

certiorari or certification, as provided in section 1254 of title 28.

(e) Other remedies

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

(f) Computation of reasonable fee for attorney

For purposes of this section and sections 2072(a) and 2073 of this title, a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this section, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(g) Expedited judicial review

(1) Application

This subsection applies, in lieu of the preceding subsections of this section, to judicial review of—

(A) any consumer product safety rule promulgated by the Commission pursuant to section 2064(j) of this title (relating to identification of substantial hazards);

(B) any consumer product safety standard promulgated by the Commission pursuant to section 2089 of this title (relating to all-terrain vehicles);

(C) any standard promulgated by the Commission under section 2056a of this title (relating to durable infant and toddler products); and

(D) any consumer product safety standard promulgated by the Commission under section 2056b of this title (relating to mandatory toy safety standards).

(2) In general

Not later than 60 days after the promulgation, by the Commission, of a rule or standard to which this subsection applies, any person adversely affected by such rule or standard may file a petition with the United States Court of Appeals for the District of Columbia Circuit for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28.

(3) Review

Upon the filing of the petition under paragraph (2) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter.

(4) Conclusiveness of judgment

The judgment of the court affirming or setting aside, in whole or in part, any final rule under this section shall be final, subject to review by the Supreme Court of the United

States upon certiorari or certification, as provided in section 1254 of title 28.

(5) Further review

A rule or standard with respect to which this subsection applies shall not be subject to judicial review in proceedings under section 2066 of this title (relating to imported products) or in civil or criminal proceedings for enforcement.

(Pub. L. 92-573, §11, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 94-284, §§10(b), 11(a), May 11, 1976, 90 Stat. 507; Pub. L. 97-35, title XII, §1211(h)(1)-(3)(A), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97-414, §9(j)(2), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 110-314, title II, §236(a), Aug. 14, 2008, 122 Stat. 3075.)

AMENDMENTS

2008—Subsec. (g). Pub. L. 110-314 added subsec. (g).

1983—Subsec. (c). Pub. L. 97-414 substituted "subsection (f) of this section" for "section 2059(e)(4) of this title".

1981—Subsec. (a). Pub. L. 97-35, §1211(h)(2), substituted reference to section 2058(d)(2) of this title for reference to section 2058(a)(2) of this title.

Subsec. (c). Pub. L. 97-35, §1211(h)(1), substituted reference to section 2058(f)(1) and (3) of this title for reference to section 2058(c) of this title.

Subsec. (f). Pub. L. 97-35, §1211(h)(3)(A), added subsec. (f).

1976—Subsec. (a). Pub. L. 94-284, §11(a), permitted the Commission to file the record of its proceedings on which its rule was based with the court in lieu of transmitting the record to the Attorney General.

Subsec. (c). Pub. L. 94-284, §10(b), inserted provision permitting the court to award costs, including reasonable attorneys' fees, in the interest of justice.

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.

PENDING ACTIONS UNAFFECTED

Pub. L. 110-314, title II, §236(b), Aug. 14, 2008, 122 Stat. 3076, provided that: "The amendment made by subsection (a) [amending this section] shall not apply to any petition filed before the date of enactment of this Act [Aug. 14, 2008] for judicial review of any action by the Consumer Product Safety Commission."

§ 2061. Imminent hazards

(a) Filing of action

The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2) of this section, or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) Relief; product condemnation and seizure

(1) The district court in which such action is filed shall have jurisdiction to declare such

product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Consumer product safety rule

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) Jurisdiction and venue; process; subpoena

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in 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.

(e) Employment of attorneys by Commission

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

(g)¹ Cost-benefit analysis of compliance with relief ordered in action for judicial review of consumer product safety rule not required

Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product or a person under this section, to prepare a comparison of the costs that would be incurred in complying with the relief that may be ordered

in such action with the benefits to the public from such relief.

(Pub. L. 92-573, §12, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 97-35, title XII, §1205(a)(2), Aug. 13, 1981, 95 Stat. 716; Pub. L. 101-608, title I, §111(a)(1), Nov. 16, 1990, 104 Stat. 3114.)

AMENDMENTS

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

1981—Subsecs. (d) to (f). Pub. L. 97-35 redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which provided for consultation with the Product Safety Advisory Council by the Commission prior to commencing an action, was struck out.

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.

§ 2062. Repealed. Pub. L. 97-35, title XII, § 1211(b), Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92-573, §13, Oct. 27, 1972, 86 Stat. 1219, provided that Commission could prescribe procedures to insure that manufacturer of a new consumer product notify Commission of new product prior to its distribution.

EFFECTIVE DATE OF REPEAL

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

§ 2063. Product certification and labeling

(a) Certification accompanying product; products with more than one manufacturer

(1) GENERAL CONFORMITY CERTIFICATION.—Except as provided in paragraphs (2) and (3), every manufacturer of a product which is subject to a consumer product safety rule under this chapter or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which—

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this chapter or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

(2) THIRD PARTY TESTING REQUIREMENT.—Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer of such children's product (and the private labeler of such children's product if such children's product bears a private label) shall—

(A) submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children's product safety rule; and

¹ So in original. Probably should be "(f)".