

and that the original evidence or copies, as appropriate, are turned over to the appropriate law enforcement authorities.

Information Created Pursuant to an Investigation

§ 270.340 Information created by investigation participants who are not NIST employees.

Unless requested sooner by the Lead Investigator, at the conclusion of an investigation, each investigation participant who is not a NIST employee shall transfer any original information they created pursuant to the investigation to NIST. An investigation participant may retain a copy of the information for their records but may not use the information for purposes other than the investigation, nor may they release, reproduce, distribute, or publish any information first developed pursuant to the investigation, nor authorize others to do so, without the written permission of the Director or their designee. Pursuant to 15 U.S.C. 281a, no such information may be admitted or used as evidence in any suit or action for damages arising out of any matter related to the investigation.

Protection of Information

§ 270.350 Freedom of Information Act.

As permitted by section 7(b) of the Act, the following information will not be released:

(a) Information described by section 552(b) of Title 5, United States Code, or protected from disclosure by any other law of the United States; and

(b) Copies of evidence collected, information created, or other investigation documents submitted or received by NIST, a Team, or any other investigation participant, until the final investigation report is issued.

§ 270.351 Protection of voluntarily submitted information.

Notwithstanding any other provision of law, a Team, NIST, any investigation participant, and any agency receiving information from a Team, NIST, or any other investigation participant, will not disclose voluntarily provided safety-related information if that information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

§ 270.352 Public safety information.

A Team, NIST, and any other investigation participant will not publicly release any information it receives in the course of an investigation under the Act if the

Director finds that the disclosure might jeopardize public safety.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Exemptions From Classification as Banned Hazardous Substances; Exemption for Certain Model Rocket Propellant Devices for Use With Rocket-Powered Model Cars

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to exempt from the Federal Hazardous Substances Act ("FHSA") certain model rocket propellant devices for vehicles that travel on the ground. The Commission's current regulations exempt motors used for flyable model rockets. The rule exempts certain propellant devices for rocket-powered model cars if they meet requirements similar to those required for flyable model rockets and additional requirements to avoid possible injuries if the cars are operated off of their tether.

DATES: The rule becomes effective on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: James G. Joholske, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0608 ext. 1419.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2(q)(1)(A) of the FHSA bans toys that are or contain hazardous substances that are accessible to a child. 15 U.S.C. 1261(q)(1)(A). However, the FHSA authorizes the Commission, by regulation, to grant exemptions from classifications as banned hazardous substances for:

articles, such as chemistry sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected to read and heed such directions and warnings.

15 U.S.C. 1261(q)(1)(A). Thus, the Commission may issue an exemption if it finds that the product requires inclusion of a hazardous substance in

order for it to function, has sufficient directions and warnings, and is intended for children who are old enough to read and follow the directions and warnings. *Id.* The Food and Drug Administration, which administered the FHSA before the Commission was established, issued a rule under this authority that exempted from the definition of banned hazardous substances model rocket propellant devices (motors) designed for use in light-weight, recoverable, and reflyable model rockets, if they meet certain requirements. 16 CFR 1500.85(a)(8).

B. The Petition

The Commission received a petition from Centuri Corporation ("Centuri") requesting that the Commission issue a rule exempting certain model rocket propellant devices to be used for model cars that travel on the ground along a tethered line and are propelled in a manner similar to flyable rockets. The petitioner requested an exemption that would allow the sale of both of its two prototype rocket-powered model cars. The smaller car, named "Blurzz," uses an "A" motor, and is shaped like a "rail," a type of custom-made vehicle used in competitive drag racing. The larger prototype, named "Screamin' Eagle," uses a "D" motor, and is shaped like a "Bonneville Speed Record" custom vehicle. The Commission decided to grant the petition in part and propose an exemption for model rocket propellant devices to be used for rocket-powered model cars like the smaller "Blurzz" car only.¹

C. The Proposed Exemption

On January 30, 2002, the Commission published a notice of proposed rulemaking ("NPR") proposing to exempt model rocket propellant devices for use with smaller rocket-powered model cars like the "Blurzz." 67 FR 4373. As explained in the NPR, the Commission concluded that due to the weight, speed and the height it can reach, the larger "Screamin' Eagle" posed a significant risk of injury to any person downrange from it when it is used in the absence of the tether. The Commission, therefore, denied the petition insofar as it requested an exemption from the FHSA for model rocket propellant devices for cars like the "Screamin' Eagle." However, the Commission concluded that when the smaller "Blurzz" car was ignited

¹ The Commission voted 2-1 to grant the petition with regard to the smaller vehicles and deny it regarding the larger ones. Commissioners Thomas Moore and Mary Sheila Gall voted to take this action. Then-Chairman Ann Brown voted to deny the entire petition.

without the tether, it ordinarily simply flipped onto its back and skittered around on the ground or traveled downrange only a very limited distance, and rose only a few inches in the air, before flipping onto its back. Thus, the Commission concluded that there is a reasonable probability that model rocket propellant devices for rocket-powered model cars like the "Blurzz" present no unreasonable risk of injury even when operated in reasonably foreseeable misuse without the tether. The Commission also preliminarily found that children interested in model rockets and rocket-powered model cars such as the "Blurzz" are of sufficient maturity that they may reasonably be expected to read and heed the directions for use and warnings that accompany model cars like the "Blurzz." The Commission also preliminarily found that those directions and warnings are adequate to guide users in the safe use of the product.

D. Comments on the NPR

The Commission received three comments on the NPR from Centuri, Intertek Testing Services ("Intertek"), and the National Association of Rocketry ("NAR"). Centuri commented on some of the technical statements in the staff's memos that were part of the briefing package concerning Centuri's petition. The comment from Intertek was actually test results submitted by Centuri. Intertek suggested enlarging the safety alert symbol that appears in directions for the model car. Commission staff agrees that the entire warning label should be larger. NAR agreed with the Commission that the exemption should be limited to smaller "A" motors.

E. The Final Rule

When reviewing data for the petition, the Commission's Directorate for Epidemiology found two deaths over a 20-year period involving model airplanes (both involved adult males, 40 and 44 years of age). Centuri provided additional information about these. In one incident, the plane weighed about 5 pounds (compared to 2.7 oz. for a size "A" rocket-powered model car), and was traveling at an estimated 200 mph (compared to the top speed of 28 mph for the size "A" car). Centuri characterized the airplane in the other incident as "quite large and heavy." The staff reviewed data available after the petition briefing package (for the period May 26, 2001 to April 15, 2002) and found no deaths that could be considered comparable to deaths that might involve rocket-powered model cars.

The Commission's Human Factors staff reviewed revised instructions submitted by Centuri and concluded that the revisions were an improvement over previous instructions and would make them easier for users age 10 and up to follow.

The Commission's Engineering staff reviewed results of testing from Intertek. Intertek was primarily concerned with the dangers of launching the engine alone without the vehicle. Because such motors are currently available with other exempted products, the staff does not believe that exempting rocket-powered model cars creates or increases the hazard of igniting motors outside the vehicles. Intertek was also concerned about launching cars from a ramp or vertical support. However, the Engineering staff believes such operation would be similar to launching a model rocket, and injury data do not suggest a problem with model rockets in those types of launches.

The Commission's staff was concerned about possible injuries if rocket powered cars are operated off the tether. As discussed above, when the "Blurzz" was used without the tether it traveled only a limited distance a few inches off the ground and then flipped on its back. Such performance is not likely to injure operators or bystanders. However, Compliance staff was concerned that in the future a company may develop a rocket-powered model car that when operated off the tether could obtain sufficient height, distance and force to injure operators or bystanders. Thus, the final rule contains a limitation that vehicles must be designed so that they either cannot operate off of a track or line (*i.e.*, tether), or if operated off the tether the vehicle will be unstable and will not travel in a guided fashion, so that the car will not strike operators or bystanders. The Commission reminds manufacturers that under section 15 of the Consumer Product Safety Act they have an obligation to report to the Commission if they have information which reasonably supports the conclusion that their product creates an unreasonable risk of serious injury or death or contains a defect which could create a substantial product hazard. 15 U.S.C. 2064(b)(2) & (3). The Commission has the authority to pursue corrective action regarding any toy or other children's article that creates a substantial risk of injury to children. 15 U.S.C. 1274(c)(1).

A small change was made to the final rule in order to correct a cross reference that conflicted with the characteristics of an A motor described in section 1500.85(a)(14)(i)(B) of the rule and to

include appropriate provisions of the cross-reference in the rule itself.

F. Effective Date

This rule exempts certain model rocket propellant devices for rocket-powered model cars that would otherwise be banned under the FHSA. Because the rule grants an exemption, it is not subject to the requirement under the Administrative Procedure Act ("APA") that a rule must be published 30 days before it takes effect. 5 U.S.C 553(d)(1). The rule lifts an existing restriction and allows a product not previously permitted. Thus, the Commission believes it is appropriate for the rule to become effective upon publication in the **Federal Register**.

G. Impact on Small Business

The NPR discussed the Commission's assessment of the impact that a rule to exempt propellant devices for use with small rocket-powered model cars like the "Blurzz" might have on small businesses. Because the exemption would relieve manufacturers from existing restrictions, the Commission concluded that the proposed exemption would not have a significant impact on a substantial number of small businesses or other small entities. No comments or additional information alter that conclusion.

H. 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 assessed the possible environmental effects associated with the proposed exemption. As discussed in the NPR, the Commission concluded that the rule would have no adverse effect on the environment, and therefore, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to

the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). (The FHSA also provides for the state or political subdivision of a state to apply for an exemption from preemption if certain requirements are met.) Thus, the rule exempting model rocket propellant devices for use with certain surface vehicles will preempt non-identical requirements for such propellant devices.

The Commission has also evaluated the rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

Conclusion

For the reasons stated above, the Commission concludes that, with the requirements stated in the exemption, model rocket propellant devices to propel small rocket-powered cars like the "Blurzz" require inclusion of a hazardous substance in order to function, have sufficient directions and warnings for safe use, and are intended for children who are mature enough that they may reasonably be expected to read and heed the directions and warnings. Therefore, the Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.85 is amended by adding a new paragraph (a)(14) to read as follows:

§ 1500.85 Exemptions from classification as banned hazardous substances.

(a) * * *

(14) Model rocket propellant devices (model rocket motors) designed to propel rocket-powered model cars, provided—

(i) Such devices:

(A) Are designed to be ignited electrically and are intended to be operated from a minimum distance of 15 feet (4.6 m) away;

(B) Contain no more than 4 g. of propellant material and produce no more than 2.5 Newton-seconds of total impulse with a thrust duration not less than 0.050 seconds;

(C) Are constructed such that all the chemical ingredients are pre-loaded into a cylindrical paper or similarly constructed non-metallic tube that will not fragment into sharp, hard pieces;

(D) Are designed so that they will not burst under normal conditions of use, are incapable of spontaneous ignition, and do not contain any type of explosive or pyrotechnic warhead other than a small recovery system activation charge;

(E) Bear labeling, including labeling that the devices are intended for use by persons age 12 and older, and include instructions providing adequate warnings and instructions for safe use; and

(F) Comply with the requirements of 16 CFR 1500.83(a)(36)(ii and iii); and

(ii) The surface vehicles intended for use with such devices:

(A) Are lightweight, weighing no more than 3.0 oz. (85 grams), and constructed mainly of materials such as balsa wood or plastics that will not fragment into sharp, hard pieces;

(B) Are designed to utilize a braking system such as a parachute or shock absorbing stopping mechanism;

(C) Are designed so that they cannot accept propellant devices measuring larger than 0.5" (13 mm) in diameter and 1.75" (44 mm) in length;

(D) Are designed so that the engine mount is permanently attached by the manufacturer to a track or track line that controls the vehicle's direction for the duration of its movement;

(E) Are not designed to carry any type of explosive or pyrotechnic material other than the model rocket motor used for primary propulsion;

(F) Bear labeling and include instructions providing adequate warnings and instructions for safe use; and

(G) Are designed to operate on a track or line that controls the vehicles' direction for the duration of their movement and either cannot operate off the track or line or, if operated off the track or line, are unstable and fail to operate in a guided fashion so that they will not strike the operator or bystanders.

* * * * *

3. Section 1500.83(a)(36)(i) is revised to read as follows:

§ 1500.83 Exemptions for small packages, minor hazards, and special circumstances.

(a) * * *

(36) * * *

(i) The devices are designed and constructed in accordance with the specifications in § 1500.85(a)(8), (9) or (14);

* * * * *

Dated: January 27, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

Appendix to Preamble—List of Relevant Documents

- Briefing memorandum from Terrance R. Karels, Directorate for Economic Analysis, to the Commission, "Exemption from Classification as Banned Hazardous Substances Rocket-powered Model Cars, January 13, 2003.
- Memorandum from Joyce McDonald, Hazard Analysis Division, to Terrance R. Karels, "Model Rocket Car Petition," October 18, 2002.
- Memorandum from Sharon R. White, Directorate for Engineering Sciences, Division of Human Factors, to Terrance R. Karels, "Responses to Comments on Briefing Package concerning Centuri Corporation's Petition for Exemption of Model Rocket Propellant Devices for Surface Vehicles, HP 01–02," September 6, 2002.
- Memorandum from Troy W. Whitfield, Directorate for Engineering Sciences, to Terrance R. Karels, "Rocket Powered Model Cars—Public Comment," September 12, 2002.
- Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Files, "Rocket powered cars," May 8, 2002.
- Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Patricia M. Pollitzer, Office of General Counsel, "Rocket-powered Model Cars—Economic Considerations," December 20, 2002.
- Memorandum from Jason R. Goldsmith, Ph.D., Division of Health Sciences, to Terrance R. Karels, "Rocket-Powered Model Cars—Response to Comments," October 17, 2002.

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TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of