SKOKOMISH FIREWORKS SALES AND SAFETY ORDINANCE

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GENERAL PROVISIONS

4.03.001 Title

This Ordinance shall be known as the Skokomish Fireworks Sales and Safety

Ordinance.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.002 Authority and Declaration of Purpose

(a) Authority. This Skokomish Fireworks Sales and Safety Ordinance is enacted pursuant to the inherent sovereign authority of the Skokomish Indian Tribe in accordance with the Treaty of Point No Point, the Constitution of the Skokomish Indian Tribe and applicable federal law. Pursuant to Article V of the Constitution, the Skokomish Tribal Council has the authority to enact laws and ordinances to license and regulate the conduct of business activities, and to impose taxes on all persons and property within the Tribe's jurisdiction.

(b) Purpose. The Skokomish Tribal Council, as the governing body of the Skokomish Indian Tribe, recognizes the need to enhance and strengthen the development of the Reservation, supporting community values and goals for achieving complete self-determination and self-governance as a separate sovereign Nation. As a guide to interpretation and application, the purposes of this Ordinance are as follows:

(1) To prevent the sale of illegal and unsafe fireworks on the Skokomish Indian Reservation and other property within the Tribe's jurisdiction;

(2) To promote the safety and welfare of the Skokomish community members by regulating the conduct of Wholesale fireworks sales within the Reservation and of Retail fireworks sales along the heavily traveled highways on the Reservation;

(3) To generate revenue for operation of the Skokomish tribal government, including the administration and enforcement of this Ordinance; and

(4) To assert, to the exclusion of state and local regulatory authorities, the Tribe's authority over the conduct of trade in, and the use and disposition of, fireworks on the Reservation.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.003 Jurisdiction

(a) General Jurisdiction.

The provisions of this Ordinance shall apply to the fullest extent of the sovereign jurisdiction of the Skokomish Indian Tribe as authorized by the Tribe's Constitution, the Treaty of Point No Point and applicable federal law.

(b) Civil Jurisdiction.

Except as otherwise provided herein, the Skokomish Tribal Court shall have jurisdiction over all civil proceedings arising under this Ordinance.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.004 No Waiver of Immunity

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Skokomish Indian Tribe. The Fireworks Committee as described in this Ordinance may not waive or limit the sovereign immunity of the Tribe.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.005 Severability

If any provision or application of this Ordinance is determined by review to in invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.006 Definitions

(a) Where a term is not defined in this Ordinance, it shall be given its ordinary meaning.

(b) Terms used in this Ordinance, and regulations adopted under it shall have the following meaning given to them in this section, except where specifically defined or the context clearly indicates otherwise:

(1) "Enrolled Tribal Member" or "Tribal Member" means a person who is an enrolled member of the Skokomish Indian Tribe.

(2) "Fireworks" means any device containing a combustible or explosive substance intended to produce a visible or audible combustion, explosion, deflagration, or detonation, but shall not include firearms.

(3) "Fireworks Stand" means a location or establishment at which fireworks are offered for Retail sale only and which contains a countertop-type buffer separating the customer from Retailer;

(4) “Permittee” means a person awarded permission by the Skokomish Indian Tribe to sell Fireworks at Retail or Wholesale.

(5) “Reservation” means the Skokomish Indian Reservation established pursuant to the Treaty of Point No Point of January 26, 1855, 12 Stat. 933, and Executive Order of February 25, 1874 and includes all lands within the exterior boundaries thereof, whether held in fee, restricted or trust status.

(6) “Retail” means the sale of Fireworks to ultimate consumers, as opposed to sale for further distribution or processing.

(7) “Tribal Court” means the Skokomish Tribal Court or any court established by the Tribe to adjudicate violations of this Ordinance and consequently adopted regulations.

(8) “Tribal Manager” means the Skokomish Tribal Manager hired by the Tribal Council pursuant to Article VI of the Constitution and who is responsible for the execution of tribal laws and policies and the management of all tribal business.

(9) “Other property within the Tribe’s jurisdiction” means other areas of territory and jurisdiction as defined in Article I, Section 2 of the Constitution of the Skokomish Indian Tribe.

(10) “Wholesale” means the sale of Fireworks to a Retailer for resale, and not to the ultimate consumer.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

FIREWORKS COMMITTEE

4.03.007 Authority and Duty of Fireworks Committee

(a) Fireworks Committee Established. There is hereby established the Skokomish Fireworks Committee (hereinafter “Fireworks Committee”).

(b) Role of Fireworks Committee. The Fireworks Committee shall act in a regulatory and advisory capacity to the Skokomish Tribal Council and shall carry out any other Fireworks related duties assigned to it by the Tribal Council or this Ordinance. The Fireworks Committee has authority as follows:

(1) Promulgate regulations for all aspects of fireworks sales and safety

pursuant to this Ordinance, including but not limited to:

(i) recommending the time and place where sale of Fireworks is lawful;

(ii) recommending and defining the types of sales allowed for those Fireworks not already defined in this Ordinance;

(iii) recommending the time, place and manner in which it will be lawful to use, ignite, or discharge Fireworks;

(iv) recommending additional requirements and conditions of the issuance and use of retail and wholesale fireworks permits; and

(v) regulating all other aspects of Fireworks sales which the Tribal Council refers to the Fireworks Committee.

(2) To monitor and inspect, in conjunction with Tribal Law Enforcement, all Wholesale and Retail Fireworks Stands within the Reservation for compliance with this Ordinance and all regulations adopted under it.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.008 Adoption of Annual Regulations

The Fireworks Committee shall prepare proposed annual regulations. These proposed annual regulations shall cover all aspects of tribal Fireworks sales to be consistent with this Ordinance. In preparing the proposed annual regulations, the Fireworks Committee shall:

(a) Consider all recommendations made by Committee Members and other Tribal Members; and

(b) Submit the proposed annual regulations to the Tribal Council with a written resolution approving and authorizing the adoption of the annual regulations to be effective on dates specified therein.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.009 Notice of Regulations

Copies of all Fireworks regulations shall be provided to the Tribal Council as soon as possible. Copies of all adopted regulations shall be prominently posted within the Reservation and shall be available to Tribal Members upon request.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

WHOLESALE FIREWORKS PERMITS AND SALES

4.03.010 Authorized Wholesalers

No person shall make Wholesale sales of Fireworks within the Reservation without a valid annual Wholesale Fireworks Permit issued by the Skokomish Indian Tribe.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.011 Wholesale Fireworks Permits and Fees

Any person who wishes to make Wholesale sales on the Reservation must apply each year for a tribal Wholesale Fireworks Permit. Applications must be submitted in writing to the Tribal Manager. Approval of all applications shall be within the discretion of the Tribal Manager. All permit fees may be changed by the annual Fireworks Sales and Safety Regulations as approved by the Tribal Council. There shall be two types of Wholesale Fireworks Permits:

(a) Mobile Wholesale Permit ($0 Fee)

A Mobile Wholesale permit shall be approved only for the sale of Fireworks to approved Retail Fireworks owners/operators or their designated employee within the Reservation. Prior to each Wholesale purchase, the Wholesaler shall require each Retail Fireworks owner/operator or their designated employee to present a valid “Buying Authorization Card.” A mobile Wholesaler must vacate the Reservation after each sale.

(b) On-Site Permit ($0 Fee)

An on-site Wholesale permit shall be approved only for sale of Fireworks to approved Retail Fireworks owners/operators or their designated employee within the Reservation. Prior to each Wholesale purchase, the Wholesaler shall require each Retail Fireworks owner/operator or their designated employee to present a valid “Buying Authorization Card.” An on-site Wholesaler must be located at least 300 feet from any residence, Fireworks Stand or other structure.

(c) Payment of Fees

All Wholesale Firework Permit applications must be approved and permit fees paid ***prior to sales on the Reservation***. ***NO DEFERRAL PAYMENTS ON WHOLESALE FIREWORKS PERMITS AND FEES IS AUTHORIZED.***

(d) Terms of Permit

Each Wholesale Fireworks Permit shall state such terms and conditions necessary to achieve the purposes of this Ordinance.

(e) Display of Permit

Every Wholesale Fireworks Permit issued pursuant to this Ordinance shall be prominently displayed by the Wholesaler when conducting business within the Reservation.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.012 Violations

Any person who makes or attempts to make Wholesale sales of Fireworks within the Reservation in violation of this Ordinance shall be subject to the following penalties:

(a) Civil Fine: No less than $500, but no more than $5000 per violation.

(b) Civil Forfeiture: pursuant to section 4.03.021 of this Ordinance.

(c) Revocation/Suspension of Permit: pursuant to section 4.03.022 of this Ordinance.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

RETAIL FIREWORKS SALES AND PERMITS

4.03.013 Authorized Retailers

No person shall make Retail sales of Fireworks within the Reservation or other property within the Tribe's jurisdiction without a valid annual Retail Fireworks Sales Permit issued by the Skokomish Indian Tribe.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.014 Retail Fireworks Sales Permits

Retail Fireworks Sales Permits and Buying Authorization Cards shall be issued only to enrolled Skokomish Tribal members and shall be approved only for the sale of Fireworks from Retail Fireworks Stands on the Reservation or other property within the Tribe's jurisdiction. ***WHOLESALE PURCHASES FOR AND/OR RETAIL SALES OF FIREWORKS FROM OTHER THAN A FIREWORKS STAND IS STRICTLY PROHIBITED.*** Each applicant must apply each year for a tribal Retail Fireworks Sales Permit and Buying Authorization Card (replacement charge of $10.00 per lost, misplaced

or damaged permit or card).

(a) Qualifications for Retail Fireworks Sales Permit.

To qualify for a tribal Retail Fireworks Sales Permit, an applicant must submit to the Tribal Manager the written "Fireworks Retail Sales Permit Application" which shows to applicant has the following qualifications:

(1) Enrolled member of the Skokomish Indian Tribe;

(2) At least eighteen (18) years of age; and

(3) Property within Reservation on which Fireworks Stand will be located must be held in trust or must be Indian-owned fee property. Property outside the Reservation must be held in trust. The following evidence shall be provided:

(A) Ownership of the property;

(B) Statement of consent of owner(s); or

(C) Other legal authorization to occupy the property.

(b) Action on Permit Application

Within ten (10) days of receipt of an application, the Tribal Manager shall determine whether an applicant qualifies for a Retail Fireworks Sales Permit as provided in sub-section (a) above. The Tribal Manager shall either approve and issue the permit to a qualified applicant, or shall notify the applicant in writing of the reason(s) for denial of the permit. All decisions of the Tribal Manager may be appealed to the Tribal Council. The decision of the Tribal Council shall be final.

(c) Permit Fees

All permit, lease and cleaning deposit fees may be changed by the annual Fireworks Sales and Safety Regulations as approved by the Tribal Council:

(1) Generally

All Retail Fireworks Stand owners/operators will be required to submit the following fees with their application:

(A) $110.00 Retail Fireworks Sales permit fee on all Stands, regardless of size; and

(B) All applicants must pay a $100.00 refundable cleaning deposit prior to opening of their Fireworks Stand. Ten dollars is designated from each permit sold to be held in a separate account for future use by the Fireworks Committee for upcoming seasons.

(C) Sales for Retail Fireworks Stands shall begin on the third Monday of April.

(2) Tribally-owned property

The Tribe may authorize Fireworks Stands to be located on tribally-owned property as follows:

(A) Fireworks Stand owners/operators will be selected on a first, come, first serve by permit number basis, pending review by the Fireworks Committee. Fees collected will be designated for clearing property that can be utilized for leasing to tribal members who would otherwise have no place for their Fireworks business.

(B) Lease fees for tribally owned property will be established by the annual Fireworks Sales and Safety Regulations as approved by the Tribal Council. Selected enrolled tribal members must pay the lease fee plus $110.00 Retail Fireworks Sales permit fee plus a $100.00 refundable cleaning deposit prior to opening their Fireworks Stand.

(C) A fee for portable toilets will be incorporated into the lease fees established by the annual Fireworks Sales and Safety Regulations as approved by the Tribal Council.

(D) Fireworks Stands on Tribal Property are to be maximum 25 feet in length and a maximum 10 feet in width.

(3) ***NO DEFERRAL PAYMENTS ON RETAIL FIREWORKS PERMITS AND FEES IS AUTHORIZED.***

(d) Terms of Permit. Each Retail Fireworks Sales Permit shall state such terms and conditions necessary to achieve the purposes of this Ordinance. *Provided*, each Retail Fireworks Sales Permit shall only entitle the Permittee to operate one Fireworks Stand:

(1) Of the length designated within the permit;

(2) At the location designated within the permit; and

(3) For the period established each year in the regulations.

(e) Transfer of Permit Prohibited. The Retail Fireworks Sales Permit may not be transferred to any other person or applied to a Stand at a location other than the one designated within the permit.

(f) Refunds.

(1) Permit fees paid at the time of permit application shall be promptly refunded if the Tribal Manager determines that an applicant does not qualify for a Retail Fireworks Sales Permit.

(2) Cleaning deposit refunds shall be refunded as follows:

(A) A Fireworks Stand owner/operator must collect and properly dispose of all garbage and debris in and around the Fireworks Stand:

(i) Within 10 days after the close of the summer Fireworks season; and

(ii) Within 10 days after the close of the winter Fireworks season,

(B) Following the ten (10) day periods referenced in sub-section (A), the Fireworks Committee, Law Enforcement Officers and/or tribal staff will inspect each Fireworks Stand for compliance:

(i) Upon a determination of compliance with sub-section (A)(i), the cleaning deposit shall be refunded within thirty (30) days following the close of the summer Fireworks season.

(ii) Upon a determination of failure to comply with sub-section (A)(i), the cleaning deposit shall be forfeited to the Tribe. In addition, failure to comply with sub-section (A)(i) may result in other penalties and fines contained in Violations and Penalties below, and the Tribal Manager may deny future permits to the Fireworks Stand owner/operator for a period up to three years.

(iii) Upon a determination of failure to comply with sub-section (A)(ii), in addition to other penalties and fines contained within Violations and Penalties below, the Tribal Manager may deny future permits to the Fireworks Stand owner/operator for a period up to three years.

(g) Non-Payment of Fines as Grounds for Denial of Permit

No permit shall be issued to an applicant who has outstanding fines imposed by the Skokomish Tribal Court for violations of this Ordinance or any regulations promulgated under it.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.015 Retail Fireworks Stands: Operations and Sales

(a) Display of Permit. Every Retail Fireworks Sales Permit issued pursuant to this Ordinance shall be prominently displayed at the Fireworks Stand authorized by the permit.

(b) Employees. ***NO PERSON UNDER THE AGE OF SIXTEEN (16)*** shall be authorized to assist in the operation of a Fireworks Stand, except in the presence of immediate adult supervision. At the time of application for a Retail Fireworks Sales Permit, a Fireworks Stand owner/operator must list all employees or persons that will be working in their Stands who are not enrolled tribal members.

(c) Safety Precautions/Restrictions.

(1) Every Fireworks Stand owner/operator shall keep, in a location which can be easily reached by employees, either a fire extinguisher of at least ten (10) pound dry weight, or a source and quantity of water which can be immediately and effectively used for fire prevention and control.

(2) No Fireworks Stands shall be located within fifty (50) feet of a gasoline, oil, propane or flammable service or storage facility and/or within 300 (300) feet of any tribal business and/or within fifty (50) feet of any other tribal building or structure. No open flame shall be located within three hundred (300) feet of the Twin Totems Grocery and Convenience Store without the written permission of the Skokomish Tribal Manager.

(3) Every Fireworks Stand owner/operator shall display in a prominent place a sign which bears the following warning:

"IT IS UNLAWFUL TO DISCHARGE FIREWORKS WITHIN FIFTY (50) FEET OF THIS STAND. VIOLATORS SHALL BE SUBJECT TO CIVIL FINES OF UP TO $1000.00 PER VIOLATION. S.T.C. 4.03.018(a)."

(4) Every Fireworks Stand owner/operator shall display in a prominent place a sign which bears the following warning:

"NO SMOKING OR OPEN FLAME IS PERMITTED WITHIN FIFTY (50) FEET OF THIS STAND. VIOLATORS SHALL BE SUBJECT TO CIVIL FINES OF UP TO $1000.00 PER VIOLATION. S.T.C. 4.03.019."

(d) Access and Parking. All Fireworks Stand owners/operators shall ensure that safe, off-street automobile access and parking is available for all customers and employees of the Fireworks Stand.

(e) Sign Removal. Within ten (10) days after the close of the summer Fireworks season and within ten (10) days after the close of the winter Fireworks season, a Fireworks Stand owner/operator must remove all flags, signs, billboards or any other advertisement materials promoting the sale of Fireworks at any location within the Reservation, including any location on or adjacent to the Fireworks Stand.

(1) If such flags, signs, billboards or other advertisement materials are not removed within the ten (10) day period, they shall be deemed a public nuisance by the Tribal Manager in violation of this Ordinance and may be disposed of by tribal law enforcement officers and/or tribal staff without further notice to, and at the expense of (including, but not limited to, the forfeiture of the $50.00 cleaning deposit pursuant to section 4.03.031(f) of this Ordinance) the Fireworks Stand owner/operator.

(2) *Provided further,* if a Fireworks Stand owner/operator is found to be in violation of this section, in addition to the civil fines and penalties contained within VIOLATIONS AND PENALTIES below, the Tribal Manager may deny future permits to the Fireworks Stand owner/operator and/or any immediate family member for the sale of Fireworks at the location deemed to be a public nuisance for a period up to three years.

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.016 Tribal Fireworks Stands

(a) No Permits or Fees Required. In addition to licensing individual Fireworks Stand operators, the Tribal Council may authorize the operation of one or more Stands wholly owned and operated by the Tribe. Each tribal Stand shall be operated in accordance with the provisions of this Ordinance. *Provided*, tribally owned and operated Stands shall not be subject to the permit and fee provisions of this Ordinance.

(b) Operation. The Tribal Fireworks Stands shall be operated by a manager appointed by the Tribal Council and compensated at a rate set by the Tribal Council. The manager must be an enrolled member of the Tribe. The manager may employ as many persons as are needed for operation of the Stands, so long as all employees are enrolled members of the Tribe.

(c) Revenues. Revenues from sales at tribal Fireworks Stands shall be used first for paying wages and business expenses. All remaining revenues shall be declared surplus and deposited in the tribal general fund.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

VIOLATIONS AND PENALTIES

4.03.017 Prohibited Fireworks

It shall be unlawful for any person within the Tribe's jurisdiction to transport, possess, discharge, or offer for sale any Fireworks which are prohibited by the Hazardous Substances Act, 15 U.S.C. 1261, *et seq.*, the Consumer Products Safety Act, 15 U.S.C. 2051, *et seq.*, and which are banned or do not meet the requirements contained in the regulations promulgated by the Consumer Products Safety Commission, including 16 C.F.R. Part 1507 (Fireworks Devices - copy attached), 16 C.F.R. Part 1500.17 (Banned Hazardous Substances - copy attached), and all other applicable regulations, hereby incorporated by this reference.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.018 Unlawful Discharge of Fireworks

(a) It shall be unlawful for any person to discharge or to permit another person to discharge Fireworks within fifty (50) feet of a Fireworks Stand.

(b) It shall be unlawful for any person to discharge Fireworks after 12:00 Midnight or earlier than 6:00 a.m. on the Reservation. On Holidays and

weekends, Fireworks may be discharged no earlier than 6:00 a.m. and no later than 2:00 a.m.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.019 Other Prohibitions

(a) Smoking Prohibited. It shall be unlawful for any person to smoke or to permit another person to smoke within fifty (50) feet of a Fireworks Stand.

(b) Open Flame Prohibited. It shall be unlawful for any person to have an open flame or fire, or to permit another person to have an open flame or fire, within fifty (50) feet of a Fireworks Stand.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.020 Civil Fines

(a) Except as otherwise specifically provided for, any person who violates any provision of this Ordinance may be assessed a civil fine for each separate violation of not less than $50.00 and not more than $1000.00.

(b) Wholesaling without a valid annual Wholesale Fireworks Permit

(1) First Offense - $1,500 fine each sale; civil forfeiture of all stock held for wholesale; revocation of annual permit; denial of annual permit within discretion of Tribal Manager

(2) Second Offense - $3,500 fine each sale; civil forfeiture of all stock held for commercial sale; revocation of annual permit; denial of annual permit two years

(3) Third Offense - $5,000 fine each sale; civil forfeiture of all stock held for commercial sale; denial of annual permit for three years

(c) Retailing without a valid annual Retail Fireworks Sales Permit

(1) First Offense - $350 fine each sale

(2) Second Offense - $500 fine each sale; civil forfeiture of all stock held for retail; denial of annual permit within Tribal Manager's discretion

(3) Third Offense - $1,000 fine each sale; civil forfeiture of all stock held for retail; denial of annual permit for three years

(d) Failure to collect and properly dispose of all garbage and debris in and around the fireworks stand within ten (10) days after the close of the summer or winter fireworks season

(1) First Offense - Forfeiture of cleaning deposit; $100 fine

(2) Second Offense - Forfeiture of cleaning deposit; $50 fine each day; revocation of annual permit within discretion of Tribal Manager

(e) Employing or allowing a person under sixteen years of age to assist in the operation of a fireworks stand without adult supervision.

(1) First Offense - $250 fine; revocation of annual permit within discretion of Tribal Manager

(2) Second Offense - $500 fine; revocation of annual permit; denial of annual permit

(f) Failure to keep suitable fire extinguisher or water source in suitable location for fire prevention and control

(1) First Offense - $250 fine; revocation of annual permit within discretion of Tribal Manager

(2) Second Offense - $500 fine; revocation of annual permit; denial of annual permit for one to three years

(g) Location of fireworks stand within fifty (50) feet of a gasoline, oil, propane or flammable service or storage facility and/or within 300 (300) feet of any tribal business and/or within fifty (50) feet of any other tribal building or structure. No open flame shall be located within three hundred (300) feet of the Twin Totems Grocery and Convenience Store without the written permission of the Skokomish Tribal Manager.

(1) First Offense - $500 fine; revocation of annual permit; denial of annual permit for one year

(2) Second Offense - $750 fine; revocation of annual permit; denial of annual permit for two years

(3) Third Offense - $1000 fine; revocation of annual permit; denial of annual permit for three years

(h) Failure to remove all flags, signs, billboards, and advertisement material within ten (10) days after the close of the summer or winter fireworks season

(1) First Offense - Forfeiture of cleaning deposit; payment of any costs of removal in excess of cleaning deposit

(2) Second Offense – Forfeiture of cleaning deposit; $50 fine; payment of any costs of removal in excess of cleaning deposit; revocation of annual permit

(3) Third Offense – Forfeiture of cleaning deposit; payment of any costs of removal in excess of cleaning deposit; $50 fine each day; revocation of annual permit

(i) Transportation of Prohibited Fireworks

(1) First Offense - $200 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks; revocation of annual permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(2) Second Offense - $500 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks; non-discretionary revocation of permit (if offense by owner or employee of a fireworks stand); denial of annual permit for one year within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(j) Possession of Prohibited Fireworks

(1) First Offense - $50 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks; revocation and/or denial of annual permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(k) Discharge of Prohibited Fireworks

(1) First Offense - $50 to $1000 fine depending on size of prohibited fireworks, level of danger to community, and defendant's willingness to cooperate; civil forfeiture of banned, prohibited or noncomplying fireworks; revocation of permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand); revocation and/or

denial of annual permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(l) Offering Prohibited Fireworks for sale

(1) First Offense - $50 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks

(2) Second Offense - $200 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks; revocation of annual permit; denial of annual permit for one to three years within discretion of Tribal Manager

(3) Third Offense - $350 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; civil forfeiture of banned, prohibited or noncomplying fireworks; revocation of permit; denial of annual permit for one to three years within discretion of Tribal Manager

(m) Discharge within fifty (50) feet of a fireworks stand

(1) First Offense - $250 to $750 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; revocation of permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(2) Second Offense - $350 to $850 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; revocation of permit (if offense by owner or employee of a fireworks stand); denial of annual permit for one year (if offense by owner or employee of a fireworks stand)

(3) Third Offense - $750 to $1,000 fine depending on quantity and size of prohibited fireworks, defendant's willingness to cooperate, and level of danger to community; revocation of permit (if offense by owner or employee of a fireworks stand); denial of annual permit for two or three years (if offense by owner or employee of a fireworks stand)

(n) Discharge after 12:00 Midnight (weeknights) or 2:00 a.m. (weekends and holidays) or earlier than 6:00 a.m.

(1) First Offense - $50 to $750 fine depending on quantity and size of fireworks, defendant's willingness to cooperate, level of nuisance, and

level of danger to community; revocation of permit (if offense by owner or employee of a fireworks stand)

(2) Second Offense - $100 to $750 fine depending on quantity and size of fireworks, defendant's willingness to cooperate, level of nuisance, and level of danger to community; revocation of permit (if offense by owner or employee of a fireworks stand); denial of annual permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(3) Third Offense - $200 to $750 fine depending on quantity and size of fireworks, defendant's willingness to cooperate, level of nuisance, and level of danger to community; revocation of permit (if offense by owner or employee of a fireworks stand); denial of annual permit within discretion of Tribal Manager (if offense by owner or employee of a fireworks stand)

(o) Smoking or permitting smoking within fifty (50) feet of a fireworks stand

(1) First Offense - $250 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand); denial of annual permit within discretion of Tribal Manager

(2) Second Offense - $250 to $750 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand); denial of annual permit within discretion of Tribal Manager

(3) Third Offense - $500 to $1000 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand); denial of annual permit

(p) Having or permitting an open flame or fire within fifty (50) feet of a fireworks stand

(1) First Offense - $250 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand) denial of annual permit within discretion of Tribal Manager

(2) Second Offense - $250 to $750 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand); denial of annual permit for two years (if offense by owner or employee of a fireworks stand)

(3) Third Offense - $500 to 1000 fine; revocation of annual permit (if offense by owner or employee of a fireworks stand); denial of annual permit for three years (if offense by owner or employee of a fireworks stand)

Amended by Resolution No. 2026-092 (August 5, 2026); Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.021 Civil Forfeitures

Any Fireworks located on the Reservation or other property within the Tribe's jurisdiction which are being held for commercial sale in violation of this Ordinance, or which are prohibited by section 4.03.017 of this Ordinance, are subject to civil forfeiture as provided in the Civil Rules of the Skokomish Tribal Court. Such Fireworks may be seized by tribal law enforcement officers before filing of a forfeiture complaint.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

4.03.022 Revocation/Suspension of Permit

Except as otherwise specifically provided for:

(a) Revocation of Permit. If a person who has been issued a Wholesale or Retail Fireworks Sales Permit pursuant to this Ordinance is found to be in violation of the Ordinance by the Skokomish Tribal Court, the Tribal Manager may revoke the permit and may further deny the same person annual permits for up to three years from the date of the conviction of the civil offense.

(b) Suspension of Permit. If probable cause exists to believe a person is in violation of section 4.03.017 of this Ordinance, the Tribal Manager may suspend the Permittee's Wholesale or Retail Fireworks Sales Permit, prohibiting all operations and sales by the Permittee pending a hearing before the Skokomish Tribal Court. In such a case, the hearing before the Skokomish Tribal Court must be held no later than seventy-two (72) hours after the Tribal Manager issues the suspension, unless the Permittee voluntarily waives this right.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

ENFORCEMENT

4.03.023 Tribal Law Enforcement Officers

(a) Skokomish Police Department. Law enforcement officers employed by the Skokomish Police Department are hereby authorized to enforce the provisions of this Ordinance. Tribal law enforcement officers shall have authority to:

(1) Inspect Wholesale (on-site and mobile) dealers and Retail Fireworks Stands to determine compliance with the provisions of this Ordinance;

(2) Serve notices and legal process;

(3) Issue civil citations for violations of this Ordinance;

(4) Seize Fireworks in accordance with the provisions of this Ordinance; and

(5) Otherwise enforce administrative decisions of tribal officials and/or orders of the Skokomish Tribal Court in accordance with this Ordinance and other applicable tribal laws.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

Legislative History prior to July 5, 2017

+Adopted by Resolution No. 82-48 (September 1, 1982)
Amended by Resolution No. 91-05 (January 9, 1991)
Amended by Resolution No. 92-83 (September 30, 1992)
Amended by Resolution No. 09-025 (February 4, 2009)
Amended by Resolution No. 09-080 (May 13, 2009)
+Amended by Resolution No. 09-126 (August 5, 2009)
Amended by Resolution No. 10-060 (June 16, 2010)
Amended by Resolution No. 14-001 (January 8, 2001)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)
Amended by Resolution No. 2026-092 (August 5, 2026)

+Ordinance and/or amendments not attached to the resolution in the Skokomish Tribal Archives

16 CFR
COMMERCIAL PRACTICES
CHAPTER II
CONSUMER PRODUCT SAFETY COMMISSION
SUBCHAPTER C -- FEDERAL HAZARDOUS SUBSTANCES ACT REGULATIONS

PART 1507 -- FIREWORKS DEVICES

Sec.
1507.1 Scope.
1507.2 Prohibited chemicals.
1507.3 Fuses.
1507.4 Bases.
1507.5 Pyrotechnic leakage.
1507.6 Burnout and blowout.
1507.7 Handles and spikes.
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1507.9 Toy smoke devices and flitter devices.
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1507.11 Party poppers.
1507.12 Multiple-tube Fireworks devices.

Authority: 15 U.S.C. 1261-1262, 2079(d); 21 U.S.C. 371(e).
Source: 41 FR 22935, June 8, 1976, unless otherwise noted.

Cross Reference: See also 1500.14(b)(7); 1500.17(a) (3), (8) and (9); 1500.83(a)(27) and 1500.85(a)(2).

§1507.1 Scope.

This part 1507 prescribes requirements for those fireworks devices (other than firecrackers) not otherwise banned under the act. Any fireworks device (other than firecrackers) which fails to conform to applicable requirements is a banned hazardous substance and is prohibited from the channels of interstate commerce. Any fireworks device not otherwise banned under the act shall not be a banned hazardous substance by virtue of the fact that there are no applicable requirements prescribed herein.

§1507.2 Prohibited chemicals.

Fireworks devices shall not contain any of the following chemicals:

(a) Arsenic sulfide, arsenates, or arsenites.

(b) Boron.

(c) Chlorates, except:

(1) In colored smoke mixtures in which an equal or greater amount of sodium bicarbonate is included.

(2) In caps and party poppers.

(3) In those small items (such as ground spinners) wherein the total powder content does not exceed 4 grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.

(d) Gallates or gallic acid.

(e) Magnesium (magnesium/aluminum alloys, called magnalium, are permitted).

(f) Mercury salts.

(g) Phosphorus (red or white). Except that red phosphorus is permissible in caps and party poppers.

(h) Picrates or picric acid.

(i) Thiocyanates.

(j) Titanium, except in particle size greater than 100-mesh.

(k) Zirconium.

§1507.3 Fuses.

(a) Fireworks devices that require a fuse shall:

(1) Utilize only a fuse that has been treated or coated in such manner as to reduce the possibility of side ignition. Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition are exempted from §1507.3(a)(1).

(2) Utilize only a fuse which will burn at least 3 seconds but not more than 9 seconds before ignition of the device.

(b) The fuse shall be securely attached so that it will support either the weight of the fireworks device plus 8 ounces of dead weight or double the weight of the device, whether is less, without separation from the fireworks device.

[41 FR 22935, June 8, 1976, as amended at 61 FR 67200, Dec. 20, 1996; 61 FR 67200, Dec. 20, 1996]

§1507.4 Bases.

The base or bottom of fireworks devices that are operated in a standing upright position shall have the minimum horizontal dimensions or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto.

§1507.5 Pyrotechnic leakage.
The pyrotechnic chamber in fireworks devices shall be sealed in a manner that prevents leakage of the pyrotechnic composition during shipping, handling, and normal operation.

§1507.6 Burnout and blowout.
The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.

§1507.7 Handles and spikes.

(a) Fireworks devices which are intended to be hand-held and are so labeled shall incorporate a handle at least 4 inches in length (see §1500.14(b)(7)). Handles shall remain firmly attached during transportation, handling and full operation of the device, or shall consist of an integral section of the device at least four inches below the pyrotechnic chamber.

(b) Spikes provided with fireworks devices shall protrude at least 2 inches from the base of the device and shall have a blunt tip not less than 1/8-inch in diameter of 1/8-inch square.

§1507.8 Wheel devices.
Drivers in fireworks devices commonly known as "wheels" shall be securely attached to the device so that they will not come loose in transportation, handling, and normal operation. Wheel devices intended to operate in a fixed location shall be designed in such a manner that the axle remains attached to the device during normal operation.

§1507.9 Toy smoke devices and flitter devices.

(a) Toy smoke devices shall be so constructed that they will neither burst nor produce external flame (excluding the fuse and firstfire upon ignition) during normal operation.

(b) Toy smoke devices and flitter devices shall not be of such color and configuration so as to be confused with banned fireworks such as M-80 salutes, silver salutes, or cherry bombs.

(c) Toy smoke devices shall not incorporate plastic as an exterior material if the pyrotechnic composition comes in direct contact with the plastic.

§1507.10 Rockets with sticks.
Rockets with sticks (including skyrockets and bottle rockets) shall utilize a straight and rigid stick to provide a direct and stable flight. Such sticks shall remain straight and rigid and attached to the driver so as to prevent the stick from being damaged or detached during transportation, handling, and normal operation.

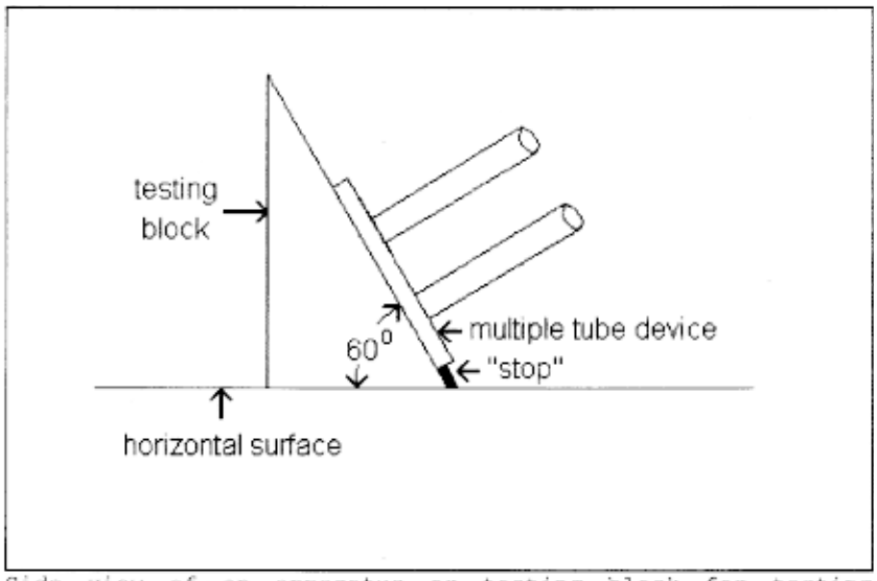
§1507.11 Party poppers.
Party poppers (also known by other names such as "Champagne Party Poppers," and "Party Surprise Poppers,") shall not contain more than 0.25 grains of pyrotechnic composition. Such devices may contain soft paper or cloth inserts provided any such inserts do not ignite during normal operation.

§1507.12 Multiple-tube fireworks devices.

(a) Application. Multiple-tube mine and shell fireworks devices with any tube measuring 1.5 inches (3.8 cm) or more in inside diameter and subject to §1500.17(a)(12) of this part shall not tip over when subjected to the tip-angle test described in this section.

(b) Testing procedure. The device shall be placed on a smooth surface that can be inclined at 60 degrees from the horizontal, as shown in Figure 1 of this section. The height and width of the inclined plane (not including the portion of the plane below the mechanical stop) shall be at least 1 inch (2.54 cm) greater than the largest dimension of the base of the device to be tested. The test shall be conducted on a smooth, hard surface that is horizontal as measured by a spirit level or equivalent instrument. The mechanical stop on the inclined plane shall be 1/16 inches (1.6 mm) in height and perpendicular to the inclined plane. The stop shall be positioned parallel to the bottom edge of the inclined plane and so that no portion of the device to be tested or its base touches the horizontal surface. The device shall not tip over when the plane is inclined at 60-degrees from the horizontal. The procedure shall be repeated for each edge of the device.

FIGURE 1 TO §1507.12



Side view of an apparatus or testing block for testing compliance with the proposed 60-degree tilt angle standard.

§ 1500.17 Banned hazardous substances.

(a) Under the authority of section 2(q)(1)(B) of the act, the Commission declares as banned hazardous substances the following articles because they possess such a degree or nature of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of interstate commerce:

(1) Mixtures that are intended primarily for application to interior masonry walls, floors, etc., as a water repellant treatment and that are "extremely flammable" within the meaning of section 2(1) of the act (repeated in § 1500.3(b)(10)).

(2) Carbon tetrachloride and mixtures containing it (including carbon tetrachloride and mixtures containing it used in fire extinguishers), excluding unavoidable manufacturing residues of carbon tetrachloride in other chemicals that under reasonably foreseeable conditions of use do not result in an atmospheric concentration of carbon tetrachloride greater than 10 parts per million.

(3) 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; except that this provision shall not apply to such fireworks devices if all of the following conditions are met:

(i) Such fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered by the U.S. Department of the Interior (or by equivalent State or local government agencies); and

(ii) Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control are unavailable or inadequate. (See also § 1500.14(b)(7); § 1500.17(a) (8) and (9); § 1500.83(a)(27); § 1500.85(a)(2); and part 1507).

(4) Liquid drain cleaners containing 10 percent or more by weight of sodium and/or potassium hydroxide; except that this subparagraph

shall not apply to such liquid drain cleaners if packaged in accordance with a standard for special packaging of such articles promulgated under the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, 84 Stat. 1670-74 (15 U.S.C. 1471-76)).

(5) Products containing soluble cyanide salts, excluding unavoidable manufacturing residues of cyanide salts in other chemicals that under reasonable and foreseeable conditions of use will not result in a concentration of cyanide greater than 25 parts per million.

(6)(i) Any paint or other similar surface-coating material intended, or packaged in a form suitable, for use in or around the household that:

(A) Is shipped in interstate commerce after December 31, 1973, and contains lead compounds of which the lead content (calculated as the metal) is in excess of 0.06 percent of the total weight of the contained solids or dried paint film; or

(B) Is shipped in interstate commerce after December 31, 1972, and contains lead compounds of which the lead content (calculated as the metal) is in excess of 0.5 percent of the total weight of the contained solids or dried paint film.

(C) [Reserved]

(D) The provisions of paragraph (a)(6)(i) of this section do not apply to artists' paints and related materials.

(ii) Any toy or other article intended for use by children that:

(A) Is shipped in interstate commerce after December 31, 1973, and bears any paint or other similar surface-coating material containing lead compounds of which the lead content (calculated as the metal) is in excess of 0.06 percent of the total weight of the contained solids or dried paint film; or

(B) Is shipped in interstate commerce after December 31, 1972, and bears any paint or other similar surface-coating material containing lead compounds of which the lead content (calculated as the metal) is in excess of 0.5 percent of the total weight of the contained solids or dried paint film.

(iii) Since the Commission has issued comprehensive regulations for lead-containing paint and certain consumer products bearing such paint at the 0.06 percent level under the Consumer Product Safety Act (see 16 CFR part 1303), paragraphs (i) and (ii) of § 1500.17(a)(6) are revoked as to the subject products manufactured after February 27, 1978.

Note: The effective date of paragraphs (a)(6)(i)(A) and (a)(6)(ii)(A) was stayed by an order published in the Federal Register of August 10, 1972 (37 FR 16078).

(7) General-use garments containing asbestos (other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use).

(8) Firecrackers designed to produce audible effects, if the audible effect is produced by a charge of more than 50 milligrams (.772 grains) of pyrotechnic composition (not including firecrackers included as components of a rocket), aerial bombs, and devices that may be confused with candy or other foods, such as "dragon eggs," and "cracker balls" (also known as "ball-type caps"), and including kits and components intended to produce such fireworks except such devices which meet all of the following conditions:

(i) The fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered by the U.S. Department of Interior (or by equivalent State or local governmental agencies); and

(ii) Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate. (See also § 1500.17(a)(3) and (9)).

(9) All fireworks devices, other than firecrackers, including kits and components intended to produce such fireworks, not otherwise banned under the act, that do not comply with the applicable requirements of part 1507 of this chapter, except fireworks devices which meet all the following conditions:

(i) The fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered

by the U.S. Department of the Interior (or by equivalent State or local government agencies); and

(ii) Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate. (See also § 1500.17(a) (3) and (8)).

(10) Self-pressurized products intended or suitable for household use that contain vinyl chloride monomer as an ingredient or in the propellant manufactured or imported on or after October 7, 1974. (See also § 1500.17(a) (3) and (8)).

(11)(i) Reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter and that are imported on or after October 8, 1991.

(ii) Findings.

(A) General. In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) Voluntary standard. Although a voluntary standard relating to the risk of injury associated with reloadable tube aerial shells has been adopted, it has not been implemented. Thus, the Commission is not required to make findings covering the likelihood that the voluntary standard would result in elimination or adequate reduction of the risk of injury or that there would be substantial compliance with the voluntary standard.

(C) Relationship of benefits to costs. The Commission estimates that the removal of large reloadable shells from the market is likely to virtually eliminate the number of associated injuries, with only a slight offsetting increase in the number of injuries due to the use of substitute Class C fireworks products available to consumers. The estimated net benefits range from essentially zero to close to $1 million annually. The

annual costs of a ban are estimated to be very low. Included are potential costs to foreign manufacturers and U.S. importers from sales losses, production changes, and inventory retrofitting, and slightly reduced market choices for consumers who purchase aerial display fireworks. Costs to each of these sectors are estimated to be slight, and are reduced to the extent that alternative products are perceived as adequate substitutes for large reloadable shells. Thus, the Commission finds that the benefits expected from the regulation bear a reasonable relationship to its costs.

(D) Least burdensome requirement. The Commission considered several alternatives to the ban. These included: Design or performance criteria; additional or alternative labeling; inclusion of some reloadable shells 1.75 inches or smaller in the ban; and no action in reliance on the voluntary standard. The Commission determined that a ban of reloadable shells larger than 1.75 inches in outer diameter is the least burdensome alternative that would prevent or adequately reduce the risk of injury.

(1) Regarding design or performance criteria, the Commission considered requirements similar to those stated in the voluntary standard of the American Fireworks standards Laboratory ("AFSL"). However, such criteria may increase the cost of the product and would not address all factors involved in the incidents. Further, concerns exist about the feasibility of criteria and quality control.

(2) Regarding additional or alternative labeling, the users' perception and experience concerning the amount of time available to get away may lead them to disregard an inconsistent warning. There are no data to suggest that a significant number, if any, incidents would be avoided if large reloadable shells carried more detailed labels or instructions than they currently do. It cannot be concluded that potential benefits would be greater than zero.

(3) The Commission considered including reloadable shells that are 1.75 inches or less in

outer diameter and have the "equivalent explosive power" of larger shells. A kinetic energy level of 70 joules was considered to evaluate explosive power. However, any potential benefits are uncertain since the Commission concluded that a clear relation between kinetic energy and injury potential could not be established. Also, costs could be slightly higher.

(4) The Commission also considered imposing no mandatory requirements on large reloadable shells and relying instead on the AFSL voluntary standard. However, it is uncertain whether any net benefits to consumers would result from this alternative, since the level of injury reduction could be near zero if, as is probable, some firms chose not to conform with some or all of the AFSL standard.

(12)(i) Large multiple-tube devices. Multiple-tube mine and shell fireworks devices that first enter commerce or are imported on or after March 26, 1997, that have any tube measuring 1.5 inches (3.8 cm) or more in inner diameter, and that have a minimum tip angle less than 60 degrees when tested in accordance with the procedure of § 1507.12 of this part.

(ii) Findings

(A) General. In order to issue a rule under the section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these in the regulation. These findings are discussed in paragraphs (a)(12)(ii) (B) through (D) of this section.

(B) Voluntary standard.

(1) One alternative to the tip-angle requirement that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. The American Fireworks Safety Laboratory (AFSL) has a standard for mines and shells intended to address the potential tip-over hazard associated with multiple-tube

fireworks devices. AFSL's Voluntary standard for Mines and Shells -- Single or Multiple Shot requires that large multiple-tube devices not tip over (except as the result of the last shot) when shot on a 2-inch thick medium-density foam pad. The Commission cannot conclude that AFSL's existing voluntary standard adequately reduces the risk of injury from large devices that tip over while functioning. The Commission's tests using polyurethane foam did not find sufficient agreement between performance on foam and on grass. No other data are available to show that this dynamic test is reliable.

(2) In addition, even if the AFSL standard is effective, the Commission does not believe that compliance with the standard will be adequate. AFSL reports that it has been testing in accordance with its standard since January 1994. However, the results of CPSC's compliance testing indicate that multiple-tube devices still tip over while functioning. In fiscal year 1994, all 24 imported devices the Commission tested, and 1 of 8 domestic devices, tipped over while functioning. In fiscal year 1995, 22 of 27 imported devices and 1 of 5 domestic devices tipped over during Commission testing. The Commission finds that there is unlikely to be substantial compliance with the voluntary standard applicable to multiple-tube devices.

(C) Relationship of benefits to costs. The Commission estimates that the 60-degree tip-angle standard will eliminate the unreasonable tip-over risk posed by these devices. This will provide benefits of saving one life about every 3 years, and preventing an unknown number of nonfatal injuries. The annual cost of modifying affected devices is estimated to be between $1.5 million and $2.7 million. The Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) Least burdensome requirement. The Commission considered the following alternatives: a ban of all multiple-tube devices with inner tube diameters 1.5

inches or greater; a dynamic performance standard; additional labeling requirements; and relying on the voluntary standard. Although a ban of all large multiple-tube devices would address the risk of injury, it would be more burdensome than the tip-angle standard. The Commission was unable to develop a satisfactory dynamic standard that would reduce the risk of injury. Neither additional labeling requirements nor reliance on the voluntary standard would adequately reduce the risk of injury. Thus, the Commission finds that a standard requiring large multiple-tube devices to have a minimum tip angle greater than 60 degrees is the least burdensome requirement that would prevent or adequately reduce the risk of injury. (Secs. 2(f)(1), (A), (B), (g), (q)(1)(B), 3(a), 74 Stat. 372, 374, as amended 80 Stat. 1304-05, 83 Stat. 187-189, 90 Stat. 503 (15 U.S.C. 1261, 1262); sec. 701 (e), (f), (g), 52 Stat. 1055-56, as amended 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 371 (e), (f), (g)), sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)))

[38 FR 27012, Sept. 27, 1973, as amended at 38 FR 27514, Oct. 4, 1973; 38 FR 31520, Nov. 15, 1973; 39 FR 30114, Aug. 21, 1974; 39 FR 42903, Dec. 9, 1974; 41 FR 22935, June 8, 1976; 42 FR 44202, Sept. 1, 1977; 43 FR 12310, Mar. 24, 1978; 48 FR 16, Jan. 3, 1983; 56 FR 37837, Aug. 9, 1991; 61 FR 13095, Mar. 26, 1996; 61 FR 18245, Apr. 25, 1996]
Amendment(s) published April 18, 2003, in 68 FR 19147

Effective Date(s) October 15, 2003

3. In § 1500.17, add new paragraphs (a)(13) and (b) to read as follows:
§ 1500.17 Banned hazardous substances.
(a) * * *

(13)(i) Candles made with metal-cored wicks. Candles manufactured or imported on or after October 15, 2003, made with metal-cored candlewicks, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candles subject to paragraph (a)(13)(i)(A) of this section are shipped, including each outer container or wrapper in which such candles are distributed to a Retail outlet, is

labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candle(s) is/are intended to be displayed at Retail or during use in the home, unless that container or wrapper is also the only container or wrapper in which the candle(s) is/are shipped to a Retailer.

(ii) Metal-cored candlewicks. Metal-cored candlewicks manufactured or imported on or after October 15, 2003, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candlewicks subject to paragraph (a)(13)(ii)(A) of this section is shipped, including each outer container or wrapper of a shipment distributed to a Retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candlewick(s) is/are intended to be displayed or sold at Retail, unless that container or wrapper is also the only container or wrapper in which the candlewick(s) is/are shipped to a Retailer.

(iii) Findings

(A) General. To issue a rule under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include them in the regulation. These findings are discussed in paragraphs (a)(13)(iii)(B) through (D) of this section.

(B) Voluntary Standard. One alternative to the ban that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. One organization has a standard for candlewicks intended to address the potential for substantial illness posed by such wicks and candles with such wicks. The Commission has found that the standard is technically unsound and that substantial compliance with it is unlikely. Furthermore, there is no evidence that the

standard has been adopted and implemented by candlewick or candle manufacturers.

(C) Relationship of Benefits to Costs. The Commission estimates that the ban will reduce the potential for exposure to lead and resulting lead poisoning because there is no "safe" level of lead in the blood. The annual cost to the candle/wick industry of the ban is estimated by the Commission to be in the range of $100,000 to $300,000. On a percentage basis these costs represent only 0.005 to 0.015 percent of the overall value of candle shipments in 2000, which was approximately $2 billion. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) Least burdensome requirement. The Commission considered the following alternatives: no action; labeling all metal-cored candles with wicks containing more than 0.06 percent lead by weight of the metal; recordkeeping for shipments of wicks containing 0.06 percent or less lead by weight of the metal and of candles with such wicks; and relying on the voluntary standard. Neither no action, nor labeling, nor reliance on the voluntary standard would adequately reduce the risk of illness. Recordkeeping for shipments of wicks and of candles was not the least burdensome requirement that would prevent or adequately reduce the risk of illness. Therefore the Commission finds that a ban on candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks is the least burdensome requirement that would prevent or adequately reduce the risk of illness.

(b) [Reserved].