



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action  
Commissioners Voting by Ballot

1111 - 18th Street, N.W.  
Washington, D.C.

Voting: Chairman King  
Commissioner Pittle  
Commissioner Sloan  
Commissioner Zagoria

ITEM

Confirmation of Policy Statement Regarding the Granting of Emergency Exemptions from Commission Regulations (Statement of Policy was published in the Federal Register of May 4, 1978)

(Briefing material transmitted by the Office of the Secretary on June 4, 1979)

DECISION

The Commission approved the attached Federal Register notice confirming the policy statement regarding the granting of emergency exemptions from Commission regulations.

VOTE

Concurring: Chairman King (6/22/79)

*Susan B. King*

Commissioner Pittle (6/18/79)

*R. David Pittle*

Commissioner Sloan (6/19/79)

*Edith B. Sloan*

Commissioner Zagoria (6/19/79)

*Sam Zagoria*

Attachment

Submitted by the Office of the Secretary

companies which inadvertently produce products that do not conform to Commission regulations issued under the five acts the Commission administers. Although the document is a general statement of policy exempt from the notice and public procedure provisions of the Administrative Procedure Act (5 U.S.C. 553), the Commission, nevertheless, solicited public comment on the policy because of a desire for public participation in the formulation of a final policy.

The Commission has not received any public comments on the policy. The Commission has, however, been operating under the published policy for over a year and has considered several emergency exemption requests under the criteria in the policy for deciding whether to grant or deny such requests. The Commission has found the policy to be useful in evaluating emergency exemption requests and has decided to affirm with no changes the policy that originally appeared in the Federal Register on May 4, 1978.

The Commission believes that the policy, in addition to assisting the Commission, has provided guidance to companies on the types of information to be submitted with an exemption request. The Commission notes in this regard that published Commission procedures regarding petitioning for amendments to regulations may also 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 policy explains the factors the Commission considers in evaluating exemption requests. The requests themselves must be filed with the Office of the Secretary of the Commission.

Accordingly, under the provisions of the Consumer Product Safety Act (15 U.S.C. 2051), the Federal Hazardous Substances Act (15 U.S.C. 1261), the Flammable Fabrics Act (15 U.S.C. 1191), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471), and the Refrigerator Safety Act (15 U.S.C. 2111), the Commission in this document affirms the policy statement regarding the granting of emergency exemptions from Commission regulations that was issued May 4, 1978 at Title 16 of the Code of Federal Regulations, Chapter II, Part 1009, § 1009.9.

Although unchanged, the policy statement is reprinted in its entirety for information purposes below:

**§ 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 a company and similarly situated companies. If so, the Commission may deny the request on this ground.

(3) *The precedential effect of exempting some products:* The Commission recognizes that decisions to exempt some products set precedents in at least two ways. First, they indicate to companies that the CPSC will permit deviations to a given regulation. Second, they indicate to companies that the CPSC will permit deviations to regulations in general. Both precedents, if set carelessly by the CPSC, could result in many requests for exemption and could undermine the stability and integrity of the Commission's regulations.

(e) In deciding whether to grant or deny an exemption request, the Commission also considers the following factors which relate specifically to the company making the request: (If the request is granted, all similarly-situated companies, however, will be accorded the same relief).

(1) *The nature of the emergency exemption request:* The Commission will not reward bad quality control or faulty design work by permitting companies to market their mistakes. Although it is difficult to detail specific instances, the Commission is sympathetic to companies that produced noncomplying products due to factors beyond their immediate control or despite their best efforts.

(2) *The economic loss which a company will suffer if its emergency request is denied:* The greater the loss a

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**CONSUMER PRODUCT SAFETY  
COMMISSION****16 CFR Part 1009****Policy Regarding the Granting of  
Emergency Exemptions From  
Commission Regulations**

**AGENCY:** Consumer Product Safety  
Commission.

**ACTION:** Confirmation of statement of  
policy.

**SUMMARY:** This document affirms the policy of the Commission regarding the granting of emergency exemptions to companies which inadvertently produce products that do not conform to Commission regulations. The policy statement, which was issued May 4, 1978, lists several criteria which the Commission considers in deciding whether to grant or deny an exemption request. The Commission has been operating under the policy for over a year and has found it to be useful in evaluating emergency exemption requests.

**DATE:** The policy became effective on May 4, 1978.

**FOR FURTHER INFORMATION CONTACT:** Carole Roth, Office of the General Counsel, Consumer Product Safety Commission, 1111 18th St., NW., Washington, D.C. 20207 (202-634-7770).

**SUPPLEMENTARY INFORMATION:** On May 4, 1978 the Commission published in the Federal Register (43 FR 19215; 16 CFR Part 1009.9) a statement of policy regarding Commission consideration of emergency exemption requests from

company may suffer the more likely the Commission will favorably consider an exemption. However, the Commission does not believe economic loss alone should be determinative of an emergency exemption request.

(3) *The fairness to competitors:* The Commission is reluctant to grant relief if it could place the company at an unfair competitive advantage over other companies which have successfully complied with the same regulation. Therefore, the Commission will afford the same relief to similarly-situated companies, and will decline to grant a request where unfair competitive advantage may result.

Dated: July 9, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety  
Commission.

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