

Washington, DC. The sixth and final meeting is tentatively scheduled for October 12–14. Notices of all future meetings will be published in the **Federal Register** at least 15 calendar days prior to each meeting.

Notice of this meeting is being provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations covering management of Federal advisory committees. See 41 CFR part 102–3. Issued under the authority of delegation in 49 CFR 1.27(n).

Dated: August 29, 2016.

**Molly J. Moran,**

*Acting General Counsel.*

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**BILLING CODE 4910–9X–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

[Docket No. CPSC–2016–0020]

#### 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 October 6, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2016–0020 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 (email), 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:

DeWane Ray, Deputy Executive Director for Safety Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301)–504–7547; email: [jray@cpsc.gov](mailto:jray@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 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>

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 grains] in [consumer] fireworks.”<sup>7</sup> This provides a bright-line

<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).

<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).

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

<sup>1</sup> Pub. L. 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).

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.

#### 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: August 26, 2016.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2016-21014 Filed 9-2-16; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038-AE47**

### Commodity Pool Operator Annual Report

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** On August 5, 2016, the Commodity Futures Trading Commission (Commission or CFTC) published in the **Federal Register** a notice of proposed rulemaking (Proposal) to amend certain of its regulations applicable to the Annual Report that each person registered or required to be registered as a commodity pool operator (CPO) must distribute for each commodity pool that it operates. As is explained below, the Commission is extending for two weeks the comment period for the Proposal.

**DATES:** The comment period for the Proposal published on August 5, 2016, at 81 FR 51828, is extended until September 20, 2016.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AE47 and "Commodity Pool Operator Annual Report," by any of the following methods:

- **CFTC Web site:** <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the Web site.
- **Mail:** Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- **Hand Delivery/Courier:** Same as Mail, above.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [www.cftc.gov](http://www.cftc.gov). You should submit only information that

you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission Regulation 145.9.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a submission from [www.cftc.gov](http://www.cftc.gov) that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, 202-418-5445, [ccummings@cftc.gov](mailto:ccummings@cftc.gov) or Barbara S. Gold, Associate Director, 202-418-5441, [bgold@cftc.gov](mailto:bgold@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** The Proposal concerns certain provisions of the Annual Report that registered CPOs are required to distribute and submit under Regulation 4.22. Among other things, it would amend these provisions: To permit the use of additional alternative generally accepted accounting principles, standards or practices; to provide for an exemption from the Annual Report audit requirement where the first fiscal year of a pool consists of a period of three months or less from the date of formation of the pool; and to clarify that a CPO must distribute and submit an audited Annual Report at least once during the life of the pool. The comment period for the Proposal is due to expire on September 6, 2016.

By letter dated August 26, 2016, the Managed Funds Association (MFA), a membership organization representing many persons who would be affected by the Proposal, requested a two-week extension of the comment period for the Proposal, such that, as extended, the comment period would expire on September 20, 2016. In support of its request, MFA explained that it is drafting comments in response to the

<sup>1</sup> 17 CFR 145.9 (2016). The Commission's regulations are found at 17 CFR Ch. I (2016). They are accessible through the Commission's Web site.

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