posed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Jan. 2, 1951, ch. 1194, § 7, 64 Stat. 1135.)

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 1178. Nonapplicability of chapter to certain machines and devices

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, § 9, as added Pub. L. 87–840, § 6, Oct. 18, 1962, 76 Stat. 1077.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as an Effective Date of 1962 Amendment note under section 1171 of this title.

CHAPTER 25—FLAMMABLE FABRICS

Sec.
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§ 1191. Definitions

As used in this chapter—

(a) The term ''person'' means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term ''commerce'' means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term ''territory'' includes the insular possessions of the United States and also any territory of the United States.

(d) The term ''article of wearing apparel'' means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term ''interior furnishing'' means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term ''fabric'' means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section.

(g) The term ''related material'' means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in paragraph (h) of this section.

(h) The term ''product'' means any article of wearing apparel or interior furnishing.

(i) The term ''Commission'' means the Consumer Product Safety Commission.

(j) The term ''Federal Trade Commission Act'' means the Act of Congress entitled ''An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes'', approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, § 2, 67 Stat. 111; Pub. L. 90–189, § 1, Dec. 14, 1967, 81 Stat. 568; Pub. L. 92–573, § 30(b), Oct. 27, 1972, 86 Stat. 1231.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (j), 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—Par. (b). Pub. L. 90–189, § 1(1), reduced from capital to lower-case the first letter of ''territory'' wherever appearing and redefined ''commerce'' to include commerce between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

Par. (c). Pub. L. 90–189, § 1(2), reduced from capital to lower-case the first letter of ''territory'' wherever appearing.

Par. (d). Pub. L. 90–189, § 1(3), struck out provisions which excepted hats, gloves, and footwear from definition of ''article of wearing apparel'' provided that: such hats did not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals; such gloves were not more than fourteen inches in length and were not affixed to or did not form an integral part of another garment; and such footwear did not consist of hosiery in whole or in part and was not affixed to or did not form an integral part of another garment.

Par. (e). Pub. L. 90–189, § 1(5), (6), added par. (e) and redesignated former par. (e) as (f).

Par. (f). Pub. L. 90–189, § 1(4), (5), (7), redesignated par. (e) as (f), substituted ''(except fiber, filament, or yarn for other than retail sale)'' for ''(other than fiber, filament, or yarn)'' and ''for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section'' for ''or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter'', and struck out former par. (f) which defined ''interlining''.

Pars. (g) to (j). Pub. L. 90–189, § 1(5), (8), added pars. (g) and (h) and redesignated former pars. (g) and (h) as (i) and (j), respectively.

EFFECTIVE DATE

Section 12 of act June 30, 1953, provided: ''This Act [enacting this chapter] shall take effect one year after the date of its passage [June 30, 1953].''

SHORT TITLE

Section 1 of act June 30, 1953, provided: ''This Act [enacting this chapter] may be cited as the 'Flammable Fabrics Act'.''

SAVINGS PROVISION

Section 11 of Pub. L. 90–189 provided that: ''Notwithstanding the provisions of this Act [amending this section and sections 1192 to 1195, 1197, 1198, and 1200 of this title and enacting sections 1201 to 1204 of this title], the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended [this chapter], on the day preceding the date of enactment of this Act [Dec. 14, 1967], shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act.''

TRANSFER OF FUNCTIONS

''Consumer Product Safety Commission'' substituted for ''Federal Trade Commission'' in par. (i) pursuant to section 30(b) of Pub. L. 92–573, which is classified to section 2079(b) of this title and which transferred functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

APPROPRIATIONS

Section 13 of act June 30, 1953, as amended by Pub. L. 90–189, § 9, Dec. 14, 1967, 81 Stat. 573; Pub. L. 92–542, Oct. 25, 1972, 86 Stat. 1108, appropriated $1,500,000 for the fiscal year ending June 30, 1968, $2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and $4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this chapter.

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 Consumer Product Safety 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 Consumer Product Safety 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 Consumer Product Safety Commission may obtain from any person by regulation or subpena 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 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 it 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) of this section 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 this section 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) Any action instituted under this subsection shall survive, notwithstanding any change in the persons occupying the office of Commissioner or any vacancy in such office.

(6) 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) of this section shall be furnished by the Commission to any interested party at its 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) of this section.

(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 material, or product shall be commenced 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.[1]

(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) of this section 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) of this section, 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—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (g)(6) of this section 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

[1] So in original. Probably should be ''regulation; and''.

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, not less than 60 days after publication of the notice required in subsection (g) of this section, 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) of this section 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) of this section 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) of this section; 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 Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(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) of this section 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. 92–573, § 30(b), Oct. 27, 1972, 86 Stat. 1231; 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.)

AMENDMENTS

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

Section 20(b) of Pub. L. 94–284 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]."

TRANSFER OF FUNCTIONS

"Consumer Product Safety Commission" substituted for "Secretary of Commerce", "Commission" substituted for "Secretary", "it" substituted for "he", and "its" substituted for "his" wherever appearing in subsecs. (a) to (f) except in subsec. (e)(5), where "persons occupying the office of Commissioner" was substituted for "person occupying the office of Secretary", pursuant to section 30(b) of Pub. L. 92–573, which is classified to section 2079(b) of this title and which transferred functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

§ 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 $5,000 for each such violation, except that the maximum civil penalty shall not exceed $1,250,000 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 and number of the violations, the severity of the risk of injury, the occurrence or absence of injury, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(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 and number 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, and the occurrence or absence of injury. 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, 1994, 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.)

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

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''.

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.

§ 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 commerce, or by sale 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 commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

(June 30, 1953, ch. 164, § 6, 67 Stat. 113; Pub. L. 90–189, § 5, Dec. 14, 1967, 81 Stat. 571.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), 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, § 5(a), inserted ‘‘, or a rule or regulation prescribed under section 1194 (c) of this title,’’ after ‘‘section 1192 of this title’’ and substituted ‘‘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)’’ for ‘‘or in the United States court of any Territory for the district or Territory in which such person resides or transacts business’’.

Subsec. (b). Pub. L. 90–189, § 5(b), substituted ‘‘product’’ for ‘‘article of wearing apparel’’, ‘‘product, fabric, or related material’’ for ‘‘article of wearing apparel or fabric’’ in two places and ‘‘products, fabrics, or related materials’’ for ‘‘articles of wearing apparel or fabrics’’, and inserted ‘‘or related material’’ before ‘‘has been introduced in commerce’’.

Subsec. (c). Pub. L. 90–189, § 5(b), substituted ‘‘product, fabric, or related material’’ for ‘‘article of wearing apparel or fabric’’.

Subsec. (d). Pub. L. 90–189, § 5(b), substituted ‘‘products, fabrics, or related materials’’ for ‘‘articles of wearing apparel or fabrics’’ wherever appearing and struck out ‘‘for wearing apparel purposes’’ before ‘‘until properly and adequately treated or processed’’ in two places.

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.

§ 1196. Penalties

Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty

of a misdemeanor, and upon conviction thereof shall be fined not more than $5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter.

(June 30, 1953, ch. 164, § 7, 67 Stat. 114; Pub. L. 95–631, § 8(b), Nov. 10, 1978, 92 Stat. 3747.)

AMENDMENTS

1978—Pub. L. 95–631 authorized penalties for noncompliance with section 1202(c) of this title.

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.

§ 1197. Guaranties

(a) Defense to prosecution

No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) False guaranty

It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, § 8, 67 Stat. 114; Pub. L. 90–189, § 6, Dec. 14, 1967, 81 Stat. 572.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), 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 ''product, fabric, or related material'' for ''wearing apparel or fabric'' wherever appearing and ''in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title'' for ''under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals'', added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90–189 substituted ''product, fabric, or related material'' for ''wearing apparel or fabric'' wherever appearing.

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.

§ 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming

goods in response to a demand from the Secretary of the Treasury as set forth above.

(June 30, 1953, ch. 164, § 9, 67 Stat. 114; Pub. L. 90–189, § 7, Dec. 14, 1967, 81 Stat. 572.)

AMENDMENTS

1967—Pub. L. 90–189 substituted provisions prohibiting the delivery from customs of imported products, fabrics, or related materials to which flammability standards are applicable, except as provided in section 1499 of title 19, and requiring the Secretary of the Treasury to demand redelivery in the event any such imported product, fabric, or related material is delivered from customs custody under bond and fails to conform with an applicable flammability standard, and in the absence of such redelivery to assert a claim for liquidated damages for breach of the bond, which damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand by the Secretary for provisions which authorized the Commission to prohibit any person who had exported or who had attempted to export from any foreign country into the United States any wearing apparel or fabric which was so highly flammable as to be dangerous when worn by individuals from further participation in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bonds with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this chapter.

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.

§ 1199. Chapter as additional legislation

The provisions of this chapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to any other person or circumstances shall not be affected thereby.

(June 30, 1953, ch. 164, § 10, 67 Stat. 115.)

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.

§ 1200. Persons excluded from operation of chapter

The provisions of this chapter shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this chapter: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this chapter contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title.

(June 30, 1953, ch. 164, § 11, 67 Stat. 115; Pub. L. 90–189, § 8, Dec. 14, 1967, 81 Stat. 573.)

AMENDMENTS

1967—Pub. L. 90–189 substituted ''in transporting a product, fabric, or related material'' for ''with respect to an article of wearing apparel or fabric'', ''product, fabric, or related material'' for ''article of wearing apparel or fabric'' in two places, and ''such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title'' for ''to render such article or fabric not so highly flammable, under the provisions of section 1193 of this title, 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.

§ 1201. Study and investigation; research, development and training

(a) The Consumer Product Safety Commission shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials.

(b) In cooperation with appropriate public and private agencies, the Consumer Product Safety Commission is authorized to—

(1) conduct research into the flammability of products, fabrics, and materials;

(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

(3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.

(June 30, 1953, ch. 164, § 14, as added Pub. L. 90–189, § 10, Dec. 14, 1967, 81 Stat. 573; amended Pub. L. 92–573, § 30(b), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 96–470, title I, § 114, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 97–35, title XII, § 1211(e), Aug. 13, 1981, 95 Stat. 721.)

CODIFICATION

In subsec. (a), the words ''in cooperation with the Secretary of Commerce'' which followed ''Consumer Product Safety Commission'' have been omitted from the Code in view of the transfer of functions of the Secretary of Commerce under this chapter to the Con-

sumer Product Safety Commission pursuant to section 30(b) of Pub. L. 92–573 which is classified to section 2079(b) of this title. This transfer would result in this phrase being redundant in that it would provide for the Consumer Product Safety Commission to cooperate with itself.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 struck out provisions relating to the submission of an annual report by the Secretary of Health and Human Services to the President and to the Congress containing the results of a study and investigation.

1980—Subsec. (b). Pub. L. 96–470 struck out provision requiring the Secretary to report the results of activities under this subsection to Congress.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

TRANSFER OF FUNCTIONS

''Consumer Product Safety Commission'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) and for ''Secretary of Commerce'' in subsec. (b) pursuant to section 30(b) of Pub. L. 92–573, which is classified to section 2079(b) of this title and which transferred functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

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 Consumer Product Safety Commission (hereinafter in this section referred to as 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.

(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.)

AMENDMENTS

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

sonable 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) of this section, 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) of this section, 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; definitions

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.

(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.)

REFERENCES IN TEXT

Section 11 of the Act of December 14, 1967 (Public Law 90–189), referred to in subsec. (d)(1), is set out as a note under section 1191 of this title.

AMENDMENTS

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.

§ 1204. Congressional veto of flammability regulations

(a) Transmission to Congress

The Consumer Product Safety Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any flammability regulation promulgated by the Commission under section 1193 of this title.

(b) Disapproval by concurrent resolution

Any regulation specified in subsection (a) of this section shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): ''That the Congress disapproves the flammability regulation which was promulgated under the Flammable Fabrics Act by the Consumer Product Safety Commission with respect to and which was transmitted to the Congress on and disapproves the regulation for the following reasons: .''; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b) of this section.

(June 30, 1953, ch. 164, § 17, as added Pub. L. 97–35, title XII, § 1207(d), Aug. 13, 1981, 95 Stat. 719.)

REFERENCES IN TEXT

The Flammable Fabrics Act, referred to in subsec. (b), is act June 30, 1953, ch. 164, 67 Stat. 111, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

PRIOR PROVISIONS

A prior section 1204, act June 30, 1953, ch. 164, § 17, as added Dec. 14, 1967, Pub. L. 90–189, § 10, 81 Stat. 574; amended May 11, 1976, Pub. L. 94–284, § 19, 90 Stat. 514, related to the National Advisory Committee for Flammable Fabrics Act, prior to repeal by Pub. L. 97–35, title XII, § 1205(b), Aug. 13, 1981, 95 Stat. 716, eff. Aug. 13, 1981.

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 30 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

CHAPTER 26—HOUSEHOLD REFRIGERATORS

Sec.
1211. Prohibition against transportation of refrigerators without safety devices.
1212. Violations; misdemeanor; penalties.
1213. Publication of safety standards in Federal Register.
1214. ''Interstate commerce'' defined.

§ 1211. Prohibition against transportation of refrigerators without safety devices

It shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 1213 of this title.

(Aug. 2, 1956, ch. 890, § 1, 70 Stat. 953.)

REFERENCES IN TEXT

For date this section takes effect, referred to in text, see Effective Date note below.

EFFECTIVE DATE

Section 5 of act Aug. 2, 1956, provided that: ''This Act [this chapter] shall take effect on the date of its enactment [Aug. 2, 1956], except that the first section of this Act [this section] shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this Act [section 1213 of this title]. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards.''

TRANSFER OF FUNCTIONS

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§ 1212. Violations; misdemeanor; penalties

Any person who violates section 1211 of this title shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both.

(Aug. 2, 1956, ch. 890, § 2, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

§ 1213. Publication of safety standards in Federal Register

The Consumer Product Safety Commission shall prescribe and publish in the Federal Register commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after August 2, 1956.

(Aug. 2, 1956, ch. 890, § 3, 70 Stat. 953; Pub. L. 92–573, § 30(c), Oct. 27, 1972, 86 Stat. 1231.)

TRANSFER OF FUNCTIONS

''Consumer Product Safety Commission'' substituted for ''Secretary of Commerce'' pursuant to section 30(c)