

**(b) Record keeping**

Every manufacturer of electronic products shall establish and maintain such records (including testing records), make such reports, and provide such information, as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and standards prescribed pursuant to this part and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with standards prescribed pursuant to this part.

**(c) Disclosure of technical data**

Every manufacturer of electronic products shall provide to the Secretary such performance data and other technical data related to safety as may be required to carry out the purposes of this part. The Secretary is authorized to require the manufacturer to give such notification of such performance and technical data at the time of original purchase to the ultimate purchaser of the electronic product, as he determines necessary to carry out the purposes of this part after consulting with the affected industry.

**(d) Public nature of reports**

Accident and investigation reports made under this part by any officer, employee, or agent of the Secretary shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

**(e) Trade secrets**

The Secretary or his representative shall not disclose any information reported to or otherwise obtained by him, pursuant to subsection (a) or (b) of this section, which concerns any information which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, except that such information may be disclosed to other officers or employees of the Department and of other agencies concerned with carrying out this part or when relevant in any proceeding under this part. Nothing in this section shall authorize the withholding of information by the Secretary, or by any officers or employees under his control, from the duly authorized committees of the Congress.

**(f) Information required to identify and locate first purchasers of electronic products**

The Secretary may by regulation (1) require dealers and distributors of electronic products, to which there are applicable standards prescribed under this part and the retail prices of which is not less than \$50, to furnish manufacturers of such products such information as may be necessary to identify and locate, for purposes of section 360ll of this title, the first purchasers

of such products for purposes other than resale, and (2) require manufacturers to preserve such information. Any regulation establishing a requirement pursuant to clause (1) of the preceding sentence shall (A) authorize such dealers and distributors to elect, in lieu of immediately furnishing such information to the manufacturer, to hold and preserve such information until advised by the manufacturer or Secretary that such information is needed by the manufacturer for purposes of section 360ll of this title, and (B) provide that the dealer or distributor shall, upon making such election, give prompt notice of such election (together with information identifying the notifier and the product) to the manufacturer and shall, when advised by the manufacturer or Secretary, of the need therefor for the purposes of section 360ll of this title, immediately furnish the manufacturer with the required information. If a dealer or distributor discontinues the dealing in or distribution of electronic products, he shall turn the information over to the manufacturer. Any manufacturer receiving information pursuant to this subsection concerning first purchasers of products for purposes other than resale shall treat it as confidential and may use it only if necessary for the purpose of notifying persons pursuant to section 360ll(a) of this title.

(June 25, 1938, ch. 675, §537, formerly act July 1, 1944, ch. 373, title III, §537, formerly §360A, as added Pub. L. 90-602, §2(3), Oct. 18, 1968, 82 Stat. 1182; renumbered §537 and amended Pub. L. 101-629, §19(a)(1)(B), (2)(E), (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 263i 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 263i of Title 42, The Public Health and Welfare, as this section.

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

Subsecs. (b) to (e). Pub. L. 101-629, §19(a)(1)(B), substituted “this part” for “this subpart” wherever appearing.

Subsec. (f). Pub. L. 101-629, §19(a)(1)(B), (2)(E)(ii), substituted “this part” for “this subpart”, “section 360ll” for “section 263g” in three places, and “section 360ll(a)” for “section 263g(a)”.

## 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.

**§ 360oo. Prohibited acts**

(a) It shall be unlawful—

(1) for any manufacturer to introduce, or to deliver for introduction, into commerce, or to import into the United States, any electronic product which does not comply with an applicable standard prescribed pursuant to section 360kk of this title;

(2) for any person to fail to furnish any notification or other material or information required by section 360ll or 360nn of this title; or to fail to comply with the requirements of section 360ll(f) of this title;

(3) for any person to fail or to refuse to establish or maintain records required by this part or to permit access by the Secretary or any of his duly authorized representatives to, or the copying of, such records, or to permit entry or inspection, as required by or pursuant to section 360nn of this title;

(4) for any person to fail or to refuse to make any report required pursuant to section 360nn(b) of this title or to furnish or preserve any information required pursuant to section 360nn(f) of this title; or

(5) for any person (A) to fail to issue a certification as required by section 360kk(h) of this title, or (B) to issue such a certification when such certification is not based upon a test or testing program meeting the requirements of section 360kk(h) of this title or when the issuer, in the exercise of due care, would have reason to know that such certification is false or misleading in a material respect.

(b) The Secretary may exempt any electronic product, or class thereof, from all or part of subsection (a) of this section, upon such conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(June 25, 1938, ch. 675, § 538, formerly act July 1, 1944, ch. 373, title III, § 538, formerly § 360B, as added Pub. L. 90-602, § 2(3), Oct. 18, 1968, 82 Stat. 1184; renumbered § 538 and amended Pub. L. 101-629, § 19(a)(1)(B), (2)(F), (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 263j 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 263j of Title 42, The Public Health and Welfare, as this section.

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

Subsec. (a)(2). Pub. L. 101-629, § 19(a)(2)(F)(ii), (iii), substituted “section 360ll or 360nn” for “section 263g or 263i” and “section 360ll(f)” for “section 263g(f)”.

Subsec. (a)(3). Pub. L. 101-629, § 19(a)(1)(B), (2)(F)(iii), substituted “this part” for “this subpart” and “section 360nn” for “section 263i”.

Subsec. (a)(4). Pub. L. 101-629, § 19(a)(2)(F)(iii), substituted “section 360nn(b)” for “section 263i(b)” and “section 360nn(f)” for “section 263i(f)”.

Subsec. (a)(5). Pub. L. 101-629, § 19(a)(2)(F)(i), substituted “section 360kk(h)” for “section 263f(h)” 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.

## § 360pp. Enforcement

### (a) Jurisdiction of courts

The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of section 360oo of this title and to restrain dealers and distributors of electronic products from selling or otherwise disposing of electronic products which do not conform to an applicable standard prescribed pursuant to section 360kk of this title except when such products are disposed of by returning them to the distributor or manufacturer from whom they were obtained. The district courts of the United States shall also have jurisdiction in accordance with section 1355 of title 28 to enforce the provisions of subsection (b) of this section.

### (b) Penalties

(1) Any person who violates section 360oo of this title shall be subject to a civil penalty of not more than \$1,000. For purposes of this subsection, any such violation shall with respect to each electronic product involved, or with respect to each act or omission made unlawful by section 360oo of this title, constitute a separate violation, except that the maximum civil penalty imposed on any person under this subsection for any related series of violations shall not exceed \$300,000.

(2) Any such civil penalty may on application be remitted or mitigated by the Secretary. 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, may be deducted from any sums owing by the United States to the person charged.

### (c) Venue; process

Actions under subsections (a) and (b) of this section may be brought in the district court of the United States for the district wherein any act or omission or transaction constituting the violation occurred, or in such court for the district where the defendant is found or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

### (d) Warnings

Nothing in this part shall be construed as requiring the Secretary to report for the institution of proceedings minor violations of this part whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

### (e) Compliance with regulations

Except as provided in the first sentence of section 360ss of this title, compliance with this part or any regulations issued thereunder shall not relieve any person from liability at common law or under statutory law.

### (f) Additional remedies

The remedies provided for in this part shall be in addition to and not in substitution for any other remedies provided by law.