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United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION

1996 DEC -9 P 4:12

BALLOT VOTE SHEET

DATE: DEC. 6 1996

TO : The Commission

FROM : Eric A. Rubel, General Counsel
Stephen Lemberg, Asst. General Counsel
Harleigh Ewell, Attorney, GCRA (Ext. 2217)

SUBJECT: Amendment to fuse burn time requirements for fireworks -- draft Federal Register notice to issue final rule

BALLOT VOTE DUE: DEC 16, 1996

Attached is a staff briefing package on whether the Commission should issue a final rule to amend its regulation under the Federal Hazardous Substances Act governing the fuse burn time of fireworks. 16 C.F.R. § 1507.3(a)(2). On July 7, 1996, the Commission proposed to extend the allowable range of fuse burn times from 3 to 6 seconds to 3 to 9 seconds. 61 Fed. Reg. 41043. A draft Federal Register notice that would issue the final rule is attached at Tab A of the briefing package for the Commission's consideration.

Please indicate your vote on the following options.

I. ISSUE THE AMENDMENT AND APPROVE THE DRAFT FEDERAL REGISTER NOTICE AT TAB A WITHOUT CHANGE.

(Signature) 12/13/96 (Date)

II. ISSUE THE AMENDMENT AND APPROVE THE DRAFT FEDERAL REGISTER NOTICE AT TAB A WITH CHANGES (please specify).

(Signature) (Date)

NOTE: This document has not been reviewed or accepted by the Commission.
Initial hh Date 12/6/96

CPSA § 6(b)(1) Cleared
12/6/96
No Mfrs/Prvtlbrs
Products Identified
Excepted

III. TAKE OTHER ACTION (please specify).

(Signature) (Date)

Attachments

Comments/Instructions:

A

DRAFT - 12/6/96 Billing Code 6355-01

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1507

Final Rule: Fireworks Devices; Fuse Burn Time

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulation under the Federal Hazardous Substances Act that specifies the allowable fuse burn times of fireworks devices (except firecrackers). The amendment changes the allowable fuse burn times from the presently required range of 3 to 6 seconds to the range of 3 to 9 seconds. Increasing the range will improve safety by allowing manufacturers to more consistently produce fireworks that do not have dangerously short fuse burn times of below 3 seconds. Further, the increase in the maximum allowable fuse burn time to 9 seconds will not create any additional risk of injury to consumers. The amendment originally was requested in a petition from the American Fireworks Standards Laboratory.

DATES: Adversely affected persons have until [**insert date 30 days after publication**] to file objections to this rule, stating grounds therefor and requesting a public hearing on

those objections. Objections and requests for hearings must be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814 telephone (301) 504-6800.

If no material objections are received, the Commission will promptly publish a **Federal Register** notice announcing that fact and affirming the issuance of the amendment. The amendment will go into effect on the date that the affirmation notice is published, but not earlier than [insert date 31 days after publication]. If material objections are received, the Commission will publish a notice in the **Federal Register** specifying whether the amendment has been stayed by the filing of proper objections.

FOR FURTHER INFORMATION CONTACT: Robert Poth, Division of Regulatory Management, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504-0400 ext. 1375.

SUPPLEMENTARY INFORMATION:

I. Background

In this notice, the Consumer Product Safety Commission ("the Commission" or "CPSC") amends its regulation under the Federal Hazardous Substances Act ("FHSA") that governs the allowable range of times that fuses for fireworks (other

than firecrackers[1]) may burn before the device ignites. 16 CFR 1507.3(a)(2). That regulation currently requires fireworks devices to have a fuse which will burn at least 3 seconds but not more than 6 seconds before the device ignites. 16 CFR 1507.3(a)(2).[2]

In 1991, the American Pyrotechnics Association ("APA"), a trade association representing the fireworks industry, submitted a petition to the Commission to modify the fuse burn time regulation. APA requested that the upper limit of the allowable fuse burn time be raised to 9 seconds.

The 1991 petition was denied because, at that time, there were insufficient human factors data to demonstrate that a person would not return to a fireworks device within the requested 9-second allowable fuse burn time. The Commission was concerned that a longer fuse burn time might increase injuries to consumers who returned to live fireworks assuming that they were "duds."

After the APA's petition was denied, the American Fireworks Standards Laboratory ("AFSL"), an industry-supported fireworks standards and certification organization, contracted with the American Institutes of Research ("AIR") to conduct human factors research of

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[1] 16 CFR 1507.1.

[2] As a matter of enforcement policy, the Commission's staff has not brought legal actions against fuse burn time violations as low as 2 seconds and as high as 8 seconds for all fireworks except reloadable shell devices, bottle rockets, and jumping jacks which exhibit erratic flight.

fireworks-related behavior. As discussed in the notice of proposed rulemaking, 61 FR 41043 (August 7, 1996), the study found that consumers would not likely return to a fireworks device within 9 seconds after lighting the fuse.

In September 1995, AFSL petitioned the CPSC (Petition HP 96-1) to make the same modification to the FHSA fireworks fuse burn time regulation as had been previously requested by APA—that the upper limit of the allowable range of fuse burn times be changed from 6 to 9 seconds.

Manufacturers currently target a 4.5-second average fuse burn time, which is the midpoint of the currently allowed 3 to 6-second range. By raising the upper limit of the fuse burn time from 6 to 9 seconds, AFSL contends that manufacturers could target a more ideal average fuse burn time of 6 seconds. AFSL claims this would enhance consumer safety by eliminating incidents where fuses burn less than 3 seconds.

After considering the available information, the Commission preliminarily concluded that raising the upper limit of the fuse burn time range from 6 seconds to 9 seconds will reduce injuries caused by short fuse burn times. Further, the Commission found that raising the upper limit of the fuse burn time range by 3 seconds will not cause additional injuries from long fuse burn times.

In addition, the Commission concluded that the risk associated with short fuse burn times is of greater concern

than any risk associated with long fuse burn times. With a long fuse burn time, consumers have some cues (absence of smoke and noise) to guide them as to when to approach a device; they have time to make decisions before they react. However, consumers have no cues to alert them that a fireworks device may have a short fuse burn time. The consequences of short fuse burn times can be immediate. Consumers may have no time to retreat to a safe distance or to take safety precautions.

Accordingly, the Commission voted to grant Petition HP 96-1, and published a notice of proposed rulemaking on August 7, 1996. 61 FR 41043. That notice discusses in detail the reasons for the Commission's action and various issues associated with the proposed amendment. The Commission received 8 comments on the proposal, all of which favored the amendment. The comments are discussed below in Section III of this notice.

II. Statutory Procedure

This proceeding is conducted under the FHSA. 15 U.S.C. 1261-1278. Fireworks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA. More specifically, they are flammable or combustible substances, or generate pressure through decomposition, heat, or other means, and "may cause substantial personal injury or substantial illness during or as a proximate result of any

customary or reasonably foreseeable handling or use ...." 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling that is or may be required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate way to protect the public health and safety. *Id.* at 1261(q)(1)(B). The current fuse burn time requirement was issued under that section.

The fireworks subject to this regulation, and that have fuse burn times outside the 3 to 9-second range set forth in this amendment, are already banned hazardous substances. Because the amendment will not declare any additional products to be banned hazardous substances, an advance notice of proposed rulemaking was not required for this proceeding. *See* FHSA Sec. 3(f), 15 U.S.C. 1262(f). For the same reason, the procedures required by sections 3(g)-(i) of the FHSA do not apply to this proceeding.

The procedures established under section 701(e) of the Food, Drug, and Cosmetic Act ("FDCA") also govern this rulemaking. 15 U.S.C. 1261(q)(2). These procedures provide that, once the Commission issues a final rule, persons who would be adversely affected by the rule have 30 days in which to file objections with the Commission stating the

grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). Here, this 30-day period expires [insert date that is 30 days after publication]. If objections were filed, a hearing to receive evidence concerning the objections would be held. The presiding officer would then issue an order, based upon substantial evidence. *Id.* The Commission's procedural rules at 16 CFR Part 1502 would apply to such a hearing.

Any objections and requests for a hearing must be filed with the Commission's Office of the Secretary. They will be accepted for filing if they meet the following conditions: (1) they are submitted within the 30-day period specified; (2) each objection is separately numbered; (3) each objection specifies with particularity the provision(s) of the regulation to which the objection is directed; (4) each objection on which a hearing is desired specifically requests a hearing; and (5) each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof. 16 CFR 1502.6(a). (Failure to submit a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection. *Id.* at 1502.6(a)(5).)

The Commission will publish a notice in the **Federal Register** specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no

objections have been filed, stating that fact. *Id.* at § 1502.7. As soon as practicable, the Commission will review any objections and hearing requests that have been filed to determine whether the regulation should be modified or revoked, and whether a hearing is justified. *Id.* at § 1502.8.

III. Comments On The Proposal

The Commission received 10 comments in response to the notice of proposed rulemaking. All commenters supported raising the upper limit of the fuse burn time regulation from 6 to 9 seconds. Other issues raised by the comments are discussed below.

1. *Comment: Ban of consumer fireworks.* The National Fire Protection Association ("NFPA") urged the Commission to adopt NFPA's position, stated in its Model Fireworks Law, that fireworks should not be used by consumers but should be strictly limited to trained professionals who operate in accordance with applicable codes. (Short of this preferred solution, the NFPA supports the proposed change to the fuse burn time regulation to help reduce injuries.) Similarly, although Prevent Blindness America opposes the sale, distribution, and use of Class C fireworks, that group supports the amendment because it will "improve public safety."

Response: The only way that the Commission could directly accomplish NFPA's preferred goal of keeping

fireworks out of the hands of consumers would be to ban all consumer fireworks. *See* 15 U.S.C. 1263. That alternative is beyond the scope of this proceeding.

2. *Comment: Continuation of the current enforcement policy allowing 2 to 3-second fuse burn times.* The AFSL pointed out that the Commission's current enforcement policy allows a 2 to 3-second lower limit of fuse burn time for some fireworks. The Commission has indicated that, at some time after the regulation is amended, the 3-second minimum for all subject fireworks would be strictly enforced. However, the Commission also indicated that the current 2 to 3-second policy would remain in effect for a time after the effective date of the regulation so as to minimize any adverse economic effect on manufacturers. The AFSL and some other industry members requested that this enforcement policy be extended for 1 year after the effective date of the regulation.

Response: The Commission agrees that strict enforcement of the 3-second lower limit of fuse burn time for all fireworks, as soon as the amended rule goes into effect, would pose some adverse economic impact on the industry. Fireworks produced before then that have 2 to 3-second fuse burn times, although complying with the Commission's enforcement policy that was in effect when these fireworks were made, would be banned. This would cause an unwarranted economic burden on the industry.

CPSC staff discussion with an industry commenter indicated that the July 4th season represents peak demand in the U.S. for fireworks and that domestic and imported fireworks to meet that demand should be in U.S. distribution channels by mid-May at the latest. It seems reasonable to assume that all noncomplying current inventory is intended for the 1997 July 4th season. Therefore June 30, 1997, is an appropriate cut-off date for the enforcement policy allowing 2 to 3-second fuse burn times for most fireworks. Accordingly, the Commission will not bring enforcement actions against fireworks on the basis of fuse burn times between 2 and 3 seconds for fireworks that are first distributed in commerce in the United States—by being imported into the U.S. or shipped from a U.S. manufacturer—by June 30, 1997.

The June 30, 1997, date for ending the enforcement policy allowing the introduction into commerce of fireworks having fuse burn times of between 2 and 3 seconds assumes that no objections will be received to amending the fuse burn time to 3 to 9 seconds. However, as explained in Section II of this notice, if objections are received, the effective date of the amendment could be delayed considerably. To account for this possibility, the Commission is extending this enforcement policy until June 30, 1997, or until 6 months after the effective date of the

amendment allowing 3 to 9-second fuse burn times, whichever is later.

3. *Comment: Interim policy allowing fuse burn times between 6 and 9 seconds.* The notice of proposed rulemaking indicated that the earliest possible effective date for the final rule would be 31 days after the final rule was published in the Federal Register. The AFSL stated that, if there are no objections to amending the regulation, the pending 3 to 9-second amendment should be implemented as an enforcement policy at the close of the comment period. The AFSL commented that this would allow the safety benefit to be immediately realized.

The AFSL also commented that immediately implementing the amended upper fuse burn time limit would allow a significant amount of the devices for the 1997 fireworks season to comply with the new requirement. If the amendment were not allowed to be implemented until after the rule became effective, AFSL stated, "the positive impact that the rule is expected to have on consumer safety is virtually lost until the 1998 fireworks season."

Response: The Commission believes it is in the public interest to allow the manufacture of fireworks with a 9-second upper limit of fuse burn time as soon as possible. Such a change should reduce injuries caused by short fuse burn times. Accordingly, the Commission's staff sent a letter, dated November 7, 1996, to the petitioner and other

major fireworks trade associations announcing an interim policy allowing manufacturers to begin immediately producing fireworks to the 9-second upper limit of fuse burn time.

4. *Comment: Consumer Survey.* As part of a class assignment, students from Florida International University conducted an informal survey of 30 people, from 9 through 54 years of age, to determine whether they thought banning fireworks was the best solution to the problems caused by their use. The respondents preferred increasing the fuse burn time as the best course of action to be pursued. The students also suggested that, in the future, consideration be given to having manufacturers enclose safety information with their products.

Response: The action taken by the Commission is consistent with this comment, insofar as it relates to the scope of this proceeding.

IV. Effective Date

Increasing the allowable fuse burn times from the range of 3 to 6 seconds to a range of 3 to 9 seconds will not have any adverse effects on manufacturers, since it simply provides a wider range of allowable times. Thus, the Commission is making the amendment effective as soon as practicable. Under 21 U.S.C. 371(e), 30 days is allowed after this type of final rule is issued to receive any objections to the rule. That section also provides that the final rule may not become effective before the 30-day period

for objections expires. As noted above, if no objections are filed, the Commission must publish a **Federal Register** notice stating that fact. Therefore, the amendment will become effective on the day the notice affirming the final rule is published in the **Federal Register**. This approach will allow interested persons to know with greater certainty that the amendment had in fact taken effect, without having to determine whether another party had filed objections.

As noted above, the Commission's staff currently has a policy of not enforcing against fuse burn time violations as low as 2 seconds for all subject fireworks except reloadable shell devices, bottle rockets, and jumping jacks that exhibit erratic flight. The Commission intends to continue the current policy with respect to fuse burn times of 2 to 3 seconds until at least June 30, 1997, in order to minimize any adverse economic effects on the industry. Thus, subject to further notice, no enforcement actions will be brought on the basis of fuse burn times between 2 and 3 seconds against subject fireworks that are imported or shipped from a U.S. manufacturer by June 30, 1997, or 6 months after the effective date of the amendment, whichever is longer.

Also, after notifying the Commission, the CPSC staff on November 7, 1996, established an interim policy of allowing fuse burn times between 6 and 9 seconds. Therefore, until the amendment to allow fuse burn times of between 3 and 9 seconds becomes effective, the staff will not bring

enforcement actions based on fuse burn time violations in the 6 to 9-second range.

V. Final Regulatory Flexibility Analysis

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. An agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

The purpose of the Regulatory Flexibility Act, as stated in § 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations.

Based on information from the U.S. Department of Commerce and industry sources, the estimated value of imported shipments of consumer fireworks is about $70 to $100 million annually. Practically all of the imports are from China.

Most U.S. firms that import, distribute, or manufacture fireworks for consumer use are small, and the rule is not expected to result in any adverse impact. This is because

the change to a longer fuse, which should increase production costs by only about one percent, will generate savings as a result of fewer rejections of fireworks due to fuse burn time violations. Based on information from a trade association and CPSC's Office of Compliance, an estimated 40 to 50 percent of the rejections of fireworks as a result of private and CPSC testing are due to fuse burn time violations. The savings from the reduced violations, according to a representative of an industry trade association, could reach approximately $20 million annually. This may result in lower prices to the consumer.

Industry sources indicate that any necessary adjustments to the manufacturing process will take approximately 1 week to accomplish once notification is received. Since fireworks which comply with the current 3 to 6-second fuse burn time requirement will necessarily comply with the new 3 to 9-second fuse burn time requirement—and because the existing enforcement policy will be continued for a sufficient period of time—there will be no economic impact resulting from the choice of effective date.

VI. Environmental Impact

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 amendment to the fuse burn times of fireworks.

The Commission's regulations at 16 CFR 1021.5(c)(1) and (2) state that safety standards for consumer products normally have little or no potential for affecting the human environment. Since the acceptable fuse burn times will increase from the range of 3 to 6 seconds to the range of 3 to 9 seconds—and because the existing enforcement policy will be continued for a sufficient period of time—the change will not cause any increase in noncomplying fireworks, which would require disposal. Therefore, no significant environmental effects are expected from the amended rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IX. Conclusion

List of Subjects in 16 CFR Part 1507

Consumer protection, Explosives, Fireworks.

For the reasons set out in the preamble, Title 16, Chapter II, Part 1507, of the Code of Federal Regulations is amended as follows.

PART 1507—FIREWORKS DEVICES

1. The authority citation for Part 1507 is revised to read as follows:

Authority: 15 U.S.C. 1261-1262, 2079(d); 21 U.S.C. 371(e).

2. § 1507.3 [Amended]

In section 1507.3(a)(2), remove the words "6 seconds" and add, in their place, the words "9 seconds".

Dated: _____, 199__.

_____

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot *

Commissioners Voting: Chairman Ann Brown
Commissioner Mary Sheila Gall
Commissioner Thomas H. Moore

ITEM:

Final Rule to Amend the Fuse Burn Time Requirements for Fireworks
(Ref: Staff Briefing Package, December 6, 1996)

DECISION:

Based on information presented by Commission staff in the above referenced briefing package, including an analysis of public comments on the proposed rule to amend the Commission's regulation under the Federal Hazardous Substances Act governing the fuse burn time of fireworks, 16 C.F.R. section 1507.3(a)(2), the Commission voted unanimously (3-0) to issue the amendment extending the allowable range of fuse burn times from 3 to 6 seconds to 3 to 9 seconds and to approve as drafted the Federal Register notice that would issue the final rule.

For the Commission:

Sadye E. Dunn

Sadye E. Dunn
Secretary

* Ballot Vote Due December 16, 1996