

of the Senate and the Committee on Energy and Commerce of the House of Representatives" in two places in concluding provisions.

Pub. L. 110-314, §204(a)(1)(C)-(E), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (a) of this section, the" and in concluding provisions, substituted "the notice," for "an advance notice of proposed rulemaking under subsection (a) of this section relating to the product involved," and "Register. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed consumer product safety standard." for "Register."

Subsec. (g)(2). Pub. L. 110-314, §213, inserted "or to which a rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission applies," after "applies," and substituted "rule, regulation, standard, or ban" for "consumer product safety rule" the second, third, and fourth places it appeared.

1990—Subsec. (b)(2). Pub. L. 101-608, §108(a), struck out period at end and inserted " , except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (c). Pub. L. 101-608, §109, inserted at end "Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of an advance notice of proposed rulemaking under subsection (a) relating to the product involved, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register."

Subsec. (i). Pub. L. 101-608, §110(a), added subsec. (i).  
1981—Subsec. (a). Pub. L. 97-35 amended subsec. (a) generally, substituting provisions for the commencement of rule-making proceedings by the publication of a notice of proposed rule-making for provisions for the promulgation of rule after publication of a notice according to specified provisions of law and to withdraw applicable notice of proceeding upon determination that such rule was not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or that it was in the public interest, and providing for certain other procedural safeguards.

Subsec. (b). Pub. L. 97-35 amended subsec. (b) generally, substituting provisions relating to the publication of a voluntary standard as a proposed consumer product safety rule and notice of reliance by the Commission on such standard for provisions that a consumer product safety rule shall express the risk of injury which the standard is designed to eliminate or reduce.

Subsec. (c). Pub. L. 97-35 amended subsec. (c) generally, substituting provisions relating to the publication in the Federal Register of the text of the proposed rule, including alternatives, with a preliminary regulatory analysis, and for the transmittal of such notice to certain committees of Congress for provisions relating to the requirement that the Commission make appropriate findings with respect to certain specified factors for inclusion in a consumer product safety rule.

Subsec. (d). Pub. L. 97-35 amended subsec. (d) generally, substituting provisions relating to the time for promulgation of the rule in accordance with section 553 of title 5 or withdrawal of the applicable notice for provisions relating to the effective dates for rules and standards and the authority of the Commission to prohibit stockpiling.

Subsec. (e). Pub. L. 97-35 amended subsec. (e) generally, substituting provisions relating to the requirement that the consumer product safety rule express the risk of injury which is to be eliminated or reduced and requiring, that in promulgating the rule, the Commission to consider available product data and the needs of the elderly and handicapped persons for provisions relating to the amendment and revocation of rules.

Subsecs. (f) to (h). Pub. L. 97-35 added subsecs. (f) to (h).

1978—Subsec. (a)(1), (2). Pub. L. 95-631 substituted in pars. (1) and (2) reference to section 2056 of this title for prior reference to section 2056(c), (e)(1), or (f) of this title.

1976—Subsec. (b). Pub. L. 94-284 inserted provision directing the Commission to take into consideration the special needs of the elderly and the handicapped in promulgating a consumer product safety rule.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

##### 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.

#### § 2059. Repealed. Pub. L. 97-35, title XII, § 1210, Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92-573, §10, Oct. 27, 1972, 86 Stat. 1217; Pub. L. 94-284, §10(a), May 11, 1976, 90 Stat. 506, related to filing of a petition by an interested person for issuance, amendment, or revocation of a consumer product safety rule.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 14, 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.

#### § 2060. Judicial review of consumer product safety rules

##### (a) Petition by persons adversely affected, consumers, or consumer organizations

Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia, or for the circuit in which such person, consumer, or orga-

nization resides or has his principal place of business 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. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 2056, 2057, or 2058 of this title; the transcript required by section 2058(d)(2) of this title of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

**(b) Additional data, views, or arguments**

If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

**(c) Jurisdiction; costs and attorneys' fees; substantial evidence to support administrative findings**

Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, and to grant appropriate relief, including interim relief, as provided in such chapter. A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with subsection (f)<sup>1</sup> and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28 or any other provision of law. The consumer product safety rule shall not be affirmed unless the Commission's findings under sections 2058(f)(1) and 2058(f)(3) of this title are supported by substantial evidence on the record taken as a whole.

**(d) Supreme Court review**

The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule 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.

<sup>1</sup>So in original. Probably should be followed by a closing parenthesis.

**(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.)

**Editorial Notes****AMENDMENTS**

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

1983—Subsec. (c). Pub. L. 97-414 substituted “subsection (f)” 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.

**Statutory Notes and Related Subsidiaries****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.

**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.

**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), 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 unreason-

able 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)<sup>1</sup> 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

<sup>1</sup> So in original. No subsec. (f) has been enacted.