

## Consumer Product Safety Commission

## § 1019.1

(d) If the GSA Secretariat concurs, the Chairman shall certify in writing that the renewal of the advisory committee is in the public interest and shall publish notice of the renewal in the *FEDERAL REGISTER* and shall file a new charter.

[41 FR 45882, Oct. 18, 1976, as amended at 46 FR 63249, Dec. 31, 1981]

### PART 1019—EXPORT OF NONCOMPLYING, MISBRANDED, OR BANNED PRODUCTS

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AUTHORITY: 15 U.S.C. 1196, 1202, 1263, 1264, 1273, 2067, 2068.

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#### Subpart A—Procedures for Export of Noncomplying, Misbranded, or Banned Products

##### § 1019.1 Purpose, applicability, and exemptions.

(a) *Purpose.* The regulations in this subpart A of this part 1019 establish the procedures exporters must use to notify the Consumer Product Safety Commission of their intent to export from the United States products which are banned or fail to comply with an

applicable safety standard, regulation, or statute. These regulations also set forth the procedures the Commission uses in transmitting the notification of export of noncomplying products to the country to which those products will be sent. The Consumer Product Safety Act Authorization Act of 1978 (Pub. L. 95-631), which became effective November 10, 1978, established these notification requirements and authorizes the Commission to issue regulations to implement them.

(b) *Applicability.* These regulations apply to any person or firm which exports from the United States and item which is:

(1) A consumer product that does not conform to an applicable consumer product safety rule issued under sections 7 and 9 of the Consumer Product Safety Act (15 U.S.C. 2056, 2058), or which has been declared to be a banned hazardous product under provisions of sections 8 and 9 of that Act (15 U.S.C. 2057, 2058); or

(2) A misbranded hazardous substance or a banned hazardous substance within the meaning of sections 2(p) and 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261); or

(3) A fabric or related material or an item of wearing apparel or interior furnishing made of fabric or related material which fails to conform with an applicable flammability standard or regulations issued under section 4 of the Flammable Fabrics Act (15 U.S.C. 1191, 1193).

(c) *Exemption for certain items with noncomplying labeling.* The exporter of an item that fails to comply with a standard or regulation only because it is labeled in a language other than English need not notify the Commission prior to export if the product is labeled with the required information in the language of the country to which the product will be sent.

(d) *Exemption for samples.* The exporter of an item that fails to comply with a standard or regulation, but which is intended for use only as a sample and not for resale, need not notify the Commission prior to export, if the item is conspicuously and labeled in English with the statement: "Sample only. Not for resale." (The Commission encourages exporters to provide

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this label, in addition, in the language of the importing country, but does not require the foreign language labeling.) To qualify as a sample shipment under this exemption, the quantity of goods involved must be consistent with prevalent trade practices with respect to the specific product.

(e) *Exemption for items not in child-resistant packaging.* The exporter of an item which is a “misbranded hazardous substance” within the meaning of section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) only because it fails to comply with an applicable requirement for child-resistant packaging under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*) need not notify the Commission prior to export.

### § 1019.2 Definitions.

As used in this subpart A of this part 1019:

(a) *Consignee* means the person, partnership, corporation or entity in a foreign country to whom noncomplying goods are sent;

(b) *Export* means to send goods outside the United States or United States possessions for purposes of trade, except the term does not apply to sending goods to United States installations located outside the United States or its possessions;

(c) *Exporter* means the person, partnership, corporation or entity that initiates the export of noncomplying goods;

(d) *Noncomplying goods* means any item described in § 1019.1(b), except for those items excluded from the requirements of these regulations by § 1019.1 (c), (d), and (e).

### § 1019.3 General requirements for notifying the Commission.

Not less than 30 days before exporting any noncomplying goods described in § 1019.1(b), the exporter must file a statement with the Consumer Product Safety Commission, as described in §§ 1019.4 and 1019.5 of this subpart A. The exporter need not notify the Commission about the export of items described in § 1019.1 (c), (d), or (e). As described in § 1019.5, the exporter may request the Commission to allow the statement to be filed between 10 and 29

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days before the intended export, and the request may be granted for good cause.

### § 1019.4 Procedures for notifying the Commission; content of the notification.

(a) *Where notification must be filed.* The notification of intent to export shall be addressed to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Coverage of notification.* An exporter must file a separate notification for each country to which noncomplying goods are to be exported. Each notification may include a variety of noncomplying goods being shipped to one country. The notification may include goods intended to be shipped to one country in any one year, unless the Assistant Executive Director of Compliance directs otherwise in writing.

(c) *Form of notification.* The notification of intent to export must be in writing and must be entitled: “Notification of Intent to Export Noncomplying Goods to [indicate name of country].” The Commission has no notification forms, but encourages exporters to provide the required information in the order listed in paragraphs (d) and (e) of this section.

(d) *Content of notification; required information.* The notification of intent to export shall contain the information required by this subsection. If the notification covers a variety of noncomplying goods the exporter intends to export to one country, the information required below must be clearly provided for each class of goods, and may include an estimate of the information required in paragraphs (d) (3) and (5) of this section. The required information is:

(1) Name, address and telephone number of the exporter;

(2) Name and address of each consignee;

(3) Quantity and description of the goods to be exported to each consignee, including brand or trade names or model or other identifying numbers;

(4) Identification of the standards, bans, regulations and statutory provisions applicable to the goods being exported, and an accurate description of

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the manner in which the goods fail to comply with applicable requirements; and

(5) Anticipated date of shipment and port of destination.

(e) *Optional information.* In addition to the information required by paragraph (d) of this section, the notification of intent to export may contain, at the exporter's option, the following information:

(1) Copies of any correspondence from the government of the country of destination of the goods indicating whether the noncomplying goods may be imported into that country; and

(2) Any other safety-related information that the exporter believes is relevant or useful to the Commission or to the government of the country of intended destination.

(f) *Signature.* The notification of intent to export shall be signed by the owner of the exporting firm if the exporter is a sole-proprietorship, by a partner if the exporter is a partnership, or by a corporate officer if the exporter is a corporation.

### § 1019.5 Time notification must be made to Commission; reductions of time.

(a) *Time of notification.* The notification of intent to export must be received by the Commission's Assistant Executive Director for Compliance at least 30 days before the noncomplying goods are to leave the customs territory of the United States. If the notification of intent to export includes more than one shipment of noncomplying goods to a foreign country, the Assistant Executive Director for Compliance must receive the notification at least 30 days before the first shipment of noncomplying goods is to leave the customs territory of the United States.

(b) *Incomplete notification.* Promptly after receiving notification of intent to export, the Assistant Executive Director will inform the exporter if the notification of intent to export is incomplete and will describe which requirements of § 1019.4 are not satisfied. The Assistant Executive Director may inform the exporter that the 30-day advance notification period will not begin

until the Assistant Executive Director receives all the required information.

(c) *Requests for reduction in 30-day notification requirement.* Any exporter may request an exemption from the requirement of 30-day advance notification of intent to export by filing with the Commission's Assistant Executive Director for Compliance (Washington, DC 20207) a written request that the time be reduced to a time between 10 and 30 days before the intended export. The request for reduction in time must be received by the Assistant Executive Director for Compliance at least 3 working days before the exporter wishes the reduced time period to begin. The request must:

(1) Be in writing;

(2) Be entitled "Request for Reduction of Time to File Notification of Intent to Export Noncomplying Goods to [indicate name of country]";

(3) Contain a specific request for the time reduction requested to a time between 10 and 30 days before the intended export; and

(4) Provide reasons for the request for reduction in time.

(d) *Response to requests for reduction of time.* The Assistant Executive Director for Compliance has the authority to approve or disapprove requests for reduction of time. The Assistant Executive Director shall indicate the amount of time before export that the exporter must provide the notification. If the request is not granted, the Assistant Executive Director shall explain the reasons in writing.

### § 1019.6 Changes to notification.

If the exporter causes any change to any of the information required by § 1019.4, or learns of any change to any of that information, at any time before the noncomplying goods reach the country of destination, the exporter must notify the Assistant Executive Director for Compliance within two working days after causing or learning of such change, and must state the reason for any such change. The Assistant Executive Director will promptly inform the exporter whether the 30-day advance notification period will be discontinued, and whether the exporter must take any other steps to comply

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with the advance notification requirement.

### § 1019.7 Commission notification of foreign governments.

After receiving notification from the exporter, or any changes in notification, the Assistant Executive Director for Compliance shall inform on a priority basis the appropriate government agency of the country to which the noncomplying goods are to be sent of the exportation and the basis on which the goods are banned or fail to comply with Commission standards, regulations, or statutes, and shall send all information supplied by the exporter in accordance with § 1019.4(d). The Assistant Executive Director shall also enclose any information supplied in accordance with § 1019.4(e), but he or she may also state that the Commission disagrees with or takes no position on its content, including its relevance or accuracy. The Assistant Executive Director shall take whatever other action is necessary to provide full information to foreign countries and shall also work with and inform the U.S. State Department and foreign embassies and international organizations, as appropriate. The Assistant Executive Director shall also seek acknowledgment of the notification from the foreign government. Foreign governments intending to prohibit entry of goods that are the subject of a notification from the Commission should initiate action to prevent such entry and should notify the exporter directly of that intent.

### § 1019.8 Confidentiality.

If the exporter believes any of the information submitted should be considered trade secret or confidential commercial or financial information, the exporter must request confidential treatment, in writing, at the time the information is submitted or must indicate that a request will be made within 10 working days. The Commission's regulations under the Freedom of Information Act, 16 CFR part 1015, govern confidential treatment of information submitted to the Commission.

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### 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

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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:

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.

1020.1 Why is the Commission issuing this rule?