Public Law 92-573

AN ACT

October 27, 1972
[S. 3419]

To protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer Product Safety Act.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Consumer Product Safety Act".

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FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this Act.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

DEFINITIONS

SEC. 3. (a) For purposes of this Act:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 102 (3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966),

80 Stat. 718; 84 Stat. 262. 15 USC 1391.

(D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act),

Ante, p. 973.

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

68A Stat. 490. 26 USC 4181. 72 Stat. 1282.

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958),

72 Stat. 737. 49 USC 1301.

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

85 Stat. 213. 46 USC 361. 46 USC 1452.

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act), or

52 Stat. 1040; 79 Stat. 234. 21 USC 321.

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry

products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

82 Stat. 792. 21 USC 453. 81 Stat. 584. 21 USC 601. 84 Stat. 1621. 21 USC 1033.

See sections 30(d) and 31 of this Act, for limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer products safety standard described in section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufactured" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 4.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(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 Act, be deemed to be a manufacturer, distrib-

utor, 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.

CONSUMER PRODUCT SAFETY COMMISSION

Establishment.

SEC. 4. (a) 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, 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. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

Chairman.

Terms.

(b)(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after the date of the enactment of this Act, 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 his 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.

Restrictions.

(c) 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) 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. 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) 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.

Functions.

(f)(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 Commission (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.

(g)(1) 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. Executive Director. 5 USC 5332 note.

(2) The Chairman, subject to subsection (f)(2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions. No full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS–14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission. Additional employees.

(h)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph: *Ante*, p. 110.

"(59) Chairman, Consumer Product Safety Commission."

(2) Section 5315 of such title is amended by adding at the end thereof the following new paragraph: *Ante*, p. 149.

"(97) Members, Consumer Product Safety Commission (4)."

PRODUCT SAFETY INFORMATION AND RESEARCH

SEC. 5. (a) The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary.

(b) The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

(c) In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity). Grants or contracts.

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this Act is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention. Public information.

PUBLIC DISCLOSURE OF INFORMATION

SEC. 6. (a)(1) Nothing contained in this Act shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

81 Stat. 54.

Confidential information.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

62 Stat. 791.

Summary to manufacturer or labeler.

(b)(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission finds out that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

Inaccurate or misleading information, retraction.

Nonapplicability.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this Act.

Risk of injury.

(c) The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) The Commission may by rule, in accordance with this section and section 9, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

Notice, publication in Federal Register.

(b) A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

Development period.

An invitation under paragraph (4)(B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

Proposed safety rules, publication.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this Act, would eliminate or reduce the unreasonable risk of injury associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

Proposed standards, development offers.

(d)(1) Except as provided by subsection (c), the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b)(4)(B), if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b), and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

Publication in Federal Register.

Cost, contribution.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings.

Regulations.

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this Act, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards), and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

Proposed safety rule, publication.

(e)(1) If the Commission has published a notice of proceeding as provided by subsection (b) of this section and has not, within 30 days after the date of publication of such notice, accepted an offer to develop a proposed consumer product safety standard, the Commission may develop a proposed consumer product safety rule and publish such proposed rule.

Restrictions.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same risk of injury associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

In any case in which the sole offeror whose offer is accepted under subsection (d)(1) of this section is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop proposals for such standard during the development period.

Development period.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d)(1) for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

Publication in Federal Register.

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

Withdrawal notice or proposed rule, publication in Federal Register.

(f) Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b) (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product.

BANNED HAZARDOUS PRODUCTS

SEC. 8. Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product.

ADMINISTRATIVE PROCEDURE APPLICABLE TO PROMULGATION OF CONSUMER PRODUCT SAFETY RULES

SEC. 9. (a)(1) Within 60 days after the publication under section 7 (c), (e)(1), or (f) or section 8 of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product if it makes the findings required under subsection (c), or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules which have been proposed under section 7 (c), (e)(1), or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

80 Stat. 383.

(b) A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act.

Findings.

(c) (1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

Restrictions.

(2) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product.

Standards, effective date.

(d) (1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer product safety standard under this Act shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, so as to prevent such manufacturer from circumventing the purpose of such consumer product safety rule. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such consumer product safety rule and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the consumer product safety rule.

"Stockpiling."

Amendment or revocation.

(e) The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 7 and 8, and subsections (a) through (d) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with

Publication in Federal Register.

subsection (a)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Section 11 shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

Applicability.

COMMISSION RESPONSIBILITY—PETITION FOR CONSUMER PRODUCT SAFETY RULE

SEC. 10. (a) Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

(b) Such petition shall be filed in the principal office of the Commission and shall set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary, and (2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

(c) The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

Hearing or investigation.

(d) Within 120 days after filing of a petition described in subsection (b), the Commission shall either grant or deny the petition. If the Commission grants such petition, it shall promptly commence an appropriate proceeding under section 7 or 8. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

Petition denial, publication in Federal Register.

(e)(1) If the Commission denies a petition made under this section (or if it fails to grant or deny such petition within the 120-day period) the petitioner may commence a civil action in a United States district court to compel the Commission to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120-day period.

U.S. district court, civil action.

(2) If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of evidence in a de novo proceeding before such court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rulemaking proceeding under section 7 or 8 unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.

(3) In any action under this subsection, the district court shall have no authority to compel the Commission to take any action other than the initiation of a rule-making proceeding in accordance with section 7 or 8.

(f) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(g) Subsection (e) of this section shall apply only with respect to petitions filed more than 3 years after the date of enactment of this Act.

Applicability.

JUDICIAL REVIEW OF CONSUMER PRODUCT SAFETY RULES

SEC. 11. (a) 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 organization 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 Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 7, 8, or 9; the transcript required by section 9(a)(2) of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

72 Stat. 941; 80 Stat. 1323.

"Record."

(b) 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) 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, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 9(c) are supported by substantial evidence on the record taken as a whole.

80 Stat. 392. 5 USC 701.

(d) 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 of the United States Code.

62 Stat. 928.

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

IMMINENT HAZARDS

Petition for seizure.

SEC. 12. (a) 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 Act. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product which presents imminent and

"Imminently hazardous consumer product."

unreasonable risk of death, serious illness, or severe personal injury.

Relief.

(b)(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)) 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.

Product condemnation and seizure.

(2) In the case of an action under subsection (a)(1), 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.

Consumer product safety rule.

(c) 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)(1) Prior to commencing an action under subsection (a), the Commission may consult the Product Safety Advisory Council (established under section 28) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

Hearing.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e)(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.

Proceedings, consolidation for trial.

(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.

(f) 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.

NEW PRODUCTS

Notice and description.

SEC. 13. (a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce.

"New consumer product."

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers.

PRODUCT CERTIFICATION AND LABELING

SEC. 14. (a) (1) Every manufacturer of a product which is subject to a consumer product safety standard under this Act 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.

Multiple manufacturers or labelers.

(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.

Testing programs.

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) 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.

Labels, form and content.

(c) 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.

Marking and coding.

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.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

"Substantial product hazard."

SEC. 15. (a) 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.

Noncompliance.

(b) 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

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2),

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

(c) 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) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f)) 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), or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

Action plan.

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 the 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.

Reimbursement.

(e) (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), 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) 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, distributor, 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.

Hearing.

(f) An order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, 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).

80 Stat. 384.

INSPECTION AND RECORDKEEPING

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, 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 Act, or to determine compliance with rules or orders prescribed under this Act. 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 distributor has acted or is acting in compliance with this Act and rules under this Act.

IMPORTED PRODUCTS

SEC. 17. (a) Any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) shall be refused admission into such customs territory if such product— 77A Stat. 11. 19 USC 1202.

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

(2) is not accompanied by a certificate required by section 14, or is not labeled in accordance with regulations under section 14 (c);

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 12;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); 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).

(b) 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 12 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 of the United States Code 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), such product shall be refused admission, unless subsection (c) of this section applies and is complied with. Samples. 80 Stat. 384. Admission refusal.

(c) 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)) 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. Modification.

(d) All actions taken by an owner or consignee to modify such product under subsection (c) 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 22(b) if it is not so redelivered. Supervision.

(e) 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 Destruction.

not export the product within a reasonable time, the Department of the Treasury may destroy the product.

Expenses, payment.

(f) 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) 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 Act and the Commission's rules with respect to such requirements.

EXPORTS

Nonapplicability.

SEC. 18. This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

PROHIBITED ACTS

SEC. 19. (a) 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 Act;

(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 Act;

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

(4) fail to furnish information required by section 15(b);

(5) fail to comply with an order issued under section 15 (c) or (d) (relating to notification, and to repair, replacement, and refund);

(6) fail to furnish a certificate required by section 14 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 14(c) (relating to labeling); or

(7) fail to comply with any rule under section 9(d)(2) (relating to stockpiling).

Nonapplicability.

(b) 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 14(a) 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 representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

CIVIL PENALTIES

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), or (7) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 19(a)(3) 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 $500,000 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 19(a)— Nonapplicability.

(A) if the person who violated such paragraphs is not the manufacturer or private labeler 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.

(b) 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 appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. 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. Compromise.

(c) 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. "Knowingly."

CRIMINAL PENALTIES

SEC. 21. (a) Any person who knowingly and willfully violates section 19 of this Act 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 19, 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).

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. (a) The United States district courts shall have jurisdiction to restrain any violation of section 19, or to restrain any person from distributing in commerce a product which does not comply with a con-

sumer product safety rule, or both. Such actions may be brought by the Commission (with the concurrence of the Attorney General) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product which fails to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of 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.

SUITS FOR DAMAGES BY PERSONS INJURED

SEC. 23. (a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of section 1331 of title 28, United States Code as to the amount in controversy, and shall recover damages sustained, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

72 Stat. 415.

(b) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OF SECTION 15 ORDERS

SEC. 24. Any interested person may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this Act. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing party.

Notice.

EFFECT ON PRIVATE REMEDIES

SEC. 25. (a) Compliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person. Liability.

(b) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (1) any accident or investigation report made under this Act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information. Public information.

EFFECT ON STATE STANDARDS

SEC. 26. (a) Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard. State compliance to Federal standards.

(b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(c) Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose) a proposed safety standard or regulation described in such application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce. Exemptions.

ADDITIONAL FUNCTIONS OF COMMISSION

SEC. 27. (a) The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data. Hearing notice, publication in Federal Register.

(b) The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665(b));

(7) to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, through its own legal representative with the concurrence of the Attorney General or through the Attorney General; and

(8) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3), to any officer or employee of the Commission.

Noncompliance with subpena or Commission order, penalty.

(c) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission with the concurrence of the Attorney General or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

Information disclosure.

(d) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

Performance and safety data, notification.

(e) The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

(f) For purposes of carrying out this Act, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

Contract authority.

(g) The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this Act.

Research and development facilities.

(h) The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this Act.

Recordkeeping.

(i)(1) Each recipient of assistance under this Act pursuant to grants or contracts entered into under other than competitive bidding

procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

GAO audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this Act under other than competitive bidding procedures.

Report to President and Congress.

(j) The Commission shall prepare and submit to the President and the Congress on or before October 1 of each year a comprehensive report on the administration of this Act for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this Act in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this Act.

Budget estimate, transmittal to Congress.

(k) (1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

Legislative recommendations, transmittal to Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

PRODUCT SAFETY ADVISORY COUNCIL

Establishment; membership.

SEC. 28. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this Act. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

(2) five members shall be selected from consumer product industries including at least one representative of small business; and

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

(b) The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

(c) The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

Compensation; travel pay.

(d) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

5 USC 5332 note.

80 Stat. 499; 83 Stat. 190.

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

SEC. 29. (a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this Act. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this Act which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

Separate State and local consolidation agencies.

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this Act, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts. Data, availability.

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission. National Bureau of Standards, use of facilities.

TRANSFERS OF FUNCTIONS

SEC. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission. 74 Stat. 372. 84 Stat. 1670. 15 USC 1471 note. 7 USC 135; 21 USC 343, 352, 362.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission. 67 Stat. 111; 81 Stat. 568. 15 USC 58.

(c) The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Commission. 70 Stat. 953.

(d) A risk of injury which is associated with consumer products and which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts. Risk of injury.

(e)(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Bureau of Standards. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section. Personnel, property, etc., transfer.

Public Health Service officer, competitive status.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this Act to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970 (84 Stat. 1676; 42 U.S.C. 215 nt).

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

"Function."

(f) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

LIMITATION ON JURISDICTION

SEC. 31. The Commission shall have no authority under this Act to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this Act to regulate any risk of injury

29 USC 651 note.
42 USC 2011 note, 1857 note.

associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355 (1) and (2) of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act.

82 Stat. 1174.
42 USC 263c.
42 USC 263b.

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities), and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed—

(1) $55,000,000 for the fiscal year ending June 30, 1973;
(2) $59,000,000 for the fiscal year ending June 30, 1974; and
(3) $64,000,000 for the fiscal year ending June 30, 1975.

(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 27(h); except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

Limitation.

Prospectus, transmittal to Congress.

(A) a brief description of the facility to be planned or constructed;

(B) the location of the facility, and an estimate of the maximum cost of the facility;

(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

Estimated maximum cost, limitation.

SEPARABILITY

SEC. 33. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

SEC. 34. This Act shall take effect on the sixtieth day following the date of its enactment, except—

(1) sections 4 and 32 shall take effect on the date of enactment of this Act, and

(2) section 30 shall take effect on the later of (A) 150 days after the date of enactment of this Act, or (B) the date on which at least three members of the Commission first take office.

Approved October 27, 1972.