

TOXICOLOGIC RISKS OF FLAME-RETARDANT CHEMICALS
IN RESIDENTIAL UPHOLSTERED FURNITURE

Pub. L. 105-276, title IV, § 423, Oct. 21, 1998, 112 Stat. 2510, provided that:

“(a) Within 90 days of the enactment of this Act [Oct. 21, 1998], the Consumer Product Safety Commission shall make all necessary arrangements for the Committee on Toxicology of the National Academy of Sciences (NAS) to conduct an independent 12-month study of the potential toxicologic risks of all flame-retardant chemicals identified by the NAS and the Commission as likely candidates for use in residential upholstered furniture for the purpose of meeting regulations proposed by the Commission for flame resistance of residential upholstered furniture.

“(b) Upon completion of its report, the Academy shall send the report to the Commission, which shall provide it to the Congress.

“(c) The Commission, before promulgating any notice of proposed rulemaking or final rulemaking setting flammability standards for residential upholstered furniture, shall consider fully the findings and conclusions of the Academy.”

§ 1202. Exemptions

(a) Exports; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) Imports intended for export; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States, unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(c) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period; good cause

Not less than thirty days before any person exports to a foreign country any fabric, related

material, or product that fails to conform to an applicable flammability standard or regulation in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and of the basis for such flammability standard or regulation. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such fabric, related material, or product, the country and port of destination of such fabric, related material, or product, and the quantity of such fabric, related material, or product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(d) Authority to prohibit exports

Notwithstanding any other provision of this section, the Consumer Product Safety Commission may prohibit, by order, a person from exporting from the United States for purpose of sale any fabric or related material that the Commission determines is not in conformity with an applicable standard or rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such fabric or related material, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the fabric or related material under the circumstances.

(e) Export pursuant to section 2066(e)

Nothing in this section shall apply to any fabric or related material, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(June 30, 1953, ch. 164, § 15, as added Pub. L. 90-189, § 10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 95-631, § 8(a), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110-314, title II, §§ 204(c)(2)(F), 221(b), Aug. 14, 2008, 122 Stat. 3042, 3066.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, § 204(c)(2)(F), which directed the substitution of “Commission” for “Consumer Product Safety Commission (hereinafter in this section referred to as the ‘Commission’) in section 15 (15 U.S.C. 1202)”, was executed by making the substitution for “Consumer Product Safety Commission (hereinafter in this section referred to as the ‘Commission’)” to reflect the probable intent of Congress.

Subsecs. (d), (e). Pub. L. 110-314, § 221(b), added subsecs. (d) and (e).

1978—Subsec. (a). Pub. L. 95-631, § 8(a)(1), made chapter applicable to exports when the Commission deter-

mines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (b). Pub. L. 95-631, §8(a)(2), made chapter applicable to imports intended for export when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (c). Pub. L. 95-631, §8(a)(3), added subsec. (c).

§ 1203. Preemption of Federal standards

(a) Standards or regulations designed to protect against same risk as State standards or regulations; identical State standards

Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this chapter, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this chapter is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) State standards or regulations which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this chapter and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this chapter.

(c) Exemption for State standards or regulations; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) Flammability standards or regulations

In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189).

(June 30, 1953, ch. 164, §16, as added Pub. L. 90-189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 94-284, §17(b), May 11, 1976, 90 Stat. 512; Pub. L. 110-314, title II, §204(c)(2)(G), Aug. 14, 2008, 122 Stat. 3043.)

REFERENCES IN TEXT

Section 11 of the Act of December 14, 1967 (Public Law 90-189), referred to in subsec. (d), is set out as a note under section 1191 of this title.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-314 amended subsec. (d) generally. Prior to amendment, text read as follows: “For purposes of this section—

“(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189); and

“(2) the term ‘Commission’ means the Consumer Product Safety Commission.”

1976—Pub. L. 94-284 substituted provisions which permitted the use of flammability standards or regulations not identical with the standards or regulations in effect under this chapter provided that the standards or regulations used afford a higher degree of protection from the risk of the occurrence of fire than the standards or regulation under this chapter, and which permitted the Commission, by regulation promulgated in accordance with section 553 of title 5, to grant an exemption for a flammability standard or other regulation of a State or political subdivision of a State, for the prior supremacy of chapter provision.

PREEMPTION

The provisions of this section establishing the extent to which the Flammable Fabrics Act (15 U.S.C. 1191 et