

“(1) the term ‘bedding product’ means—

“(A) an item that is used for sleeping or sleep-related purposes; or

“(B) any component or accessory with respect to an item described in subparagraph (A), without regard to whether the component or accessory, as applicable, is used—

“(i) alone; or

“(ii) along with, or contained within, that item;

“(2) the term ‘California standard’ means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117–2013, entitled ‘Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture’, originally published June 2013, as in effect on the date of enactment of this Act [Dec. 27, 2020];

“(3) the terms ‘foundation’ and ‘mattress’ have the meanings given those terms in section 1633.2 of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act [Dec. 27, 2020]; and

“(4) the term ‘upholstered furniture’—

“(A) means an article of seating furniture that—

“(i) is intended for indoor use;

“(ii) is movable or stationary;

“(iii) is constructed with an upholstered seat, back, or arm;

“(iv) is—

“(I) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture; or

“(II) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

“(v) together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

“(B) includes an article of furniture that is intended for use by a child; and

“(C) does not include—

“(i) a mattress;

“(ii) a foundation;

“(iii) any bedding product; or

“(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

“(C) ADOPTION OF STANDARD.—

“(1) IN GENERAL.—Beginning on the date that is 180 days after the date of enactment of this Act [Dec. 27, 2020], and except as provided in paragraph (2), the California standard shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).

“(2) TESTING AND CERTIFICATION.—A fabric, related material, or product to which the California standard applies as a result of paragraph (1) shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.

“(3) CERTIFICATION LABEL.—Each manufacturer of a product that is subject to the California standard as a result of paragraph (1) shall include the statement ‘Complies with U.S. CPSC requirements for upholstered furniture flammability’ on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard.

“(d) PREEMPTION.—

“(1) IN GENERAL.—Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act

of 2008 [Pub. L. 110–314] (15 U.S.C. 2051 note), and except as provided in subparagraphs (B) and (C) of paragraph (2), no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

“(2) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act [probably means “this title”] or the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) may be construed to preempt or otherwise affect—

“(A) any State or local law, regulation, code, standard, or requirement that—

“(i) concerns health risks associated with upholstered furniture; and

“(ii) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;

“(B) sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of this Act [Dec. 27, 2020]; or

“(C) the California standard.”

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86–613, §18, (formerly §17), July 12, 1960, 74 Stat. 380, as amended Pub. L. 89–756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91–113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190, set out as a note under section 1261 of this title.

§ 1192. Prohibited transactions

(a) Nonconforming products

The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title, 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.].

(b) Nonconforming components

The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title, and which has been shipped or received in commerce 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.].

(June 30, 1953, ch. 164, §3, 67 Stat. 111; Pub. L. 90–189, §2, Dec. 14, 1967, 81 Stat. 568.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, 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 “or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title” for “or for the purpose of sale or delivery after sale in commerce, of any article of wearing apparel which under the provisions of section 1193 of this title is so highly flammable as to be dangerous when worn by individuals”.

Subsecs. (b), (c). Pub. L. 90-189 struck out former subsec. (b) which made the sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 1193 of this title was so highly flammable as to be dangerous when worn by individuals unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act, redesignated subsec. (c) as (b) and, in subsec. (b) as so redesignated, substituted “product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title” for “article of wearing apparel made of fabric which under section 1193 of this title is so highly flammable as to be dangerous when worn by individuals”.

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.

§ 1193. Flammability standards or regulations**(a) Proceedings by Commission for determination**

Whenever the Commission finds on the basis of the investigations or research conducted pursuant to section 1201 of this title that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, it shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Necessary findings; effective date; exemptions

Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become

effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Commission finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Commission finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

(c) Collection of information by Commission; confidential status of trade secrets and related information; disclosure of confidential information

The Commission may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which it is required or authorized to make pursuant to this chapter. All information reported to or otherwise obtained by the Commission or its representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Commission or any officer or employee under its control, from the duly authorized committees of the Congress.

(d) Applicability of section 553 of title 5; oral presentation

Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) Judicial review; additional information before Commission; applicability of sections 701 to 706 of title 5; finality of judgment; survival of action

(1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other