Rules and Regulations

Federal Register
Vol. 51, No. 187
Friday, September 26, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 528]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 528 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 203,200 cartons during the period September 28 through October 4, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 528 (§ 910.828) is effective for the period September 28 through October 4, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on September 23, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is somewhat improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.828 is added to read as follows:

§ 910.828 Lemon Regulation 528.

The quantity of lemons grown in California and Arizona which may be handled during the period September 28 through October 4, 1986, is established at 203,200 cartons.

Dated: September 24, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–21958 Filed 9–25–86; 8:45 am]

BILLING CODE 3410-02-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1505

Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children; Statements of Enforcement Policy on Hot Surfaces of Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; statements of enforcement policy. [1]

SUMMARY: The Commission's electrical toy regulations specify maximum permissible temperatures for different surfaces on electrical toys. In response to a petition, the Commission is clarifying how a test probe will be used to evaluate surface accessibility. In addition, the Commission is clarifying the definition of one surface category.

DATE: These statements of enforcement policy become effective on September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulations

Before the Consumer Product Safety Commission came into existence in 1973,

[1] The Commission voted 2–1 to issue these statements, with Chairman Scanlon preferring to propose them first for public comment.

the Food and Drug Administration (FDA) administered the Federal Hazardous Substances Act (FHSA). In 1972, the FDA proposed FHSA safety regulations for electrically operated toys and other articles intended for use by children. The FDA issued these regulations in final form in 1973, and the Commission then republished them the same year. 16 CFR 1500.18(b)(1) and Part 1505; *see* 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The electrical toy regulations generally apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110–125 v.) branch circuits." 16 CFR 1505.1(a)(1). They contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. 16 CFR 1505.3–.8. If any toy or other children's article fails to meet a regulatory requirement, it is a "banded hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

B. Surface Temperature Provisions

The thermal provisions of the regulations categorize parts and surfaces of electrical toys (referred to below just as surfaces). Five categories are designated "A" through "E, " and two additional ones, for surfaces marked with a precautionary label, are "Type C marked" and "Type D marked." 16 CFR 1505.6(g)(2). A maximum temperature that may be reached during operation of a toy is specified for each category, depending on the thermal inertia of the surface material. 16 CFR 1505.7.

Type A and B surfaces include handles, knobs, and others associated with grasping, carrying, or lifting. 16 CFR 1505.6(g)(2)(i) and (ii). A Type C surface is one that can be touched by casual contact, without employing the aid of a common household tool (screwdriver, pliers, or other similar household tool) to take the toy apart, and that (a) performs an intended heating function (such as a cooking surface) or (b) is a material heated by the element and intended to be used as a product of the toy (such as the metal mold or plastic beads in a stained glass craft kit, but not certain baking pans, dishes, or other containers). 16 CFR 1505.6(g)(2)(iii). Type D surfaces are accessible surfaces that are not Type A, B, C or E surfaces. 16 CFR 1505.6(g)(2)(v). Type E surfaces are inaccessible or protected by an electrical-thermal safety interlock. 16 CFR 1505.6(g)(20(vii).

Accessibility of Type D and E surfaces (as well as "Type D marked") is defined as "the ability to reach a heated surface with a ¼ inch diameter rod 3 inches long" (referred to below as a probe). 16 CFR 1505.6(g)(2). The 3-inch length of this probe is based on the lengths of children's fingers. Objective accessibility criteria are not specified for other surfaces.

C. Petition

On March 19, 1984 the Toy Manufacturers of America, Inc. (TMA) petitioned the Commission for amendments to the Commission's electrical toy regulations (Petition HP 84–2). The petition expressed concern about the applicability of the regulations to the inside surfaces of toy ovens and requested two changes.

First, the petition requested that a probe be used to determine accessibility of all surfaces instead of only Type D and Type E surfaces. Second, the petition requested that the existing probe be replaced by one with articulated joints and dimensions based on the anthropometry of the fingers and hands of children aged 8 to 12 years.

II. Discussion

The Commission believes that the surface temperature provisions require some clarification:

A. The Probe

Under the existing regulations, accessibility based on the probe is defined as "the ability to reach a heated surface with [the probe]." 16 CFR 1505.6(g)(2). However, this language permits surfaces to be tested for accessibility in at least two different ways. One interpretation of how to use the probe, the method used by Underwriters Laboratories (UL), is to insert it "no more than 3 inches into an opening in a toy." Underwriters Laboratories Standard for Electic Toys, UL 696. Unless the probe contacts a surface within 3 inches of the plane of the oven's opening, that surface is considered not accessible. A second interpretation of how to use the probe is to insert it into an opening as far as it will reach, using the tester's hands and fingers as "extenders."

The first method is reasonably objective, and has been used by UL and by Commission staff for many years. The second method is inherently subjective because it makes accessibility dependent on the length and thickness of a particular tester's fingers and hands.

It is possible that more surfaces would be determined to be accessible under the second method than the first. (Even a tester with large fingers and hands could probably extend the probe further into an opening than three inches.) However, the Commission's engineering and human factors staff believe that the first method provides an acceptable level of safety for children protected by the electrical toy regulations.

The staff judgments are supported by the low risk of injuries associated with currently-available toy ovens and other electrical toys. A search of the Commission's accident data bases, for the years 1978 through 1985, revealed only two burn injuries associated with surfaces on toy ovens. No burn injuries were found to have been associated with surfaces on other electrical toys covered by the regulations.

B. Type C Surfaces

The definition of Type C surfaces is difficult to apply. The first portion of the definition includes surfaces that can be touched by casual contact, and the second portion includes surfaces that can be touched without using common household tools to take the toy apart. The definition lacks objective test criteria for either portion. Since the definition applies to surfaces that can be touched by hands and fingers, it depends on the size and shape of the tester's hands and fingers. In addition, the definition does not make clear whether the household tools would be used to expose otherwise-untouchable surfaces or for some other purpose.

The Commission staff has evaluated the accessibility of Type C surfaces by testing the cooking surfaces of three models of toy ovens. When a technician with small hands tested one of the ovens, its surface could be touched and therefore met the Type C surface definition. When a technician with larger hands tested the same surface, however, it could not be touched by casual contact or without using household tools to take the oven apart. In contrast, using the probe (tested in the UL manner described in section A above) to define Type C surfaces would eliminate this subjectivity.

III. Conclusion

A. Enforcement Policy

Based on the discussion above, the Commission will use the accessibility probe—the rod that is ¼ inch in diameter and 3 inches long—by inserting it no further than 3 inches from the plane of the opening in the toy. The probe will be used to test for accessibility of Type C, C marked, D, D marked, and E surfaces. These clarifications are

embodied by the statements of enforcement policy issued below.

The statements of enforcement policy are interpretive rules or general statements of policy under the Administrative Procedure Act (5 U.S.C. 553). Prior notice, opportunity for public participation, and a delayed effective date are therefore not required.

B. Petition HP 84–2

The TMA petition (HP 84–2) requested (1) that a probe be used to test all surfaces for accessibility and (2) that the existing probe be changed. The Commission agrees with the first request as to Type C and C-marked surfaces, and is clarifying the regulations accordingly. The Commission does not believe the probe should be used to define Type A and B surfaces since their accessibility criteria are sufficiently defined, and is not clarifying those definitions. As to the petition's second request, the Commission believes that its clarification of how to test for accessibility with the existing probe makes unnecessary the development of a new probe.

The petitioner's particular concern was cooking surfaces inside toy ovens. These are Type C surfaces that will now be tested with the probe, in the UL manner. The heating surfaces of all toy ovens currently on the market comply with the regulations under these clarified circumstances. As a result, although the Commission has not formally granted the petition or provided the specific relief requested, the statements of enforcement policy address TMA's concern.

C. Codification

Pursuant to the Federal Hazardous Substances Act, sections 2(q)(1)(A), 2(r), 3(e), 10(a), 74 Stat. 372, 378, 80 Stat. 1303–1304, 83 Stat. 187, 189 (15 U.S.C. 1261, 1262, 1269), and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 573, section 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)), 16 CFR Part 1505 is amended as follows:

PART 1505—[AMENDED]

1. The authority citation for Part 1505 continues to read as follows:

Authority: Secs. 2(f)(1)(D), (r), (s), (t), 3(e)(1), 74 Stat. 372, 375, as amended, 83 Stat. 187–89 (15 U.S.C. 1261, 1262).

§ 1505.6 [Amended]

2. By adding within the parenthetical at the end of § 1505.6(g)(2), introductory text, the phrase, "as described in § 1505.51(a)".

3. By adding at the end of § 1505.6(g)(2)(iii), "(See also § 1505.51(b))".

4. By adding at the end of § 1505.6(g)(2)(iv), "(See also § 1505.51(b))".

5. By adding (to Subpart B) a new § 1505.51 to read as follows:

§ 1505.51 Hot surfaces.

(a) *Test probe.* Section 1505.6(g)(2) defines accessibility, for certain paragraphs, as the ability to reach a heated surface with a ¼-inch-diameter rod 3 inches long. To test for accessibility using this test probe, it shall be inserted no more than 3 inches into any opening in the toy. Unless the probe contacts a surface within 3 inches of the plane of the toy's opening, that surface is not accessible.

(b) *Accessibility of Type C and C-marked surfaces.* Under § 1505.6(g)(2)(iii) and (iv), touching by casual contact or without employing the aid of a common household tool shall be determined by use of the accessibility test probe described in §§ 1505.6(g)(2) and 1505.51(a).

EFFECTIVE DATE: These statements of enforcement policy become effective on September 26, 1986.

Dated: September 18, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86–21604 Filed 9–25–86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond A. Beirne, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Issued: September 22, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of October, 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for October 1986, reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

[Calendar year 1986]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.		
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514		
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376		
NGPA section 109 threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593		
130 pct of No. 2 fuel oil in New York City threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020		

[FR Doc. 86-21808 Filed 9-25-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service,

26 CFR Parts 1 and 602

[T.D. 8104]

Capital Gains Tax and Passive Income Tax With Respect to Certain S Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a tax imposed on capital gains of certain S corporations and a tax imposed on the excess net passive income of certain S corporations that have accumulated earnings and profits from Subchapter C years. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, as amended by the Technical Corrections Act of 1982 and the Tax Reform Act of 1984. The regulations would provide the public with the guidance needed to comply with the law as amended by these Acts.

DATES: The amendments under section 1374 are generally effective for taxable years beginning after December 31, 1982, and the amendments under section 1375 are generally effective for taxable years beginning after 1981.

SUPPLEMENTARY INFORMATION:

Background

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) were published in the **Federal Register** (50 FR 27457) on July 3, 1985. Those amendments were proposed to conform the regulations to section 2 of the Subchapter S Revision Act of 1982 (96 Stat. 1669), as amended by section 305 (d) (3) of the Technical Corrections Act of 1982 (96 Stat. 2400) and sections 102 (d) (1), 474 (r), and 721 (u) and (v) of the Tax Reform Act of 1984 (98 Stat. 623, 844, and 971).

Approximately 4 written comments were received in response to the notice of proposed rulemaking. No public hearing was requested. After consideration of all the public comments, the proposed amendments are adopted as revised by this Treasury decision.

In General

Section 1374 imposes a tax on the capital gains of certain S corporations. The tax is imposed for any taxable year in which the S corporation has a net captial gain in excess of $25,000 for the taxable year if the amount of the net capital gain exceeds 50 percent of the taxable income for such year and the taxable income for such year is in excess of $25,000.

The amount of the tax is generally 28 percent of the amount of the net capital gain in excess of $25,000. However, in no case will the tax imposed by section 1374 on the corporation exceed the tax that would have been imposed by section 11 on the corporation if the corporation were not an S corporation. Section 1374(c) contains exceptions to the tax imposed by section 1374(a) and a special rule in the case of property with a substituted basis. Section 1374 (d) and § 1.1374-1A (d) define the term "taxable income" for purposes of section 1374.

Section 1375 imposes a tax on the excess net passive income of certain S corporations that have Subchapter C earnings and profits. This tax can generally be avoided by the corporation distributing its Subchapter C earnings and profits before the close of the taxable year. The tax is computed by multiplying the excess net passive income by the highest rate of tax specified in section 11 (b). Section 1375 (b) and § 1.1375-1A (b) define the term "excess net passive income." A special rule contained in section 1375 (c) ensures that a net capital gain that is taken into account under section 1375 in computing the passive income tax will not also be taken into account in determining the capital gains under section 1374. Section 1375(d) provides that the tax imposed by section 1375 may be waived in certain limited cases where an S corporation determined in good faith that it has no Subchapter C earnings and profits at the end of a taxable year and it is later determined that it did have such earnings and profits. Section 1.1375-1A(d) provides rules concerning this waiver.

Public Comments and Changes in Response to Public Comments

Several comments suggested minor technical refinements to the proposed rules. Other comments asked for additional guidance to clarify certain of the proposed rules. In general, the suggested changes have been made.

One of the changes made deals with the procedure for requesting a waiver of the tax imposed by section 1375. The final regulations provide that the request for waiver should be made to the district director rather than in the form of a ruling request to the National Office.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).