

§ 2063. Product certification and labeling**(a) Certification accompanying product; products with more than one manufacturer**

(1) Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

(2) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required by paragraph (1) of this subsection, and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1) to issue a certificate with respect to such product.

(b) Rules to establish reasonable testing programs

The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this chapter and for which a certificate is required under subsection (a) of this section. Any test or testing program on the basis of which a certificate is issued under subsection (a) of this section may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

(c) Form and contents of labels

The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(3) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked

on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

(Pub. L. 92-573, §14, Oct. 27, 1972, 86 Stat. 1220.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068, 2082 of this title.

§ 2064. Substantial product hazards**(a) “Substantial product hazard” defined**

For purposes of this section, the term “substantial product hazard” means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer

Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 2058 of this title;

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2) of this section; or

(3) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk.

(c) Public notice of defect or failure to comply; mail notice

If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) To give public notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(d) Repair; replacement; refunds; action plan

If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

(1) To bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

(2) To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c) of this section, or (B) at the time the consumer receives actual notice of the defect or non-compliance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(e) Reimbursement

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) of this section with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, dis-

tributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) Hearing

An order under subsection (c) or (d) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5 except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.

(g) Preliminary injunction

(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) of this section with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 2076(b)(7) of this title) or the Attorney General may, in accordance with section 2061(d)(1) of this title, apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28 does not apply with respect to the jurisdiction of a district court of the United States to issue or extend¹ a preliminary injunction under this subsection.

(h) Cost-benefit analysis of notification or other action not required

Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken,

¹ So in original. Probably should be "extend".

to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(Pub. L. 92-573, §15, Oct. 27, 1972, 86 Stat. 1221; Pub. L. 94-284, §12(a), May 11, 1976, 90 Stat. 508; Pub. L. 97-35, title XII, §1211(h)(4), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97-414, §9(j)(3), (m), Jan. 4, 1983, 96 Stat. 2064, 2065; Pub. L. 100-418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §§111(a)(2), 112(a), 113, Nov. 16, 1990, 104 Stat. 3114, 3115, 3117.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-608, §112(a)(4), (5), in concluding provisions substituted “comply, of such defect, or of such risk” for “comply or of such defect” and “defect, failure to comply, or such risk” for “defect or failure to comply”.

Subsec. (b)(1). Pub. L. 101-608, §112(a)(1), inserted reference to voluntary consumer product safety standard upon which Commission has relied under section 2058 of this title.

Subsec. (b)(3). Pub. L. 101-608, §112(a)(2), (3), added par. (3).

Subsec. (f). Pub. L. 101-608, §113, inserted at end “Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.”

Subsec. (h). Pub. L. 101-608, §111(a)(2), added subsec. (h).

1988—Subsec. (d). Pub. L. 100-418 substituted “general note 2 of the Harmonized Tariff Schedule of the United States” for “general headnote 2 to the Tariff Schedules of the United States” in last sentence.

1983—Subsec. (g)(1). Pub. L. 97-414 clarified previous inconsistencies in 1982 amendment by substituting “section 206(d)(1)” for “section 206(c)(1)” and amending Pub. L. 97-35, §1211(h)(4), so as to strike out direction that par. (1) be amended by inserting “, Science and Transportation” after “on Commerce”.

1981—Subsec. (g)(1). Pub. L. 97-35, §1211(h)(4), substituted reference to section 2061(c)(1) for reference to section 2061(e)(1), but probably should have substituted instead reference to section 2061(d)(1) in view of the redesignation of section 2061(e)(1) as section 2061(d)(1) by section 1205(a)(2) of Pub. L. 97-35 and the nonexistence of a section 2061(c)(1) of this title. Provisions of Pub. L. 97-35 directing that “, Science and Transportation” be inserted after “on Commerce” could not be executed in view of lack of such language in text. Section 1211(h)(4) of Pub. L. 97-35 was subsequently amended by Pub. L. 97-414. See 1983 Amendment note above.

1976—Subsec. (d). Pub. L. 94-284, §12(a)(1), provided, in provision following par. (3), that an order issued under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States, the product for which the order was issued.

Subsec. (g). Pub. L. 94-284, §12(a)(2), added subsec. (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

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.

REPORTING REQUIREMENTS

Pub. L. 103-267, title I, §102, June 16, 1994, 108 Stat. 726, provided that:

“(a) REPORTS TO CONSUMER PRODUCT SAFETY COMMISSION.—

“(1) REQUIREMENT TO REPORT.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

“(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

“(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

“(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act [15 U.S.C. 2051 et seq.].

“(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

“(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act [15 U.S.C. 2064(b)] respecting a consumer product.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2066, 2068, 2071, 2073 of this title; title 42 section 300j-22.

§ 2065. Inspection and recordkeeping

(a) For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer prod-