

Subpart B—Statement of Policy and Interpretation Concerning Export of Noncomplying, Misbranded, or Banned Products

§ 1019.31 Purpose and scope.

(a) This subpart B of this part 1019 states the policy of the Consumer Product Safety Commission and its interpretation of the Consumer Product Safety Act and the Federal Hazardous Substances Act with regard to exportation of products which have been sold, offered for sale, or distributed in commerce for use in the United States which:

(1) Fail to comply with an applicable consumer product safety standard or banning rule issued under provisions of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); or

(2) Are “misbranded hazardous substances” or “banned hazardous substances” as those terms are used in the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*).

(b) The policy expressed in this subpart B of part 1019 does not apply to any of the following products:

(1) Products which could be regulated only under provisions of the Consumer Product Safety Act but which are not subject to a consumer product safety standard or banning rule issued under that Act.

(2) Consumer products which are subject to and fail to comply with an applicable standard or banning rule issued under provisions of the Consumer Product Safety Act but which have never been distributed in commerce for use in the United States. See section 18(b) of the Consumer Product Safety Act 15, U.S.C. 2067(b), and subpart A of this part 1019 for requirements governing export of such products.)

(3) Products which could be regulated under one or more sections of the Federal Hazardous Substances Act but which are neither “misbranded hazardous substances” nor “banned hazardous substances” as those terms are used in the Act.

(4) Products which are “misbranded hazardous substances” or “banned hazardous substances” as those terms are used in the Federal Hazardous Substances Act but which have never been

sold or offered for sale in domestic commerce. (See sections 5(b) and 14(d) of the Federal Hazardous Substances Act (15 U.S.C. 1264(b) and 1273(d) and subpart A of this part 1019 for requirements governing export of such products.)

(5) Products for which the Commission has granted an exemption from an applicable standard, ban, or labeling requirement under the CPSA, FHSA, or FFA, in accordance with provisions of 16 CFR 1009.9. (These products remain subject to the notification requirements of subpart A of this part 1019.)

(6) Products which fail to comply with an applicable standard of flammability issued under provisions of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*). The Commission’s policy regarding export of such products is set forth in the Commission’s Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.*, CPSC Docket No. 80–2, July 7, 1983, and allows export without regard to whether the products have been distributed in domestic commerce. (See section 15 of the Flammable Fabrics Act, 15 U.S.C. 1202, and subpart A of this part 1019 for requirements governing export of such products.)

§ 1019.32 Statutory provisions.

(a) Section 18(a) of the Consumer Product Safety Act (15 U.S.C. 2057(a)) states:

This Act [the Consumer Product Safety Act] shall not apply to any consumer product if: (1) It can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) states in part:

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The following acts and the causing thereof are hereby prohibited: (a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance. * * * (c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(c) Section 5(b) of the Federal Hazardous Substances Act (15 U.S.C. 1264(b)) provides in part:

No person shall be subject to the penalties of this section * * * (3) for having violated subsection (a) or (c) of section 4 with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, or if the Consumer Product Safety Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

§ 1019.33 Statement of policy and interpretation.

(a) In its enforcement of the Consumer Product Safety Act, the Commission interprets the provisions of that Act to prohibit the export of products which fail to comply with an applicable consumer product safety standard or banning rule issued under that Act if those products have at any time been distributed in commerce for use in the United States.

(b) In its enforcement of the Federal Hazardous Substances Act, the Commission interprets the provisions of the Act to prohibit the export of products which are misbranded substances or banned hazardous substances as those terms are used in that Act if those products have at any time been sold or offered for sale in domestic commerce.

PART 1020—SMALL BUSINESS

Sec.

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AUTHORITY: 5 U.S.C. 601 note.

SOURCE: 61 FR 52878, Oct. 9, 1996, unless otherwise noted.

§ 1020.1 Why is the Commission issuing this rule?

(a) To state the Commission’s policies on small businesses;

(b) To assure that the Commission continues to treat small businesses fairly;

(c) To assure that small businesses do not bear a disproportionate share of any burden or cost created by a Commission regulatory, enforcement, or other action; and

(d) To assure that small businesses are given every opportunity to participate fully in the Commission’s regulatory process.

§ 1020.2 What is the definition of “small business”?

As used in this part, the term *small business* means any entity that is either a *small business*, *small organization*, or *small governmental jurisdiction*, as those terms are defined at 5 U.S.C. 601(3), (4), and (5), respectively.

§ 1020.3 What are the qualifications and duties of the Small Business Ombudsman?

(a) The Chairman will appoint a senior, full-time Commission employee as Small Business Ombudsman. The Ombudsman must:

(1) Have a working knowledge of the Commission’s statutes and regulations;

(2) Be familiar with the industries and products that the Commission regulates;

(3) Develop a working knowledge of the regulatory problems that small businesses experience;

(4) Perform the Ombudsman duties in addition to, and consistently with, other Commission responsibilities; and

(5) Not work in the Office of Compliance or Office of Hazard Identification and Reduction.

(b) The duties of the Small Business Ombudsman will include, but not be limited to, the following:

(1) Developing and implementing a program to assist small businesses that is consistent with § 1020.4;