

paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

**(d) Development by manufacturers, packers, and distributors of voluntary product standards**

Whenever the Secretary of Commerce determines that there is undue proliferation of the weights or masses, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 272 of this title. Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

**(e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards**

If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

(Pub. L. 89-755, §5, Nov. 3, 1966, 80 Stat. 1298; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-245, title I, §107(a)(1), (2), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102-329, §§1(1), (2), 3, Aug. 3, 1992, 106 Stat. 847, 848.)

**Editorial Notes**

**AMENDMENTS**

1992—Pub. L. 102-245, §107(a)(1), (2), (b), which directed amendment of section, effective two years after Feb. 14, 1992, by substituting “weight or mass” for “weight” in subsec. (c)(1) and “weights or masses” for “weights” in subsec. (d), was repealed by Pub. L. 102-329, §3.

Subsec. (c)(1). Pub. L. 102-329, §1(1), substituted “weight or mass” for “weight”.

Subsec. (d). Pub. L. 102-329, §1(2), substituted “weights or masses” for “weights”.

**Statutory Notes and Related Subsidiaries**

**CHANGE OF NAME**

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-329 effective Feb. 14, 1994, but with such amendment to have no effect on the sale or distribution of products whose labels have been printed before such date, no application to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information, and no construction requiring changes in package size or affecting in any way the size of packages, see section 2 of Pub. L. 102-329, set out as a note under section 1453 of this title.

**§ 1455. Procedure for promulgation of regulations**

**(a) Hearings by Secretary of Health and Human Services**

Regulations promulgated by the Secretary under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 371 of title 21. Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employees of the Department of Health and Human Services as he may designate for that purpose.

**(b) Judicial review; hearings by Federal Trade Commission**

Regulations promulgated by the Commission under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 371 of title 21 in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

**(c) Cooperation with other departments and agencies**

In carrying into effect the provisions of this chapter, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

**(d) Returnable or reusable glass containers for beverages**

No regulation adopted under this chapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this chapter preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

(Pub. L. 89-755, §6, Nov. 3, 1966, 80 Stat. 1299; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

#### Editorial Notes

##### REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (d), refers to the effective date of Pub. L. 89-755 which enacted this chapter to take effect July 1, 1967. See Effective Date note set out under section 1451 of this title.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

“Department of Health and Human Services” substituted for “Department of Health, Education, and Welfare” in subsec. (a), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

#### § 1456. Enforcement

##### (a) Misbranded consumer commodities

Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 331 et seq.], but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 1452 of this title.

##### (b) Unfair or deceptive acts or practices in commerce

Any violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement under section 45(b) of this title.

##### (c) Imports

In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 801(a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

(Pub. L. 89-755, §7, Nov. 3, 1966, 80 Stat. 1300.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a) and (c), is act June 25, 1938, ch. 675, 52 Stat. 1040. Chapter III of the Act is classified generally to subchapter III (§331 et seq.) of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

#### § 1457. Omitted

#### Editorial Notes

##### CODIFICATION

Section, Pub. L. 89-755, §8, Nov. 3, 1966, 80 Stat. 1300; Pub. L. 93-608, §3(2), Jan. 2, 1975, 88 Stat. 1972; Pub. L.

97-375, title II, §§202(d), 206(b), Dec. 21, 1982, 96 Stat. 1822, 1823, which required officers and agencies required or authorized by this chapter to promulgate regulations, to transmit an annual report to Congress describing activities carried out for the administration and enforcement of this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 54, 92, and 172 of House Document No. 103-7.

#### § 1458. Cooperation with State authorities; transmittal of regulations to States; noninterference with existing programs

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health and Human Services under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(Pub. L. 89-755, §9, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (b) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

#### § 1459. Definitions

For the purpose of this chapter—

(a) The term “consumer commodity”, except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], or the provisions of the eighth paragraph under the heading “Bureau of Animal Industry” of the Act of March 4, 1913 [21 U.S.C. 151 et seq.], commonly known as the Virus-Serum-Toxin Act;