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16 CFR Ch. II (1–1–07 Edition)

(f) *State or local requirement* means any statute, standard, regulation, ordinance, or other requirement that applies to a product regulated by the Commission, that is issued by a State or local government, and that is intended to have the force of law when in effect.

§ 1061.3 Statutory considerations.

(a) The Commission's statutory preemption provisions provide, generally, that whenever consumer products are subject to certain Commission statutes, standards, or regulations, a State or local requirement applicable to the same product is preempted, i.e., superseded and made unenforceable, if both are designed to protect against the same risk of injury or illness, unless the State or local requirement is identical to the Commission's statutory requirement, standard, or regulation. A State or local requirement is not preempted if the product it is applicable to is for the State or local government's own use and the requirement provides a higher degree of protection than the Commission's statutory requirement, standard, or regulation.

(b) The Commission's statutory preemption provisions provide, generally, that if a State or local government wants to enforce its own requirement that is preempted, the State or local government must seek an exemption from the Commission before any such enforcement. The Commission may, by regulation, exempt a State or local requirement from preemption if it finds that the State or local requirement affords a significantly higher degree of protection than the Commission's statute, standard, or regulation, and that it does not unduly burden interstate commerce. Such findings must be included in any exemption regulation.

§ 1061.4 Threshold requirements for applications for exemption.

(a) The Commission will consider an application for preemption on its merits, only if the application demonstrates all of the following:

(1) The State or local requirement has been enacted or issued in final form by an authorized official or instrumentality of the State or local government. For purposes of this section, a

State or local requirement may be considered to have been enacted or issued in final form even though it is preempted by a Commission standard or regulation.

(2) The applicant is an official or instrumentality of a State or local government having authority to act for, or on behalf of, that government in applying for an exemption from preemption for the safety requirement referred to in the application.

(3) The State or local requirement is preempted under a Commission statutory preemption provision by a Commission statute, standard, or regulation. A State or local requirement is preempted if the following tests are met:

(i) There is a Commission statute, standard, or regulation in effect that is applicable to the product covered by the State or local requirement.

(ii) The Commission statute, standard, or regulation is designated as having a preemptive effect under a statutory preemption provision.

(iii) The State or local requirement is designed to protect against the same risk of injury or illness as that addressed by the Commission statute, standard, or regulation.

(iv) The State or local requirement is not identical to the Commission statute, standard, or regulation.

(b) State and local governments may contact the Commission's Office of the General Counsel to obtain informal advice on whether a State or local requirement meets the threshold requirements of paragraph (a) of this section.

§ 1061.5 Form of applications for exemption.

An application for exemption shall:

(a) Be written in the English language.

(b) Clearly indicate that it is an application for an exemption from preemption by a Commission statute, standard, or regulation.

(c) Identify the State or local requirement that is the subject of the application and give the date it was enacted or issued in final form.

(d) Identify the specific Commission statute, standard, or regulation that is believed to preempt the State or local requirement.

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(e) Contain the name and address of the person, branch, department, agency, or other instrumentality of the State or local government that should be notified of the Commission's actions concerning the application.

(f) Document the applicant's authority to act for, or on behalf of, the State or local government in applying for an exemption from preemption for the particular safety requirement in question.

(g) Be signed by an individual having authority to apply for the exemption from federal preemption on behalf of the applicant.

(h) Be submitted, in five copies, to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1061.6 Contents of applications for exemption.

Applications for exemption shall include the information specified in §§ 1061.7 through 1061.10. More generally, a State or local government seeking an exemption should provide the Commission with the most complete information possible in support of the findings the Commission is required to make in issuing an exemption regulation. If any of the specified information is omitted because it is unavailable or not relevant, such omission should be explained in the application.

§ 1061.7 Documentation of the State or local requirement.

An application for an exemption from preemption shall contain the following information:

(a) A copy of the State or local requirement that is the subject of the application. Where available, the application shall also include copies of any legislative history or background materials used in issuing the requirement, including hearing reports or studies concerning the development or consideration of the requirement.

(b) A written explanation of why compliance with the State or local requirement would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

§ 1061.8 Information on the heightened degree of protection afforded.

An application for an exemption from preemption shall also contain information demonstrating that the State or local requirement provides a significantly higher degree of protection from the risk of injury or illness than the preempting Commission statute, standard, or regulation. More specifically, an application shall contain:

(a) A description of the risk of injury or illness addressed by the State or local requirement.

(b) A detailed explanation of the State or local requirement and its rationale.

(c) An analysis of differences between the State or local requirement and the Commission statute, standard, or regulation.

(d) A detailed explanation of the State or local test method and its rationale.

(e) Information comparing available test results for the Commission statute, standard, or regulation and the State or local requirement.

(f) Information to show hazard reduction as a result of the State or local requirement, including injury data and results of accident simulation.

(g) Any other information that is relevant to applicant's contention that the State or local requirement provides a significantly higher degree of protection than does the Commission statute, standard, or regulation.

(h) Information regarding enforcement of the State or local requirement and sanctions that could be imposed for noncompliance.

§ 1061.9 Information about the effect on interstate commerce.

An application for exemption from preemption shall provide information on the effect on interstate commerce a granting of the requested exemption would be expected to cause, including the extent of the burden and the benefit to public health and safety that would be provided by the State or local requirement. More specifically, applications for exemption shall include, where available, information showing: