October 14, 2008 Version

POISON PREVENTION PACKAGING ACT

(Codified at 15 U.S.C. §§ 1471−1477)

(Public Law 91-601, 84 Stat. 1670, December 30, 1970, as amended)

(This Act incorporates amendments made by the Consumer Product Safety Commission Improvements Act of 1976, Public Law 94-284, 90 Stat. 503, May 11, 1976; the Consumer Product Safety Amendments of 1981, Public Law 97-35, title 12, subtitle A, 95 Stat. 703, August 13, 1981 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) under the Poison Prevention Packaging Act to the Consumer Product Safety Commission.

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POISON PREVENTION PACKAGING ACT

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(References in brackets [ ] are to the United States Code and the Code of Federal Regulations)

(References in braces { } are editorial insertions)

{short title}

SECTION 1. **[15 U.S.C. § 1471n]** This Act may be cited as the ''Poison Prevention Packaging Act of 1970''.

{DEFINITIONS}

SEC. 2. [15 U.S.C. § 1471]

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 2(f) of the Federal Hazardous Substances Act (15 U.S.C. §1261(f));

(B) a food, drug, or cosmetic as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §321); 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 4(a)(2) of this Act **[15 U.S.C. § 1473(a)(2)]**, 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.

{SPECIAL PACKAGING STANDARDS}

SEC. 3. [15 U.S.C. § 1472]

(a) The Commission, 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) 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) In carrying out this Act, the Commission shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(d) 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 4(a)(2) of this Act **[15 U.S.C. § 1473(a)(2)]**, labeling. In the 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 he determines are unnecessarily attractive to children.

(e) 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.

CONVENTIONAL PACKAGES, MARKETING

SEC. 4. [15 U.S.C. § 1473]

(a) For the purpose of making any household substance which is subject to a standard established under section 3 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) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a 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) 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, he 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 he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

SEC. 5. [15 U.S.C. § 1474]

(a) Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 3 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 of the United States Code unless the Commission elects the procedures prescribed by subsection (e) of section 701 of the Federal Food, Drug, and Cosmetic Act, **[21 U.S.C. § 371(e)]** in which event such subsection and subsections (f) and (g) of such section 701 shall apply to such proceedings. If the Commission makes such election, he 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 of the United States Code, 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 him for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based his standard, 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 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 his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his 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 of the United States Code. 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 of the United States Code.

{AMENDMENTS TO OTHER ACTS}

SEC. 6. (a) Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) is amended—

(1) by striking out ''which substance'' in the part preceding paragraph (1) and inserting in lieu thereof ''if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of1970 or if such substance''; and

(2) by adding the following after and below paragraph (2):

''The term 'misbranded hazardous substance' also includes a household substance as defined in section 2(2)(D) of the Poison Prevention Packaging Act of 1970 if it is a substance described in paragraph 1 of section 2(f) of this Act and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.''.

(b) Section 2z(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 135(z)(2)) is amended by striking out the period at the end of paragraph (h) of such section and inserting in lieu thereof ''; or'' and by adding at the end thereof a new paragraph as follows:

''(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.''

(c) Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 343) is amended by adding at the end thereof a new paragraph as follows:

''(n) If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.''

(d) Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 352) is amended by adding at the end thereof a new paragraph as follows:

''(p) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.''

(e) Section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)(2)) is amended by striking out ''and (h)'' and inserting in lieu thereof '', (h), and (p)''.

(f) Section 602 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 362) is amended by adding at the end thereof a new paragraph as follows:

''(f) If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.''

PREEMPTION OF FEDERAL STANDARDS

SEC. 7. [15 U.S.C. § 1476]

(a) 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 3 (and any exemption therefrom and requirement related thereto) of this Act.

(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 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.

{EFFECTIVE DATE}

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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 Poison Packaging Prevention 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.

SEC. 8. [15 U.S.C. §1471n]

This Act shall take effect on the date of its enactment. **[December 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.

SEC. 9. ENFORCEMENT BY STATE ATTORNEYS GENERAL. [15 U.S.C. §1477]

The attorney general of a State, or other authorized State officer, alleging a violation of a standard or rule promulgated under section 3 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 24(b) of the Consumer Product Safety Act (15 U.S.C. 2073(b)) shall apply to any such action.