



Public Law 91-601
91st Congress, S. 2162
December 30, 1970

Act

CLEVELAND

JUN 24 1971

TECH. SERVICE

84 STAT. 1670

To provide for special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Poison Prevention Packaging Act of 1970".

SEC. 2. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(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 3(1) of the Federal Hazardous Substances Act (16 U.S.C. 1361(f));

(B) an economic poison as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 133(a));

(C) a food, drug, or cosmetic as those terms are defined in section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(D) 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, 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.

SEC. 3. (a) The Secretary, after consultation with the technical advisory committee provided for in section 6 of this Act, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he 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 per-

Section
Prevents on
Packaging
Act of 1970.
Revised 1970.

76 Stat. 372;
82 Stat. 127.

75 Stat. 266.

82 Stat. 1040;
82 Stat. 251.

Special
packaging
standards.

0007-SWP-036377

N21702

sonal 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 Secretary 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.

Findings,
publication.

(c) In carrying out this Act, the Secretary shall publish his findings, his reasons therefor, and citation of the sections of statute which authorize his action.

Limitation.

(d) Nothing in this Act shall authorize the Secretary to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 3(a)(2) of this Act, labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

Conventional
packages,
marking.

Sec. 4. (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, at 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 comply with such standard bear conspicuous labeling stating "This is for use by households without young children"; except that the Secretary 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 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 Secretary 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. (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 Secretary elects the procedures

prescribed by subsection (a) of section 701 of the Federal Food, Drug, and Cosmetic Act, in which event such subsection and subsections (f) and (g) of such section 701 shall apply to such proceedings. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (a).

(b)(1) In the case of any standard prescribed by a regulation issued in accordance with section 555 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 90th day after the regulation prescribing such standard is issued by the Secretary, 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 Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based his standard, as provided in section 5112 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 Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary 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 Secretary 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 Secretary'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 provided in section 706 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or writ of error, as provided in section 1254 of title 28 of the United States Code.

(c) For the purpose of assisting in carrying out the purposes of this Act, the Secretary shall appoint a technical advisory committee, designating a member thereof to be chairman, composed of not more than eighteen members who are representative of (1) the Department of Health, Education, and Welfare, (2) the Department of Commerce, (3) manufacturers of household substances subject to this Act, (4) scientists with expertise related to this Act and licensed practitioners in the medical field, (5) consumers, and (6) manufacturers of packages and closures for household substances. The Secretary shall consult with the technical advisory committee in making findings and in establishing standards pursuant to this Act.

70 Stat. 919,
21 USC 371,
52 Stat. 1565,
72 Stat. 948.

Petition,
filing,
90 Stat. 303.

72 Stat. 941;
80 Stat. 1321.
Hearings addi-
tional evi-
dence.

Findings,
modification.

Judicial
review.

80 Stat. 303

82 Stat. 920.

Technical
advisory
committee.

0007-SWP-036379

0007-SWP-000117704

84 STAT. 1677

compensation
and travel
expenses.

60 Stat. 499;
63 Stat. 190.

76 Stat. 374;
80 Stat. 1209.

1970, P. 1670.

"Unbranded
hazardous
substance."

73 Stat. 267.

52 Stat. 1067;
74 Stat. 398.

52 Stat. 1050;
76 Stat. 798.

65 Stat. 642.

51 Stat. 1054;
74 Stat. 398.

Federal
prescription.

(b) Members of the technical advisory committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5708 of title 5 of the United States Code for persons in the Government service employed intermittently.

Sec. 7. (a) Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1361(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 of 1970 or if such substance"; and

(2) by adding the following after and below paragraph (2): "The term 'unbranded 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 3(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 2(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(a)(2)) is amended by striking out "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 303(b)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(3)) 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:

"(8) 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."

Sec. 8. Whenever a standard established by the Secretary 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.

0007-SWP-036380

0007-SWP-000117705

December 30, 1970

- 5 -

Pub. Law 91-601

84 STAT. 476

Sec. 9. This Act shall take effect on the date of its enactment. 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 Secretary, 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.

Effective date.
Publication
in Federal
Register.

Approved December 30, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1642 (Comm. on Interstate and Foreign Commerce) and No. 91-1795 (Comm. of Conference).

SENATE REPORT No. 91-448 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 116 (1970):

Oct. 11, considered and passed Senate.

Oct. 7, considered and passed House, amended.

Oct. 16, Senate and House agreed to conference report.

0007-SWP-036381

0007-SWP-000117706

Poison PREVENTION PACKAGING ACT OF 1970



Public Law 91-601
91st Congress, S. 2162
December 30, 1970

An Act

To provide for special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, and for other purposes.

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Section 1. This Act may be cited as the "Poison Prevention Packaging Act of 1970".

Sec. 2. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(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 3(f) of the Federal Hazardous Substances Act (15 U.S.C. 1361(f));

(B) an economic poison as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 133(a));

(C) a food, drug, or cosmetic as those terms are defined in section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(D) 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, 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.

Sec. 3. (a) The Secretary, after consultation with the technical advisory committee provided for in section 6 of this Act, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he 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 per-

Poison
Prevention
Packaging
Act of 1970.
Definitions.

74 Stat. 170,
82 Stat. 167,
73 Stat. 286.

52 Stat. 1040;
82 Stat. 351.

Special
packaging
standards.

0007-SWP-036382

0007-SWP-000117707

personal injury or serious illness resulting from handling (e.g., or ingesting such substance; and

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

(b) In establishing a standard under this section, the Secretary 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.

Findings,
publications.

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

Last sentence.

(d) Nothing in this Act shall authorize the Secretary to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 4(a)(2) of this Act, labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

Conspicuous labeling,
packaging,
marking.

Sec. 4. (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 Secretary 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 Secretary 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 purpose 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 purpose of this Act.

Sec. 5. (a) Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 3 shall be conducted in accordance with the procedure prescribed by section 653 (other than paragraph (4) (B) of the last sentence of subsection (b) of such section) of title 5 of the United States Code unless the Secretary elects the procedures

or serious illness resulting from handling, using, or inhaling substance; and special packaging to be required by such standard is feasible, practicable, and appropriate for such substance.

During a standard under this section, the Secretary

shall determine if such standard is necessary for the protection of the public health, safety, or interest, and shall publish his findings, or, and citation of the sections of statutes which

are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance. Under this Act, the Secretary shall publish his findings, or, and citation of the sections of statutes which are and use of the household substance.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

70 Stat. 313.
21 Stat. 371.
22 Stat. 1753.
72 Stat. 144.

0007-SWP-036384

Compensation
and travel
expenses.80 Stat. 409;
82 Stat. 130.74 Stat. 374;
80 Stat. 1308.

42 U.S.C. 1670.

"Misbranded
hazardous
substances."

73 Stat. 227.

80 Stat. 1047;
74 Stat. 398.81 Stat. 1080;
76 Stat. 795.

81 Stat. 649.

82 Stat. 1064;
74 Stat. 398.Federal
presumption.

(b) Members of the technical advisory committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while en route away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5706 of title 5 of the United States Code for persons in the Government service employed intermittently.

Sec. 7. (a) Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1051(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 of 1970 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 3(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 2a(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)(3)) 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 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) is amended by adding at the end thereof a new paragraph as follows:

"(a) 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 505(b)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(3)) 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."

Sec. 8. Whenever a standard established by the Secretary 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.

0007-SWP-036385

0007-SWP-000117710

December 30, 1970

- 5 -

Pub. Law 91-601

Sec. 8. This Act shall take effect on the date of its enactment. 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 Secretary, 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.

Approved December 30, 1970.

54 STAT. 1874
Effective Date.
Publication
in Federal
Register.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1642 (Comm. on Interstate and Foreign Commerce)
and No. 91-1755 (Comm. of Conference),
SENATE REPORT No. 91-645 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 116 (1970):
May 11, considered and passed Senate.
Dec. 7, considered and passed House, amended.
Dec. 16, Senate and House agreed to conference report.

0007-SWP-036386

0007-SWP-000117711



Public Law 91-601
91st Congress, S. 2162
December 30, 1970

Poison Prevention Packaging Act

84 STAT. 1870

To provide for special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. This Act may be cited as the "Poison Prevention Packaging Act of 1970".

SEC. 2. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(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 3(2) of the Federal Hazardous Substances Act (15 U.S.C. 1051(f));

(B) an economic poison as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(a));

(C) 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

(D) 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, 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.

SEC. 3. (a) The Secretary, after consultation with the technical advisory committee provided for in section 6 of this Act, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he 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 per-

Poison Prevention Packaging Act of 1970, definitions.

24 Stat. 372;
23 Stat. 187.

73 Stat. 266.

22 Stat. 1060;
22 Stat. 151.

Special packaging standards.

0007-SWP-036387

0007-SWP-000117712

usual injury or serious illness resulting from handling, using, or ingesting such substance; and

(5) 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 Secretary 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 Secretary 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 Secretary to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 4(a)(3) of this Act, labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

Sec. 4. (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 Secretary 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 Secretary 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 purpose 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 purpose of this Act.

Sec. 5. (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 (5)(B) of the last sentence of subsection (b) of such section) of title 5 of the United States Code unless the Secretary elects the procedures

December 30, 1970

- 3 -

Pub. Law 91-601

84 STAT. 1672

prescribed by subsection (a) of section 701 of the Federal Food, Drug, and Cosmetic Act, in which event such subsection and subsections (f) and (g) of such section 701 shall apply to such proceedings. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (a).

(b) (1) In the case of any standard prescribed by a regulation issued in accordance with section 355 of title 21 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 Secretary, 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 Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based his standard, as provided in section 5115 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 Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary 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 Secretary in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (3) of section 705 of title 21 of the United States Code. If the court orders additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Secretary'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 706 of such title 21.

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

Sec. 6. (a) For the purpose of assisting in carrying out the purposes of this Act, the Secretary shall appoint a technical advisory committee, designating a member thereof to be chairman, composed of not more than eighteen members who are representative of (1) the Department of Health, Education, and Welfare, (2) the Department of Commerce, (3) manufacturers of household substances subject to this Act, (4) scientists with expertise related to this Act and licensed practitioners in the medical field, (5) consumers, and (6) manufacturers of packages and closures for household substances. The Secretary shall consult with the technical advisory committee in making findings and in establishing standards pursuant to this Act.

70 Stat. 919.
21 USC 372.
22 Stat. 1265;
72 Stat. 548.

Petition,
Filing,
20 Stat. 383.

72 Stat. 941;
20 Stat. 1273.
Hearings addi-
tional evi-
dence.

Findings,
modification.

Judicial
review.

20 Stat. 383.

22 Stat. 920.
Technical
advisory
committee.

0007-SWP-036389

0007-SWP-000117714

Compensation
and travel
expenses.

60 Stat. 499;
62 Stat. 190.

74 Stat. 334;
62 Stat. 190.

81st, 9-1970.

"Unbranded
hazardous
substances."

74 Stat. 387.

82 Stat. 1607;
74 Stat. 388.

82 Stat. 1608;
74 Stat. 798.

68 Stat. 648.

82 Stat. 1604;
74 Stat. 388.

Federal
prescription.

(b) Members of the technical advisory committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5708 of title 5 of the United States Code for persons in the Government service employed intermittently.

Sec. 7. (e) Section 9(p) of the Federal Hazardous Substances Act (15 U.S.C. 1051(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 of 1970 or if such substance"; and

(2) by adding the following after and below paragraph (3): "The term 'unbranded hazardous substance' also includes a household substance as defined in section 3(3)(D) of the Poison Prevention Packaging Act of 1970 if it is a substance described in paragraph 1 of section 3(2) 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 2a(8) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)(8)) is amended by striking out the period at the end of paragraph (b) of such section and inserting in lieu thereof "; or" and by adding at the end thereof a new paragraph as follows:

"(1) 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."

(e) Section 608 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) is amended by adding at the end thereof a new paragraph as follows:

"(a) 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 608 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) 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 608(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(2)) is amended by striking out "and (b)" and inserting in lieu thereof ", (b), and (p)".

(f) Section 608 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) 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."

Sec. 8. Whenever a standard established by the Secretary 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.

0007-SWP-036390

December 30, 1970

- 5 -

Pub. Law 91-601

44 STAT. 1474

SEC. 8. This Act shall take effect on the date of its enactment. 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 Secretary, 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.

Effective date.
Publication
in Federal
Register.

Approved December 30, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-2642 (Comm. on Interstate and Foreign Commerce) and No. 91-2785 (Comm. of Conference).
SENATE REPORT No. 91-645 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 116 (1970):

May 11, considered and passed Senate.
Dec. 7, considered and passed House; amended.
Dec. 26, Senate and House agreed to conference report.

GPO 26-128

0007-SWP-036391

0007-SWP-000117716