

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

officer designated by him¹ for that purpose. The Commission thereupon shall file in the court the record of the proceedings on which the Commission based the standard or regulation, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendations, if any, for the modification or setting aside of its original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(f) Transcript of proceedings

A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Commission to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).

(g) Promulgation of regulation; commencement of proceeding; publication of prescribed notice of proposed rulemaking

A proceeding for the promulgation of a regulation under this section for a fabric, related ma-

terial, or product may be commenced by a notice of proposed rulemaking or by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the fabric, related material, or product and the nature of the risk of injury associated with the fabric, related material, or product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation.²

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(h) Voluntary standard; publication as proposed regulation; prerequisites for reliance by Commission

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (g)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation, would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under this section.

(2) If the Commission determines that—

¹ So in original. Probably should be "it".

² So in original. Probably should be "regulation; and".

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (g)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, 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.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(i) Publication of proposed rule by Commission; preliminary regulatory analysis; contents; transmission of notice by Commission to Committees

No regulation may be proposed by the Commission under this section unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (g)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (g)(6) and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard

that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the 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.

(j) Final regulatory analysis; contents; publication; judicial review of regulation

(1) The Commission shall not promulgate a regulation under this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (i) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the

whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(k) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(June 30, 1953, ch. 164, § 4, 67 Stat. 112; Aug. 23, 1954, ch. 833, 68 Stat. 770; Pub. L. 90-189, § 3, Dec. 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 chapter; 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 business of the persons charged, the severity of the risk of injury, and¹ 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—

¹ So in original. The word “and” probably should not appear.