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with the requested assistance, or will direct the small business to the appropriate Commission staff for help.

(c) Whenever the Commission issues a final regulatory flexibility analysis for a rule, under the Regulatory Flexibility Act (5 U.S.C. 604), the Commission will publish a compliance guide for small businesses. The guide will explain in easy-to-understand language what action a small business must take to comply with the rule.

(d) The Commission may take other appropriate actions to assist small businesses, but such actions will not treat any other Commission constituent unfairly.

§ 1020.5 What is the Small Business Enforcement Policy?

(a) When appropriate, the Commission will, subject to all applicable statutes and regulations and paragraph (b) of this section:

(1) Waive or reduce civil penalties for violations of a statutory or regulatory requirement by a small business and/or

(2) Consider a small business's ability to pay in determining a penalty assessment against that small business,

(b) The Commission may decline to waive civil penalties or consider a small business's ability to pay, under paragraph (a) of this section, when one or more of the following circumstances applies:

(1) The small business's violations posed serious health or safety threats.

(2) The small business was subject to multiple enforcement actions by the Commission.

(3) The small business's violations involved willful or criminal conduct.

(4) The small business failed to correct violations within a reasonable time.

(5) The small business failed to make a good faith effort to comply with the law.

(6) The small business acted in any other way that would make it unfair or inappropriate for the Commission to provide a benefit under paragraph (a) of this section.

PART 1021—ENVIRONMENTAL REVIEW

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AUTHORITY: 42 U.S.C 4321-4347; 40 CFR part 1500 *et seq.*

SOURCE: 45 FR 69434, Oct. 21, 1980, unless otherwise noted.

Subpart A—General

§ 1021.1 Purpose.

This part contains Consumer Product Safety Commission procedures for review of environmental effects of Commission actions and for preparation of environmental impact statements (EIS) and related documents. These procedures supersede any Commission procedures previously applicable. The procedures provide for identification of effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at the appropriate points in the Commission's decision-making process; and for preparation of environmental impact statements for major actions significantly affecting the environment. These procedures are intended to implement the Council on Environmental Quality's final regulations of November 29, 1978 (43 FR 55978; 40 CFR part 1500, *et seq.*) concerning agency compliance

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with the National Environmental Policy Act, as amended (NEPA) (15 U.S.C. 4321-4347 as amended by Pub. L. 94-83, August 8, 1975).

§ 1021.2 Policy.

It is the policy of the Commission to weigh and consider the effects upon the human environment of a proposed action and its reasonable alternatives. Actions will be designed to avoid or minimize adverse effects upon the quality of the human environment wherever practicable.

§ 1021.3 Definitions.

(a) The term *CPSC actions* means rulemaking actions; enforcement actions; adjudications; legislative proposals or reports; construction, relocation, or renovation of CPSC facilities; decisions on petitions; and any other agency activity designated by the Executive Director as one necessitating environmental review.

(b) The term *Commission* means the five Commissioners of the Consumer Product Safety Commission.

(c) The term *CPSC* means the entire organization which bears the title Consumer Product Safety Commission.

(d) The term *NEPA regulations* means the Council of Environmental Quality regulations of November 29, 1978 (43 FR 55978) for implementing the provisions of the National Environmental Policy Act, as amended (42 U.S.C 4321, et. seq).

(e) The term *environmental review process* refers to all activities associated with decisions to prepare an environmental assessment, a finding of no significant impact, or an environmental impact statement.

(f) The definitions given in part 1508 of the Council's NEPA regulations are applicable to this part 1021 and are not repeated here.

§ 1021.4 Overview of environmental review process for CPSC actions.

The environmental review process normally begins during the staff development of a proposed action and progresses through the following steps:

(a) *Environmental assessment.* (Section 1508.9 of the NEPA regulations). The assessment is initiated along with the staff development of a proposal and the identification of realistic alternatives.

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The assessment shall be available to the Commission before the Commission votes on a proposal and its alternatives. Its purpose is to identify and describe foreseeable effects on the environment, if any, of the action and its alternatives. The assessment culminates in a written report. This report generally contains analyses of the same categories of information as would an EIS, but in a much less detailed fashion. (See §1021.10(a), below.) It contains sufficient information to form a basis for deciding whether effects on the environment are likely to be "significant." (See §1508.27 of the NEPA regulations.)

(b) *Decision as to significance of effects on the environment.* This decision is made by the Executive Director of the CPSC and is based upon the results of the environmental assessment as well as any other pertinent information. If the effects are significant, CPSC publishes in the FEDERAL REGISTER a notice of intent to prepare an environmental impact statement. (See §1508.22 of the NEPA regulations.) If not, a finding of no significant impact is prepared. (Section 1508.13 of the NEPA regulations.)

(c) *Finding of no significant impact.* This is a written document which gives reasons for concluding that the effects of a proposed action, or its alternatives, on the environment will not be significant. Together with the environmental assessment, it explains the basis for not preparing an EIS. The finding of no significant impact is signed by the Executive Director. The finding of no significant impact and the environmental assessment accompany the proposed action throughout the Commission decision-making process.

(d) *Draft environmental impact statement.* The content of a draft EIS is described in §1021.12, below. For a particular proposal, the breadth of issues to be discussed is determined by using the scoping process described in §1501.7 of the NEPA regulations. The draft EIS pertaining to a proposed rule is before the Commission at the time it considers the proposed action and is available to the public when the notice of proposed rulemaking is published or as

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soon as possible thereafter. In appropriate instances, the FEDERAL REGISTER preamble for a proposed rule may serve as the draft EIS. The draft EIS shall accompany the proposed action throughout the remainder of the Commission decision-making process.

(e) *Final EIS.* The content of this document is described in §1021.12. A final EIS responds to all substantive comments on the draft statement. It is before the Commission when it considers a final action.

(f) *Supplemental statements.* When CPSC makes changes in the proposed action that are important to environmental issues or when there is significant new environmental information, the Executive Director instructs CPSC staff to prepare supplements to either the draft or final EIS (See §1502.9(c) of the NEPA regulations).

(g) *Record of decision.* (Sections 1505.2 and 1506.1 of the NEPA regulations.) At the time of a decision on a proposed action which involves an EIS, CPSC prepares a written record of decision explaining the decision and why any alternatives discussed in the EIS were rejected. This written record is signed by the Secretary of the Commission for the Commission. No action going forward on the proposal may be taken until the record of decision is signed and filed in the Office of the Secretary of the Commission.

§ 1021.5 Categories of CPSC actions.

(a) There are no CPSC actions which ordinarily produce significant environmental effects. Therefore, there are no actions for which an environmental impact statement is normally required.

(b) The following categories of CPSC actions have the potential of producing environmental effects and therefore, normally require environmental assessments but not necessarily environmental impact statements:

(1) Regulatory actions dealing with health risks.

(2) Actions requiring the destruction or disposal of large quantities of products or components of products.

(3) Construction, relocation, or major renovation of CPSC facilities.

(4) Recommendations or reports to Congress on proposed legislation that will substantially affect the scope of

CPSC authority or the use of CPSC resources, authorize construction or razing of facilities, or dislocate large numbers of employees.

(5) Enforcement actions which result in the widespread use of substitute products, which may present health risks.

(c) The following categories of CPSC actions normally have little or no potential for affecting the human environment; and therefore, neither an environmental assessment nor an environmental impact statement is required. (These categories are termed "categorical exclusions" in the NEPA regulations; see §§1507.3(b)(2) and 1508.4):

(1) Rules or safety standards to provide design or performance requirements for products, or revision, amendment, or revocation of such standards.

(2) Product certification or labeling rules.

(3) Rules requiring poison prevention packaging of products or exempting products from poison prevention packaging rules.

(4) Administrative proceedings to require individual manufacturers to give notice of and/or to correct, repair, replace, or refund the purchase price of banned or hazardous products. Other administrative adjudications which are primarily law enforcement proceedings.

(5) Recommendations or reports to Congress on proposed legislation to amend, delete or add procedural provisions to existing CPSC statutory authority.

(6) Decisions on petitions for rule-making.

(7) Issuance of subpoenas, general orders, and special orders.

(d) In exceptional circumstances, actions within category in paragraph (c) of this section ("categorical exclusions") may produce effects on the human environment. Upon a determination by the Executive Director that a normally excluded proposed action may have such an effect, an environmental assessment and a finding of no significant impact or an environmental impact statement shall be prepared.

Subpart B—Procedures

§ 1021.6 Responsible official.

(a) The Executive Director of the CPSC shall have the responsibility to ensure that the Commission's policies and procedures set forth in this part are carried out. He or she shall have the following specific powers and duties:

(1) To ensure that CPSC environmental review is conducted in accordance with the NEPA regulations as well as this part 1021.

(2) To evaluate the significance of effects of a CPSC action on the environment and to determine whether a finding of no significant impact or an EIS should be prepared.

(3) To determine when a categorical exclusion requires environmental review because of exceptional circumstances indicating that the otherwise excluded action may produce an environmental effect.

(4) To instruct CPSC staff to prepare supplements to either draft or final EIS's where there is new environmental information or when CPSC makes changes in a proposed action that are important to environmental issues.

(5) To ensure that environmental documents are before the Commission at all stages of review of proposed action.

(6) To make provisions for soliciting public comment on the anticipated effects on the environment of proposed CPSC actions and their reasonable alternatives at any stage of the environmental review process, whenever he or she decides that such comment will be helpful. The Executive Director, for example, shall have the power to require that provision for soliciting such comments, written or oral, be included in any announcement of a public hearing on proposed rulemaking or on the merits of a petition for rulemaking.

(7) To call upon all resources and expertise available to CPSC to ensure that environmental review is accomplished through an interdisciplinary effort.

(8) To delegate any of his or her powers and duties, other than paragraphs (a) (2) and (3) of this section, to any officer or employee of the CPSC.

§ 1021.7 Coordination of environmental review with CPSC procedures.

(a) The Commission shall consider all relevant environmental documents in evaluating proposals for Commission action. The preparation and completion of assessments and statements required by this part shall be scheduled to assure that available environmental information is before the Commission at all appropriate stages of development of CPSC actions along with technical and economic information otherwise required. The range of alternatives discussed in appropriate environmental documents shall be encompassed by the range of alternatives considered by the Commission for an action.

(b) An environmental assessment on a proposed rulemaking action requiring environmental review shall be available to the commission before the Commission votes on a proposed rule, and its alternatives. If the Executive Director determines that an EIS is needed, the draft EIS shall normally be before the Commission at the time it votes to publish a proposed rule. A final EIS shall be before the Commission when it considers final action on a proposed rule. Relevant environmental documents shall accompany the proposed rulemaking action throughout the Commission's decisionmaking process.

(c) Draft EISs or findings of no significant impact together with environmental assessments shall be made available to the public for comment at the time of publication in the FEDERAL REGISTER of CPSC proposals for regulatory action requiring environmental review or promptly thereafter. Pursuant to §1506.10 of the NEPA regulations, no decision on a proposed action shall be made by the Commission until the later of 90 days after the Environmental Protection Agency (EPA) has published a notice announcing receipt of the draft EIS or 30 days after EPA announces receipt of the final EIS. These time periods may run concurrently. In addition, with regard to rulemaking for the purpose of protecting the public health and safety, the Commission may waive the 30 day period and publish a decision on a final rule

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simultaneously with publication by EPA of the notice of availability.

(d) Whenever the Commission decides to solicit offers by an outside person or organization to develop a proposed consumer product safety standard in accordance with section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) and the Executive Director has determined that environmental review is needed, the Executive Director shall recommend to the Commission whether the “offeror” should perform an environmental assessment during development of the proposed standard. In making this recommendation, the Executive Director shall take into account the resources of the “offeror”, including the expertise and money available to it. If the Commission decides that the “offeror” should perform an assessment, the agreement between the Commission and the offeror shall so provide. CPSC, however, shall independently evaluate any assessment prepared and shall take responsibility for the scope and content of the assessment.

(e) CPSC adjudications are primarily law enforcement proceedings and therefore are not agency actions within the meaning of NEPA. (See §1508.18(8) of the NEPA regulations.) However, in CPSC formal rulemaking proceedings, all available environmental information, including any supplements to a draft or final EIS, shall be filed in the Office of the Secretary and shall be made part of the formal record of the proceeding.

§ 1021.8 Legislative proposals.

Draft EISs on legislative proposals which may significantly affect the environment shall be prepared as described in §1506.8 of the NEPA regulations. The draft EIS, where feasible, shall accompany the legislative proposal or report to Congress and shall be available in time for Congressional hearings and deliberations. The draft EIS shall be forwarded to the Environmental Protection Agency in accordance with §1506.9 of the NEPA regulations. Comments on the legislative statement and CPSC’s responses shall be forwarded to the appropriate Congressional committees.

§ 1021.9 Public participation, notice, and comment.

(a) Information and comments are solicited from and provided to the public on anticipated environmental effects of CPSC actions as follows:

(1) Promptly after a decision is made to prepare a draft EIS, a notice of intent to prepare the draft EIS shall be published in the CPSC Public Calendar and in the FEDERAL REGISTER. The notice shall state the nature of the proposed action and available alternatives and shall describe the planned scoping process. The notice shall solicit information and comment by other governmental agencies and the public.

(2) As soon as practicable after a finding of no significant impact is completed, a copy of the finding together with the environmental assessment report shall be forwarded to the Office of the Secretary of the Commission to be made available to the public. Any information and comments received from the public on the documents will be considered and will accompany the documents throughout the CPSC decisionmaking process, but comments will not ordinarily be answered individually.

(3)(i) Upon completion of a draft EIS, a notice of its availability for comment should be published in the CPSC Public Calendar and in the FEDERAL REGISTER. Copies of the draft EIS shall be filed with the Environmental Protection Agency (EPA) in accordance with §1506.9 of the NEPA regulations. The length of the comment period on the draft EIS shall be stated in the notice of availability and on the cover of the draft EIS. The comment period, in accordance with §1506.10 of the NEPA regulations, shall be a minimum of 45 days from the date the notice of receipt of the draft EIS is published in the FEDERAL REGISTER by EPA. It should also be stated in the CPSC notice that comments received during the comment period will be addressed in the final EIS, whereas late comments will be considered to the extent practicable, and that all comments will be appended to the final EIS.

(ii) Copies of the draft EIS shall be sent to public and private organizations known by CPSC to have special

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expertise with respect to the environmental effects involved, those who are known to have an interest in the action, and those who request an opportunity to comment. Also, copies shall be circulated for comment to Federal, State, and local agencies with jurisdiction by law and special expertise with respect to environmental effects involved. Part 1503 of the NEPA regulations shall be consulted for further details of this procedure.

(iii) Draft EIS's shall be available to the public in the Office of the Secretary at Commission headquarters.

(4) Upon completion of a final EIS, a notice of its availability in the Office of the Secretary, shall be published in the CPSC Public Calendar and if deemed appropriate, in the FEDERAL REGISTER. Copies of the final EIS shall be forwarded to EPA and one copy shall be sent to each entity or person who commented on the draft EIS.

(5) A list of EIS's under preparation and of EIS's or findings of no significant impact and environmental assessments completed shall be available to the public in the Office of the Secretary, at Commission headquarters. The list shall be continuously updated.

(6) In addition to publication in the CPSC Public Calendar and the FEDERAL REGISTER, notices called for by this section may also be publicized through press releases or local newspapers, whenever appropriate.

§ 1021.10 Emergencies.

Where emergency circumstances make it necessary to take an action without observing all the provisions of these implementing procedures or the NEPA regulations, CPSC will consult with the Council on Environmental Quality about alternative arrangements.

§ 1021.11 Information regarding NEPA compliance.

Interested persons may contact the Commission's Office of the Executive Director (301-504-0550) for information regarding CPSC NEPA compliance.

[45 FR 69434, Oct. 21, 1980, as amended at 62 FR 46667, Sept. 4, 1997]

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Subpart C—Contents of Environmental Review Documents

§ 1021.12 Environmental assessment.

(a) An environmental assessment shall first briefly describe the proposed action and realistic alternative actions. Next, it shall identify all effects on the environment that can be expected to result from the proposed and alternative actions. After each anticipated effect is identified, it shall be described as fully as can be done with available data in order to show its magnitude and significance. Sources of information for assessment include CPSC staff studies and research reports, information gathered at hearings or meetings held to obtain the views of the public on the proposed action, and other information received from members of the public and from governmental entities.

(b) The assessment shall identify and describe any methods or approaches which would avoid or minimize adverse effects on the environment.

§ 1021.13 Finding of no significant impact.

(a) A finding of no significant impact shall cite and be attached to the environmental assessment upon which it is based. It shall refer to anticipated effects upon the environment identified in the environmental assessment and give the reason(s) why those effects will not be significant. The final paragraph of the finding shall give the reasons why the overall impact on the environment is not regarded as significant.

(b) The signature of the Executive Director shall appear at the end of the finding of no significant impact.

§ 1021.14 Environmental impact statement.

(a) Draft and final EIS's, unless there is a compelling reason to do otherwise, shall conform to the recommended format specified in § 1502.10 of the NEPA regulations and shall contain the material required by §§ 1502.11 through 1502.18 of those regulations.

(b) It may be necessary to include in an EIS a description of effects which are not effects on the natural or physical environment, but rather are, for

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example, purely economic or health effects. For this reason, an EIS may include issues and facts that are thoroughly analyzed in other comprehensive CPSC documents such as hazard analyses, economic impact analyses, or analyses of impact on particular age groups among consumers. In such cases, the EIS shall not duplicate the other documents, but rather shall cite and summarize from them. A list of background documents and sources of data cited in the EIS shall appear at the end of every EIS.

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APPENDIX I TO PART 1025—SUGGESTED FORM OF FINAL PREHEARING ORDER

AUTHORITY: Consumer Product Safety Act (secs. 15, 20, 27 (15 U.S.C. 2064, 2069, 2076), the Flammable Fabrics Act (sec. 5, 15 U.S.C. 1194), the Federal Trade Commission Act (15 U.S.C. 45)), unless otherwise noted.

SOURCE: 45 FR 29215, May 1, 1980, unless otherwise noted.