to pay to the Commission amounts to defray the reasonable costs of particular services provided by the Commission to such entities. The Commission shall complete the study within one year of the date of the enactment of this Act [Nov. 16, 1990] and shall report the results of the study to the Congress".

LIBRARY REFERENCES

Administrative Law

Cellulose insulation, see 16 CFR § 1404.1 et seq.
Cigarette lighters, certification requirements, see 12 CFR § 1210.11.
Coal and wood burning appliances, see 16 CFR § 1406.1 et seq.
Consumer litigation, see 28 CFR § 0.45.
Delegation of—
  Authority, see 16 CFR § 1101.71.
  Functions, see 16 CFR § 1000.11.
Disclosure or production of information, see 16 CFR §§ 1015.1 et seq., 1101.11.
Investigations, inspections, and inquiries, see 16 CFR §§ 1118.1 et seq., 1605.1 et seq.
Notice of agency activities, see 16 CFR § 1011.4.
Regulations for informal oral presentations, see 16 CFR § 1052.1 et seq.
Rules of practice and procedure, see 16 CFR § 1025.1 et seq.
Submission of performance and technical data respecting particular products to the Commission, see 16 CFR §§ 1401.1 et seq., 1402.1 et seq.
Substantial product hazard reports, see 16 CFR § 1115.1 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Delegation of duties

Although the Commission, embodied by the five commissioners, must of necessity delegate a large portion of the responsibility for administrative fact-gathering and fact-finding to its employees, functions, constituting final agency action, such as administrative adjudications and rule-making must be made or ratified by the Commissioners and may not be delegated to subordinates under broad grants of authority. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex. 1975, 391 F.Supp. 841.

While intra agency delegation is a necessity in carrying out some of the functions of the Commission, such delegation cannot be excessive. Relco, Inc. v. Consumer Product Safety Commission, S.D.Tex.1975, 391 F.Supp. 841.

2. Right of privacy

Commission's collection of information on repair and maintenance records of aerial tramway, which constituted a "consumer product", did not constitute

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Right of privacy

mmission's collection of inform repair and maintenance records al tramway, which, constitut sumer product", did not

an abusive process and did not involve an unconstitutional encroachment on owner's privacy; Commission's efforts were valid exercise of its authority pursuant to a legitimate purpose. Robert K. Bell Enterprises, Inc. v. Consumer Product Safety Commission, N.D.Okla.1980, 484 F.Supp. 1221.

3. Investigatory subpoenas

For purposes of determining whether to enforce alleged investigatory subpoenas issued by Commission, Commission's actions do not enter adjudicatory phase until issuance of notice of enforcement. U. S. v. Anaconda Co., D.C.D.C.1977, 445 F.Supp. 486.

Where respondents had six weeks' actual notice of Commission's adoption of Federal Trade Commission's rules governing investigational subpoenas for purposes of its investigation of residential aluminum wiring systems before return date of subpoenas issued to manufacturers of such wiring systems and manufacturers of electrical devices used in wiring systems, Commission could not be precluded from seeking enforcement of subpoenas on ground it lacked published rules pertaining to investigations. U. S. v. Anaconda Co., D.C.D.C.1977, 445 F.Supp. 486.

4. Enforcement of subpoenas

Defense that Commission did not have statutory authority to investigate residential aluminum wiring systems because such wiring systems were not "consumer products" within meaning of § 2052 of this title was properly presented in action for enforcement of subpoenas issued by Commission to assist in investigation to determine whether aluminum wiring systems presented substantial product hazard. U. S. v. Anaconda Co., D.C.D.C. 1977, 445 F.Supp. 486.

Legal question raised in subpoena enforcement proceeding as to whether aluminum wiring systems were "consumer products" within meaning of § 2051 of this title and so could be investigated by Commission was of sufficient importance and complexity that, as matter of policy, inquiry by other circuits should not be foreclosed. U. S. v. Anaconda Co., D.C.D.C.1977, 445 F.Supp. 486.

Record showing that minutes of executive session of Commission authorized staff to prepare an appropriate notice of enforcement but that no notice of enforcement had been issued established that proceedings had not shifted from investigatory to adjudicatory so as to preclude enforcement of alleged investigatory subpoenas issued by Commission. U. S. v. Anaconda Co., D.C.D.C.1977, 445 F.Supp. 486.

5. Status of individual

Since Commission is authorized to seek information from "any person", status of owner of aerial tramway, which was found to be a consumer product, as a manufacturer or assembler, or as a factory, warehouse, or establishment for inspection purposes was irrelevant to Commission's right to collect information about repair and maintenance records. Robert K. Bell Enterprises, Inc. v. Consumer Product Safety Commission, N.D.Okla.1980, 484 F.Supp. 1221.

6. Warning label

Warning label required by Commission for power mowers was not authorized by this chapter provision authorizing Commission to require "performance and technical data," but in imposing such requirement on manufacturers Commission acted permissibly under provision of this chapter authorizing requirements that consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting form of warnings or instructions, and record supported reasonableness of such labeling requirement. Southland Mower Co. v. Consumer Product Safety Commission, C.A.5 1980, 619 F.2d 499.

7. Estoppel

Where district court in prior decision concluding that residential aluminum wiring systems were not "consumer products" under § 2052 of this title did not consider question of whether electrical devices connected to such wiring were consumer products, there was no identity of issue between that suit and instant suit by Commission to enforce subpoena issued to manufacturers of aluminum wiring systems and manufacturers of electrical devices used in wiring systems so as to give collateral estoppel effect to prior decision as to manufacturers of electrical devices. U. S. v. Anaconda Co., D.C.D.C. 1977, 445 F.Supp. 486.

In that collateral estoppel claim arose out of a prior district court decision and question raised in instant action was narrow legal one of whether Commission had authority to investigate residential aluminum wiring systems, district court would allow assertion of defense of collateral estoppel in action to enforce subpoenas issued by Commission relative to its investigation of residential aluminum wiring systems. U. S. v. Anaconda Co., D.C.D.C.1977, 445 F.Supp. 486.

8. **Findings of agency**

Where carpet passed flammability tests conducted by independent laboratories but failed tests conducted by Consumer Product Safety Commission and administrative law judge without suggesting any reason in his findings concluded that tests conducted by Commission were accurate, court of appeals, in absence of logical and persuasive explanation, had no alternative but to credit findings of agency. Congoleum Industries, Inc. v. Consumer Product Safety Commission, C.A.9 1979, 602 F.2d 220.

9. **Persons entitled to bring suit**

Action seeking penalty for violation of hazard reporting requirements of this chapter was not required to be brought in name of Commission rather than the United States. U. S. v. Advance Mach. Co., D.C.Minn.1982, 547 F.Supp. 1085.

§ 2076a. Report on civil penalties

(1) Beginning 1 year after Nov. 16, 1990, and every year thereafter, the Consumer Product Safety Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives the information specified in paragraph (2). Such information may be included in the annual report to the Congress submitted by the Commission.

(2) The Commission shall submit information with respect to the imposition of civil penalties under the statutes which it administers. The information shall include the number of civil penalties imposed, an identification of the violations that led to the imposition of such penalties, and the amount of revenue recovered from the imposition of such penalties.

(Pub.L. 101–608, Title I, § 115(d), Nov. 16, 1990, 104 Stat. 3121.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1990 Acts. Senate Report No. 101–37, House Conference Report No. 101–914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

Codifications

Section was enacted as part of the Consumer Product Safety Improvement Act of 1990, and not as part of the Consumer Product Safety Act which comprises this chapter.

Change of Name

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

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Change of Name

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, 1995.

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§ 2077. Chronic Hazard Advisory Panels

(a) Appointment; purposes

The Commission shall appoint Chronic Hazard Advisory Panels (hereinafter referred to as the Panel or Panels) to advise the Commission in accordance with the provisions of section 2080(b) of this title respecting the chronic hazards of cancer, birth defects, and gene mutations associated with consumer products.

(b) Composition; membership

Each Panel shall consist of 7 members appointed by the Commission from a list of nominees who shall be nominated by the President of the National Academy of Sciences from scientists—

(1) who are not officers or employees of the United States, (other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research) and who do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and

(2) who have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.

The President of the National Academy of Sciences shall nominate for each Panel a number of individuals equal to three times the number of members to be appointed to the Panel.

(c) Chairman and Vice Chairman; election; term

The Chairman and Vice Chairman of the Panel shall be elected from among the members and shall serve for the duration of the Panel.

(d) Majority vote

Decisions of the Panel shall be made by a majority of the Panel.

(e) Administrative support services

The Commission shall provide each Panel with such administrative support services as it may require to carry out its duties under section 2080 of this title.

(f) Compensation

A member of a Panel appointed under subsection (a) of this section shall be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of the duties of the Panel.

(g) Requests for and disclosures of information

Each Panel shall request information and disclose information to the public, as provided in subsection (h) of this section, only through the Commission.

(h) Information from other Federal departments and agencies

(1) Notwithstanding any statutory restriction on the authority of agencies and departments of the Federal Government to share information, such agencies and departments shall provide the Panel with such information and data as each Panel, through the Commission, may request to carry out its duties under section 2080 of this title. Each Panel may request information, through the Commission, from States, industry and other private sources as it may require to carry out its responsibilities.

(2) Section 2055 of this title shall apply to the disclosure of information by the Panel but shall not apply to the disclosure of information to the Panel.

(Pub.L. 92-573, § 28, as added Pub.L. 97-35, Title XII, § 1206(a), Aug. 13, 1981, 95 Stat. 716, and amended Pub.L. 101-608, Title I, § 116, Nov. 16, 1990, 104 Stat. 3121.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1990 Acts. Senate Report No. 101-37, House Conference Report No. 101-914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

Amendments

1990 Amendments. Subsec. (b)(1). Pub.L. 101-608, § 116, inserted "(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research)" after "States".

Effective Dates

1981 Acts. Section applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see § 1215 of Pub.L. 97-35, set out as a note under § 2052 of this title.

Prior Provisions

A prior § 2077, Pub.L. 92-573, § 28, Oct. 27, 1972, 86 Stat. 1230, which provided for the establishment and membership of the Product Safety Advisory Council, was repealed by Pub.L. 97-35, Title XII, § 1205(a)(1), Aug. 13, 1981, 95 Stat. 716.

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.

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Pub.L. 101-509, set out in a note
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LIBRARY REFERENCES

Administrative Law

Chronic Hazard Advisory Panels access to confidential business information, see 16 CFR § 1017.34.

Commission must disclose information to the public, see 16 CFR § 1101.12.

American Digest System

Consumer Protection ⚿11.

United States ⚿36.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

C.J.S. United States §§ 36, 37, 62 to 64.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2078. Cooperation with States and other Federal agencies

(a) Programs to promote Federal-State cooperation

The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) Appropriateness of State and local programs

In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) Cooperation of Federal departments and agencies

The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it.

The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) Utilization of National Institute of Standards and Technology

The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Institute of Standards and Technology, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) Copies of accident or investigation reports to other agencies; conditions

The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this chapter by any officer, employee, or agent of the Commission only if (1) information which under section 2055(a)(2) of this title is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 2055(b) of this title.

(Pub.L. 92-573, § 29, Oct. 27, 1972, 86 Stat. 1230; Pub.L. 94-284, § 15, May 11, 1976, 90 Stat. 510; Pub.L. 100-418, Title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

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1976 Acts. Senate Report No. 94-251 and House Conference Report No. 94-1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1988 Acts. House Conference Report No. 100-576, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

Amendments

1988 Amendments. Subsec. (d). Pub.L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1976 Amendments. Subsec. (e). Pub.L. 94-284 added subsec. (e).

LIBRARY REFERENCES

Administrative Law

Information disclosure, see 16 CFR § 1101.2.

American Digest System

Consumer Protection ⟹13.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2079. Transfers of functions

(a) Hazardous substances and poisons

The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act [15 U.S.C.A. § 1261 et seq.] and the Poison Prevention Packaging Act of 1970 [15 U.S.C.A. § 1471 et seq.] are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 et seq.], to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) Flammable fabrics

The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act [15 U.S.C.A. § 1191 et seq.] are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C.A. § 41 et seq.], to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) Household refrigerators

The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 [15 U.S.C.A. § 1211 et seq.] are transferred to the Commission.

(d) Regulation by Commission of consumer products in accordance with other provisions of law

A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act [15 U.S.C.A. § 1261 et seq.], the Poison Prevention Packaging Act of 1970 [15 U.S.C.A. § 1471 et seq.], or the Flammable Fabrics Act [15 U.S.C.A. § 1191 et seq.] may be regulated under this chapter only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this chapter. Such a rule shall identify the risk of injury proposed to be regulated under this chapter and shall be promulgated in accordance with section 553 of Title 5; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.

(e) Transfer of personnel, property, records, etc.; continued application of orders, rules, etc.

(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Institute of Standards and Technology. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this chapter to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges **(A)** which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and **(B)** which are in effect at the time this section takes

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effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) "Function" defined

For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

(Pub.L. 92–573, § 30, Oct. 27, 1972, 86 Stat. 1231; Pub.L. 94–284, §§ 3(f), 16, May 11, 1976, 90 Stat. 504, 510; Pub.L. 100–418, Title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94-251 and House Conference Report No. 94-1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1988 Acts. House Conference Report No. 100-576, see 1988 U.S. Code Cong. and Adm. News, p. 1547.

References in Text

The Federal Hazardous Substances Act, referred to in subsecs. (a) and (d), is Pub.L. 86-613, July 12, 1960, 74 Stat. 372, as amended, 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.

The Poison Prevention Packaging Act of 1970, referred to in subsecs. (a) and (d), is Pub.L. 91-601, Dec. 30, 1970, 84 Stat. 1670, as amended, which is classified generally to chapter 39A (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is Act June 25, 1938, c. 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 Flammable Fabrics Act, referred to in subsecs. (b) and (d), is Act June 30, 1953, c. 164, 67 Stat. 111, as amended, which is classified generally to chapter 25 (§ 1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is Act Sept. 26, 1914, c. 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.

The Act of August 2, 1956, referred to in subsec. (c), is Act Aug. 2, 1956, c. 890, 70 Stat. 953, as amended, which is classified generally to chapter 26 (§ 1211 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (e)(1)(B), (2), (3), and (4), see section 34(2) of Pub.L. 92-573, set out as an Effective Date note under section 2051 of this title.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub.L. 91-604, Dec. 31, 1970, 84 Stat. 1710, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

Amendments

1988 Amendments. Subsec. (e)(1)(A). Pub.L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1976 Amendments. Subsec. (a). Pub.L. 94-284, § 3(f), struck out "of the Administrator of the Environmental Protection Agency and" before "of the Secretary of Health, Education, and Welfare" and substituted "Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)" for "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970".

Subsec. (d). Pub.L. 94-284, § 16, inserted requirement that the Commission find by a rule, promulgated in accordance with section 553 of Title 5, that it is within the public interest to regulate a risk of injury under this chapter, which could be eliminated or reduced by action under the enumerated acts.

CROSS REFERENCES

Children's bicycle helmet safety standards, see 15 USCA § 6004.

:ATUTORY NOTES

vhich is classified generally to subchap- er I (§ 41 et seq.) of chapter 2 of this itle. For complete classification of this \ct to the Code, see section 58 of this title ınd Tables.

The Act of August 2, 1956, referred to n subsec. (c), is Act Aug. 2, 1956, c. 890, '0 Stat. 953, as amended, which is classi- ied generally to chapter 26 (§ 1211 et eq.) of this title. For complete classifi- ation of this Act to the Code, see Tables.

For the effective date of this section or, lternatively, the time or date this section ıkes effect, referred to in subsec. :)(1)(B), (2), (3), and (4), see section 4(2) of Pub.L. 92-573, set out as an :ffective Date note under section 2051 of ıis title.

Paragraphs (3) through (8)(A) of sec- on 15(b) of the Clean Air Amendments f 1970, referred to in subsec. (e)(1)(B), 'e pars. (3) through (8)(A) of section 5(b) of Pub.L. 91-604, Dec. 31, 1970, 84 tat. 1710, which is set out as a note ıder section 215 of Title 42, The Public ealth and Welfare.

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Subsec. (d). Pub.L. 94-284, § 16, ted requirement that the Commission :l by a rule, promulgated, in acco ıce with section 553 of Title 5, that it hin the public interest to regulat : of injury under this chapter whi .ld be eliminated or reduced by ler the enumerated acts.

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:e 15 USCA § 6004.

LIBRARY REFERENCES

Administrative Law

- Cigarette lighters, see 16 CFR § 1210.1 et seq.
- Electrically operated toys, requirements, see 16 CFR § 1505.1 et seq.
- Fireworks devices, see 16 CFR § 1507.1 et seq.
- Flammability standards—
  - Childrens sleepwear, see 16 CFR §§ 1615.1 et seq., 1616.1 et seq.
  - Clothing textiles, see 16 CFR § 1610.1 et seq.
  - Mattresses and mattress pads, see 16 CFR § 1632.1 et seq.
  - Vinyl plastic film, see 16 CFR § 1611.1 et seq.
- Hazardous substances, see 16 CFR § 1500.1 et seq.
- Insufficiency of investigations, inspections, and inquiries under other acts, see 16 CFR § 1605.1 et seq.
- Poison Prevention Packaging Act—
  - Packaging requirements, see 16 CFR § 1700.1 et seq.
  - Petition procedures and requirements, see 16 CFR § 1702.1 et seq.
  - Statements of policy, see 16 CFR § 1701.1 et seq.
- Rattles, see 16 CFR § 1510.1 et seq.
- Refrigerator Safety Act regulations, see 16 CFR § 1750.2.
- Regulation of products subject to other acts, see 16 CFR § 1145.1 et seq.
- Requirements for full-size baby cribs, see 16 CFR § 1508.11 et seq.
- Statements of policy or interpretation, see 16 CFR § 1602.1.
- Substantial product hazard reports, see 16 CFR § 1115.1 et seq.
- Surface flammability of carpets and rugs, washing procedures—
  - Hide carpets and rugs, see 16 CFR §§ 1630.61, 1631.61.
  - Wool flokati carpets and rugs, see 16 CFR §§ 1630.62, 1631.62.
- Swimming pool slides, see 16 CFR § 1207.1 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Construction with other laws

Record being totally devoid of evidence to support extension, to schools, of ban on use of urea-formaldehyde foam insulation, Consumer Product Safety Commission improperly proceeded under this chapter, and Commission's desire to avoid complex and lengthy nature of rule-making proceeding that would be required under Federal Hazardous Substances Act, section 1261 et seq. of this title, was not sufficient reason to proceed under this chapter. Gulf South Insulation v. U.S. Consumer Product Safety Com'n, C.A.5 1983, 701 F.2d 1137.

Requirement that rules and proposals promulgated under this section state risk of injury which rules seek to reduce does not appear in Federal Hazardous Substances Act, § 1261 et seq. of this title, although regulations issued under latter would at least be subject to requirement of § 553(c) of Title 5 that a concise general statement of purpose be incorporated in final rules. Forester v. Consumer Product Safety Commission of U. S., C.A.D.C.1977, 559 F.2d 774, 182 U.S.App.D.C. 153.

2. Power of Commission to regulate consumer products

Amendment to this section providing that consumer products subject to regulation under other acts may be regulated only if Commission by rule finds that it is in public interest to regulate such risk of injury broadens, despite its negative language, jurisdiction of Commission under this section by permitting it in its sound discretion to regulate products under this section which formerly would have been subject to regulation exclusively under Federal Hazardous Substances Act, § 1261 et seq. of this title. Forester v. Consumer Product Safety Commission of U. S., C.A.D.C.1977, 559 F.2d 774, 182 U.S.App.D.C. 153.

Foreclosure of Commission from regulating children's bicycles under this chapter did not necessarily bar it from regulating adult bicycles under this chapter. Forester v. Consumer Product Safety Commission of U. S., C.A.D.C.1977, 559 F.2d 774, 182 U.S.App.D.C. 153.

§ 2080. Limitations on jurisdiction of Consumer Product Safety Commission

(a) Authority to regulate

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C.A. § 2011 et seq.]; or the Clean Air Act [42 U.S.C.A. § 7401 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2) [1] of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3 [1] of part F of title III of the Public Health Service Act.

(b) Certain notices of proposed rulemaking; duties of Chronic Hazard Advisory Panel

(1) The Commission may not issue—

(A) an advance notice of proposed rulemaking for a consumer product safety rule,

(B) a notice of proposed rulemaking for a rule under section 2076(e) of this title, or

(C) an advance notice of proposed rulemaking for regulations under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product unless a Chronic Hazard Advisory Panel, established under section 2077 of this title, has, in accordance with paragraph (2), submitted a report to the Commission with respect to whether a substance contained in such product is a carcinogen, mutagen, or teratogen.

(2)(A) Before the Commission issues an advance notice of proposed rulemaking for—

(i) a consumer product safety rule,

(ii) a rule under section 2076(e) of this title, or

(iii) a regulation under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product, the Commission shall request the Panel to review

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'ommission of U. S., C.A.D.C.1977, 559
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the scientific data and other relevant information relating to such risk to determine if any substance in the product is a carcinogen, mutagen, or a teratogen and to report its determination to the Commission.

(B) When the Commission appoints a Panel, the Panel shall convene within 30 days after the date the final appointment is made to the Panel. The Panel shall report its determination to the Commission not later than 120 days after the date the Panel is convened or, if the Panel requests additional time, within a time period specified by the Commission. If the determination reported to the Commission states that a substance in a product is a carcinogen, mutagen, or a teratogen, the Panel shall include in its report an estimate, if such an estimate is feasible, of the probable harm to human health that will result from exposure to the substance.

(C) A Panel appointed under section 2077 of this title shall terminate when it has submitted its report unless the Commission extends the existence of the Panel.

(D) The Federal Advisory Committee Act shall not apply with respect to any Panel established under this section.

(c) Panel report; incorporation into advance notice and final rule

Each Panel's report shall contain a complete statement of the basis for the Panel's determination. The Commission shall consider the report of the Panel and incorporate such report into the advance notice of proposed rulemaking and final rule.

(Pub.L. 92-573, § 31, Oct. 27, 1972, 86 Stat. 1232; Pub.L. 97-35, Title XII, § 1206(b), Aug. 13, 1981, 95 Stat. 717; Pub.L. 97-414, § 9(j)(5), Jan. 4, 1983, 96 Stat. 2064.)

[1] See References in Text note below.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1983 Acts. House Report No. 97-840, see 1982 U.S. Code Cong. and Adm. News, p. 3577.

References in Text

The Occupational Safety and Health Act of 1970, referred to in subsec. (a), is Pub.L. 91-595, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under § 651 of Title 29 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is Act Aug. 30, 1954, c. 1073, 68 Stat. 921, as amended, which is classified generally 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 set out under § 2011 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, c. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under § 7401 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a), is Act July 1, 1944, c. 373, 58 Stat. 682, as amended. Subpart 3 of part F of title III of the Public Health Service Act, which was classified to subpart 3 (§ 263b et seq.) of part F of subchapter II of chapter 6A of Title 42, was redesignated as subchapter C of chapter V of Act June 25, 1938, c. 675, the Federal Food, Drug, and Cosmetic Act, by Pub.L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and was transferred to part C (21 U.S.C. 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. Section 355 of the Public Health Service Act, which was classified to section 263c of Title 42, was renumbered as section 531 of Act June 25, 1938, c. 675, by Pub.L. 101–629, § 19(a)(3), (4), 104 Stat. 4530, and transferred to section 360hh of Title 21. For complete classification of the Public Health Service Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(2)(D), is Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments

1983 Amendments. Subsec. (b)(1). Pub.L. 97–414 struck out introductory text "an advance notice of proposed rulemaking for" after "issue", inserted in subpar. (A) "an advance notice of proposed rulemaking for" before "a consumer" and in subpar. (B) "a notice of proposed rulemaking for" before "a rule", and substituted in subpar. (C) "an advance notice of proposed rulemaking for regulations" for "a regulation".

1981 Amendments. Pub.L. 97–35 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Effective Dates

1981 Acts. Amendment by Pub.L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see § 1215 of Pub.L. 97–35, set out as a note under section 2052 of this title.

Manufacture or Sale of Firearms or Firearms Ammunition

Pub.L. 94–284, § 3(e), May 11, 1976, 90 Stat. 504, provided that: "The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms."

LIBRARY REFERENCES

American Digest System

Consumer Protection ⇨11.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

Law Review and Journal Commentaries

Second-hand smoke: The asbestos and benzene of the Nineties, 25 Ariz.St.L.J. 713 (1993).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2081. Authorization of appropriations

(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this chapter (other than the provisions of section 2076 (h) of this title which authorize the planning and

.lix to Title 5, Government Organization and Employees.

Amendments

1983 Amendments. Subsec. (b)(1). Pub.L. 97–414 struck out introductory ext "an advance notice of proposed rulemaking for" after "issue", inserted in subpar. (A) "an advance notice of proposed rulemaking for" before "a consumer" and in subpar. (B) "a notice of proposed rulemaking for" before "a rule", and substituted in subpar. (C) "an advance notice of proposed rulemaking for regulations" for "a regulation".

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1981 Acts. Amendment by Pub.L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see § 1215 of Pub.L. 97–35, set out as a note under section 2052 of this title.

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ppropriated for the purposes of apter (other than the provisions ch authorize the planning and

construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 2079 of this title, not to exceed—

(1) $42,000,000 for fiscal year 1991, and

(2) $45,000,000 for fiscal year 1992.

For payment of accumulated and accrued leave under section 5551 of Title 5 severance pay under section 5595 under such title, and any other expense related to a reduction in force in the Commission, there are authorized to be appropriated such sums as may be necessary.

(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 2076(h) of this title; except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

(A) a brief description of the facility to be planned or constructed;

(B) the location of the facility, and an estimate of the maximum cost of the facility;

(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

(c) No funds appropriated under subsection (a) of this section may be used to pay any claim described in section 2053(i) of this title whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of Title 28, or under any other provision of law.

(Pub.L. 92-573, § 32, Oct. 27, 1972, 86 Stat. 1233; Pub.L. 94-284, §§ 2, 5(b), May 11, 1976, 90 Stat. 503, 505; Pub.L. 95-631, § 1, Nov. 10, 1978, 92 Stat. 3742; Pub.L. 97-35, Title XII, § 1214, Aug. 13, 1981, 95 Stat. 724; Pub.L. 101-608, Title I, § 117, Nov. 16, 1990, 104 Stat. 3121; Pub.L. 103-437, § 5(c)(1), Nov. 2, 1994, 108 Stat. 4582.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1976 Acts. Senate Report No. 94-251 and House Conference Report No. 94-1022, see 1976 U.S. Code Cong. and Adm. News, p. 993.

1978 Acts. House Report No. 95-1164, see 1978 U.S. Code Cong. and Adm. News, p. 9434.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1990 Acts. Senate Report No. 101-37, House Conference Report No. 101-914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

1994 Acts. House Report No. 103-779, see 1994 U.S. Code Cong. and Adm. News, p. 3639.

Amendments

1994 Amendments. Subsec. (b)(1). Pub.L. 103-437 in introductory provisions substituted "Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate" for "Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate", which required no change in text. See Change of Name note set out under this section.

1990 Amendments. Subsec. (a). Pub.L. 101-608 added pars. (1) and (2) and struck out former pars. (1) to (9) which specified maximum appropriations authorized for fiscal year ending June 30, 1976, to fiscal year ending Sept. 30, 1983.

1981 Amendments. Subsec. (a). Pub.L. 97-35, added pars. (8) and (9) and provision following par. (9) relating to payment of accumulated or accrued leave, severance pay, and any other expenses related to a reduction in force in the Commission.

1978 Amendments. Subsec. (a)(5) to (7). Pub.L. 95-631 added pars. (5) to (7).

1976 Amendments. Subsec. (a). Pub.L. 94-284, § 2, substituted "$51,000,000 for the fiscal year ending June 30, 1976, $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $68,000,000 for the fiscal year ending September 30, 1978" for "$55,000,000 for the fiscal year ending June 30, 1973, $59,000,000 for the fiscal year ending June 30, 1974, and $64,000,000 for the fiscal year ending June 30, 1975".

Subsec. (c). Pub.L. 94-284, § 5(b), added subsec. (c).

Effective Dates

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

Change of Name

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

ı claim made under section 2672 of ıion of law.

. 86 Stat. 1233; Pub.L. 94–284, §§ 2, Pub.L. 95–631, § 1, Nov. 10, 1978, 92 § 1214, Aug. 13, 1981, 95 Stat. 724; . 16, 1990, 104 Stat. 3121; Pub.L. Stat. 4582.)

STATUTORY NOTES

which specified maximum appropriations authorized for fiscal year ending June 30, 1976, to fiscal year ending Sept. 30, 1983.

1981 Amendments. Subsec. (a). Pub.L. 97–35, added pars. (8) and (9) and provision following par. (9) relating to payment of accumulated or accrued leave, severance pay, and any other expenses related to a reduction in force in the Commission.

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Subsec. (c). Pub.L. 94–284, § 5(b), dded subsec. (c).

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1981 Acts. Amendment by Pub.L. 7–35 effective Aug. 13, 1981, see § 1215 Pub.L. 97–35, set out as a note under ction 2052 of this title.

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Committee on Energy and Commerce House of Representatives changed to mmittee on Commerce of House of presentatives by House Resolution No. One Hundred Fourth Congress, 95.

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tion pages of this volume.

§ 2082. Interim cellulose insulation safety standard

(a) Applicability of specification of General Services Administration; authority and effect of interim standard; modifications; criteria; labeling requirements

(1) Subject to the provisions of paragraph (2), on and after the last day of the 60-day period beginning on July 11, 1978, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C (as such specification was in effect on February 1, 1978), shall be deemed to be an interim consumer product safety standard which shall have all the authority and effect of any other consumer product safety standard promulgated by the Commission under this chapter. During the 45-day period beginning on July 11, 1978, the Commission may make, and shall publish in the Federal Register, such technical, nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety standard. At the end to[1] the 60-day period specified in the first sentence of this paragraph, the Commission shall publish in the Federal Register such interim consumer product safety standard, as altered by the Commission under this paragraph.

(2) The interim consumer product safety standard established in paragraph (1) shall provide that any cellulose insulation which is produced or distributed for sale or use as a consumer product shall have a flame spread rating of 0 to 25, as such rating is set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C.

(3) During the period for which the interim consumer product safety standard established in subsection (a) of this section is in effect, in addition to complying with any labeling requirement established by the Commission under this chapter, each manufacturer or private labeler of cellulose insulation shall include the following statement on any container of such cellulose insulation: "ATTENTION: This material meets the applicable minimum Federal flammability standard. This standard is based upon laboratory tests only, which do not represent actual conditions which may occur in the home". Such statement shall be located in a conspicuous place on such container and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such container.

(b) Scope of judicial review

Judicial review of the interim consumer product safety standard established in subsection (a) of this section, as such standard is in effect on and after the last day of the 60-day period specified in such subsection, shall be limited solely to the issue of whether any changes made by the Commission under paragraph (1) are technical, nonsubstantive changes. For purposes of such review, any change made by the Commission under paragraph (1) which requires that any test to determine the flame spread rating of cellulose insulation shall include a correction for variations in test results caused by equipment used in the test shall be considered a technical, nonsubstantive change.

(c) Enforcement; violations; promulgation of final standard; procedures applicable to promulgation; revision of interim standard; procedures applicable to revision

(1)(A) Any interim consumer product safety standard established pursuant to this section shall be enforced in the same manner as any other consumer product safety standard until such time as there is in effect a final consumer product safety standard promulgated by the Commission, as provided in subparagraph (B), or until such time as it is revoked by the Commission under section 2058(e) of this title. A violation of the interim consumer product safety standard shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 2058 of this title.

(B) If the Commission determines that the interim consumer product safety standard does not adequately protect the public from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, it shall promulgate a final consumer product safety standard to protect against such risk. 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. The provisions of section 2058(b), (c), and (d) of this title shall apply to any proceeding to promulgate such final standard. In any judicial review of such final standard under section 2060 of this title, the court shall not require any demonstration that each particular finding made by the Commission under section 2058(c) of this title is supported by substantial evidence. The court shall affirm the action of the Commission unless the court determines that such action is not supported by substantial evidence on the record taken as a whole.

(2)(A) Until there is in effect such a final consumer product safety standard, the Commission shall incorporate into the interim consumnsumer product safety standard section, as such standard is in 60-day period specified in such the issue of whether any changes graph (1) are technical, nonsub- ich review, any change made by) which requires that any test to of cellulose insulation shall in- est results caused by equipment ed a technical, nonsubstantive

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er product safety standard, in accordance with the provisions of this paragraph, each revision superseding the requirements for flame resistance and corrosiveness referred to in subsection (a) of this section and promulgated by the General Services Administration.

(B) At least 45 days before any revision superseding such requirements is to become effective, the Administrator of the General Services Administration shall notify the Commission of such revision. In the case of any such revision which becomes effective during the period beginning on February 1, 1978, and ending on July 11, 1978, such notice from the Administrator of the General Services Administration shall be deemed to have been made on July 11, 1978.

(C)(i) No later than 45 days after receiving any notice under subparagraph (B), the Commission shall publish the revision, including such changes in the revision as it considers appropriate to make the revision suitable for promulgation as an amendment to the interim consumer product safety standard, in the Federal Register as a proposed amendment to the interim consumer product safety standard.

(ii) The Commission may extend the 45-day period specified in clause (i) for an additional period of not more than 150 days if the Commission determines that such extension is necessary to study the technical and scientific basis for the revision involved, or to study the safety and economic consequences of such revision.

(D)(i) Additional extensions of the 45-day period specified in subparagraph (C)(i) may be taken by the Commission if—

(I) the Commission makes the determination required in subparagraph (C)(ii) with respect to each such extension; and

(II) in the case of further extensions proposed by the Commission after an initial extension under this clause, such further extensions have not been disapproved under clause (iv).

(ii) Any extension made by the Commission under this subparagraph shall be for a period of not more than 45 days.

(iii) Prior notice of each extension made by the Commission under this subparagraph, together with a statement of the reasons for such extension and an estimate of the length of time required by the Commission to complete its action upon the revision involved, shall be published in the Federal Register and shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(iv) In any case in which the Commission takes an initial 45-day extension under clause (i), the Commission may not take any further extensions under clause (i) if each committee referred to in clause (iii) disapproves by committee resolution any such further extensions before the end of the 15-day period following notice of such initial extension made by the Commission in accordance with clause (iii).

(E) The Commission shall give interested persons an opportunity to comment upon any proposed amendment to the interim consumer product safety standard during the 30-day period following any publication by the Commission under subparagraph (C).

(F) No later than 90 days after the end of the period specified in subparagraph (E), the Commission shall promulgate the amendment to the interim consumer product safety standard unless the Commission determines, after consultation with the Secretary of Energy, that—

(i) such amendment is not necessary for the protection of consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation; or

(ii) implementation of such amendment will create an undue burden upon persons who are subject to the interim consumer product safety standard.

(G) The provisions of section 2060 of this title shall not apply to any judicial review of any amendment to the interim product safety standard promulgated under this paragraph.

(d) Reporting requirements of other Federal departments, agencies, etc. of violations

Any Federal department, agency, or instrumentality, or any Federal independent regulatory agency, which obtains information which reasonably indicates that cellulose insulation is being manufactured or distributed in violation of this chapter shall immediately inform the Commission of such information.

(e) Reporting requirements of Commission to Congressional committees; contents, time of submission, etc.

(1) The Commission, no later than 45 days after July 11, 1978, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives which shall contain a detailed statement of the manner in which the Commission intends to carry out the enforcement of this section.

(2)(A) The Commission, no later than 6 months after the date upon which the report required in paragraph (1) is due (and no later than the end of each 6-month period thereafter), shall submit a report to each committee referred to in paragraph (1) which shall h committee referred to in clause olution any such further extensions od following notice of such initial on in accordance with clause (iii).

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describe the enforcement activities of the Commission with respect to this section during the most recent 6-month period.

(B) The first report which the Commission submits under subparagraph (A) shall include the results of tests of cellulose insulation manufactured by at least 25 manufacturers which the Commission shall conduct to determine whether such cellulose insulation complies with the interim consumer product safety standard. The second such report shall include the results of such tests with respect to 50 manufacturers who were not included in testing conducted by the Commission for inclusion in the first report.

(f) Compliance with certification requirements; implementation; waiver; rules and regulations

(1) The Commission shall have the authority to require that any person required to comply with the certification requirements of section 2063 of this title with respect to the manufacture of cellulose insulation shall provide for the performance of any test or testing program required for such certification through the use of an independent third party qualified to perform such test or testing program. The Commission may impose such requirement whether or not the Commission has established a testing program for cellulose insulation under section 2063(b) of this title.

(2) The Commission, upon petition by a manufacturer, may waive the requirements of paragraph (1) with respect to such manufacturer if the Commission determines that the use of an independent third party is not necessary in order for such manufacturer to comply with the certification requirements of section 2063 of this title.

(3) The Commission may prescribe such rules as it considers necessary to carry out the provisions of this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated, for each of the fiscal years 1978, 1979, 1980, and 1981, such sums as may be necessary to carry out the provisions of this section.

(Pub.L. 92–573, § 35, as added Pub.L. 95–319, § 3(a), July 11, 1978, 92 Stat. 386, and amended Pub.L. 103–437, § 5(c)(2), Nov. 2, 1994, 108 Stat. 4582.)

[1] So in original.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92–835 and House Conference Report No. 92–1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1978 Acts. House Report No. 95–1116 and House Conference Report No. 95–1322, see 1978 U.S. Code Cong. and Adm. News, p. 1044.

1994 Acts. House Report No. 103-779, see 1994 U.S. Code Cong. and Adm. News, p. 3639.

Amendments

1994 Amendments. Subsecs. (c)(2)(D)(iii), (e)(1). Pub.L. 103-437 substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce", which required no change in text. See Change of Name note set out under this section.

Change of Name

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Congressional Statement of Findings and Purpose

Section 2 of Pub.L. 95-319 provided that:

"(a) The Congress finds that—

"(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

"(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

"(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

"(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

"(b) It is the purpose of the Congress in this Act [enacting this section, amending section 2068 of this title, and enacting provisions set out as notes under sections 2051 and 3082 of this title] to provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product."

LIBRARY REFERENCES

Administrative Law

Cellulose insulation, see 16 CFR §§ 1209.1 et seq., 1404.1 et seq.

Commission participation and employee involvement in voluntary standards activities, see 16 CFR § 1031.1 et seq.

American Digest System

Consumer Protection ⚖11.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2083. Congressional veto of consumer product safety rules

(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 consumer product safety rule promulgated by the Commission under section 2058 of this title.

(b) Disapproval by concurrent resolution

Any rule specified in subsection (a) of this section shall not take effect if—

"(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

"(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

"(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

"(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

"(b) It is the purpose of the Congress in this Act [enacting this section, amending section 2068 of this title, and enacting provisions set out as notes under sections 2051 and 3082 of this title] to provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product."

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(1) within the 90 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, 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 consumer product safety rule which was promulgated by the Consumer Product Safety Commission with respect to ____ and which was transmitted to the Congress on ____ and disapproves the rule for the following reasons: ____."; or

(2) within the 60 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, 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 30 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 rule involved, and shall not be construed to create any presumption of validity with respect to such rule.

(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 3 days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b) of this section.

(Pub.L. 92-573, § 36, as added Pub.L. 97-35, Title XII, § 1207(a), Aug. 13, 1981, 95 Stat. 718.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

Effective Dates

1981 Acts. Section applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, see § 1215 of Pub.L. 97-35, set out as a note under § 2052 of this title.

Transfer of Functions

Any reference in any provision of law enacted before Jan. 4, 1995, to a function, duty, or authority of the Clerk of the House of Representatives treated as referring, with respect to that function, duty, or authority, to the officer of the House of

Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives, see section 2(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

LIBRARY REFERENCES

Administrative Law

Commission participation and employee involvement in voluntary standards activities, see 16 CFR § 1031.1 et seq.

American Digest System

Consumer Protection ⚬11.

Encyclopedias

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 2084. Information reporting

(a) Notification of settlements or judgments

If a particular model of a consumer product is the subject of at least 3 civil actions that have been filed in Federal or State court for death or grievous bodily injury which in each of the 24-month periods defined in subsection (b) of this section result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall, in accordance with subsection (c) of this section, report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action.

(b) Calculation of 24-month periods

The 24-month periods referred to in subsection (a) of this section are the 24-month period commencing on January 1, 1991, and subsequent 24-month periods beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period.

(c) Information required to be reported

(1) The information required by subsection (a) of this section to be reported to the Commission, with respect to each civil action described in subsection (a) of this section, shall include and in addition to any voluntary information provided under paragraph (2) shall be limited to the following:

(A) The name and address of the manufacturer.

of Pub.L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

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(B) The model and model number or designation of the consumer product subject to the civil action.

(C) A statement as to whether the civil action alleged death or grievous bodily injury, and in the case of an allegation of grievous bodily injury, a statement of the category of such injury.

(D) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff.

(E) in [1] the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned the civil action, and the court in which the civil action was filed.

(2) A manufacturer furnishing the report required by paragraph (1) may include (A) a statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed or (B) any other information which the manufacturer chooses to provide. A manufacturer reporting to the Commission under subsection (a) of this section need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(3) No statement of the amount paid by the manufacturer in a final settlement shall be required as part of the report furnished under subsection (a) of this section, nor shall such a statement of settlement amount be required under any other section of this chapter.

(d) Report not deemed an admission of liability

The reporting of a civil action described in subsection (a) of this section by a manufacturer shall not constitute an admission of—

(1) an unreasonable risk of injury,

(2) a defect in the consumer product which was the subject of such action,

(3) a substantial product hazard,

(4) an imminent hazard, or

(5) any other admission of liability under any statute or under any common law.

(e) Definitions

For purposes of this section:

(1) A grievous bodily injury includes any of the following categories of injury: mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to require extended hospitalization.

(2) For purposes of this section,[2] a particular model of a consumer product is one that is distinctive in functional design,

construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance.

(Pub.L. 92-573, § 37, as added Pub.L. 101-608, Title I, § 112 (b), Nov. 16, 1990, 104 Stat. 3115.)

[1] So in original. Probably should be capitalized.

[2] So in original.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-835 and House Conference Report No. 92-1593, see 1972 U.S. Code Cong. and Adm. News, p. 4573.

1990 Acts. Senate Report No. 101-37, House Conference Report No. 101-914, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 4407.

Congressional Reports

Section 112(f) of Pub.L. 101-608, provided that:

"(1) The Consumer Product Safety Commission shall report to the Congress on the extent to which reports made to the Commission under section 37 of the Consumer Product Safety Act [15 U.S.C.A. § 2084] have assisted the Commission in carrying out its responsibilities under such Act [15 U.S.C.A. § 2051 et seq.]. The report—

"(A) shall provide aggregate data and not the details and contents of individual reports filed with the Commission pursuant to such section 37,

"(B) shall not disclose the brand names of products included in reports under such section 15(b) or 37 [15 U.S.C.A. § 2064(b) or 2084] or the number of reports under such sections for particular models or classes of products, and

"(C) shall include—

"(i) a comparison of the number of reports received under such section 37 and the number of reports received under section 15(b) of such Act,

"(ii) a comparison of the number of reports filed with the Commission before the date of the enactment of this Act [Nov. 16, 1990] and after such date, and

"(iii) the total number of settlements and court judgments reported under such section 37 and the total number of rulemakings and enforcement actions undertaken in response to such reports,

"(iv) recommendations of the Commission for additional improvements in reporting under the Consumer Product Safety Act.

"(2) The first report under paragraph (1) shall be due February 1, 1992, and the second such report shall be due April 1, 1993."

LIBRARY REFERENCES

Administrative Law

Procedures for filing reports, see 16 CFR § 1116.1 et seq.

Substantial product hazard reports, see 16 CFR § 1115.1 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

RECALL HANDBOOK

A Guide for Manufacturers, Importers, Distributors and Retailers on Reporting Under Sections 15 and 37 of the Consumer Product Safety Act and Section 102 of the Child Safety Protection Act and Preparing for, Initiating and Implementing Product Safety Recalls

Including
CPSC Fast Track Product Recall Program

U.S. Consumer Product Safety Commission
Office of Compliance
Recalls and Compliance Division
4330 East West Highway, Room 613
Bethesda, Maryland 20814
Telephone: (301) 504-0608, ext. 15
Fax: (301) 504-0359
www.cpsc.gov

CPSC FAX-ON-DEMAND DOCUMENT #8002

May 1999

Foreword

The CPSC Office of Compliance staff prepared this <u>Recall Handbook</u> to assist your company to understand your obligations and responsibilities under the Consumer Product Safety Act. It applies to you if you manufacture, import, distribute, or retail consumer products.

No company likes to recall one of its products, but when a safety problem makes a product recall necessary to prevent injuries and save lives, it is to everyone's benefit to move quickly and effectively.

Our staff is constantly striving to improve both the timeliness of recalls and the effectiveness of the recall programs negotiated with companies. Our Fast Track Product Recall Program is helping both of these efforts and is highlighted in this revised edition of the <u>Recall Handbook</u>.

The Fast Track program is designed for companies willing and able to move quickly with a voluntary recall of their product. The program, described in detail in Section IV, eliminates some of the procedural steps in the traditional recall process, including the staff preliminary determination that the product contains a defect that presents a substantial product hazard.

Many companies have used the program since CPSC introduced it in August 1995. Now about half of our recalls are done under this streamlined system. In 1998 the CPSC Fast Track Product Recall program was one of three federal winners of the prestigious Innovations in American Government Award. This award is funded by the Ford Foundation and administered by the John F. Kennedy School of Government at Harvard University in partnership with the Council for Excellence in Government.

We welcome your comments on the Fast Track program or any other information in this handbook.

Marc J. Schoem
Director
Recalls and Compliance Division

RECALL HANDBOOK

RECALL HANDBOOK[1]

Background

The U.S. Consumer Product Safety Commission (CPSC) is an independent regulatory agency responsible for protecting the public from unreasonable risks of injury and death associated with consumer products. Established by Congress in the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051-2084, the CPSC has jurisdiction over approximately 15,000 different types of products used in and around the home, in schools, and in recreation ("consumer products").[2]

This handbook is for companies that manufacture, import, distribute, retail, or otherwise sell consumer products. It has three purposes: 1) to familiarize companies with their reporting requirements under sections 15(b) and 37 of the CPSA, 15 U.S.C. § 2064(b) and § 2084, and Section 102 of the Child Safety Protection Act, Pub. L. 103-267, 108 Stat. 722, 6/16/94; 2) to help companies learn how to recognize potentially hazardous consumer products at an early stage; and 3) to assist firms that discover they have manufactured or distributed such products develop and implement "corrective action plans" that address the hazards. The term "corrective action plan" (CAP) generally includes any type of remedial action taken by a firm. A CAP could, for example, provide for the return of a product to the manufacturer or retailer for a cash refund or a replacement product; for the repair of a product; and/or for public notice of the hazard. A CAP may include multiple measures that are necessary to protect consumers. The Commission staff refers to corrective actions as "recalls" because the public and media more readily recognize and respond to that description.[3]

This handbook is not an all-inclusive reference source of information describing how to recall products. The goal of a corrective action plan should be to retrieve as many hazardous products from the distribution chain and from consumers as is possible in the most practical, cost-effective manner. Reaching this goal often requires creative planning. Companies developing specific corrective action plans to address unsafe or potentially unsafe products typically work closely with the Commission staff to take advantage of the staff's expertise in designing and carrying out such plans. This results in greater protection for consumers against injury or death.

I. Reporting Requirements

A. Section 15 Reports

Section 15(b) of the Consumer Product Safety

[1] This handbook does not replace the Commission's statutes or interpretative regulations set out in 16 C.F.R. Parts 1115, 1116 and 1117. If there is any discrepancy, the statutes and regulations supersede this handbook. For more information about reporting requirements, see the Commission's Statement of Enforcement Policy, 51 Fed. Reg. 23,410 (1986). This material is available on the CPSC web site at: http://www.cpsc.gov.

[2] The Commission does not have general jurisdiction over foods, drugs, cosmetics, medical devices, firearms and ammunition, boats, motor vehicles, aircraft, or tobacco. Specific questions about the Commission's jurisdiction over particular products should be directed to the Office of the General Counsel.

[3] This handbook uses the term "recall" to describe any repair, replacement or refund program.

Act establishes reporting requirements for manufacturers, importers, distributors and retailers of consumer products. Each must notify the Commission immediately if it obtains information which reasonably supports the conclusion that a product distributed in commerce (1) fails to meet a consumer product safety standard or banning regulation, (2) contains a defect which could create a substantial product hazard to consumers, (3) creates an unreasonable risk of serious injury or death, or (4) fails to comply with a voluntary standard upon which the Commission has relied under the CPSA.[4] Companies that distribute products that violate regulations issued under the other laws that the Commission administers -- the Flammable Fabrics Act, 15 U.S.C. § 1193-1204; the Federal Hazardous Substances Act, 15 U.S.C. § 1261-1278; the Poison Prevention Packaging Act, 15 U.S.C. § 1471-1476; and the Refrigerator Safety Act; 15 U.S.C. §1211-1214 -- must also report, if the violations may also constitute product defects that could create a substantial risk of injury to the public or may create an unreasonable risk of serious injury or death. The Commission has issued an interpretive regulation, 16 C.F.R. Part 1115, that further explains a reporting company's obligations.

In enacting section 15(b), Congress intended to encourage the widespread reporting of potential product hazards. In addition to assisting the Commission to discover substantial product hazards, reporting would identify risks of injury that the Commission could address through voluntary or mandatory standards, or information and education.

[4]As of October 1998, there were two such standards -- the voluntary standards for chain saws and for unvented gas space heaters.

Although CPSC uses sources other than company reports to identify potentially hazardous products, reporting by companies under section 15 can provide the most timely and effective source of information about such products. This is because firms often learn of potential product safety problems at an early stage. For this reason, companies involved in the manufacture, importation, distribution, or sale of consumer products should develop a system for maintaining and reviewing information about their products that might suggest a product defect or unreasonable risk of serious injury or death. Such information includes consumer complaints, warranty returns, insurance claims or payments, product liability lawsuits, reports of production problems, product testing or other critical analyses of products, and the like.

Reporting a product to the Commission under section 15 does not automatically mean that the Commission will conclude that the product creates a substantial product hazard or that corrective action is necessary. The CPSC staff works with the reporting firm to determine if corrective action is appropriate. Many of the reports received require no corrective action because the staff concludes that the reported product defect does not create a substantial product hazard.

1. What and Where to Report

A company should file its report with the Division of Recalls and Compliance. The report may be filed by mail, telephone (301-504-0608, ext. 15), or electronically through the CPSC web site (www.cpsc.gov) or fax (301-504-0359). A company should assign the responsibility of reporting to someone with knowledge of the product and of the reporting requirements of section 15.

He or she should have the authority to report to CPSC or to quickly raise the reporting issue to someone who does.

Reporting firms should be prepared to provide the information described below. However, no company should delay a report because some of this information is not yet available. The following information should be transmitted:

- Description of the product.
- Name and address of the company, and whether it is a manufacturer, distributor, importer or retailer.
- Nature and extent of the possible product defect or unreasonable risk of serious injury or death.
- Nature and extent of injury or possible injury associated with the product.
- Name, address and telephone number of the person informing the Commission.
- If available, the other information specified in Section 1115.13(d) of the Commission's regulations interpreting the reporting requirements.
- A timetable for providing information not immediately available.

Retailers and distributors may satisfy their reporting obligations in the manner described above. Alternatively, a retailer or distributor may send a letter to the manufacturer or importer of a product describing the risk of injury or death or the defect associated with the product or its failure to comply with an applicable regulation and forward a copy of that letter to the Division of Recalls and Compliance. A distributor or retailer receiving product hazard information from a manufacturer or importer or other source must report to CPSC unless the firm knows the Commission has been adequately informed of the defect, failure to comply, or risk.

2. When To Report

Section 15 requires firms to report "immediately." This means that a firm should notify the Commission within 24 hours of obtaining information described in section A ("Section 15 Reports") above. 16 C.F.R. § 1115.12 provides guidelines for determining whether a product defect exists, whether a product creates an unreasonable risk of serious injury or death, and whether a report is necessary or appropriate. Section II of this handbook does the same.

A company **must** report to the Commission within 24 hours of obtaining reportable information. The Commission encourages companies to report **potential** substantial product hazards even while their own investigations are continuing. However, if a company is uncertain whether information is reportable, the firm may spend a reasonable time investigating the matter. That investigation should not exceed ten working days unless the firm can demonstrate that a longer time is reasonable in the circumstances. Absent such circumstances, the Commission will presume that, at the end of ten working days, the firm has received and considered all information which would have been available to it had a reasonable, expeditious, and diligent investigation been undertaken.

The Commission considers a company to have obtained knowledge of product safety related information when that information is received by an employee or official of the firm who may reasonably be expected to be capable of appreciating the significance of that information. Once that occurs, under ordinary circumstances, five working days is the maximum reasonable time for that information to reach the chief executive officer or the official assigned responsibility for complying with the reporting requirements.

The Commission evaluates whether or when a firm should have reported. This evaluation will be based, in part, on what the company actually knew about the hazard posed by the product or **on what a reasonable person, acting under the circumstances, should have known about the hazard while exercising due care.** Thus, a firm is deemed to know what it would have known had it exercised due care in analyzing reports of injury or consumer complaints, or in evaluating warranty returns, reports of experts, in-house engineering analyses, or other information.

3. Confidentiality of Reports

The Commission often receives requests for information reported under section 15(b). Section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5), prohibits the release of such information unless a remedial action plan has been accepted in writing, a complaint has been issued or the reporting firm consents to the release. In addition, a firm claiming that information it has submitted is trade secret or confidential commercial or financial information must mark the information as "confidential" in accordance with section 6(a)(3) of the CPSA, 15 U.S.C. § 2055(a)(3). That should be done when the information is submitted to the Commission. The firm will receive an additional opportunity to claim confidentiality when it receives subsequent notice from the Commission's Freedom of Information Office that the information may be disclosed to the public in response to a request. If section 6(b)(5) does not apply, the CPSC staff will not treat information as exempt from disclosure to the public under section 6(a) of the CPSA, 15 U.S.C. § 2055(a), and the Freedom of Information Act, absent a specific claim for confidential treatment.

B. Section 37 Reports

Section 37 of the CPSA requires manufacturers of consumer products to report information about settled or adjudicated lawsuits.[5] Manufacturers must report if:

- A particular model of the product is the subject of at least three civil actions filed in federal or state court;
- Each suit alleges the involvement of that particular model in death or grievous bodily injury -- mutilation or disfigurement, dismemberment or amputation, the loss of important bodily functions or debilitating internal disorder, injuries likely to require extended hospitalization, severe burns, severe electric shock, or other injuries of similar severity; and
- During one of the following two-year periods specified in the law, each of the three actions results in either a final settlement involving the manufacturer or in a court judgment in favor of the plaintiff:

  January 1, 1991 – December 31, 1992
  January 1, 1993 – December 31, 1994
  January 1, 1995 – December 31, 1996
  January 1, 1997 – December 31, 1998
  January 1, 1999 – December 31, 2000

  (subsequent periods follow this pattern); and

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[5]The Commission has issued a rule interpreting the requirements of section 37 at 16 C.F.R. Part 1116. The Commission recommends that manufacturers considering whether they have section 37 reporting obligations refer to that rule, particularly in determining whether products involved in different lawsuits are the same model.

- The manufacturer is involved in the defense of or has notice of each action prior to the entry of the final order, and is involved in discharging any obligation owed to the plaintiff as a result of the settlement or judgment.

1. What to Report

A report under section 37 must contain:

- The name and address of the manufacturer of the product.
- The model and model number or designation of the product.
- A statement as to whether the civil action alleged death or grievous bodily injury, and in the case of the latter, the nature of the injury. For reporting purposes, the plaintiff's allegations as to the nature of the injury are sufficient to require a report, even if the manufacturer disagrees with the allegations.
- A statement as to whether the case resulted in a final settlement or a judgment. However, a manufacturer need not provide the amount of a settlement.
- In the case of a judgment in favor of the plaintiff, the name and case number of the case, and the court in which it was filed.

A manufacturer may also provide additional information, if it chooses. Such information might include a statement as to whether the manufacturer intends to appeal an adverse judgment, a specific denial that the information it submits reasonably supports the conclusion that its product caused death or grievous bodily injury, and an explanation why the manufacturer has not previously reported the risk associated with the product under section 15.

2. When and Where to Report

A manufacturer must report within 30 days after a judgment or final settlement in the last of three lawsuits. The same is true of any additional lawsuits involving the same model that are settled or adjudicated in favor of the plaintiff during the same two-year period.

Companies must file Section 37 reports in writing to the Director, Recalls and Compliance Division, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

3. Confidentiality of Reports

Unlike section 15(b) reports, the Commission may not disclose to the general public information reported under section 37 in any circumstances. By law, reporting under section 37 is not an admission of the existence of an unreasonable risk of injury, a defect, a substantial product hazard, an imminent hazard, or any other liability under any statute or common law.

C. Section 102

Section 102 of the Child Safety Protection Act requires that companies report certain choking incidents to the Commission.[6] Each manufacturer, distributor, retailer, and importer of a marble, a ball with a diameter of 1.75" or less ("small ball"), or latex balloon, or a toy or

[6]Firms should refer to 16 C.F.R. Part 1117 for more detailed information about this reporting requirement.

game that contains such a marble, ball, balloon, or other small part must report information that reasonably supports the conclusion:

1) that a child (regardless of age) choked on such a marble, small ball, balloon, or small part; and

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

1. What to Report

The report should include the name and address of the child who choked and the person who notified the firm of the incident, a detailed identification of the product, a description of the incident and any resulting injuries or medical treatment, information about any changes made to the product involved or its labeling or warnings to address the risk of choking, and the details of any public notice or other corrective action planned. Firms should refer to 16 C.F.R. Part 1117 for more detailed information about this reporting requirement.

2. When and Where to Report

Section 102 reports must be filed within 24 hours of obtaining the information.

A company may file a Section 102 report with the Division of Recalls and Compliance by mail, telephone (301-504-0608, ext. 15), or fax (301-504-0359). Telephone reports must be followed with a written confirmation.

3. Confidentiality of Reports

Section 102 reports receive the same confidentiality treatment as information submitted under section 15 of the CPSA.

II. Identifying a Defect

The Commission's reporting requirements provide information that assists the Commission in evaluating whether some form of remedial action is appropriate. However, in the absence of a regulation that addresses a specific risk of injury, the product in question must contain a defect that creates a substantial risk of injury to the public to warrant such remedial action. The handbook next discusses the considerations that go into determining whether a product defect exists and, if so, whether the risk presented by that defect is substantial.

A defect could be the result of a manufacturing or production error; or it could result from the design of, or the materials used in, the product. A defect could also occur in a product's contents, construction, finish, packaging, warnings, and/or instructions. (See 16 C.F.R. § 1115.4)

Not all products that present a risk of injury are defective. A kitchen knife is one such example. The blade has to be sharp to allow the consumer to cut or slice food. The knife's cutting ability is not a product defect, even though some consumers may cut themselves while using the knife.

In determining whether a risk of injury associated with a product could make the product defective, the Commission considers the following:

1. *What is the utility of the product? What is it supposed to do?*

2. *What is the nature of the injury that the*

product might cause?

3. *What is the need for the product?*

4. *What is the population exposed to the product and the risk of injury?*

5. *What is the Commission's experience with the product?*

6. Finally, *what other information sheds light on the product and patterns of consumer use?*

If the information available to a company does not reasonably support the conclusion that a defect exists, the firm need not report to the Commission under the defect reporting provision of Section 15(b)(2). However, since a product may be defective even when it is designed, manufactured, and marketed exactly as intended, a company in doubt as to whether a defect exists should still report. Additionally, a firm must report if it has information indicating the product creates an unreasonable risk of serious injury or death. See 15 U.S.C. 2064(b)(3) and 16 C.F.R. § 1115.6.

If the information obtained by a company supports a conclusion that a product has a defect, the company must then consider whether the defect may be serious enough that it could create a substantial product hazard. Generally, a product could create a substantial hazard when consumers are exposed to a significant number of units or if the possible injury is serious or is likely to occur. However, because a company ordinarily does not know the extent of public exposure or the likelihood or severity of potential injury when a product defect first comes to its attention, the company should report to the Commission even if it in doubt as to whether a substantial product hazard exists.

Section 15 lists criteria for determining when a product creates a substantial product hazard. Any one of the following factors could indicate the existence of a substantial product hazard:

- **Pattern of defect.** The defect may stem from the design, composition, content, construction, finish, or packaging of a product, or from warnings and/or instructions accompanying the product. The conditions under which the defect manifests itself must also be considered in determining whether the pattern creates a substantial product hazard.

- **Number of defective products distributed in commerce.** A single defective product could be the basis for a substantial product hazard determination if an injury is likely or could be serious. By contrast, defective products posing no risk of serious injury and having little chance of causing even minor injury ordinarily would not be considered to present a substantial product hazard.

- **Severity of risk.** A risk is considered severe if the injury that might occur is serious, and/or if the injury is likely to occur.

- **Likelihood of injury.** The likelihood is determined by considering the number of injuries that have occurred, **or that could occur,** the intended or reasonably foreseeable use or misuse of the product, and the population group (such as children, the elderly, or the disabled) exposed to the product.

A substantial product hazard also exists when a product does not comply with an applicable consumer product safety rule, and the failure to comply creates a substantial risk of injury to consumers.

III. CPSC Evaluation of Section 15 Reports

When a company reports to the Commission, the staff of the Division of Recalls and Compliance undertakes the same product hazard analysis as that requested of firms. First, the staff considers whether the product contains a defect. If the staff believes there is a defect, it then assesses the substantiality of the risk presented to the public, using the criteria listed in section 15 (that is, pattern of defect, number of defective products distributed in commerce, severity of the risk, likelihood of injury and other appropriate data). In determining preliminarily whether the product in question creates a substantial product hazard,[7] the staff applies hazard priority standards to classify the severity of the problem.

The hazard priority system allows the Commission staff to rank defective products uniformly. For example, a Class A hazard rating is reserved for product defects that present a strong likelihood of death or grievous injury or illness to the consumer. Should the staff make a preliminary determination that a product creates a substantial product hazard, the hazard priority system also provides a guide for selecting the level and intensity of corrective action.

Class A Hazard

- Exists when a risk of death or grievous injury or illness is likely or very likely, or serious injury or illness is very likely.

Class A hazards warrant the highest level of attention. They call for a company to take immediate, comprehensive, and imaginative corrective action measures to identify and notify consumers, retailers and distributors having the defective product and to remedy the defect through repair or replacement of the product, refunds, or other measures.

Class B Hazard

- Exists when a risk of death or grievous injury or illness is not likely to occur, but is possible, or when serious injury or illness is likely, or moderate injury or illness is very likely.

Class C Hazard

- Exists when a risk of serious injury or illness is not likely, but is possible, or when moderate injury or illness is not necessarily likely, but is possible.

Regardless of whether a product defect is classified as a Class A, B or C priority hazard, the common element is that each of these defects creates a substantial product hazard that requires corrective action to reduce that risk of injury.

The priority given to a specific product defect provides a guideline for determining how best to communicate with owners and users of the

[7] The decision is preliminary because only the Commissioners, after a hearing, can make a formal determination that a product is defective and creates a substantial product hazard.

defective product and to get them to respond appropriately. While some companies have exemplary track records in communicating with consumers independently, it is still to a company's advantage to work with the Commission staff, using both the company's and the Commission's skills and resources to conduct an effective product recall.

IV. Fast Track Product Recall Program

A firm that files a Section 15(b) report may wish to use of an alternative procedure that the Commission has established to expedite recalls.[8] The program is called the "Fast Track Product Recall Program." If a company reports a potential product defect and, within 20 working days of the filing of the report, implements with CPSC a consumer-level voluntary recall that is satisfactory to the staff, the staff will not make a preliminary determination that the product contains a defect which creates a substantial product hazard.

This program allows the staff and company to work together on a corrective action plan almost immediately, rather than spending the time and other resources necessary to investigate the reported defect further to determine whether it rises to the level of a substantial product hazard.

To participate in this program, companies must:

- Provide all of the information required for a full report (16 C.F.R. § 1115.13(d)).
- Request to participate in the program.
- Submit a proposed corrective action plan with sufficient time for the Commission staff to analyze any proposed repair, replacement or refund offer and to evaluate all notice material before the implementation (announcement) of the CAP which is to occur within 20 working days of the report.

[8] This program is described in more detail in the Federal Register of July 24, 1997, 62 Fed. Reg. 39,827-39,828.

V. Putting Together a Corrective Action Plan

A. Preparing For A Product Recall

It is unlikely that any two recall programs will ever be identical. Therefore, companies should be prepared to address issues that invariably arise. For instance:

- What is the defect that causes the product hazard?
- What caused the product defect to occur in the first place?
- Where are the unsafe products? How many are there?
- Did the product fail to comply with government safety regulations? How?
- Was the government or the appropriate regulatory body informed about the defect or lack of compliance?
- Has the company discontinued production and shipments of these products to distributors?
- Has the company notified retailers to stop selling the product and asked them to help identify consumers who own the product?
- Has the company started reviewing existing databases to identify potential

product owners, e.g., product registration and customer service records?

- Has a press release been prepared announcing the recall? What other forms of public notice are needed?

- Has a toll-free telephone service been set up that will be able to handle the number of calls expected after the recall is announced?

- What is the company's estimate of the cost of the product recall campaign?

- Is the company prepared to deploy manpower and/or fund an effort to provide replacement parts for defective products or to exchange them for new products that do not have the problem?

- Has a plan been developed to ship replacement parts or new units to distributors participating in the product recall, or otherwise repair units in their inventory?

- Is the company prepared to monitor the product recall and provide timely reports to the Commission on the progress of the recall?

- How is the company upgrading its quality control or risk analysis procedures to prevent a similar product recall in the future?

This list addresses administrative and operational functions of a company involved in a product recall. Even if a product recall is merely potential, a company should be prepared to respond to the questions listed above.

B. Elements of a Recall

A company that undertakes a recall should develop a comprehensive plan that reaches throughout the entire distribution chain to consumers who have the product. The company must design each communication to motivate people to respond to the recall and take the action requested by the company.

Once the staff and a company agree on a remedy to correct a product defect, the staff works with the company to put together an effective plan for public notification and implementation of the recall. The information that should be included in a corrective action plan (CAP) is set forth at 16 C.F.R. § 1115.20(a). A plan must include the company's agreement that the Commission may publicize the terms of the plan to the extent necessary to inform the public of the nature of the alleged substantial product hazard and the actions being undertaken to correct that hazard.

The objectives of a recall are:

1. To locate all defective products as quickly as possible;

2. To remove defective products from the distribution chain and from the possession of consumers; and

3. To communicate accurate and understandable information in a timely manner to the public about the product defect, the hazard, and the corrective action. Companies should design all informational material to motivate retailers and media to get the word out and consumers to act on the recall.

In determining what forms of notice to use, the paramount consideration should be the level of hazard that the recalled product presents. Class A hazards warrant the highest level of company and Commission attention. Other considerations include where and how the product was marketed, its user population, the estimated useful life of the product, and how the product is most likely to be maintained and repaired.

A company conducting a recall must take particular care to coordinate the notice portion of the recall so that all participating parties, including retailers, have sufficient advance notice so that they can carry out the actions agreed upon. Notice also needs to be balanced -- the purpose of some elements, such as news releases, press conferences, and video news releases -- is to get the media to publicize information about the recall widely. Other elements, such as advertisements and posters, assure that the information is available to the public throughout the course of the recall and attempts to reach consumers who did not hear the original announcement.

VI. Communicating Recall Information

The Commission encourages companies to be creative in developing ways to reach owners of recalled products and motivate them to respond. The following are examples of types of notice that may be appropriate. This list is meant as a guide only, and is by no means all-inclusive. As new or innovative methods of notice and means of communication become available, such as use of the Internet, the staff encourages their use.

- A joint news release from CPSC and the company;
- Targeted distribution of the news release;
- A dedicated toll-free number and/or fax number for consumers to call to respond to the recall notice;
- Information on company world wide web sites;
- A video news release to complement the written news release;
- A national news conference and/or television or radio announcements;
- Direct notice to consumers known to have the product -- identified through registration cards, sales records, catalog orders, or other means;
- Notices to distributors, dealers, sales representatives, retailers, service personnel, installers, and other persons who may have handled or been involved with the product;
- Purchase of mailing lists of populations likely to use the product;
- Paid notices via television and/or radio;
- Paid notices in national newspapers and/or magazines to reach targeted users of the product;
- Paid notices through local or regional media;
- Incentives such as money, gifts, premiums, or coupons to encourage consumers to return the product;
- Point-of-purchase posters;
- Notices in product catalogs, newsletters, and other marketing materials;

- Posters for display at locations where users are likely to visit, such as stores, medical clinics, pediatricians' offices, day care centers, repair shops, equipment rental locations, etc.;

- Notices to repair/parts shops;

- Service bulletins;

- Notices included with product replacement parts/accessories.

- Notices to day care centers.

- Notices to thrift stores.

The Compliance staff must review and agree upon each communication that a company intends to use in a product recall before publication or dissemination. It is, therefore, imperative that companies give the staff advance drafts of all notices or other communications to media, customers, and consumers.

Following are some specific suggestions for communicating recall information:

A. News Releases

Unless a company can identify all purchasers of a product being recalled and notify them directly, the Commission typically issues a news release jointly with the firm. The Compliance staff develops the wording of the release with the recalling company and in conjunction with the Commission's Office of Information and Public Affairs. The agreed-upon language for the news release provides the foundation for preparing other notice documents. The Commission discourages unilateral releases issued by companies because they create confusion among the media and public, particularly if CPSC is also issuing a release on the same subject.

The Office of Information and Public Affairs sends the news releases to national wire services, major metropolitan daily newspapers, television and radio networks, and periodicals on the agency's news contact mailing list. News releases from the Commission receive wide media attention and generate a good response rate from consumers.

Each recall news release should use the word "recall" in the heading and should begin, "In cooperation with the U.S. Consumer Product Safety Commission (CPSC)...."

Recall news releases must include the following:

- The name and location of the recalling firm
- The name of the product
- The number of products involved
- A description of the hazard
- The number of deaths, injuries, and incidents involving the product
- Detailed description of the product, including model numbers, colors, sizes, and labeling
- A line drawing or photograph of the product
- Major retailers and where and when the product was sold and retail cost
- Complete instructions for consumers on how to participate in the recall

CPSC posts recall news releases on its Internet web site and requests companies to provide color photographs of recalled products for the web site.

B. Video News Releases

A video news release (VNR) is a taped version of the written news release that describes the recall in audio-visual terms. Distributed via satellite to television stations nationwide, it is an effective method to enhance a recall announcement. A VNR increases the chances that television news media will air information about a recall because it effectively provides news of the recall to television news producers in the form that they need.

Commission staff works with firms to produce VNRs announcing recalls. Like news releases, VNRs need to communicate basic information clearly and concisely. VNRs should incorporate the same information as the news release, as well as video images of the product. They often also include brief statements of company officials and/or the Chairman of the Commission. When writing a VNR script, remember that, if this information is to reach consumers, television networks or local stations must pick it up -- which means that the script must be written for television producers.

A brief guide describing how to produce a VNR is available from the Office of Compliance upon request.

C. Posters

Posters are an effective means of providing continuing notice of recalls to consumers at points of purchase or other locations that they visit. Guidelines for posters and counter cards:

- Keep them BRIEF and eye-catching; in general, a poster requires far fewer words than a news release.
- Describe the hazard and tell consumers what to do.
- Use color to make the poster stand out.
- Use a print font, size, and color that provides a strong contrast to the background color of the poster.
- Include the terms "safety" and "recall" in the heading.
- Use a good quality line drawing or photograph of the product with call outs identifying product information, such as model numbers and date codes.
- The firm's toll-free telephone number should be in large size type at the bottom
- of the poster.
- The poster should include "Post until [date at least 120 days from recall announcement]."
- Consider tear-off sheets with each poster with information on the recall for consumers to take home.

A company that chooses to produce posters announcing a recall should contact the firms or individuals that the company wants to display the posters before the recall is announced. The company should explain the reason for the recall and the contribution to public safety that the posters provide. The company should also:

- Advise retailers or other firms to place the posters in several conspicuous locations in their stores or offices where customers will see them, e.g., the area where the product was originally displayed for sale, store entrances, waiting rooms in pediatric clinics, service counters at repair shops.

- Provide sufficient numbers of posters for retailers or others to display them in more than one place in each store or location, and provide a contact for ordering additional posters.

CPSC recommends that posters be 11 x 17 inches, but in no case smaller than 8.5 x 11 inches. These two sizes are easiest to mail in bulk quantities. Larger sizes may be appropriate for repair and service shops. Also, many retailers, particularly large chains, have specific requirements for posters, including size and some product identification information. To avoid delays and having to reprint, a company producing a recall poster should take care to contact retailers in advance to see if they have any such requirements.

D. Other Forms of Notice

Like news releases and posters, letters, advertisements, bulletins, newsletters, and other communications about a recall need to provide sufficient information and motivation for the reader or listener to identify the product and to take the action you are requesting. They should be written in language targeted to the intended audience.

- Letters or other communications should be specific and concise.

- The words "Important Safety Notice" or "Safety Recall" should appear at the top of each notice and cover letter and should also be on the lower left corner of any mailing envelope.

- Notices to retailers and distributors should explain the reason for the recall, including the hazard, and contain all the instructions needed to tell them how to handle their product inventory, as well as instructions for displaying posters or notices, providing information to consumers, and disposing of returned products.

- All letters and other notices to consumers should explain clearly the reason for the recall, including injury or potential injury information, and provide complete instructions.

E. Toll-Free Numbers

A company conducting a recall should provide a toll-free (800/888/877) telephone number for consumers to respond to the recall announcement. Generally, this number should be dedicated only to the recall. Historically, the Commission staff has found that most company systems for handling consumer relations or for ordering products, repairs, or accessories are unable to respond effectively to callers about recall announcements, particularly during the first few weeks after the initial announcement.

When establishing a telephone system to handle a recall, be over-generous in estimating consumer response, especially during the first several days/weeks. It is easier to cut back than it is to add more capacity once a recall is announced, and consumers who are unable to get through may not keep trying.

Whether you use an automated system or live operators to answer the calls, prepare scripts and instructions for responding to questions. Operators or taped messages should begin by identifying the firm and product and explaining the reason for the recall. Most consumers who hear about a recall by radio, television, or word of mouth will not remember all the information they initially heard. Again, at its beginning, the message should reinforce the need for listeners to act, particularly if the message is lengthy. CPSC Compliance staff needs to review all scripts before the recall is announced. All automated systems should provide a number for consumers to contact the firm for special problems, <u>e.g.,</u> problems completing repairs or installing parts.

VII. Developing a Company Policy and Plan to Identify Defective Products and To Undertake a Product Recall

Companies whose products come under the

jurisdiction of the CPSC should consider developing an organizational policy and plan of action if a product recall or similar action becomes necessary, whether it involves the CPSC or another government agency. This policy and any related plans should focus on the early detection of product safety problems and prompt response.

A. Designating A Recall Coordinator

Designating a company official or employee to serve as a "recall coordinator" is a significant step that a firm can take to meet its product safety and defect reporting responsibilities. Ideally, this coordinator has full authority to take the steps necessary (including reporting to the Commission) to initiate and implement all recalls, with the approval and support of the firm's chief executive officer.

The recall coordinator should have the following qualifications and duties:

- Knowledge of the statutory authority and recall procedures of the Consumer Product Safety Commission;
- Ability and authority to function as the central coordinator within the company for receiving and processing all information regarding the safety of the firm's products. Such information includes, e.g., quality control records, engineering analyses, test results, consumer complaints, warranty returns or claims, lawsuits, and insurance claims.
- Responsibility for keeping the company's chief executive officer informed about reporting requirements and all safety problems or potential problems that could lead to product recalls;
- Responsibility for making decisions about initiating product recalls;
- Authority to involve appropriate departments and offices of the firm in implementing a product recall;
- Responsibility for serving as the company's primary liaison person with CPSC.

B. Role Of The Recall Coordinator

At the outset, the recall coordinator should fully review the company's product line to determine how each product will perform and fail under conditions of proper use and reasonably foreseeable misuse or abuse. Through research and analysis, product safety engineers can identify the safety features that could be incorporated into products that present safety risks to reduce their potential for future injury.

The company should institute a product identification system if one is not now in use. Model designations and date-of-manufacture codes should be used on all products, whether they carry the company's name or are privately labeled for other firms. If a product recall is necessary, this practice allows the company to identify easily all affected products without undertaking a costly recall of the entire production. Similarly, once a specific product has been recalled and corrected, a new model number or other means of identification used on new corrected products allows distributors, retailers, and consumers to distinguish products subject to recall from the new items. Until a production change can be made to incorporate a new model number or date code, some companies have used sticker labels to differentiate products that have been checked and corrected from recalled products.

VIII. Records Maintenance

The goal of any product recall is to retrieve, repair, or replace those products already in consumers' hands as well as those in the distribution chain. Maintaining accurate records about the design, production, distribution, and marketing of each product for the duration of its expected life is essential for a company to conduct an effective, economical product recall. Generally, the following records are key both to identifying product defects and conducting recalls:

A. **Records of complaints, warranty returns, insurance claims, and lawsuits.** These types of information often highlight or provide early notice of safety problems that may become widespread in the future.

B. **Production records.** Accurate data should be kept on all production runs -- the lot numbers and product codes associated with each run, the volume of units manufactured, component parts or substitutes use, and other pertinent information which will help the company identify defective products or components quickly.

C. **Distribution records.** Data should be maintained as to the location of each product by product line, production run, quantity shipped or sold, dates of delivery, and destinations.

D. **Quality control records.** Documenting the results of quality control testing and evaluation associated with each production run often helps companies identify possible flaws in the design or production of the product. It also aids the firm in charting and sometimes limiting the scope of a corrective action plan.

E. **Product registration cards.** Product registration cards for purchasers of products to fill out and return are an effective tool to identify owners of recalled products. The easier it is for consumers to fill out and return these cards, the greater the likelihood the cards will be returned to the manufacturer. For example, some firms provide pre-addressed, postage-paid registration cards that already have product identification information, e.g., model number, style number, special features, printed on the card. Providing an incentive can also increase the return rate. Incentives can be coupons towards the purchase of other products sold by the firm, free accessory products, or entry in a periodic drawing for a product give away. The information from the cards then needs to be maintained in a readily retrievable database for use in the event a recall becomes necessary.

IX. Conclusion

Consumers no longer view product recalls in a negative light. Millions of products have been recalled over the years. Today, consumers believe they enjoy a safer, better product as a result of a recall conducted responsibly by company. How well a company conducts a timely, reasonable recall of a product can have a strong influence on consumers' attitude about the firm. Successful product recalls in the past have rewarded companies with continuing consumer support and demand for the firms' products.

May 10, 2000

TO: Heather Howard
(202) 456-7263

FR: Pamela Gilbert
CPSC
(301) 504-0550, ext. 2342

RE: Information you asked for

I am sending you press releases about the Cosco tandem stroller recall and seven other recent civil penalty cases. As you suggested, we are preparing a fact sheet about these (and maybe other) cases for the press packet.

In addition, you asked for some statistics. Here is what we have so far:

1. There are, on average, 22,000 deaths and 29.5 million injuries each year related to consumer products under CPSC jurisdiction.

   10%, or about 2,200, of the deaths are to children under age 15.
   32%, or over 9 million, of the injuries are to children under age 15.

2. In the last 2 ½ years (since Oct. 1, 1997), CPSC has obtained over 150 recalls of children's products involving 86 million individual products.

   Later this morning, I should have the statistics on the percent of recalls that originated with a report from a manufacturer – I will fax that to you when I have it.

Talk to you soon (I am sure).