

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.”

#### EFFECTIVE DATE

Section effective on the sixtieth day following Oct. 27, 1972, see section 34 of Pub. L. 92-573, set out as a note under section 2051 of this title.

#### 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 President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

#### (b) Term; vacancies

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after October 27, 1972, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

#### (c) Restrictions on Commissioner's outside activities

Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

#### (d) Quorum; seal; Vice Chairman

No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

#### (e) Offices

The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

#### (f) Functions of Chairman; request for appropriations

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

**(g) Executive Director; officers and employees**

(1)(A) The Chairman, subject to the approval of the Commission, shall appoint as officers of the Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Associate Executive Director of Compliance and Administrative Litigation except the position of acting Associate Executive Director of Compliance and Administrative Litigation.

(B)(i) No individual may be appointed to such a position on an acting basis for a period longer than 90 days unless such appointment is approved by the Commission.

(ii) The Chairman, with the approval of the Commission, may remove any individual serving in a position appointed under subparagraph (A).

(C) Subparagraph (A) shall not be construed to prohibit appropriate reorganizations or changes in classification.

(2) The Chairman, subject to subsection (f)(2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, may place a total of twelve positions in grades GS-16, GS-17, and GS-18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(5) The Chairman may provide to officers and employees of the Commission who are appointed or assigned by the Commission to serve abroad (as defined in section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902)) travel benefits similar to those authorized for members of the Foreign Service of the United Service under chapter 9<sup>1</sup> of such Act (22 U.S.C. 4081 et seq.).

**(h) Omitted****(i) Civil action against United States**

Subsections (a) and (h) of section 2680 of title 28 do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

**(j) Agenda and priorities; establishment and comments**

At least 30 days before the beginning of each fiscal year, the Commission shall establish an agenda for Commission action under the Acts under its jurisdiction and, to the extent feasible, shall establish priorities for such actions. Before establishing such agenda and priorities, the Commission shall conduct a public hearing on the agenda and priorities and shall provide reasonable opportunity for the submission of comments.

(Pub. L. 92-573, § 4, Oct. 27, 1972, 86 Stat. 1210; Pub. L. 94-284, §§ 4, 5(a), May 11, 1976, 90 Stat. 504; Pub. L. 95-631, § 2, Nov. 10, 1978, 92 Stat. 3742; Pub. L. 96-373, Oct. 3, 1980, 94 Stat. 1366; Pub. L. 101-608, title I, §§ 102-105(a), Nov. 16, 1990, 104 Stat. 3110, 3111; Pub. L. 112-74, div. C, title V, § 501, Dec. 23, 2011, 125 Stat. 907.)

## REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (g)(5), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of the Act probably means chapter 9 of title I of the Act which is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

## CODIFICATION

Subsec. (h) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

## AMENDMENTS

2011—Subsec. (g)(5). Pub. L. 112-74 added par. (5).

1990—Subsec. (a). Pub. L. 101-608, § 102, inserted after first sentence “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.”

Subsec. (d). Pub. L. 101-608, § 103, inserted before period at end of first sentence “, except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date

<sup>1</sup> See References in Text note below.

of the vacancy which caused the number of Commission members to decline to two”.

Subsec. (g)(1). Pub. L. 101-608, §104, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.”

Subsec. (j). Pub. L. 101-608, §105(a), added subsec. (j). 1980—Subsec. (g)(2). Pub. L. 96-373 struck out prohibition against regular personnel acceptance of employment or compensation from manufacturer subject to this chapter for period of twelve months following termination of employment with Commission when compensated within preceding period of twelve months at rate in excess of annual rate of basic pay in effect for grade GS-14 of the General Schedule.

1978—Subsec. (a). Pub. L. 95-631, §2(a), substituted “Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time.” for “Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner.”

Subsec. (i)(1)(A), (B). Pub. L. 95-631, §2(b), struck out “before January 1, 1978,” after “deceit” in cl. (A) and “before January 1, 1978” after “employee thereof” in cl. (B).

1976—Subsec. (f)(3). Pub. L. 94-284, §4(a), added par. (3).

Subsec. (g). Pub. L. 94-284, §4(b), substituted “regular” for “full-time” before “officer or employee of the Commission” and added pars. (3) and (4).

Subsec. (i). Pub. L. 94-284, §5, added subsec. (i).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-608, title I, §105(b), Nov. 16, 1990, 104 Stat. 3111, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years which begin more than 180 days after the date of the enactment of this Act [Nov. 16, 1990].”

#### EFFECTIVE DATE

Section effective Oct. 27, 1972, see section 34(1) of Pub. L. 92-573, set out as a note under section 2051 of this title.

#### INTERIM QUORUM

Pub. L. 110-314, title II, §202(a), Aug. 14, 2008, 122 Stat. 3039, provided that: “Notwithstanding section 4(d) of the Consumer Product Safety Act (15 U.S.C. 2053(d)), 2 members of the [Consumer Product Safety] Commission, if they are not affiliated with the same political party, shall constitute a quorum for the transaction of business for the 1 year period beginning on the date of enactment of this Act [Aug. 14, 2008].”

#### UPGRADE OF COMMISSION INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 110-314, title II, §212(b), Aug. 14, 2008, 122 Stat. 3052, provided that: “The [Consumer Product Safety] Commission shall expedite efforts to upgrade and improve the information technology systems in use by the Commission on the date of enactment of this Act [Aug. 14, 2008].”

#### REDUCTION IN NUMBER OF COMMISSIONERS

Pub. L. 102-389, title III, Oct. 6, 1992, 106 Stat. 1596, provided in part that funds would not be available for the personnel compensation and benefits of more than three Commissioners of the Consumer Product Safety Commission for fiscal year 1993 and thereafter, prior to

repeal by Pub. L. 110-314, title II, §202(b)(1), Aug. 14, 2008, 122 Stat. 3040.

[Pub. L. 110-314, title II, §202(b)(2), Aug. 14, 2008, 122 Stat. 3040, provided that: “The amendment made by paragraph (1) [repealing provisions of title III of Pub. L. 102-389, formerly set out above] shall take effect 1 year after the date of enactment of this Act [Aug. 14, 2008].”]

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

### § 2053a. Employee training exchanges

#### (a) In general

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis pursuant to section 2053 of this title or section 3101 or 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies for the purpose of providing or receiving training.

#### (b) Reciprocity and reimbursement

The Commission may execute the authority contained in subsection (a) with or without reimbursement in money or in kind, and with or without reciprocal arrangements by or on behalf of the foreign government agency involved. Any amounts received as reimbursement for expenses incurred by the Commission under this section shall be credited to the appropriations account from which such expenses were paid.

#### (c) Standards of conduct

An individual retained or employed under subsection (a)(1) shall be considered to be a Federal employee while so retained or employed, only for purposes of—

(1) injury compensation as provided in chapter 81 of title 5 and tort claims liability under chapter 171 of title 28;

(2) the Ethics in Government Act (5 U.S.C. App.) and the provisions of chapter 11 of title 18; and

(3) any other statute or regulation governing the conduct of Federal employees.

(Pub. L. 110-314, title II, §208, Aug. 14, 2008, 122 Stat. 3046.)

#### REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (c)(2), probably means the Ethics in Government Act of 1978, Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

#### CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

#### DEFINITION

For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.