

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-631 designated existing text as subsec. (a) and cl. (A) and in subsec. (a), as so designated, added cl. (B), and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2068 of this title.

§ 2068. Prohibited acts**(a) Designation**

It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);

(7) fail to comply with any rule under section 2058(g)(2) of this title (relating to stockpiling); or¹

(8) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data); and¹

(9) fail to comply with any rule or requirement under section 2082 of this title (relating to labeling and testing of cellulose insulation).¹

(10) fail to file a statement with the Commission pursuant to section 2067(b) of this title.¹

(11) fail to furnish information required by section 2084 of this title.

(b) Exception

Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the

¹ So in original. Words “or” and “and” probably should not appear at the end of pars. (7) and (8). The period at the end of par. (9) probably should be a semicolon, and the period at the end of par. (10) probably should be a semicolon followed by “or”.

representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub. L. 92-573, §19, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 94-284, §§12(b), 13(a), May 11, 1976, 90 Stat. 508, 509; Pub. L. 95-319, §3(b), July 11, 1978, 92 Stat. 390; Pub. L. 95-631, §6(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-414, §9(j)(4), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101-608, title I, §112(d), Nov. 16, 1990, 104 Stat. 3117.)

AMENDMENTS

1990—Subsec. (a)(11). Pub. L. 101-608 added par. (11).

1983—Subsec. (a)(7). Pub. L. 97-414, §9(j)(4)(A), substituted “section 2058(g)(2)” for “section 2058(d)(2)”.

Subsec. (a)(8). Pub. L. 97-414, §9(j)(4)(B), redesignated par. (9) as (8) and struck out former par. (8) which made it unlawful for any person to fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products).

Subsec. (a)(9), (10). Pub. L. 97-414, §9(j)(4)(B), redesignated par. (10), as added by Pub. L. 95-319, as (9). Former par. (9) redesignated (8).

1978—Subsec. (a)(10). Pub. L. 95-631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to section 2067(b) of this title.

Pub. L. 95-319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under section 2082 of this title.

1976—Subsec. (a). Pub. L. 94-284 substituted “to” for “and to” and inserted “, and to prohibited acts” after “refund” in par. (5), inserted “or fail or refuse to establish or maintain records,” after “copying of records,” in par. (3), and added pars. (8) and (9).

DUTY TO REPORT CHOKING INCIDENTS CAUSED BY CHILDREN’S TOYS OR GAMES

For purposes of subsec. (a)(3) of this section, requirement to report information relating to choking incidents caused by children’s toys or games to Consumer Product Safety Commission deemed a requirement under this chapter, see section 102 of Pub. L. 103-267, set out as a Reporting Requirements note under section 2064 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2069, 2070, 2071 of this title.

§ 2069. Civil penalties**(a) Amount of penalty**

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed \$5,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$1,250,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private la-

beler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(b) Relevant factors in determining amount of penalty

In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 2068(a) of this title, the Commission shall consider the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(c) Compromise of penalty; deductions from penalty

Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the

business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) “Knowingly” defined

As used in the first sentence of subsection (a)(1) of this section, the term “knowingly” means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub. L. 92-573, §20, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94-284, §13(b), May 11, 1976, 90 Stat. 509; Pub. L. 95-631, §6(c), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-35, title XII, §1211(c), Aug. 13, 1981, 95 Stat. 721; Pub. L. 101-608, title I, §§112(e), 115(a), Nov. 16, 1990, 104 Stat. 3117, 3118.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-608, §§112(e), 115(a)(1), (2), substituted “\$5,000” for “\$2,000”, and “(10), or (11)” for “or (10)”, and substituted “\$1,250,000” for “\$500,000” in two places.

Subsec. (a)(3). Pub. L. 101-608, §115(a)(3), added par. (3).

1981—Subsecs. (b) to (d). Pub. L. 97-35 added subsec. (b), redesignated former subsec. (b) as (c), substituted “the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed” for “the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered”, and redesignated subsec. (c) as (d).

1978—Subsec. (a)(1). Pub. L. 95-631 made violation of section 2068(a)(10) of this title a separate offense.

1976—Subsec. (a)(1). Pub. L. 94-284 inserted reference to pars. (8) and (9).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2055 of this title.

§ 2070. Criminal penalties

(a) Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than \$50,000 or be imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.