
FLAMMABLE FABRICS ACT

(Codified at 15 U.S.C. §§ 1191–1204)

(Public Law 83-88; 67 Stat. 111, June 30, 1953, as amended)

(This Act incorporates amendments made by Public Law 83-629, 68 Stat. 770, August 23, 1954; Public Law 90-189, 81 Stat. 568, December 14, 1967; the Consumer Product Safety Commission Improvements Act of 1976, Public Law 94-284, 90 Stat. 503, May 11, 1976; the Consumer Product Safety Authorization Act of 1978, Public Law 95-631, 92 Stat. 3742, November 10, 1978; section 114 of the Congressional Reports Elimination Act of 1980, Public Law 96-470, 94 Stat. 2237, October 19, 1980; the Consumer Product Safety Amendments of 1981, Public Law 97-35, title 12, subtitle A, 95 Stat. 703, August 13, 1981; the Consumer Product Safety Improvement Act of 1990, Public Law 101-608, 104 Stat. 3110, November 16, 1990; and the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008)).

NOTE—See section 30 of the Consumer Product Safety Act which transferred the functions of the Secretary of Health, Education and Welfare (now Health and Human Services), the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act to the Consumer Product Safety Commission.

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(References in brackets [] are to title 15, United States Code)

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SHORT TITLE

SEC. 1. [15 U.S.C. § 1191n]

This Act may be cited as the “Flammable Fabrics Act”.

DEFINITIONS

SEC. 2. [15 U.S.C. § 1191]

As used in this Act—

(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 subsection (h).

(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 subsection (h).

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(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.].

PROHIBITED TRANSACTIONS

SEC. 3. [15 U.S.C. § 1192]

(a) 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 4 of this Act, 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) 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 4 of this title **[15 U.S.C. § 1193]** 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.]**.

REGULATION OF FLAMMABLE FABRICS

SEC. 4. [15 U.S.C. § 1193]

(a) Whenever the Commission finds on the basis of the investigations or research conducted pursuant to section 14 of this title, **[15 U.S.C. § 1201]** 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.

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(b) 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) 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 Act. 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 of the United States Code, 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 Act or when relevant in any proceeding under this Act. 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) Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, United States Code, 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.

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(e)(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 him 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 of the United States Code.

(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 of the United States Code 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 of the United States Code.

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(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) 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 Act, 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)(1) A proceeding for the promulgation of a regulation under this section for a fabric, related material, or a 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.

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the

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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. [sic]

(h)(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—

(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.

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(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) 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 5(a)(3) of the Consumer Product Safety Act 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)(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:

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(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 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 that 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.

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(k) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United State Code, 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.

ADMINISTRATION AND ENFORCEMENT

SEC. 5. [15 U.S.C. § 1194]

(a) Except as otherwise specifically provided herein, sections 3, 5, 6, and 8(b) of this Act, **[15 U.S.C. §§ 1192, 1194, 1195, and 1197(b)]**, 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 4 **[15 U.S.C. § 1193]** 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 24 of the Consumer Product Safety Act **[15 U.S.C. § 2073]** shall apply to any such action.

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 of this title, [§ 3 of this Act], 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 3 of this Act, **[15 U.S.C. § 1192]**, 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) 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 Act. The violation of such rules and regulations shall be unlawful and shall

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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) 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 Act; and

(2) cooperate on matters related to the purposes of this Act 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)(1) Any person who knowingly violates a regulation or standard under section 4 shall be subject to a civil penalty not to exceed \$100,000 {currently \$8,000} for each such violation except that the maximum civil penalty shall not exceed \$15,000,000 {currently \$1,825,000} for any related series of violations.

Effective date.--

[Section 217 (a)(4) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008)]

{Not technically part of the Flammable Fabrics Act}

The amendments made by this subsection shall take effect on the date that is the earlier of the date on which final regulations providing an interpretation of penalty factors are issued under subsection 5((e)(2) or 1 year after the date of enactment of this Act. {The current penalty amounts will continue in effect until the new amounts take effect.}

(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 4 of this Act [**15 U.S.C. § 1193**], 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.

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Effective date.--

[Section 217 of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008)]

{Not technically part of the Flammable Fabrics Act}

Civil penalty criteria.--Not later than 1 year after the date of enactment of this Act, and in accordance with the procedures of section 553 of title 5, United States Code, the Commission shall issue a final regulation providing its interpretation of the penalty factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a).

(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, and 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 or due care to ascertain the truth of representations.

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

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

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

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

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

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

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

(D) For purposes of this subsection:

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

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

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

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

INJUNCTION AND CONDEMNATION PROCEEDINGS

SEC. 6. [15 U.S.C. § 1195]

(a) Temporary injunction; venue

Whenever the Commission has reason to believe that any person is violating or is about to violate section 3 [15 U.S.C. § 1192], or a rule or regulation prescribed under section 5(c), of this Act 15 U.S.C. [§ 1194(c)] and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act 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 [15 U.S.C. § 41 et seq.] 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

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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) 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 3 of this Act of this title **[15 U.S.C. § 1192]**, 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) 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) 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.

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PENALTIES

SEC. 7. [15 U.S.C. § 1196]

Violation of section 3 or 8(b) of this Act or failure to comply with section 15(c) of this Act is punishable by—

- (1) imprisonment for not more than 5 years for a knowing and willful violation of that section;
- (2) a fine determined under section 3571 of title 18, United States Code; or
- (3) both.

[Section 217 (d) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008)]

{Not technically part of the Flammable Fabrics Act}

Criminal Penalties to Include Asset Forfeiture: (1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this Act or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term 'criminal violation' means a violation of this Act or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

GUARANTIES

SEC. 8. [15 U.S.C. § 1197]

(a) No person shall be subject to prosecution under section 7 of this Act [15 U.S.C. § 1196] for a violation of section 3 of this Act [15 U.S.C. § 1192] 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 4 of this Act [15 U.S.C. § 1193] 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 4 of this Act [15 U.S.C. § 1193], 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 other 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. {16 CFR Part 1608}

(b) It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false

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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.].

SHIPMENTS FROM FOREIGN COUNTRIES; DEMAND FOR REDELIVERY; CLAIM FOR LIQUIDATED DAMAGES

SEC. 9. [15 U.S.C. § 1198]

An imported product, fabric, or related material to which flammability standards under this Act are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19 [499 of the **Tariff Act of 1930, as amended**]. 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 [499 of the Tariff Act of 1930, [19 U.S.C. § 1499] as amended], 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.

CHAPTER AS ADDITIONAL LEGISLATION

SEC. 10. [15 U.S.C. § 1199]

The provisions of this Act 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 Act or the application thereof to any person or circumstances is held invalid the remainder of the Act and the application of such provisions to any other person or circumstances shall not be affected thereby.

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EXCLUSIONS

SEC. 11. [15 U.S.C. § 1200]

The provisions of this Act 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 Act: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this Act 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 4 of this Act **[15 U.S.C. § 1193]**.

EFFECTIVE DATE

SEC. 12.

This Act shall take effect one year after the date of its passage.
{passed June 30, 1953}

AUTHORIZATION OF APPROPRIATIONS

SEC. 13.

There are hereby authorized to be appropriated \$1,500,000 for the fiscal year ending June 30, 1968, \$2,500,000 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 Act.

STUDY AND INVESTIGATION; RESEARCH, DEVELOPMENT AND TRAINING

SEC. 14. [15 U.S.C. § 1201]

(a) The Secretary of Health, Education, and Welfare {Health and Human Services} in cooperation with the 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 Commission is authorized to—

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

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(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.

EXEMPTIONS

SEC. 15. [15 U.S.C. § 1202]

(a) This Act 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 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 Act 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) This Act 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 Act 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) 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 Act, 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 the basis for such flammability

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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 in 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.

(d) Notwithstanding any other provision of this section, the Consumer Product Safety Commission may prohibit, by order, a person from exporting from the United States for purpose of sale any fabric or related material that the Commission determines is not in conformity with an applicable standard or rule under this Act, unless the importing country has notified the Commission that such country accepts the importation of such fabric or related material, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the fabric or related material under the circumstances.

(e) Nothing in this section shall apply to any fabric or related material, the export of which is permitted by the Secretary of the Treasury pursuant to section 17(e).

PREEMPTION OF FEDERAL STANDARDS

SEC. 16. [15 U.S.C. § 1203]

(a) 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 Act, 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 Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

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(b) 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 Act 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 Act.

(c)(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), 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 Act, 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 Act, 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 Act 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, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

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(d) In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this Act includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189).

PREEMPTION RULE.

[Sec. 231 of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008)]

{Not technically part of the Flammable Fabrics Act}

(a) *Rule With Regard to Preemption.*--The provisions of sections 25 and 26 of the Consumer Product Safety Act (15 U.S.C. 2074 and 2075, respectively), section 18 of the Federal Hazardous Substances Act (15 U.S.C. 1261 note), section 16 of the Flammable Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison Packaging Prevention Act of 1970 (15 U.S.C. 1476) establishing the extent to which those Acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law may not be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation thereunder, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation. In accordance with the provisions of those Acts, the Commission may not construe any such Act as preempting any cause of action under State or local common law or State statutory law regarding damage claims.

(b) *Preservation of Certain State Law.*--Nothing in this Act or the Federal Hazardous Substances Act shall be construed to preempt or otherwise affect any warning requirement relating to consumer products or substances that is established pursuant to State law that was in effect on August 31, 2003.

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CONGRESSIONAL VETO OF FLAMMABILITY REGULATIONS

SEC. 17. [15 U.S.C. § 1204]

(a) The 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 4.

(b) Any regulation specified in subsection (a) 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) 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) 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).

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