

sion 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.

## CHAPTER 40—DEPARTMENT OF COMMERCE

|              |  |
|--------------|--|
| Sec.         |  |
| 1501.        | Establishment of Department; Secretary; seal.  |
| 1502, 1503.  | Omitted.   |
| 1503a.       | Under Secretary of Commerce for Economic Affairs.  |
| 1503b.       | Under Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation.  |
| 1504.        | Repealed.  |
| 1505.        | Additional Assistant Secretary; duties, rank of Assistant Secretaries.   |
| 1506.        | Additional Assistant Secretary; appointment; applicability of section 1505.  |
| 1507.        | Additional Assistant Secretary; appointment; compensation; duties.   |
| 1507a.       | Repealed.  |
| 1507b.       | Assistant Secretary of Commerce; appointment; compensation; duties.  |
| 1507c.       | Assistant Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation.  |
| 1508.        | General Counsel.   |
| 1509.        | Designation of officer to sign routine papers.   |
| 1510.        | Clerical assistants.   |
| 1511.        | Bureaus in Department.   |
| 1511a.       | Repealed.  |
| 1511b.       | United States fishery trade officers.  |
| 1511c.       | Estuarine Programs Office.   |
| 1511d.       | Chesapeake Bay Office.   |
| 1511e.       | Repealed.  |
| 1512.        | Powers and duties of Department.   |
| 1513.        | Duties and powers vested in Department.  |
| 1513a.       | Cost estimates for National Oceanic and Atmospheric Administration programs included in Department budget justification.   |
| 1513b.       | Cost estimates for National Institute of Standards and Technology construction projects included in Department budget justification.   |
| 1514.        | Basic authority for performance of certain functions and activities of Department.   |
| 1515.        | Records, etc., of bureaus transferred to Department of Commerce.   |
| 1516.        | Statistical information.   |
| 1516a.       | Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent.  |
| 1517.        | Transfer of statistical or scientific work.  |
| 1518.        | Custody of buildings; officers transferred.  |
| 1519.        | Annual and special reports.  |
| 1519a, 1520. | Repealed.  |
| 1521.        | Working capital fund; establishment; amount; uses; reimbursement.  |
| 1522.        | Acceptance of gifts and bequests for purposes of the Department; separate fund; disbursements.   |
| 1523.        | Tax status of gifts and bequests of property.  |
| 1524.        | Investment and reinvestments of moneys; credit and disbursement of interest.   |
| 1525.        | Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects; cost apportionment, waiver.   |
| 1526.        | Receipts for work or services; deposit in special accounts; availability for payment of costs, repayment or advances to appropriations or funds, refunds, credits to working capital funds; appropriation limitation of annual expenditures from accounts. |
| 1527.        | Fees or charges for services or publications under existing law unaffected.  |
| 1527a.       | Economics and Statistics Administration Revolving Fund.  |
| 1528.        | Transferred.   |
| 1529.        | Relinquishment of legislative jurisdiction over certain lands.   |