

HAZARDOUS MATERIAL IS CONSIDERED TO BE MISBRANDED IF THE HAZARDOUS MATERIAL:

(1) IS INTENDED OR PACKAGED IN A FORM SUITABLE FOR USE IN THE HOME OR BY CHILDREN; AND

(2) FAILS TO MEET THE LABELING REQUIREMENTS ESTABLISHED BY THE RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from the second clause of former Article 43, § 810(b).

The attention of the General Assembly is called to this section. The General Assembly may have intended the Secretary to have the power to remove misbranded hazardous materials from commerce, as under the federal act. However, this provision, by merely creating a category of "misbranded hazardous material", appears to fall short of giving the Secretary that power.

7-104. IMMEDIATE BAN WHERE IMMINENT HAZARD EXISTS.

(A) IN GENERAL.

NOTWITHSTANDING THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, IF THE SECRETARY BELIEVES THAT A TOY OR OTHER ARTICLE PRESENTS AN IMMINENT ELECTRICAL, MECHANICAL, OR THERMAL HAZARD TO THE PUBLIC HEALTH AND THAT PROPER LABELING CANNOT CORRECT THE HAZARD, THE SECRETARY SHALL ISSUE A TEMPORARY RULE OR REGULATION, EFFECTIVE IMMEDIATELY, THAT:

(1) DECLARES THE TOY OR OTHER ARTICLE TO BE A BANNED HAZARDOUS MATERIAL; AND

(2) REQUIRES ITS IMMEDIATE REMOVAL FROM COMMERCE.

(B) HEARING.

IMMEDIATELY AFTER THE SECRETARY ISSUES A TEMPORARY RULE OR REGULATION UNDER SUBSECTION (A) OF THIS SECTION, THE SECRETARY SHALL:

(1) GIVE NOTICE OF AND HOLD A HEARING ON THE TEMPORARY RULE OR REGULATION; AND

(2) AS PROMPTLY AS POSSIBLE, COMPLETE PROCEEDINGS UNDER § 7-102 OF THIS SUBTITLE FOR ADOPTION OF THE RULE OR REGULATION.

(C) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.