

dren's product subject to the consumer product safety standards described in subsection (a) or any rule promulgated under this section. The Commission shall grant such an exemption if the State or political subdivision standard or regulation—

(A) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard or rule under this section; and

(B) 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.

**(2) Effect of standards on established State laws**

Nothing in this section or in section 2075 of this title shall prevent a State or political subdivision of a State from continuing in effect a safety requirement applicable to a toy or other children's product that is designed to deal with the same risk of injury as the consumer product safety standards established by this section and that is in effect on the day before August 14, 2008, if such State or political subdivision has filed such requirement with the Commission within 90 days after August 14, 2008, in such form and in such manner as the Commission may require.

**(i) Judicial review**

The issuance of any rule under this section is subject to judicial review as provided in section 2060(g) of this title, as added by section 236 of this Act.

(Pub. L. 110-314, title I, §106, Aug. 14, 2008, 122 Stat. 3033; Pub. L. 112-28, §4, Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

This Act, referred to in subsec. (h)(1), is Pub. L. 110-314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (i), is section 2060(g) of this title, as added by section 236 of Pub. L. 110-314.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-28 inserted “or any provision that restates or incorporates a regulation pro-

mulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration” after “or by statute”.

DEFINITION

For definition of “Commission” used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

**§ 2057. Banned hazardous products**

Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product.

(Pub. L. 92-573, §8, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 97-35, title XII, §1203(c), Aug. 13, 1981, 95 Stat. 713.)

AMENDMENTS

1981—Pub. L. 97-35 substituted “may, in accordance with” for “may propose and, in accordance with”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

**§ 2057a. Banning of butyl nitrite**

**(a) In general**

Except as provided in subsection (b) of this section, butyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

**(b) Lawful purposes**

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States butyl nitrite for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

**(c) Definitions**

For purposes of this section:

(1) The term “butyl nitrite” includes n-butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, and mixtures containing these chemicals.

(2) The term “commercial purpose” means any commercial purpose other than for the production of consumer products containing butyl nitrite that may be used for inhaling or otherwise introducing butyl nitrite into the human body for euphoric or physical effects.

**(d) Effective date**

This section shall take effect 90 days after November 18, 1988.

(Pub. L. 100-690, title II, §2404, Nov. 18, 1988, 102 Stat. 4231.)