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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

OCT 9 1974

Leighton Kim Oshima, Esquire
Deputy Attorney General
State of Hawaii
State Capitol, 4th Floor
Honolulu, Hawaii 96813

Dear Mr. Oshima:

This is in response to your letter of August 27, 1974, to the Office of the Secretary of the Commission, requesting clarification of the term "legitimate public display purposes" as it was used in the preamble to the fireworks devices regulations published in the Federal Register May 16, 1974 (39 FR 17435). Your letter also asked whether certain specific uses would be considered legitimate public displays and therefore outside of the scope of jurisdiction of the Federal Hazardous Substances Act. These included use on the premises of a hotel or restaurant for private parties or for the entertainment of guests, in mortuaries or cemetaries for funerals, or on public streets blocked off to traffic for festivities and parades.

The Federal Hazardous Substances Act actually regulates products themselves and not the uses of such products. For a product to fall within the jurisdiction of the Act it must first be a "hazardous substance" as that term is defined in section 2(f) of the Act (15 U.S.C. 1261(f)). Additionally, under section 2(p) and 2(q)(1)(B) of the Act (15 U.S.C. 1261(p),(q)(1)(B)), aside from toys or other articles intended for use by children, the product must be "intended, or packaged in a form suitable, for use in the household." Therefore, if a hazardous substance is intended by the manufacturer to be used for commercial, industrial, or other non-household uses, and is actually packaged and distributed for non-household uses, it will remain outside of the jurisdiction of the Act unless it is diverted for household use at some point in the chain of distribution. Such diversion itself will then be considered violative of the Act under section 4(b) (15 U.S.C. 1263(b)) if it results in the product becoming banned or misbranded.

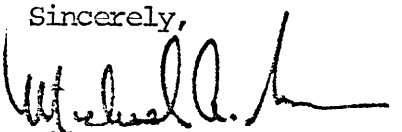
ADVISORY OPINION

Applying this principle to your specific questions it can be seen that if a firework device is manufactured, distributed, and sold for such non-household uses as mentioned in your letter it will be considered outside of the scope of the Federal Hazardous Substances Act, and therefore not subject to any regulations issued under that Act. If in the future, however, regulations pertaining to fireworks are issued under the Consumer Product Safety Act, the scope of coverage may be expected to be somewhat broader since the term "consumer product" as defined in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) includes products for uses in addition to residential use.

The policy and interpretation stated above is not new and is consistent with interpretations of the Federal Hazardous Substances Act since its passage in 1960. For your information I have attached several letters of interpretation previously written by employees of the Food and Drug Administration prior to May 14, 1973, when the administration of the Act was transferred to the Commission.

Please do not hesitate to contact me if you have further questions regarding this matter.

Sincerely,



Michael A. Brown
General Counsel

Attachments

ADDRESS REPLY TO
THE ATTORNEY GENERAL OF HAWAII
AND REFER TO
INITIALS AND NUMBER

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
4TH FLOOR
HONOLULU, HAWAII 96813

August 27, 1974

Secretary Sayde E. Dunn
Consumer Product Safety Commission
Tenth Floor
1750 K Street, N.W.
Washington, D.C. 20207

Dear Secretary Dunn:

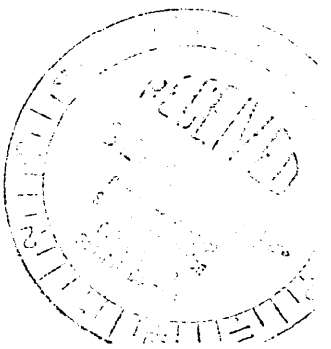
This letter is a request by the State of Hawaii for a clarification on a portion of the commentaries which accompanied the ban and regulation of certain fireworks in 39 Fed.Reg. 17435. These commentaries were subscribed to by yourself and I presume is the official position of the Consumer Product Safety Commission. Specifically, could you clarify the following passage:

> "It should also be noted that fireworks for legitimate public display purposes are not banned by the regulations since they are beyond the scope of the Federal Hazardous Substances Act." (39 Fed.Reg. 17436).

We are uncertain whether the following events where fireworks are burned can be considered "legitimate public displays":

1) on the premises of a hotel or restaurant for a private party, i.e., weddings, anniversaries;

2) on the premises of a hotel by the management for the entertainment of its guests;



3) in a mortuary or on the cemetary grounds for a funeral;

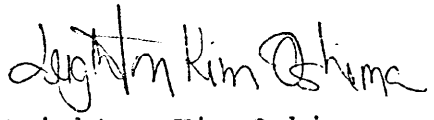
4) on a public street blocked off to traffic for the festivities and parades, i.e., Chinese New Year celebration.

Could you state your conclusion and reasons as to whether these events are for legitimate public display purposes and, therefore, outside of the jurisdiction of the Federal Hazardous Substances Act and the Consumer Product Safety Commission.

Such a clarification will affect our position and presentation at the hearings scheduled in September.

Thank you for your time and attention on this matter.

Very truly yours,



Leighton Kim Oshima
Deputy Attorney General

cc: Hon. Paul N. Pfeiffer
Chief Administrative Law Judge