

(d) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by striking out "with the concurrence of the Attorney General" and inserting in lieu thereof "(subject to subsection (b) (7))".

SUBSTANTIAL PRODUCT HAZARD

SEC. 12. (a) (1) Section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)) is amended by adding at the end the following: "An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, the product with respect to which the order was issued."

77A Stat. 11.

(2) Section 15 of such Act (15 U.S.C. 2064) is amended by adding at the end thereof the following new subsection:

15 USC 2076.

15 USC 2061.

"(g) (1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 27(b) (7)) or the Attorney General may, in accordance with section 12(e) (1), apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

"(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

"(3) The amount in controversy requirement of section 1331 of title 28, United States Code, does not apply with respect to the jurisdiction of a district court of the United States to issue or extend a preliminary injunction under this subsection."

(b) Section 19(a) (5) of such Act (15 U.S.C. 2068(a) (5)) is amended by (1) striking out "and to" and inserting in lieu thereof "to", and (2) inserting "and to prohibited acts" after "refund".

(c) Section 22 of such Act (15 U.S.C. 2071) is amended by—

(1) striking out in subsection (a) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(a) The United States district courts shall have jurisdiction to take the following action:

15 USC 2068.

"(1) Restrain any violation of section 19.

"(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

15 USC 2064.

"(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule."; and

(2) striking out in subsection (b) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

“(b) Any consumer product—

“(1) which fails to conform with an applicable consumer product safety rule, or

“(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d), when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found.”.

15 USC 2064.

PROHIBITED ACTS AND ENFORCEMENT

SEC. 13. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended by—

(1) inserting “or fail or refuse to establish or maintain records,” immediately after “copying of records,” in paragraph (3); and

(2) striking out “or” at the end of paragraph (6), striking out the period at the end of paragraph (7) and inserting in lieu thereof “; or”, and adding after paragraph (7) the following new paragraphs:

“(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

“(9) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).”.

15 USC 2062.

15 USC 2076.

(b) Section 20(a)(1) of such Act (15 U.S.C. 2069) is amended by striking out “or (7)” and inserting in lieu thereof “(7), (8), or (9)”.

CONGRESSIONAL REVIEW OF PROPOSED ADMINISTRATIVE ACTIONS OF THE COMMISSION

SEC. 14. Section 27 of the Consumer Product Safety Act (15 U.S.C. 2076) is amended by adding at the end thereof the following new subsection:

“(1) (1) Except as provided in paragraph (2)—

“(A) the Commission shall transmit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives each consumer product safety rule proposed after the date of the enactment of this subsection and each regulation proposed by the Commission after such date under section 2 or 3 of the Federal Hazardous Substances Act, section 3 of the Poison Prevention Packaging Act of 1970, or section 4 of the Flammable Fabrics Act; and

“(B) no consumer product safety rule and no regulation under a section referred to in subparagraph (A) may be adopted by the Commission before the thirtieth day after the date the proposed rule or regulation upon which such rule or regulation was based was transmitted pursuant to subparagraph (A).

“(2) Paragraph (1) does not apply with respect to a regulation under section 2(q) of the Federal Hazardous Substances Act respecting a hazardous substance the distribution of which is found under paragraph (2) of such section to present an imminent hazard or a regulation under section 3(e) of such Act respecting a toy or other article intended for use by children the distribution of which is found under paragraph (2) of such section to present an imminent hazard.”.

Proposed safety rules and regulations; transmittal to congressional committees.

15 USC 1261, 1262, 1472.

15 USC 1193.

Children's toys.

INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

SEC. 15. Section 29 of the Consumer Product Safety Act (15 U.S.C. 2078) is amended by adding at the end thereof the following new subsection:

“(e) The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a)(2) is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

“(A) any copy of any such report, or

“(B) any information contained in any such report, which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b).”

15 USC 2055.

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 16. Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to read as follows:

“(d) A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act. Such a rule shall identify the risk of injury proposed to be regulated under this Act and shall be promulgated in accordance with section 553 of title 5, United States Code; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.”

15 USC 1261
note.
15 USC 1471
note, 1191 note.

EFFECT ON STATE LAW

SEC. 17. (a) Section 18(b) of the Federal Hazardous Substances Act is amended to read as follows:

“(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

15 USC 1261
note.15 USC 1261,
1262.

“(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

15 USC 1262.

“(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

“(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

“(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

“(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement 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 requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

“(B) A regulation under subparagraph (A) granting an exemption for a requirement 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.

Notice; oral presentation of views.

“(4) Paragraph (1) (B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

"Commission."

"(5) As used in this subsection, the term 'Commission' means the Consumer Product Safety Commission."

(b) Section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) is amended to read as follows:

"PREEMPTION

"SEC. 16. (a) Except as provided in subsections (b) and (c), 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.

"(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.

Notice; oral presentation of views.

“(d) 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 Act includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189); and

Flammability standard or regulation.

“(2) the term ‘Commission’ means the Consumer Product Safety Commission.”

15 USC 1191 note.

“‘Commission.’”

(c) Section 8 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1476) is amended (1) by striking out “Whenever” and inserting in lieu thereof “(a) Except as provided in subsections (b) and (c), whenever”, and (2) by adding at the end thereof the following:

“(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement 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 standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

“(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

“(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement 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 standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

“(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State

Notice; oral presentation of views.

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.”

(d) Subsections (b) and (c) of section 26 of the Consumer Product Safety Act (15 U.S.C. 2075) are amended to read as follows:

“(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.

“(c) Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation—

“(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and

“(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or 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 standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.”

TITLE 18 PROTECTION

SEC. 18. Section 1114 of title 18, United States Code, is amended by inserting “, the Consumer Product Safety Commission,” immediately after “Department of Health, Education, and Welfare”.

FLAMMABLE FABRICS ACT ADVISORY COMMITTEE

SEC. 19. Section 17(a) of the Flammable Fabrics Act (15 U.S.C. 1204(a)) is amended by inserting after the first sentence the following new sentence: “The members of the Committee who are appointed to represent manufacturers shall include representatives from (1) the natural fiber producing industry, (2) the manmade fiber producing industry, and (3) manufacturers of fabrics, related materials, apparel, or interior furnishings.”

Membership.

FLAMMABILITY STANDARDS AND REGULATIONS

SEC. 20. (a) (1) Subsection (d) of section 4 of the Flammable Fabrics Act (15 U.S.C. 1193(d)) is amended to read as follows:

“(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.”

(2) Subsection (e) (3) of section 4 of such Act is amended by adding at the end thereof the following: “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.”

(b) The amendments made by subsection (a) shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act the proceedings for the promulgation of which were begun after the date of the enactment of this Act.

“Record.”

Effective date.
15 USC 1193
note.
15 USC 1193.

Approved May 11, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-325 accompanying H.R. 6844 (Comm. on Interstate and Foreign Commerce) and No. 94-1022 (Comm. of Conference).

SENATE REPORT No. 94-251 (Comm. on Commerce).

CONGRESSIONAL RECORD:

Vol. 121 (1975): July 18, considered and passed Senate.

July 28, 29, Sept. 24, 26, Oct. 22, considered and passed House, amended, in lieu of H.R. 6844.

Vol. 122 (1976): Apr. 13, House agreed to conference report.

Apr. 28, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 20 (1976): May 12, Presidential statement.