

or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms “food”, “drug”, and “cosmetic” shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

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

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

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

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

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

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

#### REFERENCES IN TEXT

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

#### AMENDMENTS

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

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

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

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

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

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

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

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

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

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

#### EFFECTIVE DATE OF 1986 AMENDMENT

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

#### EFFECTIVE DATE OF 1981 AMENDMENT

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

### § 1264. Penalties; exceptions

#### (a) Criminal penalties

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

#### (b) Exceptions

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

#### (c) Civil penalties

(1) Any person who knowingly violates section 1263 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 1263 of this title shall constitute a separate offense with respect to each substance

involved, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations. A violation of section 1263(e) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 1263(e) of this title; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

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

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

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

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

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

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

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

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter,

the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

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

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

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

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

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

(D) For purposes of this subsection:

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

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

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

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

#### (d) Civil action for injunction

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

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

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, § 217(c)(3), substituted “5 years, a fine determined under section 3571 of title 18, or both.” for “one year, or a fine of not more than \$3,000, or both such imprisonment and fine.”

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

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

Subsec. (c)(3). Pub. L. 110-314, § 217(b)(1)(B)(i), inserted “the nature, circumstances, extent, and gravity of the violation, including” after “shall consider”, substituted “substance distributed,” for “substance distributed, and”, and inserted “, including how to miti-

<sup>1</sup> So in original. The comma probably should not appear.

gate undue adverse economic impacts on small businesses, and such other factors as appropriate” before period at end.

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

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

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

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

Subsec. (d). Pub. L. 101-608, §118(a), added subsec. (d). 1978—Subsec. (b)(3). Pub. L. 95-631 substituted “with respect to” for “in respect of” and made cl. (3) inapplicable when the Consumer Product Safety Commission determines that exportation of the substance presents an unreasonable risk of injury to persons residing within the United States.

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

#### EFFECTIVE DATE OF 2008 AMENDMENT

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

#### CIVIL PENALTY CRITERIA

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

### § 1265. Seizures

#### (a) Grounds and jurisdiction

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the label of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

#### (b) Procedure; multiplicity of pending proceedings

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

#### (c) Disposition of goods after decree of condemnation

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

#### (d) Costs and fees

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