

“(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

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

“(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act [15 U.S.C. 2051 et seq.].

“(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

“(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act [15 U.S.C. 2064(b)] respecting a consumer product.”

§ 2065. Inspection and recordkeeping

(a) Inspection

For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, (B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, firewalled conformity assessment body, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Recordkeeping

Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this chapter and rules under this chapter.

(c) Identification of manufacturers, importers, retailers, and distributors

Upon request by an officer or employee duly designated by the Commission—

(1) every importer, retailer, or distributor of a consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act) shall identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request, to the extent that such information is known or can be readily determined by the importer, retailer, or distributor; and

(2) every manufacturer shall identify by name, address, or such other identifying information as the officer or employee may request—

(A) each retailer or distributor to which the manufacturer directly supplied a given consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act);

(B) each subcontractor involved in the production or fabrication of such product or substance; and

(C) each subcontractor from which the manufacturer obtained a component thereof.

(d) Manufacturer's compliance

The Commission shall, by rule, condition the manufacturing for sale, offering for sale, distribution in commerce, or importation into the United States of any consumer product or other product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.

(Pub. L. 92-573, §16, Oct. 27, 1972, 86 Stat. 1222; Pub. L. 110-314, title II, §§215, 223(c)(2), Aug. 14, 2008, 122 Stat. 3056, 3069.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §215(c)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110-314, §215(a)(1), substituted “(B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C)” for “or (B)”.

Subsec. (a)(2). Pub. L. 110-314, §215(a)(2), inserted “firewalled conformity assessment body,” after “factory.”

Subsec. (b). Pub. L. 110-314, §215(c)(2), inserted subsec. heading.

Subsec. (c). Pub. L. 110-314, §215(b), added subsec. (c).

Subsec. (d). Pub. L. 110-314, §223(c)(2), added subsec. (d).

§ 2066. Imported products

(a) Refusal of admission

Any consumer product offered for importation into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by this chapter or any other Act enforced by the Commission, or is accompanied

by a false certificate, if the manufacturer in the exercise of due care has reason to know that the certificate is false or misleading in any material respect, or is not accompanied by any label or certificate (including tracking labels) required under section 2063 of this title or any rule or regulation under such section;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a)(2) of this title); or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g) of this section.

(b) Samples

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a) of this section, such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) Modification

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a) of this section) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) Supervision of modifications

All actions taken by an owner or consignee to modify such product under subsection (c) of this section shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

(e) Product destruction

Products refused admission into the customs territory of the United States shall be destroyed unless, upon application by the owner, consignee, or importer of record, the Secretary of the Treasury permits the export of the product in lieu of destruction. If the owner, consignee, or importer of record does not export the product within 90 days of approval to export, such product shall be destroyed.

(f) Payment of expenses occasioned by refusal of admission

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 this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under 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.

(g) Inspection and recordkeeping requirement

Manufacturers of imported products shall be in compliance with all inspection and recordkeeping requirements under section 2065 of this title applicable to such products, and the Commission shall advise the Secretary of the Treasury of any manufacturer who is not in compliance with all inspection and recordkeeping requirements under section 2065 of this title.

(h) Product surveillance program

(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this chapter and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

(3) The Commission shall periodically report to the appropriate Congressional committees the results of the surveillance program under paragraph (1).

(Pub. L. 92-573, §17, Oct. 27, 1972, 86 Stat. 1223; Pub. L. 100-418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §114, Nov. 16, 1990, 104 Stat. 3118; Pub. L. 110-314, title II, §§216(b), 223(b), (c)(1), 235(c)(6), Aug. 14, 2008, 122 Stat. 3058, 3068, 3069, 3075.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), 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. (a)(2). Pub. L. 110-314, §216(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063(c) of this title;”

Subsec. (e). Pub. L. 110-314, §223(b), amended subsec. (e) generally. Prior to amendment, text read as follows: “Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.”

Subsec. (g). Pub. L. 110-314, §223(c)(1), amended subsec. (g) generally. Prior to amendment, text read as follows: “The Commission may, by rule, condition the importation of a consumer product on the manufacturer’s compliance with the inspection and recordkeeping requirements of this chapter and the Commission’s rules with respect to such requirements.”

Subsec. (h)(3). Pub. L. 110-314, §235(c)(6), substituted “the appropriate Congressional committees” for “the Congress”.

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

1988—Subsec. (a). 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”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 216(b) and 223(b) of Pub. L. 110-314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

EFFECTIVE DATE 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.

IMPORT SAFETY MANAGEMENT AND INTERAGENCY COOPERATION

Pub. L. 110-314, title II, §222, Aug. 14, 2008, 122 Stat. 3066, provided that:

“(a) RISK ASSESSMENT METHODOLOGY.—Not later than 2 years after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a risk assessment methodology for the identification of shipments of consumer products that are—

“(1) intended for import into the United States; and

“(2) likely to include consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

“(b) USE OF INTERNATIONAL TRADE DATA SYSTEM AND OTHER DATABASES.—In developing the methodology required under subsection (a), the Commission shall—

“(1) provide for the use of the International Trade Data System, insofar as is practicable, established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411(d)) to evaluate and assess information about shipments of consumer products intended for import into the customs territory of the United States;

“(2) incorporate the risk assessment methodology required under this section into its information technology modernization plan;

“(3) examine, in consultation with U.S. Customs and Border Protection, how to share information collected and retained by the Commission, including information in the database required under section 6A of the Consumer Product Safety Act [15 U.S.C. 2055a], for the purpose of identifying shipments of consumer products in violation of section 17(a) of such Act (15

U.S.C. 2066(a)) or other import provisions enforced by the Commission; and

“(4) examine, in consultation with U.S. Customs and Border Protection, how to share information required by section 15(j) of the CPSA [15 U.S.C. 2064(j)] as added by section 223 of this Act for the purpose of identifying shipments of consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

“(c) COOPERATION WITH U.S. CUSTOMS AND BORDER PROTECTION.—Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a plan for sharing information and coordinating with U.S. Customs and Border Protection that considers, at a minimum, the following:

“(1) The number of full-time equivalent personnel employed by the Commission that should be stationed at U.S. ports of entry for the purpose of identifying shipments of consumer products that are in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

“(2) The extent and nature of cooperation between the Commission and U.S. Customs and Border Protection personnel stationed at ports of entry in the identification of shipments of consumer product that are in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission under this Act [see Short Title of 2008 Amendment note set out under section 2051 of this title] or any other provision of law.

“(3) The number of full-time equivalent personnel employed by the Commission that should be stationed at the National Targeting Center (or its equivalent) of U.S. Customs and Border Protection, including—

“(A) the extent and nature of cooperation between Commission and U.S. Customs and Border Protection personnel stationed at the National Targeting Center (or its equivalent), as well as at United States ports of entry;

“(B) the responsibilities of Commission personnel assigned to the National Targeting Center (or its equivalent) under subsection (b)(3); and

“(C) whether the information available at the National Targeting Center (or its equivalent) would be useful to the Commission or U.S. Customs and Border Protection in identifying the consumer products described in subsection (a).

“(4) The development of rule sets for the Automated Targeting System and expedited access for the Commission to the Automated Targeting System.

“(5) The information and resources necessary for the development, updating, and effective implementation of the risk assessment methodology required in subsection (a).

“(d) REPORT TO CONGRESS.—Not later than 180 days after completion of the risk assessment methodology required under this section, the Commission shall submit a report to the appropriate Congressional committees concerning, at a minimum, the following:

“(1) The Commission’s plan for implementing the risk assessment methodology required under this section.

“(2) The changes made or necessary to be made to the Commission’s memorandum of understanding with U.S. Customs and Border Protection.

“(3) The status of—

“(A) the development of the Automated Targeting System rule set required under subsection (c)(4) of this section;

“(B) the Commission’s access to the Automated Targeting System; and

“(C) the effectiveness of the International Trade Data System in enhancing cooperation between the Commission and U.S. Customs and Border Protection for the purpose of identifying shipments of consumer products in violation of section 17(a) of

the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission;

“(4) Whether the Commission requires additional statutory authority under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.], the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], or the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] in order to implement the risk assessment methodology required under this section.

“(5) The level of appropriations necessary to implement the risk assessment methodology required under this section.”

[For definitions of “Commission” and “appropriate Congressional committees” used in section 222 of Pub. L. 110-314, set out above, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.]

§ 2067. Exemption of exports

(a) Risk of injury to consumers within United States

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) 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 product which is not in conformity with an applicable consumer product safety rule in effect under this chapter, 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 for such safety standard or rule. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such product, the country and port of destination of such product, and the quantity of such product 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.

(c) Authority to prohibit exports

The Commission may prohibit a person from exporting from the United States for purpose of sale any consumer product that is not in conformity with an applicable consumer product safety rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such consumer product, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as appropriate within its authority with respect to the disposition of the product under the circumstances.

(d) Export pursuant to section 2066(e)

Nothing in this section shall apply to any consumer product, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(Pub. L. 92-573, §18, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 95-631, §6(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 110-314, title II, §221(a), Aug. 14, 2008, 122 Stat. 3065.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-314, §221(a)(1), substituted “any product which is not in conformity with an applicable consumer product safety rule in effect under this chapter,” for “any product—

“(1) which is not in conformity with an applicable consumer product safety standard in effect under this chapter, or

“(2) which is declared to be a banned hazardous substance by a rule promulgated under section 2058 of this title.”

Subsecs. (c), (d). Pub. L. 110-314, §221(a)(2), added subsecs. (c) and (d).

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

§ 2068. Prohibited acts

(a) Designation

It shall be unlawful for any person to—

(1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is regulated under this chapter or any other Act enforced by the Commission, that is not in conformity with an applicable consumer product safety rule under this chapter, or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission;

(2) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is—

(B)¹ subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action;

(C) subject to an order issued under section 2061 or 2064 of this title; or

¹ So in original. No subpar. (A) has been enacted.