

promise, 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 mitigate 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 in-

formation 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 laws 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, intervening as claimant of the hazardous substance.

(e) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (b)—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86-613, §6, July 12, 1960, 74 Stat. 376; Pub. L. 89-756, §§2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-314 substituted “Commission” for “Secretary”.

1966—Subsec. (a). Pub. L. 89-756 substituted “Any misbranded hazardous substance or banned hazardous substance” for “Any hazardous substance that is in a misbranded package”.

§ 1266. Hearing before report of criminal violation

Before any violation of this chapter is reported by the Commission to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 86-613, §7, July 12, 1960, 74 Stat. 377; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Pub. L. 110-314 substituted “Commission” for “Secretary”.

§ 1267. Injunctions; criminal contempt; trial by court or jury

(a) Jurisdiction

The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

(b) Trials

In any proceeding for criminal contempt for violation of an injunction or restraining order