

cumstances, shall not be affected by such invalidation.”

Pub. L. 92-573, §33, Oct. 27, 1972, 86 Stat. 1233, provided that: “If any provision of this Act [see Short Title note above], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.”

PREEMPTION

Pub. L. 110-314, title II, §231, Aug. 14, 2008, 122 Stat. 3070, provided that:

“(a) **RULE WITH REGARD TO PREEMPTION.**—The provisions of sections 25 and 26 of the Consumer Product Safety Act (15 U.S.C. 2074 and 2075, respectively), section 18 of the Federal Hazardous Substances Act ([Pub. L. 86-613] 15 U.S.C. 1261 note), section 16 of the Flammable Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison Packaging Prevention Act of 1970 [Poison Prevention Packaging Act of 1970] (15 U.S.C. 1476) establishing the extent to which those Acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law may not be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation thereunder, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation. In accordance with the provisions of those Acts, the Commission may not construe any such Act as preempting any cause of action under State or local common law or State statutory law regarding damage claims.

“(b) **PRESERVATION OF CERTAIN STATE LAW.**—Nothing in this Act [see Short Title of 2008 Amendment note above] or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] shall be construed to preempt or otherwise affect any warning requirement relating to consumer products or substances that is established pursuant to State law that was in effect on August 31, 2003.”

DEFINITIONS

Pub. L. 110-314, §2(a), Aug. 14, 2008, 122 Stat. 3017, provided that:

“(a) **DEFINED TERMS.**—As used in this Act [see Short Title of 2008 Amendment note above]—

“(1) the term ‘appropriate Congressional committees’ means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate; and

“(2) the term ‘Commission’ means the Consumer Product Safety Commission.”

§ 2052. Definitions

(a) In general

In this chapter:

(1) Appropriate Congressional committees

The term “appropriate Congressional committees” means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) Children’s product

The term “children’s product” means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

(A) A statement by a manufacturer about the intended use of such product, including a

label on such product if such statement is reasonable.

(B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

(3) Commerce

The term “commerce” means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(4) Commission

The term “Commission” means the Consumer Product Safety Commission, established by section 2053 of this title.

(5) Consumer product

The term “consumer product” means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by section 30102(a)(6) and (7) of title 49),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 40102(a) of title 49),

(G) boats which could be subjected to safety regulation under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or ves-

sels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph.

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(g), (h), and (i)]), or

(I) food. The term “food”, as used in this subparagraph means all “food”, as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

Such term includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site. Except for the regulation under this chapter or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d)¹ and 2080 of this title, for other limitations on Commission’s authority to regulate certain consumer products.

(6) Consumer product safety rule

The term “consumer product safety rule” means a consumer products safety standard described in section 2056(a) of this title, or a rule under this chapter declaring a consumer product a banned hazardous product.

(7) Distribute in commerce; distribution in commerce

The terms “to distribute in commerce” and “distribution in commerce” mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(8) Distributor

The term “distributor” means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(9) Import; importation

The terms “import” and “importation” include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(10) Manufactured

The term “manufactured” means to manufacture, produce, or assemble.

(11) Manufacturer

The term “manufacturer” means any person who manufactures or imports a consumer product.

(12) Private labeler

(A) The term “private labeler” means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(13) Retailer

The term “retailer” means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(14) Risk of injury

The term “risk of injury” means a risk of death, personal injury, or serious or frequent illness.

(15) State

The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(16) Third-party logistics provider

The term “third-party logistics provider” means a person who solely receives, holds, or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product.

(17) United States

The term “United States”, when used in the geographic sense, means all of the States (as defined in paragraph (10)).²

(b) Common carriers, contract carriers, third-party logistics provider, and freight forwarders

A common carrier, contract carrier, third-party logistics provider, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

(Pub. L. 92-573, §3, Oct. 27, 1972, 86 Stat. 1208; Pub. L. 94-284, §3(b), (d), May 11, 1976, 90 Stat. 503; Pub. L. 97-35, title XII, §1213, Aug. 13, 1981, 95 Stat. 724; Pub. L. 99-514, §2, Oct. 22, 1986, 100

¹ See References in Text note below.

² So in original. Probably should refer to paragraph (15).

Stat. 2095; Pub. L. 110-314, title II, §235(a)-(c)(1), Aug. 14, 2008, 122 Stat. 3074.)

REFERENCES IN TEXT

Section 2079(d) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 110-314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(5)(D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Title 52 of the Revised Statutes, referred to in subsec. (a)(5)(G), consisted of R.S. §§4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, Shipping, see Disposition Table preceding section 101 of Title 46.

The Federal Hazardous Substances Act, referred to in the provisions following subsec. (a)(5)(I), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

For definition of Canal Zone, referred to in subsec. (a)(15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (a)(5)(C), (F), “section 30102(a)(6) and (7) of title 49” substituted for “sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391(3) and (4)]” and “section 40102(a) of title 49” substituted for “section 101 of the Federal Aviation Act of 1958 [49 App. U.S.C. 1301]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (a)(5)(G), “chapter 43 of title 46” and “section 2101(1) of title 46” substituted for “the Federal Boat Safety Act of 1971 [46 U.S.C. 1451 et seq.]” and “section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]”, respectively, on authority of Pub. L. 98-89, §2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §235(b)(2)-(4), realigned margins, inserted par. headings, reordered pars. in alphabetical order based on headings of pars., and renumbered pars. as so reordered.

Pub. L. 110-314, §235(b)(1), which directed amendment of subsec. (a) by substituting subsec. heading and introductory provisions for “for purposes of this chapter:”, was executed by making the substitution for “For purposes of this chapter:” to reflect the probable intent of Congress.

Subsec. (a)(15) to (17). Pub. L. 110-314, §235(a), added pars. (15) defining “appropriate Congressional committees”, (16) defining “children’s product”, and (17) defining “third-party logistics providers”.

Subsec. (b). Pub. L. 110-314, §235(b)(5), (c)(1), inserted heading and inserted “third-party logistics provider,” after “contract carrier,” in text.

1986—Subsec. (a)(1)(E). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1981—Subsec. (a)(1). Pub. L. 97-35 inserted provisions that term “consumer product” includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site and that such term does not include such a device which is permanently fixed to a site.

1976—Subsec. (a)(1). Pub. L. 94-284 substituted in subpar. (D) “pesticides” for “economic poisons”, and in provision following subpar. (I) “other limitations” for “limitations”, and inserted provision which limited the authority of the Commission to regulate any product or article described in subpar. (E).

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XII, §1215, Aug. 13, 1981, 95 Stat. 724, provided that:

“(a) Except as provided in subsection (b), the amendments made by this subtitle [see Short Title of 1981 Amendment note set out under section 2051 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

“(b) The amendments made by section 1207 [enacting sections 1204, 1276, and 2083 of this title and amending section 2076 of this title] shall apply with respect to consumer product safety rules under the Consumer Product Safety Act [this chapter] and regulations under the Federal Hazardous Substances Act [section 1261 et seq. of this title] and the Flammable Fabrics Act [section 1191 et seq. of this title] promulgated by the Consumer Product Safety Commission after the date of the enactment of this Act [Aug. 13, 1981]; and the amendments made by sections 1202, 1203, and 1206 of this subtitle [enacting section 2077 of this title and amending sections 1193, 1262, 2056, 2057, 2058, and 2080 of this title] shall apply with respect to regulations under the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act for which notices of proposed rulemaking are issued after August 14, 1981.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2053. Consumer Product Safety Commission

(a) Establishment; Chairman

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission. The Chairman shall be appointed by the