

chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§ 744.2 and § 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101, August 13, 1999) and August 3, 2000 (65 FR 48347, August 8, 2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2000, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in industry information relating to the following:

1. Information on the effect of foreign policy controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.

2. Information on controls maintained by U.S. trade partners (i.e., to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations.

4. Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy controls on overall trade, either for individual firms or for individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy controls on trade.

9. Information on the use of foreign policy controls on targeted countries, entities, or individuals.

BXA is also interested in comments relating generally to the extension or revision of existing foreign policy controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through <http://www.bxa.doc.gov>). If requesters cannot access BXA's website, please call the number above for assistance.

Daniel O. Hill,

Acting Assistant Secretary for Export Administration.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1026

Standards of Conduct for Outside Attorneys Practicing Before the Consumer Product Safety Commission; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is proposing to amend its regulations to add a new part addressing the behavior of attorneys on matters before the Commission. The behavior of attorneys who represent clients in

Commission adjudicative proceedings is governed by 16 CFR part 1025. The new part would cover attorney behavior in any matter before the Commission other than an adjudication. It would also establish the procedure for addressing allegations against attorneys.

DATES: Written comments in response to this notice of proposed rulemaking must be received by the Commission January 5, 2001.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland; Telephone (301) 504-0800. Comments may also be filed by telefacsimile to (301) 504-0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "NPR for Outside Attorneys."

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0980 ext. 2208; facsimile (301) 504-0403; email mhampsh@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The Commission does not have rules governing the behavior of attorneys outside the context of a formal adjudication. As a result, the Commission is unable to take agency action against attorneys who are alleged to have acted in a manner prohibited by the State or District of Columbia bar disciplinary rules applicable to the attorney, unless an administrative complaint has been filed in the matter.

The Commission conducts the majority of its business outside of adjudicatory proceedings. For example, compliance staff often negotiate with attorneys during an investigation or inquiry about a product, on a voluntary corrective action plan for that product, and, if necessary, on a civil penalty with respect to that product. Other Commission staff deal with attorneys on these and other matters, including regulatory proceedings pursuant to the statutes the Commission administers. If an attorney acts in a prohibited manner in these or similar contexts, the Commission cannot now sanction such conduct. The proposed new part is intended to address this gap in the regulations.

The Commission is proposing a rule¹ to govern attorney conduct in any matter where Commissioners or Commission staff are acting in their official capacities, outside the context of adjudications.

Definitions

The proposed rule defines "prohibited conduct" as action by an attorney in a manner prohibited by the state or District of Columbia disciplinary rules applicable to the attorney or otherwise in bad faith. Attorneys are subject to sanction if the prohibited conduct occurs when no administrative case is filed, or prior to the filing of an administrative complaint, or afterwards when an administrative action is settled but the staff may be negotiating a recall or civil penalty. Similarly, the proposed rule is intended to cover regulatory matters or any other activities between attorneys on the one hand and a Commissioner or Commission staff acting in their official capacities on the other hand.²

Actual contact with a Commissioner or the Commission staff is not required for an attorney to be sanctioned for prohibited conduct. For example, under the proposed rule, an attorney who knowingly destroys documents that are relevant to a staff investigation on a particular product would be subject to sanction by the Commission.

Procedures

The new rule includes procedures for addressing allegations of prohibited conduct by attorneys. Under the proposal, all allegations would be dealt with during a (potentially) three-stage procedure.

First Stage

During the first stage, the staff refers an allegation to the General Counsel who would have discretion to determine how it should be dealt with. The General Counsel could review the allegation and then (i) decide to close the matter, (ii) conduct an informal investigation and decide to close the matter or (iii) conduct an informal investigation and issue a show cause order to the attorney.

¹ The Commission voted 2-1 to propose this rule. Commissioner Gall voted against proposing the rule. Her dissenting statement is available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001. Commissioner Moore voted in favor of publishing the rule but filed a separate statement. His statement is also available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001.

² Misconduct by Agency employees is dealt with under internal personnel rules.

The General Counsel may decide, based on a review of the allegation, that an informal investigation is unnecessary. For this reason, the General Counsel has discretion to close the matter without any further action. In addition, if the matter is closed without investigation, the General Counsel has discretion to notify or not notify the attorney of the allegation. For example, if the allegation is frivolous and the attorney is unaware of it, the General Counsel may decide to close it without even informing the attorney that the allegation was made. The General Counsel's decision to close the matter in this instance is final and nonreviewable.

The proposed regulation also permits the General Counsel to conduct an informal investigation during the first stage (without compiling a record) to determine if a more formal proceeding against the attorney is warranted. An informal investigation may include contact between the General Counsel and the CPSC staff, the attorney, counsel for the attorney, or anyone else who has information concerning the allegation. If the General Counsel closes the matter after an such an investigation, he or she must notify the attorney. The General Counsel's decision to close the matter is final and nonreviewable.

If the General Counsel determines, after conducting an informal investigation, that a further proceeding is necessary, a show cause order will be issued to the attorney. Although the General Counsel may close the matter without conducting an informal investigation, as noted above, the proposed regulation requires the General Counsel, as a matter of fairness, to conduct such an investigation before issuing a show cause order.

Second Stage

If the General Counsel does issue a show cause order to the attorney, the second stage of the proceeding begins. The attorney receives notice of the right to make written submissions and/or oral presentations about the allegation and notice of the right to counsel. The responsibility for investigating the allegation is with the General Counsel. No discovery will be permitted. An oral presentation shall be held if requested by the attorney. All oral presentations will be transcribed.

The General Counsel will determine the number and identity of witnesses, the length of testimony, and the admissibility and number of exhibits.

At the conclusion of the second stage, the General Counsel will make a determination, based on all the information, whether to forward a recommendation for sanction to the

Commission. If the General Counsel determines not to forward a sanction recommendation to the Commission, the matter is closed and nonreviewable and the General Counsel will inform the attorney and the Executive Director in writing.

Third Stage

If the General Counsel recommends a sanction, he or she will forward the record to the Commission. Under the proposed regulation, the record consists of all information submitted by the parties during the second stage including at the oral presentation, as well as transcripts of the oral presentation, any exhibits and the sanction recommendation. The Commission reviews the record and either imposes a sanction or closes the matter. The Commission may impose one of the listed sanctions or any other sanction deemed appropriate. For example, the Commission may decide that an attorney's conduct does not warrant public censure, but some other lesser sanction.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act ("RFA"), when an agency issues a proposed rule it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small business entities. 5 U.S.C. 605(b). Because the proposed regulation governs only attorney conduct, the Commission certifies that it will not have a significant effect on a substantial number of small entities.

Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule for outside attorneys. Because this proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1026

Administrative practice and procedure, Attorneys.

Accordingly, 16 CFR Part 1026 is added to read as follows:

PART 1026—RULES AND REGULATIONS

Sec.

- 1026.1 Purpose and scope.
- 1026.2 Definitions.
- 1026.3 Prohibited conduct.
- 1026.4 Procedure.
- 1026.5 Sanctions.
- 1026.6 Information disclosure.

Authority: 15 U.S.C. 2051–2084, 1261–1278, 1191–1204, 1471–1476, 1211–1214.

§ 1026.1 Purpose and Scope.

The behavior of attorneys who represent clients in Commission adjudicative proceedings is governed by 16 CFR part 1025; *see* 16 CFR 1025.66. This part 1026 governs the behavior of attorneys in any matter before the Commission other than an adjudicative proceeding.

§ 1026.2 Definitions.

For purposes of this part only:

(a) *CPSC staff* means any Commissioner or employee of the Consumer Product Safety Commission. Because the Commissioners may have direct and individual contacts with attorneys, they are included in the definition of CPSC staff in this part. This definition does not alter or affect any other law or regulation.

(b) *Attorney* means any attorney at law who is admitted to practice before the highest court of any State or the District of Columbia.

(c) *Matter before the Commission* means any activity where the CPSC staff is acting in its official capacity.

§ 1026.3. Prohibited conduct.

On a matter before the Commission, no attorney may act in a manner prohibited by the state or District of Columbia bar disciplinary rules applicable to the attorney or otherwise in bad faith. Such action constitutes "prohibited conduct."

§ 1026.4 Procedure.

The following three-stage procedure will be used to determine whether an attorney has engaged in prohibited conduct:

(a)(1) The first stage begins when CPSC staff refers an allegation of prohibited conduct to the General Counsel, with notice to the Commission's Executive Director. The General Counsel may summarily close the matter of alleged prohibited conduct without conducting an informal investigation. If so, the General Counsel will inform the Executive Director, but has the discretion to inform or not inform the attorney.

(2) If the General Counsel does not summarily close the matter, the General

Counsel will conduct an informal investigation, after informing the attorney of the allegation and of his or her right to counsel.

(i) The informal investigation may include contact between the General Counsel and the CPSC staff, the attorney, counsel for the attorney, or anyone else who has information concerning the allegation.

(ii) Information gathered during this informal investigation stage will not be made part of the record of the proceeding, unless it is reintroduced during the second stage.

(3) Following the informal investigation, the General Counsel will review all available information and decide whether to issue an order requiring the attorney to show cause why he or she should not be sanctioned or close the matter. If the General Counsel closes the matter, the General Counsel will inform the attorney and the Executive Director in writing of that decision.

(b)(1) The second stage begins when the General Counsel issues a show cause order to the attorney. The order will provide a copy of the allegation and inform the attorney of his or her right to respond in writing and/or orally to the allegation. The General Counsel will send copies of the show cause order to the Executive Director and to the CPSC staff who referred the allegation. The General Counsel will establish a tentative date for oral presentations, in consultation with the attorney and CPSC staff, and a subsequent deadline for written submissions.

(2) During the second stage:

(i) No discovery is permitted.

(ii) The attorney may be represented by counsel.

(iii) An oral presentation shall be held, if requested by the attorney. Any oral presentations will be transcribed.

(iv) The General Counsel has the authority to make a determination with respect to any issue related to the oral presentation not addressed by this part including the number and identity of witnesses, the length of testimony and the 11 admissibility and number of exhibits at any presentation.

(v) Witnesses at the oral presentation may include the attorney, the CPSC staff, or any other person with information about the allegation. If a witness refuses to appear voluntarily, the General Counsel may ask the Commission to issue a subpoena under 15 U.S.C. 2076(b)(3). The attorney may ask the General Counsel to ask the Commission to issue subpoenas to witnesses.

(3) The General Counsel will review the information in the written

submissions and oral presentations (if any), and then decide whether to forward a recommendation for sanction to the Commission. If the General Counsel decides not to forward a written sanction recommendation, the matter is closed, and the General Counsel will inform the attorney and the Executive Director in writing.

(4) The General Counsel's decision to close the matter during the first or second stage is final and nonreviewable.

(c)(1) The third stage begins when the General Counsel forwards the record to the Commission. The record will consist of the complaint, all information submitted in writing during the second stage or at the oral presentation, exhibits, the transcript of any oral presentation, and the General Counsel's written sanction recommendation. The Commission will review the record and decide to impose a sanction or close the matter. The Secretary of the Commission will inform the attorney and the Executive Director in writing of the decision.

(2) At the beginning of the third stage, the General Counsel will designate a lawyer employed by the Commission and not involved in the matter to advise the Commission.

(3) The Executive Director and the General Counsel may designate someone employed by the Commission to act for them at any stage under this procedure.

§ 1026.5 Sanctions.

(a) The following are possible sanctions against an attorney for prohibited conduct:

(1) Censure. Issue a public censure to the attorney that describes the misconduct.

(2) Suspension. Suspend the attorney, for a designated period of time, from participation in any matter before the Commission.

(3) Permanent Exclusion. Permanently bar the attorney from participation in any matter before the Commission.

(4) Other. Any sanction deemed appropriate by the Commission.

(b) If any sanction is imposed, the General Counsel will notify all state and District of Columbia bars before which the attorney is admitted to practice.

§ 1026.6 Information disclosure.

Information disclosure under this section is governed by the provisions of the Freedom of Information Act and 16 CFR Part 1015.

Dated: October 30, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00-28202 Filed 11-3-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 905]

RIN 1512-AA07

Long Island Viticultural Area (2000R-170P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area to be known as "Long Island," located in Nassau and Suffolk counties, New York. This viticultural area encompasses the two existing appellations, "The Hamptons" and "North Fork of Long Island," as well as the addition of the remaining areas of Nassau and Suffolk counties. This proposal is the result of a petition filed by Richard Olsen-Harbach on behalf of Raphael Winery and the Petrocelli Family, as well as Karen Meredith of Broadfields. Mr. Olsen-Harbach believes that the region he refers to as "Long Island" possesses viticultural conditions which are distinguishable from the rest of New York State and the bordering areas of New Jersey and Connecticut.

DATES: Written comments must be received by January 5, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (Attention: Notice No. 905). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-9347).

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on

August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692), which added a new part 9 to 27 CFR, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Long Island Petition

ATF has received a petition from Richard Olsen-Harbach on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields, proposing to establish a viticultural area in Nassau and Suffolk counties, New York, to be known as "Long Island." This proposed viticultural area encompasses the two existing appellations, "The Hamptons, Long Island" and "North Fork of Long