



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
BETHESDA, MD 20814

This document has been electronically  
approved and signed.

**DATE:** August 10, 2016

**BALLOT VOTE SHEET**

**TO:** The Commission  
Todd A. Stevenson, Secretary

**THROUGH:** Mary T. Boyle, General Counsel  
Patricia H. Adkins, Executive Director

**FROM:** Patricia M. Pollitzer, Assistant General Counsel

**SUBJECT:** Proposed Interpretive Rule Regarding Fireworks Regulation 16 C.F.R. §  
1500.17(a)(3)

**BALLOT VOTE DUE:** Wednesday, August 17, 2016

Commissioner Mohorovic asks that the Commission consider the attached draft proposed interpretive rule that provides an interpretation of the phrase “intended to produce audible effects” that appears in the fireworks regulation at 16 C.F.R. § 1500.17(a)(3).

Please indicate your vote on the following options:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes. (Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: Draft *Federal Register* notice; Proposed Interpretive Rule Regarding Fireworks Regulation

**CONSUMER PRODUCT SAFETY COMMISSION**

**Statement of Policy on the Commission’s Interpretation of Intent to Produce Audible Effects within the Meaning of the Commission’s Fireworks Regulations Under the Federal Hazardous Substances Act**

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Proposed interpretive rule.

**SUMMARY:** The Consumer Product Safety Commission (CPSC) has approved a Proposed Statement of Policy regarding the Commission’s interpretation of the phrase “intended to produce audible effects” that appears in the Commission’s fireworks regulations.

**DATES:** Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2016-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through [regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to:

<http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing by mail/hand delivery/courier.

**FOR FURTHER INFORMATION CONTACT:** Mike Gentine, Senior Counsel to Commissioner Joe Mohorovic, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301)-504- 7628 ; email: [mgentine@cpsc.gov](mailto:mgentine@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

Under the Federal Hazardous Substances Act (FHSA)<sup>1</sup>, the Consumer Product Safety Commission (CPSC or Commission) has banned all “[f]ireworks devices intended to produce audible effects . . . if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition.”<sup>2</sup> Pursuant to staff’s Consumer Fireworks Testing Manual (Manual), Commission staff determine whether a fireworks device was intended to produce an audible effect by evaluating the relative intensity of the sound produced by such device (the Sound Test).

Through this publication, the Commission proposes to interpret the “audible effects” provision such that staff will consider the presence of metallic powder less than

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<sup>1</sup> Pub. L. No. 86-613, 74 Stat. 372 (July 12, 1960) (codified as amended at 15 U.S.C. 1261-78).

<sup>2</sup> 16 CFR 1500.17(a)(3).

100 mesh in particle size within the burst (or break) charge of a fireworks device to mean the device is intended to produce an audible effect, consistent with the American Pyrotechnic Association Standard 87-1 definition.

The Commission notes that this interpretation is not a binding rule and would not change any person's rights, duties, or obligations under the FHSA or any other Act administered by the Commission. The Commission invites comment on this proposed interpretation.

### **A. Background**

The FHSA empowers the Consumer Product Safety Commission (CPSC or Commission) to, “by regulation[,] declare to be a hazardous substance . . . any substance or mixture of substances”<sup>3</sup> which the Commission finds meets a series of statutory requirements. Under the FHSA, the Commission prohibits, as banned hazardous substances, the introduction into interstate commerce of all

Fireworks devices intended to produce audible effects (including but not limited to cherry bombs, M-80 salutes, silver salutes, and other large firecrackers, aerial bombs, and other fireworks designed to produce audible effects, and including kits and components intended to produce such fireworks) if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition.<sup>4</sup>

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<sup>3</sup> 15 U.S.C. 1262(a)(1).

<sup>4</sup> 16 CFR 1500.17(a)(3). This rule provides an exception for devices intended and sold for bona fide agricultural use. *Id.* at § 1500.17(a)(3)(i)-(ii).

The goal of this ban was to remove from consumer use the kinds of devices that had, as noted in the 1970 Food and Drug Administration (FDA) rulemaking that imposed the ban, “caused eight fatalities (six were teenage or younger) and a large number of serious injuries ranging from puncture wounds to broken bones and shattered hands.”<sup>5</sup>

The Commission’s rules do not further define or describe “devices intended to produce audible effects,” nor do they define how the Commission will determine whether a product falls under this category. The Manual directs Commission staff to evaluate the relative intensity of any sound produced by a firework device to determine whether such sound is an intended effect or merely incidental to the operation of the device. Any device in the former category must comply with the two grain limitation stated in the regulation.

Since the adoption of the Sound Test, there have been many developments in the fireworks market, including the use of fine-mesh metallic fuels to intensify device operation. Voluntary standards bodies, including the APA, have addressed the use of metallic fuels directly.<sup>6</sup>

Under the APA standard, “any burst [or break] charge containing metallic powder (such as magnalium or aluminum) less than 100 mesh in particle size, is considered to be intended to produce an audible effect, and is limited to 130 mg [the equivalent of two

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<sup>5</sup> Fireworks Devices, 35 FR 7415 (May 13, 1970).

<sup>6</sup> Amer. Pyrotechnics Assoc., *APA Standard 87-1: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics* § 2.5 (2001).

grains] in [consumer] fireworks.”<sup>7</sup> This provides a bright-line standard with a highly reproducible measure.

Aside from the clarity of its use as an enforcement tool, the APA standard is also familiar to industry. Not only does it reflect the work of a voluntary standard development organization in which industry members participated, it has been incorporated by reference into the Department of Transportation’s regulations for the shipment of fireworks.<sup>8</sup> Under this interpretation, CPSC will be testing fireworks devices in line with the APA standard when determining which devices are intended to produce an audible effect.

## **B. Interpretive Rule**

For the foregoing reasons, the Commission proposes to interpret the phrase “Fireworks devices intended to produce audible effects” in a manner consistent with the APA voluntary standard and DOT regulations. Under this interpretation, the Commission will consider the presence in the burst (or break) charge of a fireworks device of metallic powder less than 100 mesh in particle size to mean that the device is intended to produce an audible effect. Likewise, if the device lacks such metallic powder, staff will consider it as not intended to produce an audible effect. This change, as noted above, will not alter the rule or any party’s obligations under it in any way, but it will allow the Commission to enforce that rule more efficiently.

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<sup>7</sup> *Id.*

<sup>8</sup> 49 CFR 173.65.

**C. Request for Comment**

The Commission requests comments on all aspects of the proposed interpretation.

In particular, given the handmade nature of these products, the Commission requests comments on whether there should be an allowance for contamination at a level that would not pose an injury hazard to fireworks users or bystanders. We seek comments to determine whether we can exercise some flexibility in enforcement. We would not be setting an enforceable contamination allowance but, in an enforcement proceeding, we may consider allowing some contamination if we receive information supporting the position that inadvertent low level contamination by these metals can occur in the manufacturing process.

If so, please provide the CPSC information and data regarding what an appropriate allowance should be.

Dated: \_\_\_\_\_

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Todd A. Stevenson, Secretary  
Consumer Product Safety Commission