

hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Commission and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Disposition of refused articles

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

(c) Expenses in connection with refused articles

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

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

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

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

Not less than thirty days before any person exports to a foreign country any misbranded hazardous substance or banned hazardous substance, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this chapter. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

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

AMENDMENTS

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

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

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

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

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

§ 1274. Remedies respecting banned hazardous substances

(a) Notice to protect public; form and contents

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

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

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

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

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

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

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

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

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

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

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

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

whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the article or substance with respect to which the order was issued.

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

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a

hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of such toy or article to take any one or more of the following actions:

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

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

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

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

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

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

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

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

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify

which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.

(d) Charge for remedy; reimbursement for expenses

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

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

(e) Hearing; representative of class

An order under subsection (a), (b), or (c) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(f) "Manufacturer" defined

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

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

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

(Pub. L. 86-613, §15, as added Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189; amended Pub. L. 97-35, title XII, §1211(f)(1), Aug. 13, 1981, 95 Stat. 721; Pub. L. 97-414, §9(l), Jan. 4, 1983, 96 Stat.

2065; Pub. L. 98-491, §2, Oct. 17, 1984, 98 Stat. 2269; Pub. L. 100-418, title I, §1214(c), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §111(b), Nov. 16, 1990, 104 Stat. 3114; Pub. L. 110-314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b) and (c)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-314 substituted "Commission may order" for "Consumer Product Safety Commission may order" in introductory provisions.

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

1988—Subsecs. (b), (c)(2). Pub. L. 100-418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States".

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE

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

§ 1275. Toxicological Advisory Board

(a) Establishment; functions; review and recommendations

(1) Within 180 days after November 10, 1978, the Commission shall establish, in accordance with subsection (b) of this section, a Toxicological Advisory Board (hereinafter in this section re-