

without the tether, it ordinarily simply flipped onto its back and skittered around on the ground or traveled downrange only a very limited distance, and rose only a few inches in the air, before flipping onto its back. Thus, the Commission concluded that there is a reasonable probability that model rocket propellant devices for rocket-powered model cars like the "Blurzz" present no unreasonable risk of injury even when operated in reasonably foreseeable misuse without the tether. The Commission also preliminarily found that children interested in model rockets and rocket-powered model cars 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 cars like the "Blurzz." The Commission also preliminarily found that those directions and warnings are adequate to guide users in the safe use of the product.

D. Comments on the NPR

The Commission received three comments on the NPR from Centuri, Intertek Testing Services ("Intertek"), and the National Association of Rocketry ("NAR"). Centuri commented on some of the technical statements in the staff's memos that were part of the briefing package concerning Centuri's petition. The comment from Intertek was actually test results submitted by Centuri. Intertek suggested enlarging the safety alert symbol that appears in directions for the model car. Commission staff agrees that the entire warning label should be larger. NAR agreed with the Commission that the exemption should be limited to smaller "A" motors.

E. The Final Rule

When reviewing data for the petition, the Commission's Directorate for Epidemiology found two deaths over a 20-year period involving model airplanes (both involved adult males, 40 and 44 years of age). Centuri provided additional information about these. In one incident, the plane weighed about 5 pounds (compared to 2.7 oz. for a size "A" rocket-powered model car), and was traveling at an estimated 200 mph (compared to the top speed of 28 mph for the size "A" car). Centuri characterized the airplane in the other incident as "quite large and heavy." The staff reviewed data available after the petition briefing package (for the period May 26, 2001 to April 15, 2002) and found no deaths that could be considered comparable to deaths that might involve rocket-powered model cars.

The Commission's Human Factors staff reviewed revised instructions submitted by Centuri and concluded that the revisions were an improvement over previous instructions and would make them easier for users age 10 and up to follow.

The Commission's Engineering staff reviewed results of testing from Intertek. Intertek was primarily concerned with the dangers of launching the engine alone without the vehicle. Because such motors are currently available with other exempted products, the staff does not believe that exempting rocket-powered model cars creates or increases the hazard of igniting motors outside the vehicles. Intertek was also concerned about launching cars from a ramp or vertical support. However, the Engineering staff believes such operation would be similar to launching a model rocket, and injury data do not suggest a problem with model rockets in those types of launches.

The Commission's staff was concerned about possible injuries if rocket powered cars are operated off the tether. As discussed above, when the "Blurzz" was used without the tether it traveled only a limited distance a few inches off the ground and then flipped on its back. Such performance is not likely to injure operators or bystanders. However, Compliance staff was concerned that in the future a company may develop a rocket-powered model car that when operated off the tether could obtain sufficient height, distance and force to injure operators or bystanders. Thus, the final rule contains a limitation that vehicles must be designed so that they either cannot operate off of a track or line (i.e., tether), or if operated off the tether the vehicle will be unstable and will not travel in a guided fashion, so that the car will not strike operators or bystanders. The Commission reminds manufacturers that under section 15 of the Consumer Product Safety Act they have an obligation to report to the Commission if they have information which reasonably supports the conclusion that their product creates an unreasonable risk of serious injury or death or contains a defect which could create a substantial product hazard. 15 U.S.C. 2064(b)(2) & (3). The Commission has the authority to pursue corrective action regarding any toy or other children's article that creates a substantial risk of injury to children. 15 U.S.C. 1274(c)(1).

A small change was made to the final rule in order to correct a cross reference that conflicted with the characteristics of an A motor described in section 1500.85(a)(14)(i)(B) of the rule and to

include appropriate provisions of the cross-reference in the rule itself.

F. Effective Date

This rule exempts certain model rocket propellant devices for rocket-powered model cars that would otherwise be banned under the FHSA. Because the rule grants an exemption, it is not subject to the requirement under the Administrative Procedure Act ("APA") that a rule must be published 30 days before it takes effect. 5 U.S.C 553(d)(1). The rule lifts an existing restriction and allows a product not previously permitted. Thus, the Commission believes it is appropriate for the rule to become effective upon publication in the **Federal Register**.

G. Impact on Small Business

The NPR discussed the Commission's assessment of the impact that a rule to exempt propellant devices for use with small rocket-powered model cars like the "Blurzz" might have on small businesses. Because the exemption would relieve manufacturers from existing restrictions, the Commission concluded that the proposed exemption would not have a significant impact on a substantial number of small businesses or other small entities. No comments or additional information alter that conclusion.

H. 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 assessed the possible environmental effects associated with the proposed exemption. As discussed in the NPR, the Commission concluded that the rule would have no adverse effect on the environment, and therefore, neither an environmental assessment nor an environmental impact statement is required.

I. 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