15 USC Ch. 39A: SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN

From Title 15—COMMERCE AND TRADE

CHAPTER 39A—SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN

Sec.

§1471. Definitions

For the purpose of this Act—

(1) The term "Commission" means the Consumer Product Safety Commission.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 1261(f) of this title;

(B) a food, drug, or cosmetic as those terms are defined in section 321 of title 21; or

(C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) The term "package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of section 1473(a)(2) of this title, also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include—

(A) any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or

(B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

(4) The term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(5) The term "labeling" means all labels and other written, printed, or graphic matter (A) upon any household substance or its package, or (B) accompanying such substance.

(Pub. L. 91–601, §2, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92–516, §3(2), Oct. 21, 1972, 86 Stat. 998; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §3(a), May 11, 1976, 90 Stat. 503.)

References in Text

This Act, referred to in text, means Pub. L. 91–601 which enacted this chapter, section 136(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amended section 1261(p) of this title and section 353(b)(2) of Title 21, and enacted provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

Amendments

1976—Par. (2). Pub. L. 94–284 struck out subpar. (B) which included pesticide as defined in section 136(u) of Title 7 within meaning of "household substance", and redesignated subpars. (C) and (D) as (B) and (C), respectively.

1972—Par. (2)(B). Pub. L. 92–516 substituted "a pesticide" for "an economic poison".

Effective Date of 1972 Amendment

For effective date of amendment by Pub. L. 92–516, see section 4 of Pub. L. 92–516, set out as an Effective Date note under section 136 of Title 7, Agriculture.

Effective Date

Pub. L. 91–601, §8, formerly §9, Dec. 30, 1970, 84 Stat. 1674, as amended by Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231, and renumbered by Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716, provided that: "This Act [see Short Title note set out below] shall take effect on the date of its enactment [Dec. 30, 1970]. Each regulation establishing a special packaging standard shall specify the date such standard is to take effect which date shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the Commission, for good cause found, determines that an earlier effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier date shall apply. No such standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation."

Short Title of 2016 Amendment

Pub. L. 114–116, §1, Jan. 28, 2016, 130 Stat. 3, provided that: "This Act [enacting section 1472a of this title and provisions set out as a note under section 1472a of this title] may be cited as the 'Child Nicotine Poisoning Prevention Act of 2015'."

Short Title

Pub. L. 91–601, §1, Dec. 30, 1970, 84 Stat. 1670, provided that: "This Act [enacting this chapter, section 135(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amending section 1261(p) of this title and section 353(b)(2) of Title 21, and enacting provisions set out as a note under this section] may be cited as the 'Poison Prevention Packaging Act of 1970'."

Transfer of Functions

"Commission" substituted for "Secretary" and "Consumer Product Safety Commission" substituted for "Secretary of Health, Education, and Welfare" in par. (1) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1472. Special packaging standards

(a) Establishment

The Commission,[1] may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if it finds that—

(1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(b) Considerations

In establishing a standard under this section, the Commission shall consider—

(1) the reasonableness of such standard;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by this Act; and

(4) the nature and use of the household substance.

(c) Publication of findings, reasons, and citation of statutory authorizations

In carrying out this Act, the Commission shall publish its findings, its reasons therefor, and citation of the sections of statutes which authorize its action.

(d) Limitation

Nothing in this Act shall authorize the Commission to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 1473(a)(2) of this title, labeling. In this case of a household substance for which special packaging is required pursuant to a regulation under this section, the Commission may in such regulation prohibit the packaging of such substance in packages which it determines are unnecessarily attractive to children.

(e) Cost-benefit analysis not required

Nothing in this Act shall be construed to require the Consumer Product Safety Commission, in establishing a standard under this section, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

(Pub. L. 91–601, §3, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 97–414, §9(k), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 110–314, title II, §233, Aug. 14, 2008, 122 Stat. 3073.)

References in Text

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

Amendments

2008—Subsec. (e). Pub. L. 110–314 added subsec. (e).

1983—Subsec. (a). Pub. L. 97–414 struck out ", after consultation with the technical advisory committee provided for in section 1475 of this title" after "The Commission".

Transfer of Functions

"Commission" substituted for "Secretary", "it" substituted for "he", and "its" substituted for "his" wherever appearing in subsecs. (a) to (d) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

[1] *Comma retained in amendment by Pub. L. 97–414.*

§1472a. Special packaging for liquid nicotine containers

(a) Requirement

Notwithstanding section 1261(f)(2) of this title and section 2052(a)(5) of this title, any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States shall be packaged in accordance with the standards provided in section 1700.15 of title 16, Code of Federal Regulations, as determined through testing in accordance with the method described in section 1700.20 of title 16, Code of Federal Regulations, and any subsequent changes to such sections adopted by the Commission.

(b) Savings clause

(1) In general

Nothing in this section shall be construed to limit or otherwise affect the authority of the Secretary of Health and Human Services to regulate, issue guidance, or take action regarding the manufacture, marketing, sale, distribution, importation, or packaging, including child-resistant packaging, of nicotine, liquid nicotine, liquid nicotine containers, electronic cigarettes, electronic nicotine delivery systems or other similar products that contain or dispense liquid nicotine, or any other nicotine-related products, including—

(A) authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the Family Smoking Prevention and Tobacco Control Act (Public Law 111–31) and the amendments made by such Act; and

(B) authority for the rulemaking entitled "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; regulations on the Sale and Distribution of Tobacco Products and the Required Warning Statements for Tobacco Products" (April 2014) (FDA–2014–N–0189), the rulemaking entitled "Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products" (June 2015) (FDA–2015–N–1514), and subsequent actions by the Secretary regarding packaging of liquid nicotine containers.

(2) Consultation

If the Secretary of Health and Human Services adopts, maintains, enforces, or imposes or continues in effect any packaging requirement for liquid nicotine containers, including a child-resistant packaging requirement, the Secretary shall consult with the Commission, taking into consideration the expertise of the Commission in implementing and enforcing this section and the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

(c) Applicability

Notwithstanding section 2052(a)(5) of this title and section 1261(f)(2) of this title, the requirement of subsection (a) shall be treated as a standard for the special packaging of a household substance established under section 3(a) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472(a)).

(d) Definitions

In this section:

(1) Commission

The term "Commission" means the Consumer Product Safety Commission.

(2) Liquid nicotine container

(A) In general

Notwithstanding section 1261(f)(2) of this title and section 2052(a)(5) of this title, the term "liquid nicotine container" means a package (as defined in section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471))—

(i) from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and

(ii) that is used to hold soluble nicotine in any concentration.

(B) Exclusion

The term "liquid nicotine container" does not include a sealed, pre-filled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

(3) Nicotine

The term "nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

(Pub. L. 114–116, §2, Jan. 28, 2016, 130 Stat. 3.)

References in Text

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (b)(1), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

The Poison Prevention Packaging Act of 1970, referred to in subsec. (b)(2), is Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

Codification

Section was enacted as part of the Child Nicotine Poisoning Prevention Act of 2015, and not as part of the Poison Prevention Packaging Act of 1970 which comprises this chapter.

Effective Date

Pub. L. 114–116, §3, Jan. 28, 2016, 130 Stat. 5, provided that: "This Act [see Short Title of 2016 Amendment note set out under section 1471 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 28, 2016]."

§1473. Conventional packages, marketing

(a) Noncomplying packages for elderly or handicapped persons; labeling statements

For the purpose of making any household substance which is subject to a standard established under section 1472 of this title readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if—

(1) the manufacturer (or packer) also supplies such substance in packages which comply with such standard; and

(2) the packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the Commission may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(b) Noncomplying packages for substances dispensed pursuant to orders of medical practitioners

In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(c) Exclusive use of special packaging; necessary circumstances

In the case of a household substance subject to such a standard which is packaged under subsection (a) in a noncomplying package, if the Commission determines that such substance is not also being supplied by a manufacturer (or packer) in popular size packages which comply with such standard, it may, after giving the manufacturer (or packer) an opportunity to comply with the purposes of this Act, by order require such substance to be packaged by such manufacturer (or packer) exclusively in special packaging complying with such standard if it finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

(Pub. L. 91–601, §4, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

References in Text

For classification to the Code of "this Act", referred to in subsec. (c), see References in Text note set out under section 1471 of this title.

Transfer of Functions

"Commission" substituted for "Secretary" in subsecs. (a) and (c) and "it" substituted for "he" in subsec. (c) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1474. Regulations for special packaging standards

(a) Rule making procedure; election and application of procedure under section 371 of title 21; publication of election and proposal

Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 1472 of this title shall be conducted in accordance with the procedures prescribed by section 553 (other than paragraph (3)(B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 shall apply to such proceedings. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(b) Judicial review; petition; record; additional evidence; jurisdiction of court of appeals; scope of review; relief pending review; finality of judgment; review by Supreme Court

(1) In the case of any standard prescribed by a regulation issued in accordance with section 553 of title 5, any person who will be adversely affected by such a standard may, at any time prior to the 60th day after the regulation prescribing such standard is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its standard, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity 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 in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original standard, with the return of such additional evidence.

(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the standard of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 706 of title 5. If the court ordered additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Commission's standard to determine if, on the basis of the entire record before the court pursuant to paragraphs (1) and (2) of this subsection, it is supported by substantial evidence. If the court finds the standard is not so supported, the court may set it aside.

(4) With respect to any standard reviewed under this subsection, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard 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.

(Pub. L. 91–601, §5, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

Transfer of Functions

In subsec. (a), "Commission" substituted for "Secretary" and "it" substituted for "he"; in subsec. (b), "Commission" substituted for "Secretary", "it" substituted for "him" and "he", "its" substituted for "his", and "Commission's" substituted for "Secretary's" pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

§1475. Repealed. Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716

Section, Pub. L. 91–601, §6, Dec. 30, 1970, 84 Stat. 1672, provided for appointment of a technical advisory committee to assist the Secretary in carrying out the purposes of the Poison Prevention Packaging Act of 1970.

Effective Date of Repeal

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

§1476. Preemption of Federal standards

(a) Exception for identical State standards

Except as provided in subsections (b) and (c), whenever a standard established by the Commission under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 1472 of this title (and any exemption therefrom and requirement related thereto) of this Act.

(b) Federal or State standards which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, 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) Exemption for State standards; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), 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 may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5 notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(Pub. L. 91–601, §7, formerly §8, Dec. 30, 1970, 84 Stat. 1673; Pub. L. 92–573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §17(c), May 11, 1976, 90 Stat. 513; renumbered §7, Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716.)

References in Text

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

Amendments

1976—Pub. L. 94–284 substituted "(a) Except as provided in subsections (b) and (c), whenever" for "Whenever" in existing provision, and added subsecs. (b) and (c).

Transfer of Functions

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

Preemption

The provisions of this section establishing the extent to which the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or

regulation under the Poison Prevention Packaging Act of 1970, 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, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§1477. Enforcement by State Attorneys General

The attorney general of a State, or other authorized State officer, alleging a violation of a standard or rule promulgated under section 1472 of this title that affects or may affect such State or its residents, may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found or transacts business to obtain appropriate injunctive relief. The procedural requirements of section 2073(b) of this title shall apply to any such action.

(Pub. L. 91–601, §9, as added Pub. L. 110–314, title II, §218(b)(1), Aug. 14, 2008, 122 Stat. 3062.)

Prior Provisions

A prior section 9 of Pub. L. 91–601 was renumbered section 8 and is set out as a note under section 1471 of this title.