

Consumer Product Safety Commission

§ 1009.3

the development of voluntary and mandatory standards, and supporting the Agency's compliance activities through product safety assessments. A wide variety of products are tested and evaluated to determine the causes of failure and the hazards presented. Product safety tests involve mechanical, electrical, and combustion engineering, as well as thermal and chemical analyses. Test protocols are developed, test fixtures and setups are designed and fabricated, and tests are conducted following the requirements and guidance of voluntary and mandatory standards and/or using sound engineering and scientific judgment. The Laboratory participates with and supports other agency directorates on multi-disciplinary teams in the development of voluntary and mandatory standards. The Laboratory coordinates and cooperates with other Federal agencies, private industry, and consumer interest groups by sharing engineering and scientific research, test, and evaluation expertise. Additionally, Corrective Action Plans, proposed by manufacturers to correct a product defect, are tested and evaluated to assure that the proposed changes adequately resolve the problem. Regulated products, such as children's products, sleepwear, and bicycle helmets, are routinely tested and evaluated for compliance with the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. The Directorate is composed of the Mechanical Engineering Division, the Electrical Engineering Division (which includes flammable fabrics), and the Chemical Division. Overall, the directorate provides engineering, scientific, and other technical expertise to all entities within the Consumer Product Safety Commission.

PART 1009—GENERAL STATEMENTS OF POLICY OR INTERPRETATION

Sec.

1009.3 Policy on imported products, importers, and foreign manufacturers.

1009.8 Policy on establishing priorities for Commission action.

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

§ 1009.3 Policy on imported products, importers, and foreign manufacturers.

(a) This policy states the Commission's views as to imported products subject to the Consumer Product Safety Act (15 U.S.C. 2051) and the other Acts the Commission administers: The Federal Hazardous Substances Act (15 U.S.C. 1261), the Flammable Fabrics Act (15 U.S.C. 1191), the Poison Prevention Packaging Act (15 U.S.C. 1471), and the Refrigerator Safety Act (15 U.S.C. 1211). Basically, the Policy states that in order to fully protect the American consumer from hazardous consumer products the Commission will seek to ensure that importers and foreign manufacturers, as well as domestic manufacturers, distributors, and retailers, carry out their obligations and responsibilities under the five Acts. The Commission will also seek to establish, to the maximum extent possible, uniform import procedures for products subject to the Acts the Commission administers.

(b) The Consumer Product Safety Act recognizes the critical position of importers in protecting American consumers from unreasonably hazardous products made abroad and accordingly, under that Act, importers are made subject to the same responsibilities as domestic manufacturers. This is explicitly stated in the definition of "manufacturer" as any person who manufactures or imports a consumer product (Section 3(a)(4); 15 U.S.C. 2052(a)(4)).

(c) The Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*), which were transferred to the jurisdiction of the Consumer Product Safety Commission under its enabling act, all assign responsibilities to importers comparable to those of manufacturers and distributors.

(d) Historically, foreign-made products entering the United States were "cleared" by those agencies with particular jurisdiction over them. Products so cleared were limited in number relative to total imports. The Consumer Product Safety Commission has jurisdiction over a far larger number of products entering the United States

through over 300 ports of entry. In addition, the total number of imports has dramatically increased over the years and modern technology has brought air transport and containerized freight for rapid handling and distribution of consumer and other products. For the Commission to effectively “clear” such products through ports of entry could seriously impede and delay the transport of consumer products and impose additional costs to both the consumer and the importer.

(e) The Consumer Product Safety Act provides alternative means to both assure the consumer safe products and facilitate the free movement of consumer products in commerce. For example, it requires certification by manufacturers (foreign and domestic), importers and private labelers of products that are subject to a consumer product safety standard. Such certification must be based on a test of each product or upon a reasonable testing program. The other acts enforced by the Commission do not specifically require certificates; however, both the Flammable Fabrics Act and the Federal Hazardous Substances Act encourage guarantees of compliance by protecting from criminal prosecution persons who have in good faith received such guarantees (15 U.S.C. 1197(a); 16 CFR 302.11; 15 U.S.C. 1264(b)).

(f) In the interest of giving the American consumer the full measure of protection from hazardous products anticipated by the Congress, it is the Commission’s policy to assure that importers and foreign manufacturers carry out their responsibilities under all laws administered by this Commission. Specifically:

(1) Importers have responsibilities and obligations comparable to those of domestic manufacturers. Rules and regulations promulgated by the Commission will reflect these responsibilities and obligations.

(2) In promulgating its rules and regulations, the Commission encourages the participation and comments of the import community, including importers and foreign manufacturers.

(3) All imported products under the jurisdiction of the Consumer Product Safety Commission shall, to the maximum extent possible, be subject to

uniform import procedures. The Commission recognizes the need to establish and implement procedures that minimize delay and expense involved in inspecting cargo at a port of entry. The Commission encourages cooperation between importers, foreign manufacturers and foreign governments, which increases the safety of the consumer and facilitates the free movement of goods between countries.

(4) When enforcement actions are appropriate, they will be directed toward the responsible officials of any import organization and will not be restricted to action solely against the product.

(5) Legal actions sought by the Commission will usually be primarily directed toward the owner or consignee of imported goods rather than against the customs broker even though his or her name may appear as the importer of record. However, the Commissioner believes it will not serve the public interest to impede the Commission’s rights of investigation and enforcement by exempting a customs broker from the coverage of the law merely because of his or her title or usual form of business. It may be relevant that a customs broker, who does not have an ownership interest in the goods but who is acting as an agent for the actual owner or consignee, signs the entry documents as importer of record. What effect and possible need for inclusion this will have in a particular case can be judged by the Commission on a case-by-case basis.

(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.

Consumer Product Safety Commission

§ 1009.8

(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