

days after receiving that notice, the Commission notifies ASTM International that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard. If the Commission so notifies ASTM International with respect to a proposed revision of the standard, the existing standard shall continue to be considered to be a consumer product safety rule without regard to the proposed revision.

(h) Rulemaking to consider exemption from preemption

(1) Exemption of State law from preemption

Upon application of a State or political subdivision of a State, the Commission shall, after notice and opportunity for oral presentation of views, consider a rulemaking to exempt from the provisions of section 2075(a) of this title (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a children's product subject to the consumer product safety standards described in subsection (a) or any rule promulgated under this section. The Commission shall grant such an exemption if the State or political subdivision standard or regulation—

(A) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard or rule under this section; and

(B) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or 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 standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.

(2) Effect of standards on established State laws

Nothing in this section or in section 2075 of this title shall prevent a State or political subdivision of a State from continuing in effect a safety requirement applicable to a toy or other children's product that is designed to deal with the same risk of injury as the consumer product safety standards established by this section and that is in effect on the day before August 14, 2008, if such State or political subdivision has filed such requirement with the Commission within 90 days after August 14, 2008, in such form and in such manner as the Commission may require.

(i) Judicial review

The issuance of any rule under this section is subject to judicial review as provided in section

2060(g) of this title, as added by section 236 of this Act.

(Pub. L. 110-314, title I, §106, Aug. 14, 2008, 122 Stat. 3033; Pub. L. 112-28, §4, Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

This Act, referred to in subsec. (h)(1), is Pub. L. 110-314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (i), is section 2060(g) of this title, as added by section 236 of Pub. L. 110-314.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-28 inserted “or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration” after “or by statute”.

DEFINITION

For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

§ 2056c. Sulfur content in drywall standard

(a) Rule on sulfur content in drywall required

Except as provided in subsection (c), not later than 2 years after January 14, 2013, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

(b) Rule making; consumer product safety standard

A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5; and

(2) shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(c) Exception

(1) Voluntary standard

Subsection (a) shall not apply if the Commission determines that—

(A) a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home;

(B) such voluntary standard is or will be in effect not later than two years after January 14, 2013; and

(C) such voluntary standard is developed by Subcommittee C11.01 on Specifications and Test Methods for Gypsum Products of ASTM International.

(2) Federal Register

Any determination made under paragraph (1) shall be published in the Federal Register.

(d) Treatment of voluntary standard for purposes of enforcement

If the Commission determines that a voluntary standard meets the conditions in subsection (c)(1), the sulfur content limit in such voluntary standard shall be treated as a consumer product safety rule promulgated under section 2058 of this title beginning on the date that is the later of—

- (1) 180 days after publication of the Commission's determination under subsection (c); or
- (2) the effective date contained in the voluntary standard.

(e) Revision of voluntary standard

If the sulfur content limit of a voluntary standard that met the conditions of subsection (c)(1) is subsequently revised, the organization responsible for the standard shall notify the Commission no later than 60 days after final approval of the revision. The sulfur content limit of the revised voluntary standard shall become enforceable as a Commission rule promulgated under section 2058 of this title, in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the sulfur content limit of the revised voluntary standard does not meet the requirements of subsection (c)(1)(A), in which case the Commission shall continue to enforce the prior version.

(f) Future rulemaking

The Commission, at any time subsequent to publication of the consumer product safety rule required by subsection (a) or a determination under subsection (c), may initiate a rulemaking in accordance with section 553 of title 5 to modify the sulfur content limit or to include any provision relating only to the composition or characteristics of drywall that the Commission determines is reasonably necessary to protect public health or safety. Any rule promulgated under this subsection shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(Pub. L. 112-266, § 4, Jan. 14, 2013, 126 Stat. 2438.)

CODIFICATION

Section was enacted as part of the Drywall Safety Act of 2012, and not as part of the Consumer Product Safety Act which comprises this chapter.

DRYWALL LABELING REQUIREMENT

Pub. L. 112-266, § 3, Jan. 14, 2013, 126 Stat. 2437, provided that:

“(a) LABELING REQUIREMENT.—Beginning 180 days after the date of the enactment of this Act [Jan. 14, 2013], the gypsum board labeling provisions of standard ASTM C1264-11 of ASTM International, as in effect on the day before the date of the enactment of this Act, shall be treated as a rule promulgated by the Consumer Product Safety Commission under section 14(c) of the Consumer Product Safety Act (15 U.S.C. 2063(c)).

“(b) REVISION OF STANDARD.—If the gypsum board labeling provisions of the standard referred to in subsection (a) are revised on or after the date of the enactment of this Act, ASTM International shall notify the Commission of such revision no later than 60 days after final approval of the revision by ASTM International. The revised provisions shall be treated as a rule pro-

mulgated by the Commission under section 14(c) of such Act (15 U.S.C. 2063(c)), in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the revised provisions do not adequately identify gypsum board by manufacturer and month and year of manufacture, in which case the Commission shall continue to enforce the prior version.”

REVISION OF REMEDIATION GUIDANCE FOR DRYWALL DISPOSAL REQUIRED

Pub. L. 112-266, § 5, Jan. 14, 2013, 126 Stat. 2439, provided that: “Not later than 120 days after the date of the enactment of this Act [Jan. 14, 2013], the Consumer Product Safety Commission shall revise its guidance entitled ‘Remediation Guidance for Homes with Corrosion from Problem Drywall’ to specify that problematic drywall removed from homes pursuant to the guidance should not be reused or used as a component in production of new drywall.”

§ 2057. Banned hazardous products

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 chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product.

(Pub. L. 92-573, § 8, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 97-35, title XII, § 1203(c), Aug. 13, 1981, 95 Stat. 713.)

AMENDMENTS

1981—Pub. L. 97-35 substituted “may, in accordance with” for “may propose and, in accordance with”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

§ 2057a. Banning of butyl nitrite**(a) In general**

Except as provided in subsection (b), butyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

(b) Lawful purposes

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States butyl nitrite for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(c) Definitions

For purposes of this section:

- (1) The term “butyl nitrite” includes n-butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, and mixtures containing these chemicals.
- (2) The term “commercial purpose” means any commercial purpose other than for the