

(b) Appropriateness of State and local programs

In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) Cooperation of Federal departments and agencies

The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) Utilization of National Institute of Standards and Technology

The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Institute of Standards and Technology, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) Copies of accident or investigation reports to other agencies; conditions

The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this chapter by any officer, employee, or agent of the Commission only if (1) information which under section 2055(a)(2) of this title is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 2055(b) of this title.

(Pub. L. 92-573, §29, Oct. 27, 1972, 86 Stat. 1230; Pub. L. 94-284, §15, May 11, 1976, 90 Stat. 510; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

1976—Subsec. (e). Pub. L. 94-284 added subsec. (e).

§ 2079. Transfers of functions**(a) Hazardous substances and poisons**

The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] and the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) Flammable fabrics

The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) Household refrigerators

The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 [15 U.S.C. 1211 et seq.] are transferred to the Commission.

(d) Regulation by Commission of consumer products in accordance with other provisions of law

A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.], the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.], or the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] may be regulated under this chapter only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this chapter. Such a rule shall identify the risk of injury proposed to be regulated under this chapter and shall be promulgated in accordance with section 553 of title 5; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.

(e) Transfer of personnel, property, records, etc.; continued application of orders, rules, etc.

(1)(A) All personnel, property, records, obligations, and commitments, which are used pri-

marily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Institute of Standards and Technology. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this chapter to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions,

suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) "Function" defined

For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency, or department.

(Pub. L. 92-573, §30, Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94-284, §§3(f), 16, May 11, 1976, 90 Stat. 504, 510; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsecs. (a) and (d), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Poison Prevention Packaging Act of 1970, referred to in subsecs. (a) and (d), is Pub. L. 91-601, Dec. 30, 1970, 84 Stat. 1670, as amended, which is classified generally to chapter 39A (§1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, 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 Flammable Fabrics Act, referred to in subsecs. (b) and (d), is act June 30, 1953, ch. 164, 67 Stat. 111, as amended, which is classified generally to chapter 25 (§1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of August 2, 1956, referred to in subsec. (c), is act Aug. 2, 1956, ch. 890, 70 Stat. 953, as amended, which is classified generally to chapter 26 (§1211 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (e)(1)(B), (2), (3), and (4), see section 34(2) of Pub. L. 92-573, set out as an Effective Date note under section 2051 of this title.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub. L. 91-604, Dec. 31, 1970, 84 Stat. 1710, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

AMENDMENTS

1988—Subsec. (e)(1)(A). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1976—Subsec. (a). Pub. L. 94-284, §3(f), struck out "of the Administrator of the Environmental Protection

Agency and” before “of the Secretary of Health, Education, and Welfare” and substituted “Federal Food, Drug, and Cosmetic Act” for “Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Act of 1970”.

Subsec. (d), Pub. L. 94-284, §16, inserted requirement that the Commission find by a rule, promulgated in accordance with section 553 of title 5, that it is within the public interest to regulate a risk of injury under this chapter which could be eliminated or reduced by action under the enumerated acts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2081, 6004 of this title.

§ 2080. Limitations on jurisdiction of Consumer Product Safety Commission

(a) Authority to regulate

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or the Clean Air Act [42 U.S.C. 7401 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2)¹ of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3¹ of part F of title III of the Public Health Service Act.

(b) Certain notices of proposed rulemaking; duties of Chronic Hazard Advisory Panel

(1) The Commission may not issue—

(A) an advance notice of proposed rulemaking for a consumer product safety rule,

(B) a notice of proposed rulemaking for a rule under section 2076(e) of this title, or

(C) an advance notice of proposed rulemaking for regulations under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product unless a Chronic Hazard Advisory Panel, established under section 2077 of this title, has, in accordance with paragraph (2), submitted a report to the Commission with respect to whether a substance contained in such product is a carcinogen, mutagen, or teratogen.

(2)(A) Before the Commission issues an advance notice of proposed rulemaking for—

(i) a consumer product safety rule,

(ii) a rule under section 2076(e) of this title, or

(iii) a regulation under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product, the Commission shall request the Panel to review the scientific data and other relevant information relating to such risk to determine if any substance in the product is a carcinogen, mutagen, or a teratogen and to report its determination to the Commission.

(B) When the Commission appoints a Panel, the Panel shall convene within 30 days after the date the final appointment is made to the Panel. The Panel shall report its determination to the Commission not later than 120 days after the date the Panel is convened or, if the Panel requests additional time, within a time period specified by the Commission. If the determination reported to the Commission states that a substance in a product is a carcinogen, mutagen, or a teratogen, the Panel shall include in its report an estimate, if such an estimate is feasible, of the probable harm to human health that will result from exposure to the substance.

(C) A Panel appointed under section 2077 of this title shall terminate when it has submitted its report unless the Commission extends the existence of the Panel.

(D) The Federal Advisory Committee Act shall not apply with respect to any Panel established under this section.

(c) Panel report; incorporation into advance notice and final rule

Each Panel's report shall contain a complete statement of the basis for the Panel's determination. The Commission shall consider the report of the Panel and incorporate such report into the advance notice of proposed rulemaking and final rule.

(Pub. L. 92-573, §31, Oct. 27, 1972, 86 Stat. 1232; Pub. L. 97-35, title XII, §1206(b), Aug. 13, 1981, 95 Stat. 717; Pub. L. 97-414, §9(j)(5), Jan. 4, 1983, 96 Stat. 2064.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title set out under section 2011 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart 3 of part F of title III of the Public Health Service Act, which was classified to subpart 3 (§263b et seq.) of part F of subchapter II of chapter 6A of Title 42, was redesignated as subchapter C of chapter V of act June 25, 1938, ch. 675, the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101-629, §19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and was transferred to part C (21 U.S.C. 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. Section 355 of the Public Health Service Act, which was classified to section 263c of Title 42, was renumbered as section 531 of act June 25, 1938, ch. 675, by Pub. L. 101-629, §19(a)(3), (4), 104 Stat. 4530, and transferred to section 360hh of Title 21. For complete classification of the Public Health Service Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(2)(D), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat.

¹ See References in Text note below.