

(13) The terms “import” and “importation” include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term “United States”, when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

(Pub. L. 92-573, §3, Oct. 27, 1972, 86 Stat. 1208; Pub. L. 94-284, §3(b), (d), May 11, 1976, 90 Stat. 503; Pub. L. 97-35, title XII, §1213, Aug. 13, 1981, 95 Stat. 724; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(1)(D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, as amended, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Title 52 of the Revised Statutes, referred to in subsec. (a)(1)(G), consisted of R.S. §§4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, Shipping, see Table at beginning of Title 46.

The Federal Hazardous Substances Act, referred to in the provisions following subsec. (a)(1)(I), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

For definition of Canal Zone, referred to in subsec. (a)(10), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (a)(1)(C), (F), “section 30102(a)(6) and (7) of title 49” substituted for “sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391(3) and (4)]” and “section 40102(a) of title 49” substituted for “section 101 of the Federal Aviation Act of 1958 [49 App. U.S.C. 1301]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (a)(1)(G), “chapter 43 of title 46” and “section 2101(1) of title 46” substituted for “the Federal Boat Safety Act of 1971 [46 U.S.C. 1451 et seq.]” and “section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]”, respectively, on authority of Pub. L. 98-89, §2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

1986—Subsec. (a)(1)(E). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1981—Subsec. (a)(1). Pub. L. 97-35 inserted provisions that term “consumer product” includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site and that such term does not include such a device which is permanently fixed to a site.

1976—Subsec. (a)(1). Pub. L. 94-284 substituted in subpar. (D) “pesticides” for “economic poisons”, and in provision following subpar. (I) “other limitations” for “limitations”, and inserted provision which limited the authority of the Commission to regulate any product or article described in subpar. (E).

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1215 of Pub. L. 97-35 provided that:

“(a) Except as provided in subsection (b), the amendments made by this subtitle [see Short Title of 1981 Amendment note set out under section 2051 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

“(b) The amendments made by section 1207 [enacting sections 1204, 1276, and 2083 of this title and amending section 2076 of this title] shall apply with respect to consumer product safety rules under the Consumer Product Safety Act [this chapter] and regulations under the Federal Hazardous Substances Act [section 1261 et seq. of this title] and the Flammable Fabrics Act [section 1191 et seq. of this title] promulgated by the Consumer Product Safety Commission after the date of the enactment of this Act [Aug. 13, 1981]; and the amendments made by sections 1202, 1203, and 1206 of this subtitle [enacting section 2077 of this title and amending sections 1193, 1262, 2056, 2057, 2058, and 2080 of this title] shall apply with respect to regulations under 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.”

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 sec-

tion 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 Commis-

sion (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) of this section, 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.

(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.)

CODIFICATION

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

AMENDMENTS

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 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

Section 105(b) of Pub. L. 101-608 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.

REDUCTION IN NUMBER OF COMMISSIONERS

Pub. L. 102-389, title III, Oct. 6, 1992, 106 Stat. 1596, provided in part: “That funds shall 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”.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2081 of this title.

§ 2054. Product safety information and research**(a) Injury Information Clearinghouse; duties**

The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and dis-