

Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

#### CIVIL PENALTY CRITERIA

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (e)(2) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110-314, set out as a note under section 2069 of this title.

### § 1195. Injunction and condemnation proceedings

#### (a) Temporary injunction; venue

Whenever the Commission has reason to believe that any person is violating or is about to violate section 1192 of this title, or a rule or regulation prescribed under section 1194(c) of this title, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] is issued and dismissed by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be), to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

#### (b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials

Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 1192 of this title, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

#### (c) Application by defendant for representative sample of seized materials

In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

#### (d) Disposal of condemned materials

If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

(June 30, 1953, ch. 164, §6, 67 Stat. 113; Pub. L. 90-189, §5, Dec. 14, 1967, 81 Stat. 571.)

#### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

#### AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189, §5(a), inserted “, or a rule or regulation prescribed under section 1194 (c) of this title,” after “section 1192 of this title” and substituted “for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)” for “or in the United States court of any Territory for the district or Territory in which such person resides or transacts business”.

Subsec. (b). Pub. L. 90-189, §5(b), substituted “product” for “article of wearing apparel”, “product, fabric, or related material” for “article of wearing apparel or fabric” in two places and “products, fabrics, or related materials” for “articles of wearing apparel or fabrics”, and inserted “or related material” before “has been introduced in commerce”.

Subsec. (c). Pub. L. 90-189, §5(b), substituted “product, fabric, or related material” for “article of wearing apparel or fabric”.

Subsec. (d). Pub. L. 90-189, §5(b), substituted “products, fabrics, or related materials” for “articles of wearing apparel or fabrics” wherever appearing and struck out “for wearing apparel purposes” before “until properly and adequately treated or processed” in two places.

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate

to administration and enforcement of this chapter, see section 2079 of this title.

### § 1196. Penalties

Violation of section 1192 or 1197(b) of this title, or failure to comply with section 1202(c) of this title, is punishable by—

- (1) imprisonment for not more than 5 years for a knowing and willful violation of that section;
- (2) a fine determined under section 3571 of title 18; or
- (3) both.

(June 30, 1953, ch. 164, §7, 67 Stat. 114; Pub. L. 95-631, §8(b), Nov. 10, 1978, 92 Stat. 3747; Pub. L. 110-314, title II, §217(c)(4), Aug. 14, 2008, 122 Stat. 3060.)

#### AMENDMENTS

2008—Pub. L. 110-314 amended section generally. Prior to amendment, text read as follows: “Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter.”

1978—Pub. L. 95-631 authorized penalties for non-compliance with section 1202(c) of this title.

### § 1197. Guaranties

#### (a) Defense to prosecution

No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

#### (b) False guaranty

It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person rely-

ing upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §8, 67 Stat. 114; Pub. L. 90-189, §6, Dec. 14, 1967, 81 Stat. 572.)

#### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

#### AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189 substituted “product, fabric, or related material” for “wearing apparel or fabric” wherever appearing and “in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title” for “under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals”, added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90-189 substituted “product, fabric, or related material” for “wearing apparel or fabric” wherever appearing.

#### TRANSFER OF FUNCTIONS

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### § 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or