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[Proposed Rules]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Amendment to Fireworks Safety Standards; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering whether there may be a need to update and strengthen its regulation of fireworks devices. This advance notice of proposed rulemaking ('`ANPR'') initiates a rulemaking proceeding under the Federal Hazardous Substances Act ('`FHSA''). The Commission is soliciting written comments concerning the risks of injury associated with fireworks that do not comply with the current fireworks device regulations, the regulatory options discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.\1\

\1\ Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at <http://www.cpsc.gov>.

DATES: Written comments and submissions in response to this notice must be received by September 11, 2006.

ADDRESSES: Comments should be e-mailed to cpSC-os@cpSC.gov. Comments should be captioned ``FIREWORKS ANPR.'' Comments may also be mailed,

preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by facsimile to (301)504-0127.

FOR FURTHER INFORMATION CONTACT: Barbara E. Parisi, Office of General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-7879 or e-mail: bparisi@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On May 14, 1973, the Consumer Product Safety Commission, pursuant to section 30(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2079(a)), assumed responsibility for and administration of the FHSA. On September 27, 1973 (38 FR 27012), the Commission transferred existing fireworks regulations under the FHSA from 21 CFR parts 191 and 191d to 16 CFR parts 1500 and 1507.

In addition to these mandatory CPSC regulations, the American Fireworks Standards Laboratory (AFSL) has developed voluntary standards pertaining to fireworks. The AFSL standards incorporate both CPSC and Department of Transportation regulations as well as a number of standards developed by AFSL that are in addition to Federal requirements. AFSL is an independent, non-profit corporation that was established in 1989 by members of the fireworks industry. It is administered by a 12-member Board of Directors representing companies that manufacture or import fireworks into the United States. Currently, AFSL has approximately 140 U.S. importer members in its program. AFSL tests fireworks in China for its members prior to exportation to the United States. Other testing organizations offer similar services in China, generally following the AFSL standards or close variation.

B. The Product

A firecracker is a device consisting of an explosive pyrotechnic composition in a fused container with the primary function of producing an audible effect. The term ``fireworks devices'' includes firecrackers and other devices using a pyrotechnic composition which when ignited produce visual and sometimes audible effects. Fireworks devices include consumer fireworks, which are regulated by the CPSC, and professional/display fireworks, which fall under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Consumer fireworks generally fall into the following twelve device classifications: (1) Combination items; (2) Comets, Mines and Shells; (3) Firecrackers; (4) Fountains;

(5) Ground Spinners and Chasers; (6) Specialty Items; (7) Party, Trick and Toy Smoke

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Devices; (8) Reloadable Tube Aerial Shells; (9) Roman Candles; (10) Sky Rockets, Missiles, and Helicopters; (11) Hand-held Sparkling Devices; and (12) Wheels.

According to a June 27th 2005 press release from the U.S. Census Bureau, the value of fireworks imported from China into the United States in 2004 was \$164.2 million. This represented the bulk of all U.S. firework imports (\$172.5 million). By comparison, U.S. exports of fireworks came to just \$14.3 million.

The CPSC staff regularly samples fireworks imports and tests these samples to determine compliance with the regulations set forth in 16 CFR Part 1507. While the overall percentage rate of compliance of tested fireworks remained relatively steady in the years 2002 through 2004 (71%, 73%, and 72%), the compliance rate dropped to just 59% of the fireworks tested in 2005. Fireworks that had been certified to the AFSL voluntary standard enjoyed a significantly higher percentage of compliance with CPSC standards, i.e., 83% compliance in 2005.

C. The Risk of Injury

In the past few years, there has been an increase in the estimated number of injuries due to fireworks devices. In the Commission's 2005 Fireworks Annual Report, fireworks devices were involved in an estimated 10,800 injuries requiring treatment in U.S. hospital emergency departments, as compared to 9,600 in 2004, 9,300 in 2003, and 8,000 in 2002. According to that report, the Commission had reports of four deaths associated with fireworks during 2005. During 2004, the Commission received reports of eight deaths associated with fireworks. During a one month special study between June 18, 2005 and July 18, 2005, an estimated 6,500 fireworks related injuries were treated in U.S. hospital emergency departments \2\ (compared with 6,600 injuries in the 2004 special study and 6,800 injuries during the 2003 special study period).

 \2\ 95 percent confidence interval 4,900--8,100.

The results of the one-month special study conducted in 2005 by CPSC staff showed that: injuries to children were a major component of total fireworks-related injuries with children under 15 accounting for 45 percent of the estimated injuries; children and young adults under 20 had 55 percent of the estimated injuries; there were an estimated

100 injuries at public fireworks displays; the parts of the body most often injured were hands (estimated 2,000 injuries), eyes (1,600 injuries) and the head, face and ear (1,300 injuries); and more than half of the injuries involved burns. Burns were the most common injury to all parts of the body except the eyes, where contusions, lacerations, and foreign bodies in the eye occurred more frequently.

D. Relevant Statutory Provisions

This advance notice of proposed rulemaking initiates a rulemaking proceeding under the FHSA. Section 3 of the FHSA specifies the procedure the Commission follows to issue a mandatory consumer product safety standard. The Commission commences the rulemaking by issuing an ANPR, which must identify the product and the risk of injury, summarize regulatory alternatives, and invite comments or suggested standards from the public. 15 U.S.C. 1262(f). After considering any comments submitted in response to the ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA.

If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

Additionally, Section 10 of the FHSA provides the Commission with authority to ``promulgate regulations for the efficient enforcement of [the FHSA].'' One option the Commission has under this provision is to issue a rule requiring mandatory certification to the fireworks device regulations of the FHSA.

E. Existing Standards

The Commission regulates fireworks devices under the Federal Hazardous Substances Act (``FHSA''). 15 U.S.C. 1261-1278. Under its current regulations, the Commission has declared certain fireworks devices to be ``banned hazardous substances.'' 16 CFR Parts 1500.17(a)(3), (8), (9), (11) and (12). Other fireworks devices must meet specific requirements to avoid being classified as banned hazardous substances. 16 CFR Part 1507. Commission regulations also prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121.

The American Fireworks Standards Laboratory (AFSL) developed performance and labeling standards for twelve categories of consumer fireworks devices. These twelve categories are: (1) Combination items; (2) comets, mines, and shells; (3) firecrackers; (4) fountains; (5) ground spinners and chasers; (6) specialty items; (7) party, trick, and toy smoke devices; (8) reloadable tube aerial shells; (9) roman

candles; (10) sky rockets, missiles, and helicopters; (11) hand-held sparkling devices; and (12) wheels. According to AFSL, the standards were developed by a Standards Committee representing various segments of the fireworks industry, Federal and state regulatory authorities, consumers, and technical experts. The AFSL standards incorporate both CPSC and Department of Transportation mandatory regulations as well as a number of standards developed by AFSL that are in addition to Federal requirements.

The Department of Transportation incorporates by reference the American Pyrotechnics Association Standard 87-1 ('`Standard'') as part of its regulations. The Standard applies to fireworks devices, pyrotechnic articles, and novelties for entertainment purposes, and is designed to enable manufacturers, importers and distributors of fireworks and novelties to provide their customers with products that can be transported and used safely and without unreasonable risk.

F. Regulatory and Non-Regulatory Alternatives To Address the Risks of Injury

One or more of the following alternatives could be used to reduce the identified risks associated with fireworks devices.

1. Mandatory Certification. The Commission could issue a rule requiring mandatory certification to the fireworks device regulations of the FHSA. This would encourage manufacturers to conduct testing or make use of independent testing laboratories as a basis for certification.

2. Mandatory Standard. The Commission could issue a rule specifying certain additional requirements fireworks devices must meet. The Commission is required to invite any person to submit to the Commission an existing standard or a portion of a standard as a proposed regulation under section 2(q)(1) or section 3(e) of the Federal Hazardous Substances Act. (15 U.S.C. 1262(f)(5)). If the Commission determines that any standard submitted to it in response to this invitation if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission) as a regulation under the FHSA would eliminate or adequately reduce the risk of injury, the Commission may publish the standard, in whole, in part, or in such combination and with nonmaterial

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modifications, as a proposed regulation. (15 U.S.C. 1262(g)(1)).

3. Reliance on Voluntary Standard. The Commission is required to consider voluntary standards in its mandatory rulemaking. Specifically, the Commission is required to invite any person to submit to the Commission a statement of intention to modify or develop a voluntary

standard to address a risk of injury together with a description of a plan to modify or develop the standard. (15 U.S.C. 1262(f)(6)). If the Commission determines that compliance with a standard submitted to it in response to this invitation is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and it is likely that there will be substantial compliance with such standard, then the Commission must terminate the proceeding to promulgate a regulation and publish a notice in the Federal Register which includes the determination of the Commission and notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury. Before relying upon any voluntary standard, the Commission must afford interested parties a reasonable opportunity to submit written comments regarding such standard. The Commission must consider such comments in making any determination regarding reliance on the involved voluntary standard.

4. Corrective Actions Under Section 15 of the FHSA. The Commission has authority under section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis if the Commission determines that a product constitutes a banned hazardous substance.

G. Request for Information and Comments

In accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission.

2. Written comments regarding the regulatory alternatives being considered and other possible alternatives for addressing the risk.

3. Any existing standard or portion of a standard which could be issued as a proposed regulation.

4. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving information about the testing that is conducted on fireworks before they are distributed, the costs associated with testing, and the impact that testing has on both compliance with the CPSC mandatory fireworks device regulations and on injuries.

Comments should be e-mailed to cpsc-os@cpsc.gov. and should be captioned ``FIREWORKS ANPR.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by telefacsimile to (301) 504-0127. All comments and submissions should be received no later than September 11, 2006.

Dated: July 5, 2006.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.
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