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 Management.
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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1507

Proposed Rule: Fireworks Devices; Fuse Burn Time

AGENCY: Consumer Product Safety
 Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulation under the Federal Hazardous Substances Act that applies to the fuse burn times of fireworks devices. The proposal would change 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 allow manufacturers to more consistently produce fireworks that do not fall below a 3-second burn time, thus reducing hazardous short burn times. Further, the increase in fuse burn time to 9 seconds will not create any additional risk of injury to consumers. Therefore, the amendment should increase the safety of users of fireworks. The amendment was requested in a petition from the American Fireworks Standards Laboratory.

DATES: Comments on the proposal should be submitted no later than October 21, 1996.

ADDRESSES: Comments to the Commission on the proposed rule should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301) 504-0800. Comments also may be filed with the Commission by facsimile to (301) 504-0127, or by electronic mail via info@cpsc.gov. Comments should include a caption or cover indicating that they are directed to the Office of the Secretary and are comments on the proposed revisions to the fuse burn time of fireworks.

Comments on potential changes to the Commission staff's current enforcement policy for fuse burn times, and on possible interim forbearance of enforcement against fuse burn times of up to 9 seconds, should be mailed to David Schmeltzer, Assistant Executive

Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT:
 Carolyn Meiers, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0468 ext. 1281; or e-mail to cpsc/g=Carolyn/i=K./s=Meiers/o=cpsc@mhs.attmail.com

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Introduction. In this notice, the Consumer Product Safety Commission ("the Commission" or "CPSC") proposes to amend its regulation under the Federal Hazardous Substances Act ("FHSA") that governs the allowable range of times that fuses for fireworks may burn before the device ignites. 16 CFR 1507.3(a)(2). The Commission seeks comments from interested members of the public on the proposed amendment. The Commission also invites comments from counterpart agencies in foreign governments, foreign standards developers, and others who might be interested in this proposed amendment. This invitation is in addition to the routine international notification of this proposed rule that is provided by the World Trade Organization Agreement on Technical Barriers to Trade.

Background. Commission regulations under the FHSA require fireworks devices (other than firecrackers)¹ 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 result in an increase of injuries to consumers who returned to live fireworks assuming they were "duds."

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.

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 fireworks-related behavior. The objective of the study was to determine if consumers would return to a fireworks device within 9 seconds after lighting the fuse.

In September 1995, the CPSC was petitioned by AFSL (Petition HP 96-1) to make the same modification to the regulation under the FHSA that governs fireworks fuse burn time as did the previous petition from 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 seconds 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 of fuses burning less than 3 seconds.

AFSL states that increasing the upper range of the fuse burn time to 9 seconds also will increase compliance with the 3 second requirement because: (1) It will improve fuse design and quality, (2) it will make fuse burn time performance more consistent, and (3) it will allow for the variability in fuse burn time caused by environmental conditions. Any such improvement in compliance with the 3-second fuse burn time requirement would likely increase safety.

After considering the available information, the Commission voted to grant Petition HP 96-1. The available information and the reasons for the Commission's decision are explained below.

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 because 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.

A proceeding to amend a rule issued under section 2(q)(1)(B) of the FHSA is subject to the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act ("section 701(e)"), 21 U.S.C. 371(e). 15 U.S.C. 1261(2)(q)(2). Under section 701(e), if the petition of an interested person shows "reasonable grounds" for the action requested, the Commission is required to begin a rulemaking. The fireworks types that would be subject to the proposed amendment, and that have fuse burn times outside the proposed 3 to 9 second range, are already banned hazardous substances. Because the amendment proposed below will not declare any additional products to be banned hazardous substances, an advance notice of proposed rulemaking is 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.

Under section 701(e) of the FDCA, once the Commission issues a final rule in this type of proceeding, persons who would be adversely affected by the rule may file objections with the Commission, stating the grounds therefor, and request a public hearing on those objections. 21 U.S.C. 371(e). If material objections were filed, an adjudicatory hearing to receive evidence concerning the objections would be held before an administrative law judge ("ALJ"). After the ALJ's decision, further appeals could be made to the Commission and ultimately to the courts. 21 U.S.C. 371(e)–(f).

III. Injury Data

The CPSC conducted a special study of firework injuries from June 23 through July 23, 1995. The Special Study focused on this time period because of the highly seasonal nature of fireworks injuries. The injury cases in the special study were identified through the National Electronic Injury Surveillance System ("NEISS"), CPSC's database of cases from a sample of hospital emergency rooms.

Only six sample cases potentially relevant to fuse burn times were identified. The reports of these injuries do not provide quantitative measures of fuse burn times. Characterizations of

whether the time interval before a device ignites is long or short depend upon the victims' or onlookers' subjective perceptions. It could not be determined how the respondents' perceptions related to the CPSC's fuse burn time standard.

Because of the small number of sample cases and the subjectiveness of the respondents' perceptions of time, a national estimate of the injuries associated with long or short fuse burn times cannot be projected.

IV. Safety Effects of Raising the Upper Burn Time Limit to 9 Seconds

As described in greater detail below, the number of occurrences of short fuse burn times—those below 3 seconds—would likely decline appreciably if the proposed fuse burn time range of 3 to 9 seconds is adopted. This clearly would have a positive effect on the safety of the users of the fireworks subject to the fuse burn time regulation.

In the past, the Commission had been concerned that a 9-second fuse burn time could cause consumers to mistakenly believe that a fireworks device was a dud. More specifically, the concern was that a longer fuse burn time could increase the risk of injury if consumers returned to the firework before it ignited. To address this concern, AFSL contracted with AIR to conduct a human factors study to determine how long fireworks users take to begin to return to a firework that has not gone off.

This AIR study appears to present the only data currently available that relate user approach behavior to the fuse burn time of firework devices. The study found that only one of the 30 participants began to approach the device within 9 seconds. The remainder of the participants began to approach the devices from 9 seconds to 5 minutes after igniting the fuse. The median approach time for participants in the last of four trials was 19 seconds. The study concluded that an estimated 95% of the participants would not begin to approach the unexploded firework until after 9 seconds.

In the AFSL study, no participant actually reached the location of the firework device within 9 seconds. The only participant who began to approach the firework device before 9 seconds began the approach at 8 seconds. However, he did not actually reach the firework until approximately 35 seconds after lighting the fuse. The 19-second median approach time is approximately twice as long as the proposed 9-second upper limit. These data indicate that consumers are not likely to return to a fireworks device within 9 seconds of

fuse ignition. The study also indicated that consumers are likely to use smoke and noise cues emitted by a fireworks device as a guide to when a device can be safely approached.

Based on this study, the Commission's Human Factors staff does not expect an increase in injuries associated with increasing the maximum fuse burning time to 9 seconds. The Commission preliminarily concludes that increasing the range of fuse burn times from 3 to 6 seconds to 3 to 9 seconds will reduce injuries caused by fireworks with short fuse burn times and will not create any additional hazard associated with long fuse burn times.

V. Compliance with the Current Regulation

The Commission's Office of Compliance, Division of Regulatory Management, conducts an ongoing fireworks surveillance program to identify fireworks that do not comply with the Commission's regulations. Results of this program for fiscal years 1990 through 1995 show that fuse burn time violations exceeded any other type of fireworks violation. For this time period, between 40 and 50 percent of all fireworks violations were attributed to fuse burn time.

Surveillance data may not represent all firework devices, because devices tested for compliance to regulations are not randomly selected. In addition, the number of violations leading to legal action has been affected from year to year by variations in the staff's enforcement policies.

As part of the CPSC's fireworks compliance testing program, the Commission's Directorate for Laboratory Sciences recorded more than 26,700 individual fuse burn times from tests during the period FY 1990 through FY 1995. These fuse burn times excluded firecrackers, since they are not covered by this regulation, and Roman candles, since they are subject to a different enforcement policy.

Comparisons of fuse burn times measured over these years suggest an overall improvement in fuse performance. Short fuse burn times (less than 3 seconds) decreased from about 13 percent of the fireworks tested to 8 percent. Long fuse burn times (greater than 6 seconds) decreased from about 10 percent of the fireworks tested to about 5 percent. Based on these test data, the staff estimates that the compliance rate for fuses could reach about 98 percent if the proposed changes to the fuse burn

time regulation are enacted.³ Short fuse burn times violations could drop to less than 1 percent, while fuse burn times greater than 9 seconds could be expected to be about 1 percent.

VI. 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 will simply provide a wider range of allowable times. Thus, the Commission would like to make the amendment effective as soon as possible. Under 21 U.S.C. 371(e), 30 days is allowed after the final rule is issued to receive any objections to the rule. This section also provides that the final rule may not become effective before the 30-day period for objections expires. Therefore, the Commission proposes to make the amendment effective 31 days after the final rule is published in the Federal Register.

If the Commission votes to issue the proposed amendment as a final rule, the Commission's staff intends to change its policy of not enforcing against fuse burn time violations as low as 2 seconds that now applies to all fireworks except reloadable shell devices, bottle rockets, and jumping jacks which exhibit erratic flight. After the change in policy, the staff would strictly enforce the 3-second fuse burn time for all fireworks, since there will no longer be any valid reason why industry cannot comply with the 3-second lower burn time. The current policy will continue with respect to fuse burn times of 2 to 3 seconds, however, for a time after the effective date that is sufficient to minimize any adverse economic effects on manufacturers. Comments on how long the enforcement policy allowing 2-3 second fuse burn times should continue after the effective date should be sent to David Schmeltzer, Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

In addition, the Commission's staff is considering an interim policy of allowing fuse burn times between 6 and 9 seconds. This interim policy could be instituted after the end of the comment period on this proposal and before the rule is effective. Since increasing the allowable upper limit of fuse burn time to 9 seconds is expected to increase consumer safety, this interim relief appears to be in the public interest.

Persons wishing to comment on the staff's plans to provide this interim relief should send their comments to David Schmeltzer, Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

VII. Initial 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.

The purpose of the Regulatory Flexibility Act, as stated in section 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.⁴

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 proposed 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.

Any necessary adjustments to the manufacturing process will take approximately 1 week to accomplish once notification is received, according to the industry. Since fireworks which comply with the current 3 to 6 second fuse burn time requirement would

automatically comply with the proposed 3 to 9 second fuse burn time requirement (and because the existing enforcement policy will be continued for a reasonable period of time), there will be no economic impact resulting from the proposed 31-day effective date.

VIII. 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 proposed 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 range of fuse burn times will increase from 3-6 seconds to 3-9 seconds, the change will not cause any increase in noncomplying fireworks, which would require disposal. Therefore, no significant environmental effects are expected from the proposed rule if it is adopted. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IX. Conclusions

For the reasons given above, the Commission preliminarily concludes 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 believes 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 believes that the risk associated with short fuse burn times is of more 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.

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,

³ These calculations assume that no changes would be made to fuse design or quality (except for a longer fuse) and that manufacturers would target a fuse burn time of 6 seconds.

⁴ The Regulatory Flexibility Act provides that 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.

of the Code of Federal Regulations is proposed to be 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).

§ 1507.3 [Amended]

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

Dated: August 2, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM96–14–000]

Secondary Market Transactions on Interstate Natural Gas Pipelines

July 31, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of proposed rulemaking to revise section 284.243 of the Commission's regulations to improve the efficiency of the Commission's capacity release mechanism and encourage greater use of this mechanism. The Commission is proposing to: make changes in its regulations and policies to improve the operation of the capacity release mechanism; eliminate the prior requirement for competitive bidding; and permit shippers to release capacity, and pipelines to sell interruptible and short-term firm service, at rates above the rate cap when the shipper or pipeline has demonstrated that it does not exercise market power.

DATES: Comments on the proposed rule are due October 7, 1996. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM96–14–000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission's bulletin board system also can be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system.

- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

The Federal Energy Regulatory Commission (Commission) requires interstate natural gas pipelines to provide a mechanism that permits firm shippers to release unneeded capacity to other shippers needing that capacity. The Commission is proposing to revise its capacity release regulations, § 284.243, to improve the efficiency of the program and encourage greater use

of capacity release. The Commission is proposing changes in three areas. First, the Commission is proposing to require pipelines to improve their existing capacity release procedures to make the system work more efficiently. Second, the Commission is proposing to improve the speed and certainty of transactions by removing the requirement for competitive bidding. Third, the Commission proposes to permit releases of capacity and pipeline sales of interruptible and short-term firm capacity at rates above the pipeline's maximum rate upon a showing that the releasing shipper or the pipeline cannot exercise market power.

I. Public Reporting Burden

The proposed rule would affect two existing Commission data collections, FERC–545, Gas Pipeline Rates: Rate Change (Non-formal), (OMB Control No. 1902–0154) (FERC–545), and FERC–549B, Gas Pipeline Rates: Capacity Release Information (OMB Control No. 1902–0169) (FERC–549B).

Under the existing data collection/requirements of FERC–545, there would be a one-time estimated annual reporting burden of 4,125 hours (55 hours per company) with the adoption of the revised regulations proposed herein. A one-time tariff filing would adjust certain general terms and condition language in pipeline tariffs to reflect the implementation of the proposed changes in the Commission's capacity release program. Tariff filings would be required of approximately 75 interstate natural gas pipelines. (See FERC–545 burden detail in estimated burden table below.)

Under existing data collection FERC–549B there would be a reduction in annual burden of an estimated 115,650 hours (1,542 hours per company). The estimated burden reduction reflects the proposed improvements to the way the capacity release program operates and the elimination of competitive bidding requirements.

The revised regulations proposed in the subject NOPR are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)). For copies of the OMB submission, contact Michael Miller at (202)208–1415. Interested persons may send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reductions of burden, to the Desk Officer FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087 or via the Internet at hillier—t@a1.eop.gov.