

14, 1967, 81 Stat. 569; Pub. L. 94-284, §20(a), May 11, 1976, 90 Stat. 515; Pub. L. 97-35, title XII, §1203(b)(2), Aug. 13, 1981, 95 Stat. 711; Pub. L. 101-608, title I, §§107(c), 108(c), 110(c), Nov. 16, 1990, 104 Stat. 3112-3114; Pub. L. 110-314, title II, §204(c)(1), (2)(B)-(E), Aug. 14, 2008, 122 Stat. 3042.)

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §204(c)(2)(B), (D), substituted “Commission” for “Secretary of Commerce” and “it” for “he”.

Subsec. (b). Pub. L. 110-314, §204(c)(2)(B)-(D), substituted “Commission finds for” for “Secretary of Commerce finds for”, “Commission finds that” for “Secretary finds that”, “Commission may” for “Secretary may”, and “it may” for “he may”.

Subsec. (c). Pub. L. 110-314, §204(c)(2)(B)-(D), substituted “Commission may” for “Secretary of Commerce may”, “it is required” for “he is required”, “Commission or its” for “Secretary or his”, “Commission or any” for “Secretary or any”, and “its control” for “his control”.

Subsec. (e)(1). Pub. L. 110-314, §204(c)(2)(C), substituted “Commission” for “Secretary” wherever appearing.

Subsec. (e)(2). Pub. L. 110-314, §204(c)(2)(C), (D), substituted “Commission” for “Secretary” and “its” for “his” wherever appearing and substituted “it” for “he”.

Subsec. (e)(4). Pub. L. 110-314, §204(c)(2)(C), substituted “Commission” for “Secretary”.

Subsec. (e)(5), (6). Pub. L. 110-314, §204(c)(2)(E), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: “Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.”

Subsec. (f). Pub. L. 110-314, §204(c)(2)(C), substituted “Commission” for “Secretary”.

Subsec. (g). Pub. L. 110-314, §204(c)(1)(A), substituted “may be commenced by a notice of proposed rulemaking or” for “shall be commenced” in introductory provisions.

Subsec. (i). Pub. L. 110-314, §204(c)(1)(B), (C), in introductory provisions, substituted “unless the” for “unless, not less than 60 days after publication of the notice required in subsection (g) of this section, the” and in concluding provisions, substituted “appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.” for “Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.”

1990—Subsec. (h)(2). Pub. L. 101-608, §108(c), struck out period at end and inserted “, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.”

Subsec. (h)(3). Pub. L. 101-608, §107(c), added par. (3).

Subsec. (k). Pub. L. 101-608, §110(c), added subsec. (k).

1981—Subsecs. (g) to (j). Pub. L. 97-35 added subsecs. (g) to (j).

1976—Subsec. (d). Pub. L. 94-284, §20(a)(1), provided that standards, regulations, and amendments made thereto, be made in accordance with section 553 of title 5, except that oral presentation be available with a transcript of such oral presentation kept.

Subsec. (e)(3). Pub. L. 94-284, §20(a)(2), provided that the court not affirm a standard or regulation unless the findings of the Secretary are supported by substantial evidence on the record.

1967—Pub. L. 90-189 revised section generally to achieve greater flexibility in the promulgation of flammability standards by substituting provisions authorizing the Secretary of Commerce to issue standards of flammability or regulations (including labeling) for fabrics, related materials or products after observing certain specified procedural requirements for provisions which prescribed certain fixed standards of flammability which could be updated only by legislation.

1954—Subsec. (c). Act Aug. 23, 1954, added subsec. (c).

#### CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 30 and 47 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 a note under section 2052 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-284, §20(b), May 11, 1976, 90 Stat. 515, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act [this section] the proceedings for the promulgation of which were begun after the date of the enactment of this Act [May 11, 1976].”

### § 1194. Administration and enforcement

#### (a) Enforcement under Federal Trade Commission Act provisions; civil action to enforce standard or regulation

Except as otherwise specifically provided herein, sections 1192, 1194, 1195, and 1197(b) of this title shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action.

#### (b) Application of Federal Trade Commission Act provisions

The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 of this title in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this chap-

ter; and any such person violating any provision of section 1192 of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

**(c) Rules and regulations**

The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this chapter. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(d) Inspection and analysis of products; cooperation with other governmental entities**

The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this chapter; and

(2) cooperate on matters related to the purposes of this chapter with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

**(e) Penalties**

(1) Any person who knowingly violates a regulation or standard under section 1193 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 1193 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the severity of the risk of injury, the occurrence or absence of injury, the appropriateness of such penalty in relation to the size of the business of the person charged, and such other factors as appropriate.

(3) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the appropriateness of such penalty to the size of the persons charged, the severity of the risk of injury, and<sup>1</sup> the occurrence or absence of injury, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted

from any sums owing by the United States to the person charged.

(4) As used in paragraph (1), the term “knowingly” means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(5)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(June 30, 1953, ch. 164, § 5, 67 Stat. 112; Pub. L. 90-189, § 4, Dec. 14, 1967, 81 Stat. 570; Pub. L. 101-608, title I, §§ 115(c), 118(b), Nov. 16, 1990, 104 Stat. 3120, 3122; Pub. L. 110-314, title II, § 217(a)(3), (b)(1)(C), Aug. 14, 2008, 122 Stat. 3058, 3059.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a), (b), and (c), 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

2008—Subsec. (e)(1). Pub. L. 110-314, § 217(a)(3)(A), (B), substituted “\$100,000” for “\$5,000” and “\$15,000,000” for “\$1,250,000”.

Subsec. (e)(2). Pub. L. 110-314, § 217(b)(1)(C)(i), substituted “nature, circumstances, extent, and gravity”

<sup>1</sup> So in original. The word “and” probably should not appear.

for “nature and number” and “absence of injury,” for “absence of injury, and” and inserted “, and such other factors as appropriate” before period at end.

Subsec. (e)(3). Pub. L. 110-314, §217(b)(1)(C)(ii)(III), which directed insertion of “, and such other factors as appropriate” before the period, was executed by making the insertion before period at end of second sentence, to reflect the probable intent of Congress.

Pub. L. 110-314, §217(b)(1)(C)(ii)(II), which directed the substitution of “absence of injury,” for “absence of injury, and,” could not be executed because “absence of injury, and” did not appear in par. (3).

Pub. L. 110-314, §217(b)(1)(C)(ii)(I), substituted “nature, circumstances, extent, and gravity” for “nature and number”.

Subsec. (e)(5)(B). Pub. L. 110-314, §217(a)(3)(C), which directed the substitution of “December 1, 2011,” for “December 1, 1994,” in par. (6)(B) of subsec. (e)(1), was executed by making the substitution in par. (5)(B) of subsec. (e) to reflect the probable intent of Congress because subsec. (e) does not contain a par. (6).

1990—Subsec. (a). Pub. L. 101-608, §118(b), inserted at end “In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action.”

Subsec. (e). Pub. L. 101-608, §115(c), added subsec. (e). 1967—Subsec. (c). Pub. L. 90-189, §4(a), inserted “, including provisions for maintenance of records relating to fabrics, related materials, and products,” after “rules and regulations” and inserted sentence making violations of such rules and regulations unlawful and an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

Subsec. (d)(1). Pub. L. 90-189, §4(b), substituted “product, fabric or related material” for “article of wearing apparel or fabric”.

Subsec. (d)(2). Pub. L. 90-189, §4(b), substituted “or territory or with the District of Columbia or the Commonwealth of Puerto Rico” for “, Territory, or possession or with the District of Columbia”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-314, title II, §217(a)(4), Aug. 14, 2008, 122 Stat. 3058, provided that: “The amendments made by this subsection [amending this section and sections 1264 and 2069 of this title] shall take effect on the date that is the earlier of the date on which final regulations are issued under subsection (b)(2) [set out as a note under section 2069 of this title] or 1 year after the date of enactment of this Act [Aug. 14, 2008].”

#### 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.

#### 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