

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

#### Exemptions From Classification as Banned Hazardous Substances; Proposed Exemption for Certain Model Rocket Propellant Devices for Use With Lightweight Surface Vehicles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing 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 proposed rule would exempt certain propellant devices for model rocket ground vehicles if they meet requirements similar to those required for flyable model rockets.

**DATES:** The Office of the Secretary must receive comments by April 15, 2002.

**ADDRESSES:** Comments, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504-0127 or by email to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Comments should be captioned "Proposed exemption for model rocket propellant devices for surface vehicles."

**FOR FURTHER INFORMATION CONTACT:** Terrance Karels, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0962, ext. 1320.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 2(q)(1)(A) of the FHSA bans toys containing 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 re-flyable model rockets, if they meet certain requirements. 16 CFR 1500.85(a)(8).

##### B. The Petition

The Commission received a petition from Centuri Corporation requesting that the Commission issue a rule exempting certain model rocket propellant devices to be used for model rocket surface vehicles. The petitioner requested an exemption for race cars that travel on the ground along a tethered line and are propelled in a manner similar to rockets. The petitioner requested an exemption that would allow the sale of both of its two prototype model rocket 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 has decided to grant the petition in part and propose an exemption for model rocket propellant

devices to be used for surface vehicles like the smaller "Blurzz" car only.<sup>1</sup>

##### C. The Proposed Exemption

Both the Blurzz and Screamin' Eagle rocket-powered cars are designed to be operated along a tethered line. When operated along the tether, the paths of the cars are guided. A user who wishes to operate either car without the tether must physically cut the tether and remove the engine mount from it. The Commission recognizes that some users of the Screamin' Eagle and the Blurzz rocket-powered cars may operate them without the use of the tether. In such a case the path of the cars will be unguided. The Commission staff conducted limited tests of both the Screamin' Eagle and the Blurzz without the tether and videotaped the results. The Commissioners had the opportunity to view the videotapes and to consult with both Commission staff and with the senior management of Centuri about the behavioral characteristics of the cars when they were operated without the tether.

In the case of the Screamin' Eagle, the videotapes demonstrated clearly that the car can rise to a significant height and that it travels at a high rate of speed for a considerable distance before falling to earth or encountering an obstacle. The Screamin' Eagle is also relatively heavy. There is, therefore, a significant risk of injury to any person downrange from the Screamin' Eagle when it is used in the absence of the tether. The Commission, therefore, denied the petition insofar as it seeks an exemption from the FHSA for model rocket propellant devices for cars like the Screamin' Eagle.

In the case of the Blurzz, however, senior management of Centuri represented in a meeting with Commissioner Gall, her staff, and staff from the office of Commissioner Moore on October 26, 2001 that the Blurzz failed in a "safe" mode. By this expression, Centuri management meant that when the rocket motor was ignited in the Blurzz in the absence of the tether, its normal behavior was to flip over onto its back and skitter about the ground, a behavior that posed little or

<sup>1</sup> 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, while Chairman Ann Brown voted to deny the entire petition.

no risk. The Commissioners' observation of the staff-prepared videotapes of rocket car testing, and additional consultation with Commission staff confirmed this representation of Centuri management. When ignited without the tether the Blurzz car ordinarily simply flipped onto its back and skittered around on the ground. Even when the Blurzz did not flip immediately onto its back, it traveled downrange only a very limited distance, and rose only a few inches in the air, before flipping onto its back. The petitioner asserts that the experience of trying to operate the Blurzz without the tether results in little user satisfaction, meaning that users are unlikely to continue the practice. Moreover, the rocket motor used in the Blurzz is of limited thrust, and the vehicle and the rocket motor combined are very light. Even if a person were downrange from the Blurzz in the absence of the tether, the Blurzz would strike only a light blow a few inches above the ground.

On the basis of its meeting with Centuri management, and its observation of the videotapes of the testing of the Blurzz, the Commission finds that there is a reasonable probability that model rocket propellant devices for surface vehicles like the Blurzz present no unreasonable risk of injury even when operated in reasonably foreseeable misuse without the tether. The Commission, therefore, proposes to exempt model rocket propellant devices for surface vehicles like the Blurzz from the ban that would otherwise be imposed by the FHSA.

In order to grant an exemption from the ban that would ordinarily be imposed by the FHSA, the Commission must find that the labeling that accompanies model rocket propellant devices for surface vehicles like the Blurzz gives adequate directions and warnings for safe use. The Commission must also find that the product is intended for use by children who have attained sufficient maturity and that those children may reasonably be expected to read and heed the directions and warnings. The Blurzz is intended for use by children aged 12 and above. The Commission finds that those children interested in model rockets and rocket vehicles 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 rocket surface vehicles like the Blurzz. The Commission finds further that those directions and warnings are adequate to guide users in the safe use of the product.

#### **D. Impact on Small Business**

The staff preliminarily assessed the impact that a rule to exempt model rocket propellant devices for use with surface vehicles like the "Blurzz" might have on small businesses. Because the proposed exemption would relieve manufacturers from existing restrictions, the staff expects that the exemption would impose no additional costs to businesses of any size. Rather, it would allow companies to manufacture and market a product currently prohibited under the FHSA.

Based on this assessment, the Commission preliminarily concludes that the proposed amendment exempting model rocket propellant devices for surface vehicles like the "Blurzz" would not have a significant impact on a substantial number of small businesses or other small entities.

#### **E. 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 has assessed the possible environmental effects associated with the proposed exemption.

The Commission's regulations state that rules issuing or amending safety standards for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

#### **F. 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 proposed rule exempting model rocket propellant devices for use with certain surface vehicles would preempt non-identical requirements for such propellant devices.

The Commission has also evaluated the proposed 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 proposed 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, and Toys.

#### **Conclusion**

For the reasons stated above, the Commission preliminarily concludes that, with the requirements stated in the proposed exemption, model rocket propellant devices to propel lightweight surface vehicles 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 proposes to amend title 16, chapter II 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 lightweight surface vehicles such as model rocket 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 material other than a delay and 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)(i) through (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; and

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

\* \* \* \* \*

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 22, 2002.

**Todd Stevenson,**

*Secretary, Consumer Product Safety Commission.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

**RIN 0720-AA69**

#### **Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements section 726 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program in certain circumstances.

**DATES:** Comments must be received on or before April 1, 2002.

**ADDRESSES:** TRICARE Management Activity (TMA), Special Contracts and Operations Office, 16401 East Centretech Parkway, Aurora, CO 80011-9043.

**FOR FURTHER INFORMATION CONTACT:** Linda Winter, Special Contracts and Operations Office, TMA, (303) 676-3682.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The TRICARE Retiree Dental Program (TRDP), a voluntary dental insurance plan completely funded by enrollees' premiums, was implemented in 1998 based on the authority of 10 U.S.C. 1076c. The enabling legislation specifies that the Secretary of Defense shall prescribe a minimum required period for enrollment and allows enrollment to be terminated only for loss of eligibility and failure to pay premiums. There was no provision for enrollees to voluntarily terminate their enrollment before the enrollment commitment was fulfilled. Accordingly, the implementing regulation, 32 CFR 199.22, allows termination of enrollment during the required enrollment period only for the ineligibility and premium default reasons.

In section 726 of the Floyd D. Spence National Defense Authorization Act for

Fiscal Year 2001, Public Law 106-398, Congress responded to concerns that the enabling legislation was too restrictive by not allowing enrollees to voluntarily terminate their enrollment before the completion of their enrollment commitment when continued enrollment would be of no benefit to them. Section 726 amended 10 U.S.C. 1076c to direct the Secretary of Defense to allow an enrollee to disenroll at the beginning of the prescribed enrollment period and to permit disenrollment thereafter under limited circumstances providing that the fiscal integrity of the dental program is not jeopardized. The amendment specifies the inclusion of the following circumstances: assignment of Federal employment outside the dental plan jurisdiction that prevents utilization of the plan's benefits, a serious medical condition that prevents utilization of the plan's benefits, and severe financial hardship. In addition, the amendment requires a process for appealing adverse decisions to OCHAMPUS.

##### **II. Provisions to the Proposed Rule.**

This proposed rule expands the voluntary termination provision originally published in an interim final rule in the **Federal Register** on August 14, 2000 (65 FR 49491). Under the statutory mandate for voluntary enrollment, that provision implemented a grace period in which a new enrollee could voluntarily disenroll during the first thirty days following the beginning date of coverage on the condition that no benefits had been used and effectively nullify the enrollment. It also designated the TRDP contractor as the authority for grace period disenrollment decisions.

This proposed rule establishes another opportunity for voluntary disenrollment that is based on the extenuating circumstances specified in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The TRDP contractor continues as the authority for voluntary disenrollment decisions but only at the initial level. The rule establishes a process for enrollees to appeal to OCHAMPUS all adverse decisions made by the contractor in response to requests for voluntary disenrollment.

In addition, the proposed rule makes the following administrative changes: Corrects a typographical error in a reference to the Assistant Secretary of Defense (Health Affairs); replaces references to the TRICARE Active Duty Dependents Dental Plan with the name of its successor, the TRICARE Dental Program; removes the forwarding of grievances to OCHAMPUS for final