

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective, September 15, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP HI E5 Honolulu International Airport, HI [Amended]

Honolulu International Airport

(Lat. 21°19'07" N., long. 157°55'21" W.)

Kalaeloa John Rodgers Field

(Lat. 21°18'26" N., long. 158°04'13" W.)

Honolulu VORTAC

(Lat. 21°18'30" N., long. 157°55'50" W.)

That airspace extending upward from 700 feet above the surface south and southwest of Honolulu International Airport beginning at lat. 21°20'19" N, long. 157°49'00" W., thence southeast to lat. 21°16'20" N, long. 157°45'00" W., thence east along the shoreline to where the shoreline intercepts the Honolulu VORTAC 15-mile radius, then clockwise along the 15-mile radius of the Honolulu VORTAC 241° radial, then northeast bound along the Honolulu VORTAC 241° radial to intercept the 4.3-mile radius south of Kalaeloa John Rodgers Field, then counterclockwise along the arc of the 4.3-mile radius of Kalaeloa John Rodgers Field to and counterclockwise along the 4.3-mile radius of the Honolulu VORTAC to the Honolulu VORTAC 106° radial, then westbound along the Honolulu 106° radial to the 4-mile radius of the Honolulu VORTAC, then counterclockwise along the 4-mile radius to intercept the Honolulu VORTAC 071° radial, thence to a point of beginning and that airspace beginning at lat. 21°10'35" N., long. 158°11'22" W.; to lat. 21°16'05" N., long. 158°14'35" W.; to lat. 21°16'30" N., long. 158°13'46" W.; to lat. 21°16'50" N., long. 158°00'00" W.; to the point of beginning.

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Issued in Los Angeles, California, on June 22, 2006.

John Clancy

Area Director, Western Terminal Operations.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed new interpretative rule.

SUMMARY: Sections 20(b) and (c) of the Consumer Product Safety Act, 15 U.S.C. 2069(b), (c), require certain factors to be considered in assessing and compromising penalties. A new interpretative rule is proposed that identifies and explains other factors that may be considered by the Commission and staff in evaluating the appropriateness and amount of a civil penalty.¹

DATES: The Office of the Secretary must receive written comments not later than August 11, 2006.

ADDRESSES: Written comments should be captioned “Civil Penalties” and e-mailed to the Office of the Secretary at cpsc-os@cpsc.gov. Written comments may also be sent to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814 or by facsimile at (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: John Gibson Mullan, Assistant Executive Director, Compliance and Field Operations at 301–504–7626.

SUPPLEMENTARY INFORMATION: Proposed new part 1119 describes factors the Commission and staff may consider in determining the appropriateness and amount of a civil penalty for violations of section 19(a), which includes the failure to furnish information required by section 15(b).

The CPSA provides that a knowing violation of the prohibited acts enumerated in section 19(a) could subject a firm to a civil penalty under section 20 of the CPSA. In determining the amount of a civil penalty by commencing an action pursuant to section 20(b) or compromising a civil penalty claim under section 20(c), the

¹ Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at <http://www.cpsc.gov>.

Commission and staff consider five statutory factors set forth in the CPSA: The nature of the product defect, the severity of the risk of injury, the number of defective products distributed, the occurrence or absence of injury, and the appropriateness of the penalty in relation to the size of the business of the person charged. The proposed regulation describes that the Commission and staff may also consider, as appropriate, one or more of the following factors in determining the appropriateness and amount of a civil penalty: (1) A firm's previous record of compliance with CPSA requirements; (2) timeliness of a firm's response to relevant information; (3) safety and compliance monitoring; (4) cooperation and good faith; (5) economic gain from any delay or non-compliance with CPSC safety or reporting requirements; (6) a product's failure rate; and (7) any other pertinent factors.

The Commission is proposing this section to provide further clarity and transparency in how it determines civil penalty amounts in individual civil penalty determinations. The Commission believes that adoption of this proposed regulation will result in a better understanding by the public of the Commission's approach to determining the appropriateness and amount of a civil penalty.

List of Subjects in 16 CFR Part 1119

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 1119 is proposed to be added to read as follows:

PART 1119—CIVIL PENALTY FACTORS

Sec.

§ 1119.1 Factors considered in determining civil penalties.

Authority: 15 U.S.C. 2058, 2063, 2064, 2067(b), 2068, 2069, 2076(e), 2084.

§ 1119.1 Factors considered in determining civil penalties.

(a) *Statutory Factors.* Section 20 of the Consumer Product Safety Act (CPSA) specifies five factors that shall be considered by the Commission in determining the amount of a civil penalty to be sought for violations of section 19(a), which includes failure to furnish information to the Commission as required by section 15(b). Those factors are: The nature of the product defect, the severity of the risk of injury, the number of defective products distributed, the occurrence or absence of injury, and the appropriateness of [the]

penalty in relation to the size of the business of the person charged. The Act also allows the Commission to compromise any civil penalty under section 20. In determining the amount of a penalty settlement, the Commission is instructed to consider the same five factors.

(b) *Other factors.* In determining the appropriateness and the amount of any civil penalty to be pursued in negotiations when a violation of the reporting requirements of section 15(b) or other requirements of section 19(a) have occurred, in addition to the statutory factors set forth in section 20 of the CPSA, the Commission and the staff may consider, as appropriate, one or more of the following:

(1) *Previous record of compliance.* The Commission and the staff may consider whether the firm has had previous safety, reporting or other violations, and, if so, whether the firm has taken action to address previous violations and to improve compliance with applicable CPSC safety requirements.

(2) *Timeliness of response.* With regard to the matter under review, the Commission and the staff may consider how quickly the firm responded to relevant information it obtained (or reasonably should have obtained), and the extent to which any injuries might reasonably have been prevented by more timely reporting or other required action.

(3) *Safety and compliance monitoring.* The Commission and the staff may consider the extent to which the firm has adopted a system for collecting and analyzing safety information and for evaluating reporting issues (including such system's application in the matter under review).

(4) *Cooperation and good faith.* The Commission and the staff may consider the degree to which the firm cooperated and acted in good faith to address reporting or other product safety violations or other issues, both generally and with regard to the specific matter under review.

(5) *Economic gain from non-compliance.* The Commission and the staff may consider the extent to which the firm profited or otherwise benefitted from an improper delay in reporting or complying with other applicable CPSC safety requirements.

(6) *Product failure rate.* With regard to the product and matter under review, the Commission and the staff may consider the reasonably expected rate of failure for that type of product over time.

(7) *Any other pertinent factors.* The Commission and staff may consider any other pertinent factors.

Dated: July 7, 2006.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Amendment to Fireworks Safety Standards; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering whether there may be a need to update and strengthen its regulation of fireworks devices. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the Federal Hazardous Substances Act ("FHSA"). The Commission is soliciting written comments concerning the risks of injury associated with fireworks that do not comply with the current fireworks device regulations, the regulatory options discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.¹

DATES: Written comments and submissions in response to this notice must be received by September 11, 2006.

ADDRESSES: Comments should be e-mailed to cpsc-os@cpsc.gov. Comments should be captioned "FIREWORKS ANPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by facsimile to (301)504-0127.

¹ Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at <http://www.cpsc.gov>.

FOR FURTHER INFORMATION CONTACT: Barbara E. Parisi, Office of General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-7879 or e-mail: bparisi@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On May 14, 1973, the Consumer Product Safety Commission, pursuant to section 30(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2079(a)), assumed responsibility for and administration of the FHSA. On September 27, 1973 (38 FR 27012), the Commission transferred existing fireworks regulations under the FHSA from 21 CFR parts 191 and 191d to 16 CFR parts 1500 and 1507.

In addition to these mandatory CPSC regulations, the American Fireworks Standards Laboratory (AFSL) has developed voluntary standards pertaining to fireworks. The AFSL standards incorporate both CPSC and Department of Transportation regulations as well as a number of standards developed by AFSL that are in addition to Federal requirements. AFSL is an independent, non-profit corporation that was established in 1989 by members of the fireworks industry. It is administered by a 12-member Board of Directors representing companies that manufacture or import fireworks into the United States. Currently, AFSL has approximately 140 U.S. importer members in its program. AFSL tests fireworks in China for its members prior to exportation to the United States. Other testing organizations offer similar services in China, generally following the AFSL standards or close variation.

B. The Product

A firecracker is a device consisting of an explosive pyrotechnic composition in a fused container with the primary function of producing an audible effect. The term "fireworks devices" includes firecrackers and other devices using a pyrotechnic composition which when ignited produce visual and sometimes audible effects. Fireworks devices include consumer fireworks, which are regulated by the CPSC, and professional/display fireworks, which fall under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Consumer fireworks generally fall into the following twelve device classifications: (1) Combination items; (2) Comets, Mines and Shells; (3) Firecrackers; (4) Fountains; (5) Ground Spinners and Chasers; (6) Specialty Items; (7) Party, Trick and Toy Smoke