

defect in such product or any such failure to comply with a standard applicable to such product. The Secretary shall disclose to the public so much of the information contained in such notice or other information obtained under section 360nn of this title as he deems will assist in carrying out the purposes of this part, but he shall not disclose any information which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 unless he determines that it is necessary to carry out the purposes of this part.

(e) Notice from Secretary to manufacturer of defects or failure to comply with standards

If through testing, inspection, investigation, or research carried out pursuant to this part, or examination of reports submitted pursuant to section 360nn of this title, or otherwise, the Secretary determines that any electronic product—

(1) does not comply with an applicable standard prescribed pursuant to section 360kk of this title; or

(2) contains a defect which relates to the safety of use of such product by reason of the emission of electronic product radiation;

he shall immediately notify the manufacturer of such product of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance or that the alleged defect does not exist or does not relate to safety of use of the product by reason of the emission of such radiation hazard. If after such presentation by the manufacturer the Secretary determines that such product does not comply with an applicable standard prescribed pursuant to section 360kk of this title, or that it contains a defect which relates to the safety of use of such product by reason of the emission of electronic product radiation, the Secretary shall direct the manufacturer to furnish the notification specified in subsection (c) of this section to the persons specified in paragraphs (1) and (2) of subsection (b) of this section (where known to the manufacturer), unless the manufacturer has applied for an exemption from the requirement of such notification on the ground specified in paragraph (2) of subsection (a) of this section and the Secretary is satisfied that such noncompliance or defect is not such as to create a significant risk of injury, including genetic injury, to any person.

(f) Correction of defects

If any electronic product is found under subsection (a) or (e) of this section to fail to comply with an applicable standard prescribed under this part or to have a defect which relates to the safety of use of such product, and the notification specified in subsection (c) of this section is required to be furnished on account of such failure or defect, the manufacturer of such product shall (1) without charge, bring such product into conformity with such standard or remedy such defect and provide reimbursement for any expenses for transportation of such product incurred in connection with having such product

brought into conformity or having such defect remedied, (2) replace such product with a like or equivalent product which complies with each applicable standard prescribed under this part and which has no defect relating to the safety of its use, or (3) make a refund of the cost of such product. The manufacturer shall take the action required by this subsection in such manner, and with respect to such persons, as the Secretary by regulations shall prescribe.

(g) Effective date

This section shall not apply to any electronic product that was manufactured before October 18, 1968.

(June 25, 1938, ch. 675, §535, formerly act July 1, 1944, ch. 373, title III, §535, formerly §359, as added Pub. L. 90-602, §2(3), Oct. 18, 1968, 82 Stat. 1180; renumbered §535 and amended Pub. L. 101-629, §19(a)(1)(B), (2)(C), (3), (4), Nov. 28, 1990, 104 Stat. 4529, 4530; Pub. L. 103-80, §4(a)(2), Aug. 13, 1993, 107 Stat. 779.)

CODIFICATION

Section was classified to section 263g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 101-629.

AMENDMENTS

1993—Pub. L. 103-80 amended directory language of Pub. L. 101-629, §19(a)(4), which renumbered section 263g of Title 42, The Public Health and Welfare, as this section.

1990—Subsec. (a)(1). Pub. L. 101-629, §19(a)(2)(C)(i), substituted “section 360kk” for “section 263f”.

Subsec. (d). Pub. L. 101-629, §19(a)(1)(B), (2)(C)(ii), substituted “section 360nn” for “section 263i” and “this part” for “this subpart” in two places.

Subsec. (e). Pub. L. 101-629, §19(a)(1)(B), (2)(C), substituted “this part” for “this subpart” and “section 360nn” for “section 263i” in introductory provisions and “section 360kk” for “section 263f” in par. (1) and concluding provisions.

Subsec. (f). Pub. L. 101-629, §19(a)(1)(B), substituted “this part” for “this subpart” in two places.

NONINTERFERENCE WITH OTHER FEDERAL AGENCIES

Enactment of this section not to be construed to supersede or limit the functions under any other provision of law of any officer or agency of the United States, see section 4 of Pub. L. 90-602, set out as a note under section 360hh of this title.

§ 360mm. Imports

(a) Refusal of admission to noncomplying electronic products

Any electronic product offered for importation into the United States which fails to comply with an applicable standard prescribed under this part, or to which is not affixed a certification in the form of a label or tag in conformity with section 360kk(h) of this title shall be refused admission into the United States. The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon the latter's request, samples of electronic products which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may have a hearing before the Secretary of Health and Human Services. If it appears from an examination of such samples or otherwise that any electronic product fails to comply with applicable standards

prescribed pursuant to section 360kk of this title, then, unless subsection (b) of this section applies and is complied with, (1) such electronic product shall be refused admission, and (2) the Secretary of the Treasury shall cause the destruction of such electronic product unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days after the date of notice of refusal of admission or within such additional time as may be permitted by such regulations.

(b) Bond

If it appears to the Secretary of Health and Human Services that any electronic product refused admission pursuant to subsection (a) of this section can be brought into compliance with applicable standards prescribed pursuant to section 360kk of this title, final determination as to admission of such electronic product may be deferred upon filing of timely written application by the owner or consignee and the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as the Secretary of Health and Human Services may by regulation prescribe. If such application is filed and such bond is executed the Secretary of Health and Human Services may, in accordance with rules prescribed by him, permit the applicant to perform such operations with respect to such electronic product as may be specified in the notice of permission.

(c) Liability of owner or consignee for expenses connected with refusal of admission

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of operations provided for in subsection (b) of this section, and all expenses in connection with the storage, cartage, or labor with respect to any electronic product refused admission pursuant to subsection (a) of this section, shall be paid by the owner or consignee, and, in event of default, shall constitute a lien against any future importations made by such owner or consignee.

(d) Designation of agent for purposes of service

It shall be the duty of every manufacturer offering an electronic product for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of said manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon said manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon said manufacturer, and in default of such designation of such agent, service of process, notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding for enforcement of this part or any standards prescribed pursuant to this part may be made by

posting such process, notice, order, requirement, or decision in the Office of the Secretary or in a place designated by him by regulation.

(June 25, 1938, ch. 675, §536, formerly act July 1, 1944, ch. 373, title III, §536, formerly §360, as added Pub. L. 90-602, §2(3), Oct. 18, 1968, 82 Stat. 1181; renumbered §536 and amended Pub. L. 101-629, §19(a)(1)(B), (2)(D), (3), (4), Nov. 28, 1990, 104 Stat. 4529, 4530; Pub. L. 102-300, §6(b)(1), June 16, 1992, 106 Stat. 240; Pub. L. 103-80, §4(a)(2), Aug. 13, 1993, 107 Stat. 779.)

CODIFICATION

Section was classified to section 263h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 101-629.

AMENDMENTS

1993—Pub. L. 103-80 amended directory language of Pub. L. 101-629, §19(a)(4), which renumbered section 263h of Title 42, The Public Health and Welfare, as this section.

1992—Subsecs. (a), (b). Pub. L. 102-300 substituted “Health and Human Services” for “Health, Education, and Welfare” wherever appearing.

1990—Subsec. (a). Pub. L. 101-629, §19(a)(1)(B), (2)(D), substituted “this part” for “this subpart”, “section 360kk(h)” for “section 263f(h)”, and “section 360kk” for “section 263f”.

Subsec. (b). Pub. L. 101-629, §19(a)(2)(D), substituted “section 360kk” for “section 263f”.

Subsec. (d). Pub. L. 101-629, §19(a)(1)(B), substituted “this part” for “this subpart” in two places.

NONINTERFERENCE WITH OTHER FEDERAL AGENCIES

Enactment of this section not to be construed to supersede or limit the functions under any other provision of law of any officer or agency of the United States, see section 4 of Pub. L. 90-602, set out as a note under section 360hh of this title.

§ 360nn. Inspection, records, and reports

(a) Inspection of premises

If the Secretary finds for good cause that the methods, tests, or programs related to electronic product radiation safety in a particular factory, warehouse, or establishment in which electronic products are manufactured or held, may not be adequate or reliable, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are thereafter authorized (1) to enter, at reasonable times, any area in such factory, warehouse, or establishment in which the manufacturer's tests (or testing programs) required by section 360kk(h) of this title are carried out, and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, the facilities and procedures within such area which are related to electronic product radiation safety. Each such inspection shall be commenced and completed with reasonable promptness. In addition to other grounds upon which good cause may be found for purposes of this subsection, good cause will be considered to exist in any case where the manufacturer has introduced into commerce any electronic product which does not comply with an applicable standard prescribed under this part and with respect to which no exemption from the notification requirements has been granted by the Secretary under section 360ll(a)(2) or 360ll(e) of this title.