

Public Law 95-319
95th Congress

An Act

July 11, 1978
[S. 2401]

To amend the Consumer Product Safety Act to establish an interim consumer product safety rule relating to the standards for flame resistance and corrosiveness of certain insulation, and for other purposes.

Emergency
Interim
Consumer
Product Safety
Standard Act of
1978.
15 USC 2051
note.
15 USC 2082
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Interim Consumer Product Safety Standard Act of 1978".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

(b) It is the purpose of the Congress in this Act to provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product.

INTERIM CELLULOSE INSULATION SAFETY STANDARD

SEC. 3. (a) The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end thereof the following new section:

"INTERIM CELLULOSE INSULATION SAFETY STANDARD

15 USC 2082.

"SEC. 35. (a) (1) Subject to the provisions of paragraph (2), on and after the last day of the 60-day period beginning on the effective date of this section, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH-I-515C (as such specification was in effect on February 1, 1978), shall be deemed to be an interim consumer product safety standard which shall have all the authority and effect of any other consumer product safety standard promulgated by the Commission under this Act. During the 45-day period beginning on the effective date of this section, the Commission may make, and shall publish in the Federal Register, such technical, nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety standard. At the end of the 60-day period specified in the first sentence of this paragraph, the Commission shall publish in the Federal Register such interim consumer product safety standard, as altered by the Commission under this paragraph.

Regulations.
Publication in
Federal Register.

“(2) The interim consumer product safety standard established in paragraph (1) shall provide that any cellulose insulation which is produced or distributed for sale or use as a consumer product shall have a flame spread rating of 0 to 25, as such rating is set forth in the General Services Administration's specification for cellulose insulation, HH-I-515C.

“(3) During the period for which the interim consumer product safety standard established in subsection (a) is in effect, in addition to complying with any labeling requirement established by the Commission under this Act, each manufacturer or private labeler of cellulose insulation shall include the following statement on any container of such cellulose insulation: ‘ATTENTION: This material meets the applicable minimum Federal flammability standard. This standard is based upon laboratory tests only, which do not represent actual conditions which may occur in the home’. Such statement shall be located in a conspicuous place on such container and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such container.

“(b) Judicial review of the interim consumer product safety standard established in subsection (a), as such standard is in effect on and after the last day of the 60-day period specified in such subsection, shall be limited solely to the issue of whether any changes made by the Commission under paragraph (1) are technical, nonsubstantive changes. For purposes of such review, any change made by the Commission under paragraph (1) which requires that any test to determine the flame spread rating of cellulose insulation shall include a correction for variations in test results caused by equipment used in the test shall be considered a technical, nonsubstantive change.

Judicial review.

“(c) (1) (A) Any interim consumer product safety standard established pursuant to this section shall be enforced in the same manner as any other consumer product safety standard until such time as there is in effect a final consumer product safety standard promulgated by the Commission, as provided in subparagraph (B), or until such time as it is revoked by the Commission under section 9(e). A violation of the interim consumer product safety standard shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 9.

15 USC 2058.

“(B) If the Commission determines that the interim consumer product safety standard does not adequately protect the public from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, it shall promulgate a final consumer product safety standard to protect against such risk. Such final standard shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons 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. The provisions of section 9 (b), (c), and (d) shall apply to any proceeding to promulgate such final standard. In any judicial review of such final standard under section 11, the court shall not require any demonstration that each particular finding made by the Commission under section 9(c) is supported by substantial evidence. The court shall affirm the action of the Commission unless the court determines that such action is not supported by substantial evidence on the record taken as a whole.

15 USC 2060.

"(2) (A) Until there is in effect such a final consumer product safety standard, the Commission shall incorporate into the interim consumer product safety standard, in accordance with the provisions of this paragraph, each revision superseding the requirements for flame resistance and corrosiveness referred to in subsection (a) and promulgated by the General Services Administration.

Notice.

"(B) At least 45 days before any revision superseding such requirements is to become effective, the Administrator of the General Services Administration shall notify the Commission of such revision. In the case of any such revision which becomes effective during the period beginning on February 1, 1978, and ending on the effective date of this section, such notice from the Administrator of the General Services Administration shall be deemed to have been made on the effective date of this section.

Regulations.
Publication in
Federal Register.

"(C) (i) No later than 45 days after receiving any notice under subparagraph (B), the Commission shall publish the revision, including such changes in the revision as it considers appropriate to make the revision suitable for promulgation as an amendment to the interim consumer product safety standard, in the Federal Register as a proposed amendment to the interim consumer product safety standard.

"(ii) The Commission may extend the 45-day period specified in clause (i) for an additional period of not more than 150 days if the Commission determines that such extension is necessary to study the technical and scientific basis for the revision involved, or to study the safety and economic consequences of such revision.

"(D) (i) Additional extensions of the 45-day period specified in subparagraph (C) (i) may be taken by the Commission if—

"(I) the Commission makes the determination required in subparagraph (C) (ii) with respect to each such extension; and

"(II) in the case of further extensions proposed by the Commission after an initial extension under this clause, such further extensions have not been disapproved under clause (iv).

"(ii) Any extension made by the Commission under this subparagraph shall be for a period of not more than 45 days.

Notice.
Publication in
Federal Register.
Report to
congressional
committees.

"(iii) Prior notice of each extension made by the Commission under this subparagraph, together with a statement of the reasons for such extension and an estimate of the length of time required by the Commission to complete its action upon the revision involved, shall be published in the Federal Register and shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives.

"(iv) In any case in which the Commission takes an initial 45-day extension under clause (i), the Commission may not take any further extensions under clause (i) if each committee referred to in clause (iii) disapproves by committee resolution any such further extensions before the end of the 15-day period following notice of such initial extension made by the Commission in accordance with clause (iii).

"(E) The Commission shall give interested persons an opportunity to comment upon any proposed amendment to the interim consumer product safety standard during the 30-day period following any publication by the Commission under subparagraph (C).

“(F) No later than 90 days after the end of the period specified in subparagraph (E), the Commission shall promulgate the amendment to the interim consumer product safety standard unless the Commission determines, after consultation with the Secretary of Energy, that—

“(i) such amendment is not necessary for the protection of consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation; or

“(ii) implementation of such amendment will create an undue burden upon persons who are subject to the interim consumer product safety standard.

“(G) The provisions of section 11 shall not apply to any judicial review of any amendment to the interim product safety standard promulgated under this paragraph. 15 USC 2060.

“(d) Any Federal department, agency, or instrumentality, or any Federal independent regulatory agency, which obtains information which reasonably indicates that cellulose insulation is being manufactured or distributed in violation of this Act shall immediately inform the Commission of such information.

“(e) (1) The Commission, no later than 45 days after the effective date of this section, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives which shall contain a detailed statement of the manner in which the Commission intends to carry out the enforcement of this section. Report to congressional committees.

“(2) (A) The Commission, no later than 6 months after the date upon which the report required in paragraph (1) is due (and no later than the end of each 6-month period thereafter), shall submit a report to each committee referred to in paragraph (1) which shall describe the enforcement activities of the Commission with respect to this section during the most recent 6-month period.

“(B) The first report which the Commission submits under subparagraph (A) shall include the results of tests of cellulose insulation manufactured by at least 25 manufacturers which the Commission shall conduct to determine whether such cellulose insulation complies with the interim consumer product safety standard. The second such report shall include the results of such tests with respect to 50 manufacturers who were not included in testing conducted by the Commission for inclusion in the first report.

“(f) (1) The Commission shall have the authority to require that any person required to comply with the certification requirements of section 14 with respect to the manufacture of cellulose insulation shall provide for the performance of any test or testing program required for such certification through the use of an independent third party qualified to perform such test or testing program. The Commission may impose such requirement whether or not the Commission has established a testing program for cellulose insulation under section 14(b). 15 USC 2063.

15 USC 2063.
Rules.

Appropriation
authorization.

"(2) The Commission, upon petition by a manufacturer, may waive the requirements of paragraph (1) with respect to such manufacturer if the Commission determines that the use of an independent third party is not necessary in order for such manufacturer to comply with the certification requirements of section 14.

"(3) The Commission may prescribe such rules as it considers necessary to carry out the provisions of this subsection.

"(g) There are authorized to be appropriated, for each of the fiscal years 1978, 1979, 1980, and 1981, such sums as may be necessary to carry out the provisions of this section."

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

(1) in paragraph (8) thereof, by striking out "or";

(2) in paragraph (9) thereof, by striking out the period and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(10) fail to comply with any rule or requirement under section 35 (relating to labeling and testing of cellulose insulation)."

Approved July 11, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1116 accompanying H.R. 11998 (Comm. on Interstate and Foreign Commerce) and No. 95-1322 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 124 (1978):

Jan. 23, considered and passed Senate.

May 16, considered and passed House, amended, in lieu of H.R. 11998.

June 29, House and Senate agreed to conference report.