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(6) Commission procedures on imports shall be developed in the context of the overall responsibilities, authorities, priorities, resources, and compliance philosophy of this Commission. Any existing procedures which have been inherited from predecessor agencies will be reviewed and revised, if necessary, to be consistent with the authority and philosophy of this Commission.

(g) The Commission recognizes that the importer may not be the only person to be held responsible for protecting American Consumers from unreasonably hazardous products made abroad, but the importer is, at least, in a strategic position to guarantee the safety of imported products.

(h) Whenever, in the application of this policy, it appears that barriers to free trade may arise, the Commission may consider exceptions to this policy insofar as it can be done without compromising the Commission's responsibilities to assure safe products to the consumer.

(i) Whenever, in the application of this policy, it appears that administrative or procedural aspects of the Commission's regulations are unduly burdening the free flow of goods, the Commission may consider modifications which alleviate such burdens. However, the Commission cannot consider any modifications which do not assure the consumer the same protection from unsafe foreign goods as from unsafe domestic goods.

(Sec. 9, 15 U.S.C. 1198, 67 Stat. 114; Sec. 14, 15 U.S.C. 1273, 74 Stat. 379; 80 Stat. 1304, 1305; Sec. 17, 15 U.S.C. 2066, 86 Stat. 1223)

[40 FR 47486, Oct. 9, 1975, as amended at 41 FR 47915, Nov. 1, 1976]

§ 1009.8 Policy on establishing priorities for Commission action.

(a) This document states the Consumer Product Safety Commission's policy on establishing priorities for action under the five acts the Commission administers. The policy is issued pursuant to sections 4(f)(2) and 4(f)(3) of the Consumer Product Safety Act, as amended, and in further implementation of the Commission's statement of policy dated September 21, 1973.

(b) It is the general policy of the Commission that priorities for Commission action will be established by a majority vote of its members. The policy will be reflected by votes on all requests for appropriations, an annual operating plan, and any revisions thereof. Recognizing that these documents are the result of a lengthy planning process, during which many decisions are made that substantially determine the content of the final documents, the Chairman shall continually keep the Commission apprised of, and seek its guidance concerning, significant problems, policy questions and alternative solutions throughout the planning cycle leading to the development of budget requests and operating plans.

(1) *Requests for appropriations.* Requests for appropriations are submitted concurrently to the President or the Office of Management and Budget and to the Congress pursuant to section 27(k)(1) of the Consumer Product Safety Act.

(2) *Annual operating plan.* The operating plan shall be as specific as possible with regard to products, groups of products, or generic hazards to be addressed. It shall be submitted to the Commission for approval at least 30 days prior to the beginning of the fiscal year.

(c) In establishing and revising its priorities, the Commission will endeavor to fulfill each of its purposes as set forth in section 2(b) of the Consumer Product Safety Act. In so doing, it will apply the following general criteria:

(1) *Frequency and severity of injuries.* Two major criteria in determining priorities are the frequency and severity of injuries associated with consumer products. All available data including the NEISS hazard index and supplementary data collection systems, such as fire surveys and death certificate collection, shall be used to attempt to identify the frequency and severity of injuries. Consideration shall also be given to areas known to be undercounted by NEISS and a judgment reached as to the probable frequency and severity of injuries in such areas. The judgment as to severity shall include an evaluation of the seriousness of the injury.

(2) *Causality of injuries.* Consideration shall then be given to the amenability

of a product hazard to injury reduction through standard setting, information and education, or other Commission action. This step involves an analysis of the extent to which the product and other factors such as consumer behavior are causally related to the injury pattern. Priority shall be assigned to products according to the extent of product causality involvement and the extent of injuries that can reasonably be expected to be reduced or eliminated through commission action.

(3) *Chronic illness and future injuries.* Certain products, although not presently associated with large numbers of frequent or severe injuries, deserve priority attention if there is reason to believe that the products will in the future be associated with many such injuries. Although not as susceptible to measurements as other product related injuries and illnesses, these risks shall be evaluated on the basis of the best information available and given priority on the basis of the predicted future illnesses and injuries and the effectiveness of Commission action in reducing or eliminating them.

(4) *Cost and benefit of CPSC action.* Consideration shall be given on a preliminary basis to the prospective cost of Commission action to consumers and producers, and to the benefits expected to accrue to society from the resulting reduction of injuries. Consideration of product cost increases will be supplemented to the extent feasible and necessary by assessments of effects on utility or convenience of the product; product sales and shifts to substitutes; and industry supply factors, competitive structure, or employment. While all these facets of potential social ''cost'' cannot be subsumed in a single, quantitative cost measure, they will be weighed, to the extent they are available, against injury reduction benefits. The benefit estimates will be based on (i) explicitly stated expectations as to the effectiveness of regulatory options (derived from criterion (2), ''causality of injuries''); (ii) costs of injuries and deaths based on the latest injury cost data and analyses available to the Commission; (iii) explicit estimates or assumptions as to average product lives; and (iv) such other factors as may be relevant in particular cases. The Commission recognizes that in analyzing benefits as well as costs there will frequently be modifying factors—e.g., criteria (5) and (6)—or analytical uncertainties that complicate matters and militate against reliance on single numerical expressions. Hence the Commission cannot commit itself to priorities based solely on the preliminary cost/benefit comparisons that will be available at the stage of priority setting, nor to any one form of comparison such as net benefits or cost-benefit ratios. Commission costs will also be considered. The Commission has a responsibility to insure that its resources are utilized efficiently. Assuming other factors to be equal, a higher priority will be assigned to those products which can be addressed using fewer Commission resources.

(5) *Unforeseen nature of the risk.* Other things being equal, consideration should be to the degree of consumer awareness both of the hazard and of its consequences. Priority could then be given to unforeseen and unforeseeable risks arising from the ordinary use of a product.

(6) *Vulnerability of the population at risk.* Children, the elderly, and the handicapped are often less able to judge or escape certain dangers in a consumer product or in the home environment. Because these consumers are, therefore, more vulnerable to danger in products designed for their special use or frequently used by them, the Commission will usually place a higher priority, assuming other factors are equal, on preventing product related injury to children, the handicapped, and senior citizens.

(7) *Probability of exposure to hazard.* The Commission may also consider several other things which can help to determine the likelihood that a consumer would be injured by a product thought to be hazardous. These are the number of units of the product that are being used by consumers, the frequency with which such use occurs, and the likelihood that in the course of typical use the consumer would be exposed to the identified risk of injury.

(8) *Additional criteria.* Additional criteria may arise that the staff believes warrant the Commission's attention.

The Commission encourages the inclusion of such criteria for its consideration in establishing priorities. The Commission recognizes that incontrovertible data related to the criteria identified in this policy statement may be difficult to locate or develop on a timely basis. Therefore, the Commission may not require extensive documentation on each and every criterion before making a decision. In addition, the Commission emphasizes that the order of listing of the criteria in this policy is not intended to indicate either the order in which they are to be considered or their relative importance. The Commission will consider all the criteria to the extent feasible in each case, and as interactively or jointly as possible.

(Sec. 4, 15 U.S.C. 2053, 86 Stat. 1210; as amended by sec. 4, Pub. L. 94–284)

[42 FR 53953, Oct. 4, 1977]

§ 1009.9 Policy regarding the granting of emergency exemptions from Commission regulations.

(a) This document states the Consumer Product Safety Commission's policy with respect to emergency requests for exemptions for companies which inadvertently produce products that do not conform to Commission regulations issued under the five acts the Commission administers. These acts are the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act of 1970 and the Refrigerator Safety Act. While the Commission is reluctant to grant such requests, it believes that the public should be apprised of the manner in which it rules on exemption requests and therefore is publishing the policy to provide guidance to industry and others making such requests. The publication of the policy will also serve to inform the public of the criteria that the Commission uses in ruling upon such requests. This policy is intended to cover emergency requests for exemptions and, while relevant, is not intended to limit the discretion of CPSC staff to close or not to open cases in the routine enforcement of CPSC regulations.

(b) The policy governs requests for exemption from any regulation under any act the Commission administers. The policy lists criteria the Commission considers in deciding whether to grant or deny an exemption request and therefore, should provide guidance to companies on the types of information to be submitted with requests. In addition, published Commission procedures regarding petitioning for amendments to regulations may assist companies in determining what supporting data to submit with a request. (See, for example, existing Commission procedures at 16 CFR 1110, 16 CFR 1607.14, 16 CFR 1500.82 and 16 CFR 1500.201). The exemption requests themselves should be filed with the Office of the Secretary of the Commission.

(c) It is the general policy of the Commission that when a particular exemption request is made and granted, all similarly situated persons are accorded the same relief as the person who requested the exemption. Therefore, when any amendment to a Commission regulation is proposed or a statement of enforcement policy is issued, the document to the extent practicable will be phrased in objective terms so that all similarly situated persons will be able to determine whether their products would fall within the relief.

(d) In deciding whether to grant or deny an exemption request, the Commission considers the following general criteria:

(1) *The degree to which the exemption if granted would expose consumers to an increased risk of injury:* The Commission does not believe it should exempt products which would present a significantly greater risk to consumers than complying products. Therefore, the Commission will not grant exemption requests in such cases.

(2) *The cost to the Commission of granting emergency requests:* Granting emergency exemption requests will in most cases require drafting a proposed and a final amendment or a statement of enforcement policy for publication in the FEDERAL REGISTER. Such action may also require the Commission to monitor the sale or distribution of the products. These activities consume scarce Commission resources. In some instances, the costs to the Commission may exceed the benefit to be derived by