

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 product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or dis-

tributor has acted or is acting in compliance with this chapter and rules under this chapter. (Pub. L. 92-573, §16, Oct. 27, 1972, 86 Stat. 1222.)

§ 2066. Imported products

(a) Refusal of admission

Any consumer product offered for importation into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063(c) of this title;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a)(2)) of this title; or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g) of this section.

(b) Samples

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a) of this section, such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) Modification

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a) of this section) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) Supervision of modifications

All actions taken by an owner or consignee to modify such product under subsection (c) of this

section shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

(e) Product destruction

Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.

(f) Payment of expenses occasioned by refusal of admission

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) Importation conditioned upon manufacturer's compliance

The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.

(h) Product surveillance program

(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this chapter and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

(3) The Commission shall periodically report to the Congress the results of the surveillance program under paragraph (1).

(Pub. L. 92-573, §17, Oct. 27, 1972, 86 Stat. 1223; Pub. L. 100-418, title I, §1214(d), Aug. 23, 1988, 102