

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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John M. Howard,

Manager, Aircraft Programs Division.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1406

Provision of Performance and Technical Data for Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues a rule requiring that certain performance and technical data be supplied with coal and wood burning stoves, freestanding fireplaces, and similar appliances in order that consumers will be aware of important safety information concerning the installation, operation, and maintenance of these appliances. Part of the required data is in the form of labeling on the device, and the rule also requires that complete installation, operation, and maintenance directions be provided with the appliance. Sales catalogs and other point of sale literature shall contain information as to minimum safe distances that should be maintained between the appliance and combustibles. To help the Commission confirm that manufacturers are complying with the rule, the Commission at a later time will issue a requirement that manufacturers must provide to the Commission copies of the notice on the appliance and of the directions, as well as an explanation of how the appropriate clearance distances were determined. These reporting requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

DATES: The Commission has established that the rule shall become effective October 17, 1983. The required safety and performance data (§ 1406.4 (a) and (b)) shall be furnished with all subject appliances that are manufactured on or after October 17, 1983, or that are first introduced into commerce in the United States after May 16, 1984, regardless of the date of manufacture. Copies of the required data shall be provided to the Commission by November 16, 1983, or within 30 days after any change in the data or introduction of a new model. (This requirement will be issued after it is approved by OMB.) The requirement applicable to sales catalogs and point of sale literature (§ 1406.4(c)) shall be effective May 16, 1984.

ADDRESSES: All materials the Commission has that are relevant to this proceeding, including the documents listed in Appendix III of this notice, may be seen in, or copies obtained from, the Office of the Secretary, 8th Floor, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Wade Anderson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Background

The energy shortage and attendant high heating costs have motivated consumers to search for cheaper kinds of fuel. Wood, both as a primary and a supplemental fuel, has enjoyed a particular revival. Sales of wood burning stoves have tripled since 1974. Accompanying this revival, however, has been a concern about the safe use of these devices.

On January 24, 1977, the Commission received a petition from Adam Paul Banner of Midland, Michigan (Petition No. AP 77-2), stating that many fires and resultant injuries occur due to improper installation of certain coal and wood burning appliances, stoves, and freestanding fireplaces. He requested that the Commission issue a rule requiring that labeling as to the minimum safe clearance to combustibles (such as walls and furnishings) and the type of chimney required for any wood burning stove or similar appliance, or freestanding fireplace be (a) permanently attached on an embossed metal plate to each unit, (b) be printed in all sales literature, and (c) be printed on all display or shipping cartons.

At that time, the readily available data were inconclusive as to whether the statements requested by Mr. Banner

addressed an unreasonable risk of injury associated with these appliances. On February 2, 1978, the Commission deferred action on the petition and directed the staff to provide additional information.

The petition was again considered by the Commission on March 14, 1979, and May 30, 1979, and on June 7, 1979, the Commission granted the petition. The Commission directed the staff to develop a rule under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e), that would require installation and maintenance labeling for coal and wood burning stoves and similar appliances, and freestanding fireplaces and would require each manufacturer to specify minimum clearances to combustibles and the type of chimney required. Also, the staff was directed to develop options for other types of installation and maintenance information materials (such as cartons or instruction manuals). The proposed rule was published on November 17, 1980 (45 FR 76018).

B. Development of the Rule

In order to determine the type of performance and technical data that would enable consumers to learn how their appliances should be selected, installed, operated, and maintained, the Commission's staff examined the available data on fires associated with coal and wood burning appliances.

In recent years, steeply rising fuel costs have led to a revival of wood heating in residences throughout the United States. This rise in popularity, however, has been accompanied by a dramatic increase in house fires caused by wood burning appliances and their venting systems. The most recent estimates put the 1981 toll for solid fuel heating equipment at about 130,100 fires, 290 deaths, and \$265 million in property loss, based on data from the National Fire Protection Association (NFPA) and the U.S. Fire Administration. [Kale, D., *Fires in Woodburning Appliances*, U.S. CPSC, December 1982.] This estimate of fires in 1981 represents a 95 percent increase over 1978. *Ibid.* Such fires constitute about 18 percent of all residential structural fires in the United States. *Ibid.*

Data from the U.S. Fire Administration also provide information on the types of solid-fuel appliances involved in these fires. While chimney fires and fires attributed to various appliances are reported in separate categories, Commission research indicates that these categories are not mutually exclusive, in that the appliance and its venting components are all part

of the same system. If it is assumed that the number of chimney fires and associated casualties indicated by the national estimates can be attributed to specific types of solid fuel appliances in the same proportion as the number of fires associated with each type of appliance, it can be estimated that in 1981 there were approximately 71,000 fires in wood stoves and their venting systems. This number of fires would result in about 160 deaths, 1200 injuries, and \$112.8 million in property loss. [Memo from B. Harwood, WPHA, to N. Marchica, Ex-P, "Chimney Fires in Wood Stoves", U.S. CPSC, November 30, 1982.]

CPSC's in-depth investigations provide additional information about the specific causes of fires in wood burning appliances. Data from a September 1981 study conducted by CPSC indicate that in wood stoves, fires were more often related to the installation and use of the chimney or chimney connector than to the stove itself. [See, Harwood B. and Kale, D., *Fires Involving Fireplaces, Chimneys and Related Appliances*, U.S. CPSC, Sept. 1981.]

A major cause of fires in wood or coal stoves and in chimneys and chimney connectors for solid-fueled equipment was improper installation, primarily installing the devices too close to combustibles, which are then ignited by the heat from the stove, chimney, or connector. *Id.* Combustibles can include permanent items such as walls and ceilings and semi-permanent items such as carpets and draperies. In addition, combustibles can include movable items such as furnishings that may be placed too close to the appliance, resulting in ignition of the furnishings. *Id.*

Other major causes of fires associated with coal and wood burning appliances included the use of an unsuitable chimney, particularly single-wall chimney connector pipe, or the improper installation of the chimney or connector. *Id.* Proper installation requires the use of a "thimble" or other special methods where the chimney or connector passes through a combustible wall or ceiling, in order to provide needed insulation and separation from the adjacent combustible material. *Id.* Specific floor protection upon which the appliance is installed may be required in order to protect combustible flooring against heat from the appliance or embers falling out of the appliance onto combustibles. *Id.*

Other hazard patterns involve the lack of proper maintenance of the appliance. Wood tars (creosote) can condense in chimneys and chimney connectors when wood is burned. If the accumulation of creosote is not removed periodically, or

if the appliance is overfired, the creosote can ignite and cause a very hot fire in the chimney or connector. *Id.* Regular inspection is required to ensure that excessive creosote has not accumulated. Also, the chimney and connector should be periodically inspected to ensure the chimney's inner liner has not buckled, that holes or cracks have not developed in the chimney or connector, and that these pieces are properly fastened together.

Other hazards are related to improper operation of the appliance. If too much fuel, or the wrong type of fuel, is added, the appliance can be overfired, resulting in ignition of creosote in the chimney or connector or excessive temperatures in the appliance, chimney, or connector. Also, the use of flammable liquids to start the fire in these appliances causes a number of injuries. *Id.*

Thus, fires associated with wood burning appliances account for a significant portion of the residential fires in the United States today. Available data indicate that over three-fourths of the factors contributing to uncontrolled fires in wood stoves involved improper installation, use, or maintenance of the appliance or its venting system. Such factors could be addressed if the user and installer were provided with adequate information about these areas of concern.

C. Description of the Rule

For the purposes of this rule, the term "coal and wood burning appliances" includes coal and wood burning fireplace stoves, room heater/fireplace stove combinations, cookstoves and ranges, and radiant and circulating heaters. It does not include central heating units, masonry fireplaces and chimneys, fireplace inserts, or factory built fireplaces (zero clearance fireplaces), since these do not appear to present the same hazards of installation and operation as do the generally smaller or freestanding appliances covered by the rule. The definitions for these types of appliances are found at § 1406.3 of the rule.

In order to reduce the risk of injury currently associated with coal and wood burning appliances, and to enable consumers to better judge the comparative safety of different appliances for their intended installation, § 1406.4(a)(1) of the rule requires that such appliances bear a legible notice containing the following performance and technical data:

1. Appropriate minimum clearances from combustibles to avoid the occurrence of fire. The clearances shall include:

(a) Distance(s) from the back and sides of the appliance, and the chimney connector, to walls, stated in diagrammatic form.

(b) Distance(s) to be maintained between the chimney connector and ceilings, in either diagrammatic or written form.

2. Type and dimensions of floor protection, if necessary to protect combustible floors.

3. Type of chimney and chimney connector to be used with the appliance.

4. Identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls.

5. A statement that the appliance should not be overfired and a description of at least one condition which signals overfiring.

6. A statement of how often the chimney and chimney connector should be inspected and that it should be cleaned when necessary.

7. Information explaining that the appliance should be installed and used only in accordance with the manufacturer's directions.

8. A statement that the owner should contact local building or fire officials about restrictions and installation inspection requirements.

9. A statement that furnishings and other combustible materials should be kept "a considerable distance" from the appliance.

10. A description of the types of fuel suitable for use in the appliance.

11. A name and address of the manufacturer, importer, or private labeler to which the owner can write for a copy of the manufacturer's directions or for additional information, and a sufficient identification of the appliance model so that the appropriate information can be supplied.

The part of the written notice involving installation shall be located so that it is conspicuous before the appliance is installed. The remainder of the written notice contains operation and maintenance information and must be readily visible during normal use of the appliance (§ 1406.4(a)(3)). A label on the back of the stove would not be considered "readily visible" during normal use if the stove is suitable for installation with its back within a few feet of the wall. A label is considered to be readily visible during normal use even though it is not in a readily visible location on the outside of the stove if it is readily visible within compartments or behind doors that are used during the normal operation of the appliance. Thus, if a compartment door must be opened

in order to fuel the appliance or remove ashes from the appliance, a notice that is readily visible when the door is opened is considered "readily visible during normal use." Therefore, the portion of the notice required to be readily visible during normal use could be on the inner surface of the door, on a readily visible inner surface of the compartment, or on an outer surface of the appliance that is covered by an overlapping door when the door is closed.

As explained above, the remainder of the written notice required to be on the appliance need only be conspicuous before installation. Thus, this portion of the notice could be on the back of an appliance that can be installed so close to a wall that the back would not be readily seen during normal use of the appliance.

These general principles concerning the conspicuousness and visibility of the data being provided can be satisfied by either (1) a single label that is both conspicuous before installation and readily visible during normal use or (2) two (or more) label, at least one label that concerns installation and that is conspicuous before installation and at least one other label that concerns operation and maintenance and that is readily visible during normal use. The "one label" format has the advantages of being potentially cheaper and of providing all information in one place. The "two label" format has the advantage of potentially providing more consumer awareness of the operation and maintenance information after the appliance is installed, since this information would all be on one simpler label that would not have installation information competing for the consumer's attention. Also, if a manufacturer wished, the two label format can be used to reduce the degree to which a large, readily visible label might interfere with the esthetic design of the stove.

After considering the comments on the proposal, discussed below, the Commission recommends the "two label" format since the needed operation and maintenance information would not be diluted by the presence of installation data that are not needed after the appliance is installed. However, either the "one label" or the "two label" format will comply with the rule.

The notice must be permanent so that it will remain legible for the maximum expected useful life of the appliance in normal operation (§ 1406.4(a)(4)). The following are examples of labeling methods that may meet these requirements:

1. Molding the notice into the casting of the appliance body.

2. Etching, stamping, or engraving a metal plate that is riveted or screwed to the appliance.

3. Stamping or engraving the notice into the metal body of the appliance.

Other types of labels could be used provided they are likely to remain attached and legible for the useful life of the appliance.

The rule also requires manufacturers to provide complete installation, operation, and maintenance directions which include descriptions of the consequences that can occur from failure to install, use, and maintain the appliance properly (§ 1406.4(b)).

The directions are required to have a specified notice at the beginning that is intended to emphasize the importance of following the directions and of contacting local building or fire officials about restrictions and installation inspection requirements (§ 1406.4(b)(1)). The directions are required to include all the information required to be in the notice on the appliance (§ 1406.4(b)(4)) and also to include step by step installation directions, including all necessary information regarding parts and materials (§ 1406.4(b)(2)). The installation directions shall also include a direction to refer to the chimney and chimney connector manufacturers' instructions and to local building codes for installation through combustible walls or ceilings.

The directions are also required to include a clearly identified section containing complete use directions (§ 1406.4(b)(3)), including what types of fuel(s) can be used and how to fire the unit to avoid fire hazards. The instructions must also include a clearly identified section containing complete maintenance directions (*Id.*), including how and when to clean the chimney and chimney connector. Information about the use of flammable liquids should also be included (*Id.*) The directions are required to be in legible English and in readily understandable language (§ 1406.4(b)(4)). A recommended outline for the directions is given in Appendix II to the rule.

The labeling and directions requirements apply to all of the subject appliances that are manufactured after October 17, 1983, and to all of the subject appliances that are first distributed in United States commerce after May 16, 1984 regardless of the date of manufacture (§ 1406.1(c)(1)). The reasons these dates were chosen are explained below in section F of this notice, which discusses the effective date of the rule.

In order that consumers may select an appliance that is suitable for their intended use and compare the safety of different appliances for their specific installations, all sales catalogs and other point of sale literature are required to include the appliance clearance information and the statement that local building or fire officials should be consulted concerning restrictions and installation inspection requirements (§ 1406.4(c)). Since some sales literature may be printed far in advance of its expected use, this requirement will go into effect May 16, 1984, which is one year after the requirements for labeling and instructions (§ 1406.1(c)(2)).

The proposed rule would require manufacturers to provide to the Commission copies of the written notice and directions required by the rule. Under the proposal, manufacturers would also provide to the Commission a statement of how the clearance distances that are required by the rule to be stated on the appliance were determined. Submission of these data is required so the staff can determine (1) that the specific statements required by the rule are present, (2) that other types of information required by the rule but not required to be in specific language, are present, and (3) whether the clearance distances stated appear appropriate or whether further investigation is necessary.

The proposed requirement that this information be submitted to the Commission constitutes a "collection of information" as that term is defined in the Paperwork Reduction Act, 44 U.S.C. 3502(4). Since these requirements were proposed before the effective date of the Paperwork Reduction Act, the specific provisions of that Act concerning rules that contain a collection of information requirement, 44 U.S.C. 3504(h), are not applicable. However, under § 3507, the Commission may not conduct or sponsor a collection of information subject to the Act unless the agency has submitted the proposed information collection request to the Director of the Office of Management and Budget (OMB) for approval. The Commission has submitted the proposed requirements to OMB for approval and will issue the requirements as a final rule after they are approved by OMB. The Commission expects to issue the reporting requirements with an effective date of November 16, 1983, which is one month after the requirements for labeling and directions become effective for newly manufactured appliances.

The text of the reporting requirement that will be issued after approval by OMB is set forth below:

§ 1406.5 Performance and technical data to be furnished to the Commission.

Manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3(a) shall provide to the Commission the following performance and technical data related to performance and safety:

(a) *Written notice.* Manufacturers shall provide to the Commission copies of the written notice required by § 1406.4(a). If the written notice is provided to purchasers in a way, such as by casting or stamping the notice into the stove, that makes it impractical to furnish a sample of the actual notice to the Commission, the manufacturer will provide an actual size copy of the notice and a description of the forming process.

(b) *Directions.* Manufacturers shall provide to the Commission a copy of the directions required by § 1406.4(b).

(c) *Rationale.* Manufacturers shall provide to the Commission a statement of how the distances to combustibles required to be stated by § 1406.4(a)(1) were determined. In addition, the manufacturer will state the type of appliance, its fuel, size, and weight, and the material of which it is constructed, unless this information is included in the directions submitted under paragraph (b) of this section.

(d) *General.* (1) The information required to be under paragraph (a) through (c) of this section shall be submitted for each distinct design or model of appliance manufactured. An appliance will be considered to be a distinct design or model if it differs from other appliances of the same manufacturer by functional differences such as performance, weight, size, or capacity. Differences in cosmetic or other nonfunctional features do not require the submission of additional information.

(2) The written notice, directions, and rationale shall be provided to the Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207, by _____, 1983, or, in the event of a subsequent change in the component materials or design features that could cause the model to require different clearances from combustibles or a different type of chimney, or if a new product is introduced into United States commerce, within 30 days after the change or introduction.

D. Comments on the Proposal

In response to the proposal of November 17, 1980, the Commission received 78 written comments and also received oral comment from 9 persons at a public meeting on December 2, 1980. About half of the comments that were received were in favor of the Commission issuing a mandatory rule requiring labeling and/or instructions for these appliances, but some of the commenters suggested changes in the proposed requirements or suggested additional appliances or information that should be covered by the rule. Most of these favorable comments were from fire safety officials or persons with no

stated affiliation with the stove and heater industry.

Slightly over 1/3 of the comments opposed the rule, usually because the commenter believed that adequate information was already being supplied, that labeling or instructions would not be effective, or that a mandatory rule would undercut voluntary certification efforts that address more factors relating to the safety of these appliances than were addressed by the proposed rule. Most of the comments opposing the rule were from persons associated with the affected industry, such as manufacturers or dealers, or with testing or certifying organizations.

The remainder of the comments did not express an opinion on whether the Commission should issue a mandatory rule, but suggested certain changes or additions to the proposed requirements.

The substance of the comments and the Commission's response to them are set forth below.

1. *Scope of the rule.* A number of comments indicated that the rule should apply to other appliances in addition to the coal and wood burning appliances listed in the proposal. One commenter suggested a uniform label on all heating appliances, including those fueled by gas, oil, electricity, kerosene, coal, and wood. Other commenters indicated that the rule should apply to other coal and wood burning appliances such as fireplace inserts, prefabricated fireplaces, and central heating appliances.

One commenter noted that although there was less of a chance of installation clearance errors with fireplace inserts, other requirements of the proposed rule would apply equally to such inserts. A commenter noted that the definition of "fireplace inserts" in the proposal could include appliances whose functional operation is not different from totally freestanding units. Furthermore, this commenter noted that since the installation of fireplace inserts makes inspection of the flue system especially difficult, label warnings pertaining to periodic inspection of the flue gas system were even more important, especially for units designed for air-starved operation which may generate considerable quantities of creosote deposit. Another commenter noted that installation of some fireplace inserts can cover intake openings for chimney cooling air and suggested a ban of such units.

Another commenter suggested that the hazard of carbon monoxide should be addressed by labeling on stovepipe showing when the damper is open or shut.

The primary goal at the beginning of development of the proposed rule was to ensure that information relating to installation clearance distances and type of chimney required was made available for freestanding solid fuel heating appliances. Information relating to other hazards associated with freestanding appliances was included in the proposed requirements where it seemed likely that provision of the information would be effective in reducing a particular hazard. The Commission recognizes that some of the information required by the rule would also be useful in relation to types of appliances not now subject to the rule. However, the fire incident data presently available to the Commission do not clearly indicate that the potential benefits of expanding the scope of the rule would bear a reasonable relationship to the costs and other possible adverse effects of a mandatory rule. Furthermore, the degree to which such information is already provided on other types of appliances is not known. In addition, any expansion of the scope of the rule to a significant number of other appliances would have to be proposed for public comment, which would then have to be analyzed. This would delay substantially the issuance of the proposed requirements that the Commission has determined are needed at this time.

The Commission is currently conducting a project to more fully evaluate the safety aspects of other types of solid fuel heating appliances, including the types mentioned by the commenters on the proposed rule. If this investigation shows that the other types of appliances would benefit from some of the labeling and instructions provided in the rule issued below, such additional requirements could be proposed after all issues relating to such requirements are fully considered. In the meantime, the Commission does not believe that the requirements applicable to the stoves and heaters covered by the proposal should be delayed while additional work to determine the appropriateness of extending the scope of the rule is conducted. Therefore, the Commission declines to expand the scope of the rule at this time, but these issues will be considered further during the ongoing project discussed above.

2. *Voluntary actions are preferable.* A number of comments stated that existing voluntary standards and labeling programs already adequately address the hazards and that issuance of the rule would either be unnecessary or would discourage manufacturers from participating in existing testing

programs. In order to examine these comments, a brief explanation of the way in which voluntary standards and labeling programs are used is in order [See 11/26/82 briefing package, Tab E.]

There are two Underwriters Laboratories standards applicable to the appliances to be covered by the rule: UL 737 concerns fireplace stoves, and UL 1482 concerns solid fuel type room heaters. These standards contain performance requirements for determining the appropriateness of recommended clearance distances and also contain labeling and instructions requirements. UL provides a testing and certification service for manufacturers, and a label indicating that the model involved has been tested and approved by UL is placed on each appliance.

There are also other laboratories that will test appliances to the applicable UL standard and certify that the appliance meets the performance requirements of the UL test.

Still other testing laboratories will test for other certifying organizations but do not give certification themselves.

There are also certifying organizations that do not test but that evaluate the test reports from other laboratories as the basis for their certification.

Other than UL, the certifying groups may have different labeling requirements from those specified by UL.

These test programs may be used to satisfy the requirements of state and local jurisdictions that have building codes that require that only appliances that have received certification, or listing, from a suitable testing organization may be installed in that jurisdiction.

a. Effect on use of testing and certifying organizations. Some of the commenters expressed the belief that a mandatory rule would tend to discourage the use of the testing and certifying organizations described above. They argued that some manufacturers of the stoves and heaters subject to the rule would forego having their products tested in the hope that a label meeting all CPSC requirements, possibly in conjunction with claims that the appliance "meets all federal safety requirements" or the like, would be accepted by state and local building inspectors as complying with local codes.

However, the Commission does not believe that the rule will have the effect postulated by these commenters. Industry groups and certifying organizations have been very successful in the past in increasing the percentage of the market that is tested and in having local jurisdictions require listing

as a condition for meeting the local code. If these efforts are continued, there is no reason to think that state and local officials will be misled into thinking that the CPSC labeling requirement is intended to be a substitute for existing code requirements and certification programs. However, to reduce any possibility that this might occur, the Commission has added a statement of the purpose of the rule in § 1406.1(b) which makes it clear that the rule is not intended to replace any voluntary standards applicable to these appliances or to replace any state or local requirements applicable to the installation, use, or maintenance of such appliances, provided, of course, that such requirements are not inconsistent with the rule.

b. Preemption of state and local requirements. Other comments argued that the rule would preempt state and local requirements applicable to these solid fuel appliances. However, as pointed out in the proposal, the provision of section 26(a) of the CPSA, 15 U.S.C. 2075(a), relating to invalidation of state and local laws that address a risk of injury that has been addressed by a consumer product safety standard does not apply to this rule. This is because this rule is being issued under section 27(e) of the act, 15 U.S.C. 2076(e), and is thus not a consumer product safety standard, which, as that term is defined in section 3(a)(2) of the act, must be issued under sections 7 and 9. Also, as explained above, the Commission has concluded that the rule will not have the practical effect of eliminating state or local codes.

c. Adequacy of present practices. A number of commenters contended that a mandatory rule was not needed because a large portion of stoves currently sold are labeled in accordance with voluntary testing and certification programs. The Commission's staff has estimated that in 1978 about 29 percent of the estimated 1500 models on the market were tested according to the procedure contained in the applicable UL standard. [Tab H-1, briefing package of 6/9/81.] The Commission was unable to estimate the number of stoves these models represented.

As noted above, the UL standard contains performance requirements and also has labeling and instructions requirements that include a statement of the distance the appliance should be installed from combustible walls. However, the information required by the versions of the UL standards that were in effect at the time of the proposal did not include all the information that is required by the proposed rule. Furthermore, when appliances are

tested by independent laboratories other than UL, those laboratories or other certification groups may not require all the information stated in the UL labeling and instructions requirements and may impose their own labeling requirements. [CPSC staff briefing package dated 11/26/82, Tabs C and D.]

Since a substantial portion of the market for these appliances was not subject to labeling requirements, and since the labeling requirements that did exist did not require all the information that the Commission deemed necessary, the Commission proposed its mandatory labeling and instructions rule.

In 1981, the Commission reviewed the comments received on the proposal, and other available information, and concluded that there appeared to have been a large increase in the number of stoves that are tested by UL.

In the case of UL-tested stoves, the individual manufacturer pays a user's fee for each UL label used. For this reason, a count of the user's fees paid reflects the number of labels affixed during a given period. In 1978, UL sold about 76,000 such labels. [Tab H-1, briefing package of 6/9/81.] Thus, less than 7 percent of total estimated stove sales were UL listed in 1978. In 1980, about 100 firms, listing 190 separate models, purchased and used 723,000 UL labels. This represents about 72 percent of the estimated total U.S. sales of 1 million stoves in 1980. While some of these labeled stoves were not sold in 1980 and remain in inventory, it appeared that the bulk of 1980 production was UL tested and labeled.

Some other independent testing facilities also sell their labels directly to manufacturers. However, these labels may be purchased in bulk for later application. The total number of these labels sold, therefore, may not be the same as the number which would be affixed during a specific period. A number of testing firms contacted in 1980 were unable to differentiate label sales by the intended appliance. Also, some firms include stoves with other appliances, such as boilers, furnaces, and fireplace inserts, and were unable to estimate the number of labels affixed to the coal and wood burning appliances covered by this rule. However, three laboratories were able to estimate the number of labels which would have been affixed to coal and wood stoves in 1980. These three firms sold about 82,000 labels which were believed to be affixed to the subject stoves during 1980. Other testing firms were unable, or unwilling, to provide quantity information.

After considering the available information, the Commission staff

estimated that 70 to 85 percent of the total number of these stoves produced in 1980 were labeled.

In addition, Underwriters Laboratories proposed to amend their standards applicable to these appliances, UL 737 and UL 1482, to respond to the areas addressed by the proposed rule that were not addressed by their present standards.

In view of the apparent increase in the extent to which voluntary labeling efforts were being utilized and the expected upgrading of the voluntary labeling content to address the hazards addressed by the proposal, the Commission accepted a staff recommendation to delay consideration of a final rule while the staff evaluated the scope of the voluntary efforts to provide adequate labels and instructions.

As part of its investigation of the extent of voluntary efforts to address the need for safety information with these appliances, the staff conducted a limited survey in retail stores. See briefing package dated 11/26/82, Tabs D and E. This survey indicated that an estimated 77 percent of stoves on the market in February of 1982 were certified by a testing laboratory or other certifying organization and that 75 percent of these stoves were labeled with clearance information. While only a few 1982 model stoves were found in this survey, the survey indicated that 95 percent of the 1982 stoves were certified and labeled with clearance information.

The survey also showed, however, that a much smaller percentage of the stoves surveyed were actually certified by UL than had been predicted previously. This difference is thought to be due to the fact that the earlier estimate of the number of stoves produced in 1980 may be as much as 60 percent lower than the number actually produced. [Tab H, briefing package of 11/26/82.]

The 1982 survey conducted by the staff showed that 17 certifying organizations other than UL had certified stoves in the survey. Six laboratories identified in the survey were later asked about their requirements for solid fuel stove labels and instruction manuals. [Tab E, briefing package of 11/26/83.] These laboratories were chosen either because of the percentage of certified stove models or the number of stove sales attributed to models certified by them as the result of the survey. Additionally, updated information was requested from one building code group identified in 1981 as having labeling requirements that differed from the CPSC requirements. *Ibid.*

Requirements for the test standard were found to be uniform. All of the organizations contacted indicated that the use UL 737, Standard for Fireplace stoves, and UL 1482, Standard for Solid Fuel Type Room Heaters, as test standards and as guides for instruction manual content. The staff's survey also found that wood stove manufacturers usually included an owner's manual with each appliance.

The CPSC rule requires that all appliances should be accompanied by directions that include:

a. A specified safety notice on the first page of the booklet.

b. Step-by-step installation directions, including an explanation of consequences which could result from failure to install the appliance properly, and a statement that the installer should refer to the instructions provided by the chimney and chimney connector manufacturer.

c. Use directions, including how to fire the appliance; information about the use of flammable liquids; maintenance directions including how and when to clean the chimney and chimney connector; and a description of the consequences that could result from failure to use or maintain the appliance properly.

The UL requirements are different because:

a. There is no general safety notice,
b. There is no specific reference to a requirement for directions for joining the chimney and chimney connector through a combustible wall,

c. The distance to be kept between the heaters and furnishings is not a specified requirement, but is included in the requirement for "clearance to combustible materials," and

d. There is no explanation of the consequences of not following the installation and use instructions.

However, the Commission has a concern over two aspects of the UL instructions requirements. The first is related to the CPSC requirement that information be provided on the installation of chimney connectors and chimneys. The Commission requires that the directions include an explanation of methods to join safely the chimney connector to the chimney and to pass these parts through a combustible wall or ceiling, as appropriate. The UL requirement, on the other hand, simply states that the directions must include the parts and materials required and the step-by-step process for installing a room heater, accessories, and its chimney connector. The Commission believes that this should be more specific, since the UL requirement could be interpreted as requiring instructions

only for the connection to the appliance. Secondly, the Commission believes that the section of the UL requirement relating to inspection for creosote build-up does not adequately explain how to inspect the system, and the frequency of inspection recommended (every two months) may be too long in some cases.

Instruction booklets prepared by 19 manufacturers or importers were obtained during the retail survey. The majority (12) of the booklets covered 1981 stove models, and most of the booklets provided some installation, use, and maintenance information. However, none of the booklets provided all of the information that would be required by the CPSC proposal. Two of the 19 booklets contained a safety notice at the beginning of the booklet. Seventeen of the booklets contained some installation information; however, only nine of the booklets contained step by step installation directions as specified in the proposed rule, and only four of the booklets mentioned the potential fire hazard resulting from improper installation. Many of the booklets stated that a UL-listed chimney should be used, but only two firms directed the reader to the installation instructions provided by the chimney and chimney connector manufacturer. One firm that manufactures the chimney and chimney connector that must be used with its appliance provided complete chimney installation directions. Eight other booklets discussed the use of a thimble or connector through a combustible wall or ceiling. However, these eight provided insufficient information for the installer to make the connection properly. This is consistent with the Commission's concern, expressed above, about the UL 1482 voluntary standard.

Sixteen of the 19 booklets reviewed provided directions for firing the appliance, and 10 booklets cautioned against the use of flammable liquids to start or freshen-up the fire. Seventeen of the booklets provided some maintenance information, although only 9 of the booklets provided directions for cleaning the chimney and chimney connector, and only 7 of the booklets mentioned the consequences of improper use and installation.

Based on this information, the Commission concludes that not only do the UL instructions requirements lack information in several areas required by the CPSC proposed rule, but that many stove manufacturers do not conform to even these instruction requirements.

Changes to the Underwriters Laboratories' requirements for labels specified in UL 737 and UL 1482 have

made the UL and CPSC requirements similar. However, the CPSC rule requires that a label statement to keep furnishings and other combustible materials a considerable distance from the appliance be readily visible during heater use. The UL standards require that a statement of the clearances to combustible materials from the back and sides of the appliance and the chimney connector be visible after installation, but this would not be given the prominence of other use information which UL 1482 requires to be "visible while feeding fuel." UL 1482 does require a "hot surfaces" label which includes the statement "keep children, clothing and furniture away"; however, this statement appears to be intended to warn against the danger of contact with the heater's surface and not against the danger of ignition due to heat radiated from the heater. Accordingly, it does not state that furnishing and other combustibles should be kept a considerable distance from the appliance. The UL "hot surfaces" label is required to be on the front of the heater unless the heater incorporates a means for observing the fuel burning process within the heater (such as by a closed-window type of port), in which case the label can be on the back of the stove. Thus, the UL requirements for fireplace stove labels do not specifically mention furnishings and do not require that the label be readily visible during normal use. The UL requirements for solid-fuel type room heaters, while mentioning furniture, do not address the same hazard as the CPSC label and need not be readily visible if a window or similar feature is provided.

In addition, variations were found in the labeling requirements of the laboratories other than UL. Two laboratories indicated that they test for other certifying organizations and use the label required by these organizations. Three laboratories indicated that they require a UL content label with some differences in the use of words or diagrams, or both, for giving clearance information. The laboratory identified in the survey as having certified the largest percentage (31.3%) of stoves sold indicated that their labeling requirements varied. A check of the label on the largest selling model certified by this laboratory revealed that this label had very little of the information required for the CPSC label. Information missing from this label included:

a. Statement to keep furnishings a considerable distance from the appliance;

b. Clearance of chimney connector from walls;

c. Floor protection materials and dimensions;

d. Type of chimney and chimney connector needed;

e. Precautions needed when joining a chimney and chimney connector through combustible walls; and

f. Statements on overfiring, frequency of inspection and cleaning of chimney connectors and chimneys, contacting building officials, and installation according to manufacturer's directions.

The building code group's label had not changed since 1981. They still did not require: (a) statements to keep furnishings a considerable distance from the appliance; (b) the type of chimney; (c) precautions needed to join a chimney and chimney connector through a combustible wall; and (d) statements about contacting the local building official and installing the appliance according to manufacturer's directions.

After considering the results of the staff investigation into the extent of voluntary provision of safety information in labels and instructions, the Commission concludes that there are significant differences between the requirements of the Commission's rule and the labels and instructions that are now being utilized by the manufacturers of the subject appliances. Furthermore, the large number of certifying organizations and differing state and local requirements appear to make it impractical to obtain adequate and uniform labels and instructions by any means other than a mandatory rule. Therefore, the Commission concludes that the rule issued below is necessary to provide the data to the purchasers of these appliances that they need in order to safely install, operate and maintain these appliances.

d. *Local codes as an alternative.*

Other comments implied that a more effective way to obtain safety for these appliances would be to encourage adherence to local codes. The Commission agrees that safety would be improved if all stove installations were inspected and approved by a qualified building inspector. However, there is little information to indicate that efforts in this direction would be an adequate substitute for a mandatory rule.

During fiscal years 1979 and 1980, the Commission conducted 46 investigations of fires in wood and coal stoves. The subject of local permits or codes was mentioned in 14 of these investigation reports. Seven of these reports indicated that no local permit was required or issued; 4 said that permits were required by local codes but none was issued for

the stoves in question; 2 indicated that it was not known whether a permit was required, but none was issued; and only 1 report concerned a stove that had been inspected and approved by a local building inspector.

While these reports do not provide a statistically valid sample, it appears that fires occur less often where an inspection program is carried out. However, the reports also indicate that in a substantial number of cases, local inspection programs do not prevent fires in such appliances. Furthermore, inspections of stove installations do not ensure that adequate information on operation and maintenance is available to the users of the stove. Therefore, the Commission concludes that reliance on local code provisions alone is not sufficient and that the mandatory labeling rule is still needed to address these risks of injury.

e. *Effective use of Commission resources.* Other comments suggest that the rule should not be issued in its present form because administration of the rule would require an inordinate amount of Commission resources and a high level of expertise. However, the Commission does not believe this will be the case. The duty of providing correct information on the label falls primarily on the manufacturer of the appliance. CPSC compliance staff then will make a preliminary determination of the adequacy of the data provided. Situations involving either an absence of supporting data or information that deviates significantly from usual industry guidance for the appliance involved can be referred to the Commission's engineering staff for further investigation. The Commission's staff estimates that the preliminary screening should not take more than 1 or 2 hours per model and that it should not be necessary to test more than 5 to 10 models per year. This amount of effort seems reasonable in view of the risks involved in the installation, operation, and use of this product.

f. *Use of private laboratories.* One comment suggested that private laboratories could perform the label inspection and verification outlined in the proposed rule. As noted above, the Commission encourages the voluntary use of existing testing and certification organizations and expects that many manufacturers and importers will obtain independent testing and certification services. However, the Commission does not intend for the rule to have the adverse economic impact on manufacturers that might be caused by requiring third party laboratories to test all manufacturers' models. Furthermore,

the Consumer Product Safety Act contains no express authority for such a requirement.

g. Effect on dealers' safety efforts. One comment suggested that the rule would result in a decrease in dealers' taking the responsibility for providing adequate information to their customers. Although the information provided as a result of the rule should make it easier for dealers to be certain that purchasers are provided with adequate information, there is no reason to believe that the existence of the rule would make dealers less concerned for the safety of their customers. Furthermore, for those dealers or other sales outlets that do not now provide sufficient information or expertise, the rule should increase the information available to consumers.

h. HUD minimum property standards. The Commission is also aware of a rule promulgated by the Department of Housing and Urban Development on January 17, 1983 (48 FR 1954). This rule, which became effective on March 9, 1983, requires that solid fuel room heaters and fireplace stoves used in the newly-constructed dwellings to which HUD Minimum Property Standards apply be tested and labeled according to Underwriters Laboratories voluntary standards UL 1482 and UL 737, and bear other specific information in addition to that required by the CPSC rule. Products so tested and labeled would meet most provisions of the Commission's rule, and the two rules are not inconsistent.

The Commission believes, however, that a relatively small number of installations of such products would be affected by HUD's rule, and that there would not be a significant increase in the general level of label use among manufacturers and importers of these appliances because of the HUD rule. Therefore, the Commission believes that its rule is necessary to provide information to all purchasers of these products. [Tab B, briefing package of 3/25/83.]

3. Alternative activities. A number of comments suggested activities other than providing labels and instructions that the Commission might engage in to address the risks of injury addressed by the proposal. In some cases, the commenters intended that the suggested activities would be a substitute for issuing a final rule based on the proposal, and in other cases the activities could be in addition to the requirements of the proposed rule.

a. Research. Some comments suggested that the Commission should conduct additional research into fire hazards and/or collect and publish statistics about fires. The Commission agrees that such activities are desirable,

and, to the extent resources are available, the Commission regularly sponsors research, conducts hazard analyses, and makes reports and safety educational materials available to the public. The rule issued below is one way in which information can be provided to the particular members of the public that need the information. While useful, the suggested additional general educational activities would not be an adequate substitute for the notification required by the rule, which would be furnished to every purchaser of appliances subject to the rule.

b. Information to previous purchasers. Some commenters suggested that information such as that required by the rule should be furnished to persons who bought stoves before the rule was issued. The Commission agrees that some appliances are incorrectly installed or are being inadequately maintained or improperly operated because the owners were not furnished information that is required by the rule. Hopefully, some of the owners of these stoves can be reached by information and education campaigns conducted by the Commission, other federal and state agencies, industry groups, and appliance manufacturers. However, the Commission has insufficient data to conclude that the benefits of requiring the notification of each known prior purchaser of these types of appliances would justify the costs of such action. In addition, the inclusion of such a requirement, if authorized, would require a reproposal of the rule, thereby delaying the providing of other needed information. Therefore, the Commission has not adopted this commenter's suggestion.

c. Requirement for listing. One commenter suggested that the best way to ensure adequate information to the consumer would be to require that all appliances subject to the rule must be listed with Underwriters Laboratories and that this requirement should be enforced by local jurisdictions. However, the Commission has no authority to issue such a requirement. As far as attempting to achieve this by state and local action is concerned, it would be a massive undertaking to work with each local jurisdiction that could be affected by such a program to attempt to persuade them to undertake this activity. Furthermore, Commission in-depth investigations indicate that a substantial number of stoves are installed without complying with existing local requirements. Thus, this alternative would not be an adequate substitute for the rule that is issued below.

d. Mandatory acknowledgment by consumers. Another commenter thought that dealers should be required to give information to purchasers, who would then be required to sign an acknowledgment that they had received the information. However, the Commission has no authority to issue such a requirement. Even if it did, or if such a program could be instituted voluntarily or by local jurisdictions, the establishment and administration of such a program would entail tremendous resources. Thus, this does not seem to be a practical way for the Commission to address the problem.

4. Comment on the substance of the rule. A number of comments were received on the substance of the proposed rule. Some of these comments concerned the specific requirements that were contained in the proposal. Others suggested additional information they thought should be in the rule.

a. Comments on the proposed requirements. (i) *Chimney and chimney connector.* A few comments concerned the proposed requirement that the label include a statement of the proper type(s) of chimney and chimney connector to be used with the appliance. These comments stated that it was difficult to identify the proper chimney or chimney connector and that enough information to be of value could not be put on a label.

The Commission does not agree with these comments. The required information should ensure that the chimney and chimney connector are of suitable design and construction to withstand the temperature of the flue gases and other probable environmental stresses and that the inside dimensions are suitable to adequately vent the products of combustion. Generally, these data can be conveyed with 2 or 3 pieces of information. For both components, a minimum inside diameter should be specified. For chimneys, there are recognized performance ratings that can be used to specify the design and construction that the manufacturer intends to recommend. For example, terms such as "residential" indicate that the chimney should be suitable for residential use with flue gas temperatures that do not exceed 1000° F. [However, the Commission understands that the National Fire Protection Administration will soon propose to raise the temperature requirements for "residential" chimneys.] Chimney connectors can be specified by the material and thickness.

Although the Commission concludes that this information can be readily supplied on a label, in order to avoid the

type of misunderstanding evidenced by these comments, a fuller explanation of what is required than was stated in the proposal has been provided in § 1406.4(a)(1)(iii) of the rule, and a specific example of acceptable designations has been provided in Figs. 1 and 2.

The proposed wording for § 1406.4(a)(1)(iv) required that the label bear an "identification of parts or precautions required for passing a chimney or chimney connector through combustible walls or ceilings." In the final rule, this language has been changed to read "identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls." This change more precisely reflects the contents of NFPA 211-5-7.2, which states that chimney connectors should not be passed through ceilings. There has been no change in the example of a statement that would comply with the requirement of § 1406.4(a)(1)(iv).

(ii) *Chimney cleaning information.* Several comments concerned the proposed requirement for label information stating "how often the chimney and chimney connector should be inspected and cleaned." The comments pointed out that it is not practical to state a single period at which creosote should be cleaned since the amount of creosote deposited can depend on type of fuel and the method of operation of the stove.

The example given in the proposal of a statement that would comply with this requirement (Figs. 1 and 2) does not conflict with the thrust of these comments. The acceptable example stated: "PREVENT CREOSOTE FIRE: Inspect Chimney Connector and Chimney Twice Monthly and Clean if Necessary." Thus, a statement of a particular time period for creosote cleaning is not required. The requirement has been reworded to make this point clearer.

Comments also stated that the proposal provided no guidance on when creosote buildup would have reached the point that cleaning was indicated. However, from the information available to the Commission, there does not appear to be any level of creosote buildup that can be deemed absolutely safe, and the rule should serve to make users aware of the need to inspect regularly so they will become aware of any buildup that occurs.

(iii) *Overfiring.* One comment stated that it was not possible to overfire a listed stove and that the proposed requirement for a label statement concerning overfiring was not

necessary. This comment would prefer requiring that stoves be listed.

The Commission does not agree that a listed stove cannot be overfired and therefore believes that the warning concerning overfiring is needed even for listed stoves. In addition, as discussed above, the Commission does not have authority to require a manufacturer to list all of its stoves with a third party testing or certifying organization. Therefore, the Commission disagrees with this comment.

Another comment stated that it was not possible to put enough information about overfiring on a label and that a simple warning would be misleading.

Although the Commission agrees that it is impractical to put all available information about overfiring on a label, it is important that consumers be reminded of the hazard of overfiring. This goal will be accomplished by the requirement of the final rule that the label contain a statement that the appliance not be overfired and a description of *at least 1* condition that signals overfiring. The proposed wording has been modified in the final rule to make it clear that the label need not include a description of *every* condition that could signal overfiring.

(iv) *Instructions to install only according to manufacturers' directions.* One comment implied that the proposed requirement that the label state that the appliance should be installed only according to the manufacturer's instructions was inadequate because instructions accompanying stoves that are not tested and listed by a recognized testing laboratory may have inappropriate directions. The commenter states that unlisted appliances should be installed according to code.

The Commission agrees with the intent of this comment, but does not believe that it is possible, in the space available on a label, to adequately describe which stoves should be considered "listed by a recognized testing lab." However, in order to respond to this commenter's concern, the Commission has changed the wording of the proposal to indicate that the appliance should be installed and used only in accordance with the manufacturer's instructions and local building codes.

(v) *Information on shipping carton.* The proposal contained a requirement that the following notice shall appear legibly and conspicuously on the packaging or carton of the appliance or on the container for parts supplied by the manufacturers: REMINDER—READ THE ENCLOSED INSTALLATION DIRECTIONS.

One commenter stated that the location of such a reminder should be left up to the manufacturer and that a warning tag on one of the handles of the stove, which the homeowner would see before and during the installation, would be more effective.

Upon reconsideration, the Commission has decided to delete this requirement. The fact that the portion of the labeling concerning installation is required to be conspicuous before installation should bring that label to the attention of the installer. That label refers specifically to the instructions and also conveys enough information so that the installer would probably realize that installation is sufficiently complicated that it is desirable to refer to the instructions. Thus, the Commission cannot conclude that whatever slight additional benefit might result from the additional reminder is worth the added cost of providing it.

(vi) *Safety notice in instruction book.* One commenter stated that the "safety notice" required to be at the beginning of the instructions by § 1406.4(b)(1) did not contain enough information to meet the evolving requirements imposed by the courts in product liability litigation. This commenter overlooks the fact that the rule does not prevent the manufacturer from including any additional information that he or she may desire. In order to emphasize this point, the final rule has included a statement that the manufacturer may choose to add other information to this notice.

This commenter also stated that provisions of the statement could constitute "overlabeling" that could result in a "defect" under strict liability law." The Commission disagrees. Since the mandatory federal rule issued below would invalidate inconsistent state laws, the provision of the required statement by a manufacturer could not, in itself, be the basis for a valid product liability claim.

(vii) *Sales literature, catalogs, etc.* A number of comments addressed the proposed requirement that all "sales literature, catalogs, and point of sale advertisements" for the appliance that are provided by the manufacturer shall legibly and conspicuously include (1) a statement of the appropriate minimum clearances from the back and sides of the appliance to walls and (2) a statement that the owner should contact local building or fire officials about restrictions and installation inspection requirements in the owner's area.

One comment suggested that this information should be included in point of sale information but should not be

required in advertising that appears in printed or other media.

The intent of requiring the provision of this information is to help ensure that purchasers will not inadvertently order an appliance that is not suitable for the available space or for the user's intended application. Thus, the requirement need only apply to literature, etc., that can be reasonably expected to form the basis for a final consumer decision to purchase a particular model without the need to obtain additional information. Possibly the best examples of the type of situation intended to be covered are catalogs containing order forms to be mailed and point of sale literature. Normal promotional advertising in newspapers or other media would not be subject to this requirement. Thus, it appears that the proposed rule conforms to the intent of this comment. However, the wording of the final rule has been changed to delete the word "advertisements" and to more clearly point out the intent of the rule.

Another comment stated that it was not clear whether the requirement applied to other than manufacturers' literature. This rule is being issued under section 27(e) of the CPSA, which states that the Commission may require certain information to be provided by manufacturers to prospective purchasers, to the first purchasers for purposes other than resale (consumers), and to the Commission. This section provides no express authority to issue requirements binding on parties other than manufacturers, and the rule issued below does not apply to such parties. Thus, the rule applies to literature printed or distributed by manufacturers. It does not apply to literature, advertisements, etc., provided in the first instance by independent distributors, dealers, and retail outlets. By specifying that the requirement is applicable to the materials provided by manufacturers, the Commission believes the intent of the rule is clear.

One comment stated that it would not be feasible to get all the information required by this provision on a catalog page. The Commission disagrees with this view. The following statement would comply with this requirement.

Minimum clearances to walls: ———
in. back. ——— in. sides.

Contact local building or fire officials about restrictions and installation inspection requirements.

The latter part of the statement need not be repeated for each model, where there is more than one model shown on each page. Thus, the additional information supplied under this requirement would be a minor addition

to the information that would have to be provided anyway in order for the literature, etc., to be the type of literature that is covered by the requirement [i.e., suitable as the basis of the order of a specific stove].

Another comment suggested that the literature suggest that the reader write for information on clearances. However, this approach would be inconsistent with the purpose of the literature covered by the requirement, i.e., that of being the basis for an immediate order of a particular model. Accordingly, the Commission has not adopted this suggestion.

(viii) *Specification of clearances to walls.* One commenter argued that in the labels and instructions, the requirement for stating appropriate clearances from the "sides" of the appliance was indefinite. This was due to the fact that stoves vary widely in their configurations and because one side of the stove may require a different clearance than the other, as where there is a door on the side of the stove. The commenter suggested that instead the clearance should be stated from the edge of the chimney connector. Although it is difficult to see how this change would help clarify the situation where a stove requires different clearances on one side than the other, the change is not needed. If the position of the chimney connector is fixed with relation to the sides of the stove, specifying the clearance from the edge of the chimney connector to a wall on the side of the stove would in fact establish the clearance from the side of the stove and thus would comply with the rule. Furthermore, if the manufacturer could not specify the point on the side from which the clearance should be measured, the distance from another point would have to be specified. Also, both the proposed and final rules require that clearances be stated from the back and sides of the stove and from the chimney and chimney connector to walls. Although, in some cases, these distances could all be stated by reference to the same place on the stove, information that has the effect of establishing each distance must be provided.

(ix) *Furnishings.* Comments were received arguing that the separate requirement to state the clearance to furnishings should be deleted, either because it was identical to the clearance to other combustibles or because there is no test method established to determine the appropriate clearance.

Many consumers probably do not appreciate the fact that furnishings such as chairs, sofas, drapes, and rugs can present a fire hazard when exposed to

radiated heat from a stove or heater, in the same manner as do combustible walls, floors, or ceilings. The proposed requirement for a separate statement of clearances to furnishings was intended to insure that consumers are aware of the need to keep these items away from the appliances subject to the rule. As these commenters point out, however, there is no widely accepted test for determining the appropriate clearance distances for furnishings. A representative of Underwriters Laboratories has indicated to the Commission's staff that before UL would incorporate a requirement for a clearance distance to combustibles to furnishings into the UL standard, they would have to develop an appropriate test procedure, at considerable expense. [Log of meeting on February 28, 1983.] Also, the inclusion of another test would increase the cost of testing to appliance manufacturers and ultimately to consumers. At this time, the Commission lacks data showing that the benefits of this particular requirement would be sufficient to warrant these additional expenditures.

Furthermore, if the Commission required the statement of a clearance distance that could not be confirmed by a test under the applicable UL standard, manufacturers might be inclined to forego having their products tested to the UL standard, whether at UL or at other laboratories that test to that standard. This result is also one that the Commission does not intend as a consequence of its rule.

For the reasons given above, the Commission has decided not to require a statement of a particular distance that furnishings should be kept from an appliance. However, the Commission believes that there is still a need for consumers to be advised of the hazard of placing furnishings too close to the appliance. Therefore, in the final rule the requirement has been changed to require a statement that furnishings and other combustible materials should be kept a considerable distance from the appliance. This should provide useful information to the consumer and at the same time should satisfy the concerns expressed by these commenters concerning the specification of a particular distance.

(x) *Test methods.* Several commenters indicated their belief that the rule should specify particular test methods for determining the appropriate clearance distances. Some of these commenters believed that the Commission should require the use of these test methods and others thought

that examples of suitable test methods should be given.

At the present time, the Commission has no information that would indicate that the testing standards presently used by the industry would not provide information that would comply with this rule. However, other standards, or the result of experience with the installation of particular stoves at particular distances, could also produce the required information. The Commission's staff has not thoroughly evaluated the adequacy of the existing performance standards for the stoves and heaters subject to this rule, and to do so would delay substantially the implementation of this rule and result in unnecessary fires that could be prevented if consumers are provided with the information required by the rule as soon as is reasonably possible. In addition, the Commission is reluctant to specifically recommend particular voluntary standards that have not been thoroughly evaluated by its staff.

Furthermore, it is possible that recommending a particular test method could have the effect of motivating manufacturers to test appliances by that method even though the manufacturer already states appropriate clearance that were obtained by other means or by using conservative estimates. This could have the unintended effect of increasing the cost of the rule without a corresponding increase in safety. (Although some commenters suggested that merely issuing the rule would have this effect, the Commission does not believe there would be any need for a manufacturer who already knew the appropriate distances to have his stoves specifically tested because the Commission issues a rule requiring a statement of distances.)

Furthermore, the Commission wishes to avoid the possibility that requiring or recommending particular standards could inhibit the development of improved standards as knowledge about the causes and prevention of fires increases.

Some commenters, however, expressed the belief that not specifying a test method would result in some manufacturers stating clearances that are subjective or inadequate. The Commission does not believe this is likely to occur. The rule's requirement that the manufacturers state their reasons for selecting the particular distances stated would discourage manufacturers from stating distances that are too "optimistic." In addition, the Commission's staff can independently evaluate clearances that seem unusually small for the type of appliance involved. These factors should prevent the

occurrence of the situation feared by these commenters.

For these reasons, the Commission declines to require or recommend the use of particular test methods for determining the appropriate clearance distances that the rule requires.

(xi) *Labels.* A number of comments addressed the proposed requirements that labels stating necessary installation, operation, and maintenance information be on the stove.

(A) *One label vs. two label formats.* As explained above in section C of this notice, the label information required by this rule can be provided either on one label that is readily visible after installation or on two or more labels; one (or more) label(s) that contain the information relating to installation and that is conspicuous before installation (but that may be inconspicuous or not visible after installation) and (at least) another label that contains the information relating to operation and maintenance of the appliance and that is readily visible after installation. In the proposal, the Commission asked for comment on whether it should recommend one of these formats.

The comments generally supported the two label format. One comment contended that the two label format should be required. Other comments expressed a preference for the two label format but indicated that manufacturers should have the choice of using either label format. Comments opposing the two label format seem to be actually intended to oppose the requirement that some of the information be readily visible in normal use. In view of the comments, and because of the advantages of the two label format in allowing the operation and maintenance information to be more understandable (since the installation information would not be competing for the reader's attention) and in permitting a smaller readily visible label that would not detract unduly from the appearance of the exterior of the stove, the final rule recommends that manufacturers use the two label format in complying with this rule. However, as indicated in the proposal, the rule's requirements are satisfied by either the one label or two label format.

(B) *Amount of label information.* Some comments indicated that too much information was being required on the label and that therefore the safety information would not be readily communicated to the consumer. One comment suggested that for this reason no label should be required, but that instead the information should be required in an instruction booklet to be supplied with the appliance.

The Commission believes that the examples of complying labels given in Figures 1 and 2 below show clearly that the amount of information required on these labels is not so great as to significantly detract from the consumer's ability to notice and understand the information provided. This is especially true if the manufacturer uses the two label format described above. Therefore, the Commission has retained in the final rule basically all the information that was required by the proposal.

(C) *Legibility.* A number of comments were directed at the rule's requirement that the label be "legible." One comment suggested that the Commission should specify a minimum type size that should be used on the label in order to insure that the label is legible.

The Commission does not believe that such a requirement would achieve the commenter's intended result. The rule's requirement that the notice on the appliances be legible could be affected by a number of factors. Among these are type size, type style, the width or uniformity of the lines used to form the words and diagrams in the notice, the contrasts in color or texture between the words or diagrams in the notice and the background on which they are placed, and the arrangement of the information within the label or with respect to other features on the appliance. In requiring that the notice be legible, the Commission has not attempted to establish specifications for the various factors that could affect the legibility of the notice. However, the legibility requirement means that the content of the notice must be presented in such a manner that it can be readily determined by a person looking at the notice. Labels that cannot be quickly and easily read will not comply with this requirement.

Another comment stated that the indication in the proposal that molding the label into the body of a cast stove would satisfy the requirement that the label be permanent should be deleted because molded labels would be illegible. However, there is no need to delete this section, since if the quality or contrast of a molded label on a particular appliance is such that the label is not legible, as described above, the label would not comply with the rule even though it is permanent.

(D) *Location.* A number of comments were received opposing the proposal's requirement that the label information concerning operation and maintenance must be "readily visible during normal use." These comments indicated that the presence of a label on the front of the

appliance would detract from the appearance of the stove.

The Commission does not agree with these comments. The requirement that the operation and maintenance information be readily visible during normal use is needed to ensure that the persons actually operating the stove are reminded of the proper practices in order to avoid the fires that are now occurring due to improper practices. It is unreasonable to expect that a person will remember all the necessary operation and maintenance information for the entire useful life of these appliances, which can be for many years. In addition, the persons responsible for the operation and maintenance may never see labels that are not readily visible and may not have seen the instruction manual at the time of original installation. Therefore, the Commission concludes that the requirement that the operation and maintenance information be readily visible during normal use is essential in order to accomplish the safety purpose of the rule.

The concern raised by these commenters as to the potential adverse effect of this requirement on the appearance of the stove is also believed to be unwarranted. The size of the label needed to convey the information required to be readily visible during normal use can actually be quite small if the two label format is used, as shown in Fig. 1. Furthermore, the rule does not require that this label be in the most conspicuous location but merely that it be readily visible during normal use of the appliance. Thus, the label could be located to one side or toward the bottom of the appliance, as long as it remains readily visible. Finally, § 1406.4(a)(3) of the rule states that a label will be deemed to be readily visible during normal use if it is readily visible within stove compartments or under overlapping covers or doors in locations that will be seen at some time during normal use, such as when loading fuel or removing ashes. This provision allows yet another means for manufacturers of decorative stoves to avoid any excessive adverse effect of the label location requirement on the appearance of their product.

Another comment stated that allowing operation and maintenance information labels inside of compartments was not feasible since such labels would become unreadable. These comments apparently assume that the labels would be exposed to the direct heat or fire of the firebox in these locations. However, this is not necessarily the case.

The rule has a separate requirement that the required labels be provided so

that they will "remain legible for the maximum expected useful life of the appliance in normal operation." If a label would be discolored, damaged, or otherwise rendered illegible by heat or fire, another location or type of label would have to be selected. Therefore, no change in the rule is needed in response to this comment.

(E) *Permanence.* Most of the comments that mentioned the requirement that labels be permanent agreed with the requirement.

One commenter asked that the rule be amended "to allow for flexibility in the use and attachment of different materials, such as metallic foil, for the labeling information."

The preamble of the proposal gave some examples of types of labels that could satisfy the requirement that the label be permanent. Section 1406.4(a)(4) of the rule, however, merely requires that the label "shall be provided so that it will remain legible for the maximum expected useful life of the appliance in normal operation." Other types of labels than those specifically mentioned in the preamble as examples of suitable types may be used if in fact they are capable of remaining legible for the maximum expected useful life in normal use. Therefore, the suggested amendment is unnecessary.

(F) *Written and/or diagrammatic information.* The proposal stated that the appropriate minimum clearances to combustibles that would be required to be on the label should be stated in both written and diagrammatic form. The Commission agrees with the two comments that disagreed with the redundancy of this requirement, and the redundancy has been eliminated from the final rule.

One of these comments indicated that because of the potential variations of clearances in different installation configurations, the clearance information should be listed in the label, and more complete diagrams could be supplied in the instructions. The other comment indicated that the more graphic the label, the more effective it would be in communicating the required information to the consumer.

The Commission agrees with this latter comment. This is especially the case when the appliance is being reinstalled in a different location and the original instruction manual may not be available. Accordingly, the final rule indicates that the distance from the back and sides of the appliance and the chimney connector, to walls must be stated in diagrammatic form.

However, the required statement of the clearance to be maintained between the chimney connector and ceilings is

less subject to variations and is easier to understand in written form than are the side and back clearances to walls. Furthermore, any extra space required to indicate the connector-to-ceiling clearance in diagrammatic form may not be warranted by any extra communication value, compared to supplying this information in written form. Therefore, the final rule specified that the connector-to-ceiling clearances may be stated in either written or diagrammatic form.

If different back and side clearances are required in different installation configurations, the manufacturer could either provide the requisite number of diagrams or supply one or more diagrams with the greater clearances and also provide a label statement referring the reader to the instructions for special cases where smaller clearances could be used. Therefore, since the concern of the commenter who wished for this information to be listed in written form can be satisfied in another way, the Commission concludes that the extra ease of understanding of side and back clearances in diagram form warrants such a requirement in the final rule.

(G) *Meaning of "combustible."* A commenter argued that the requirement that the clearance to "combustible walls" be stated on the label was confusing since the reader would be unlikely to realize the meaning of "combustible" in this context. Walls that have a brick or tile facing over wood framing are "combustible" for the purposes of these clearances since the heat will be transmitted through the facing to the wood. Therefore, inclusion of the term "combustible walls" in specifying the clearance could encourage persons to install the appliance at lesser distances when the outer surface of the wall is not one that a layman would consider combustible.

The proposal did not expressly require that the label use the word "combustible" in stating this distance; it only required that the distance stated be that to combustible walls. However, the examples of acceptable labels did use this terminology. Since the Commission agrees with the substance of this comment, the final rule has been changed so that the examples of acceptable labels now state the clearances to walls and ceilings without using the qualifying word "combustible." In addition, the body of the rule has eliminated the term "combustible" in the specific requirements for clearances to walls and ceilings, but the introductory portion of the requirement still indicates that the

clearances to be provided are those to "unprotected combustibles." This should help reduce the possibility of confusion pointed out by this comment.

(H) *Overfiring.* One commenter opposed the proposed requirement that the label contain a "statement that the appliance should not be overfired, and a description of the condition[s] which signal[s] overfiring" because a caution against overfiring could result in operation of the appliance in a damped-down manner that would increase the production of creosote due to operation at a low flue temperature.

The Commission does not believe there is any reason to conclude that a warning against overfiring, especially when accompanied by a statement of one or more specific symptoms of overfiring, would result in insufficient burning, thereby creating a related creosote hazard. Consumers are unlikely to mistake normal burning for overfiring and therefore to restrict the fuel or air supply so that insufficient burning results. On the contrary, the warning is intended to prevent actual overfiring without a realization of the hazard involved. Therefore, the Commission concludes that this comment is speculative and that no change in the rule is needed to address this possibility.

b. *Suggested additional requirements*
(1) *Type of fuel required.* Two comments stated that consumers should be notified of the types of fuel that are suitable for use in the appliance.

The proposal included a requirement that the instruction manual contain a statement of the types of fuel that may be used in the appliance. After considering the comments, the Commission has concluded that this information should also be included on the label that is required to be readily visible during normal use. While a requirement for this statement on the label was not included in the proposal, it was required in the instructions and is related to the hazard of overfiring and the appropriate clearance distances that were addressed in the proposed label requirements. Therefore, the Commission concludes that this additional requirement is within the scope of the proposal.

(2) *Disposal of ashes.* The proposal required complete use and maintenance directions to be provided in the directions. This general requirement would include a statement of how to safely dispose of ashes, and a statement addressing this hazard was included in the recommended format and wording for the directions stated in Appendix II to the proposal. A major insurance company suggested more complete

language for this direction, and the Commission has included similar language in Appendix II to the final rule. However, this type of statement is not being required on the label since the Commission has no information indicating that the risk of fire from improper disposal of ashes is as high as the other risks addressed by the label.

(3) *Type of wood to burn.* One commenter stated that the label should indicate what type of wood to burn in the appliance.

The Commission, however, does not believe that there is sufficient information available on the safety ramifications of burning different types of wood in these appliances to warrant such a requirement. Therefore, the Commission has not adopted this suggestion.

(4) *Instructions on what to do when a chimney fire occurs.* A commenter suggested that information should be provided on what a consumer should do if a chimney fire occurs. While the Commission agrees that such information could be valuable, the precise content of the advice could be somewhat controversial. For example, should the directions tell the homeowner to shut off air to the stove first, or should the first action be a call to the fire department? Should the consumer remain in the house and try to smother the fire in the appliance, or would it be safer to leave the home and await the arrival of the fire department? Particularly in view of these types of uncertainties, the Commission probably could not adopt such a requirement without a reproposal of the rule. In addition, the Commission does not know the extent to which the lack of such information may be responsible for avoidable injuries or property damage. For these reasons, the Commission is not adopting this requirement at this time.

(5) *Information on the efficiency of stoves.* Several commenters stated that information on the efficiency of the appliances subject to the rule, or on the heat output that the appliance could achieve with a specific fuel, should be provided. The Commission declines to adopt this suggestion since it was not proposed and since the Commission's statutory authority under section 27(e) of the CPSA to require manufacturers to furnish information to consumers must be related to the safety of the product and not merely to providing useful information on the cost, performance, or efficiency of a product.

(6) *Other miscellaneous operating information.* One commenter indicated that he believed the following

information should be on the feeder door of a wood or coal stove.

"1. Do not use explosive or highly flammable fuels to start fire. (Actually, corn cobs soaked in kerosene are the best.)

2. Before refueling stove, be sure to open chimney vent. (This avoids excessive smoking out of the door.)

3. Do not burn trash/garbage in the stove. (Paper trash can be extremely dangerous in that it burns very quickly and escapes fragments into the chimney.)

4. Keep all clothing and furniture at least _____ft. away.

5. Check thermostat setting before retiring for night."

This commenter also urged that the following information should be provided on a second label located either on the inside of the protective shield door (outer stove cover) or "on the back side beside the thermostat."

"1. Use caution in reloading the stove. Reload only when the fire is burned down. Open chimney draft vent when doing so. Never use flammable fuels on ashes or smoldering logs.

2. Shake ashes daily and remove at regular intervals.

3. Check for creosote buildup in the stove pipes by tapping them lightly with the wood poker regularly. You can tell when there is a buildup and the pipes need cleaning them.

4. Avoid continual opening and shutting of the stove feeder door.

5. Learn how to start the initial fire in a cold stove by using small, dry materials and putting larger pieces stacked so to promote burning.

6. Keep a tea kettle filled with water on top of the stove to avoid dry air.

7. Follow all installation directions when setting up the stove:

a. Is the stove pipe unit firmly attached to the chimney entrance with a small wire?

b. Are the stove pipe sections firmly entered into each other?

c. Is there a protective flood shield underneath the stove?"

d. Is there protective asbestos or tin on the walls beside the stove?

Some of the suggested labeling does not relate to safety concerns and is thus beyond the Commission's authority to require. Much of the other information could be useful and would properly be included in the instructions. However, the Commission does not believe that the information suggested in this comment is as valuable as the information that is otherwise required by the rule to be on a label. To require the lengthy additional material suggested by this commenter would

result in a label that was so large and contained so much information as to be unreasonably unsightly and contain so much information that consumers would either not read the label or the impact of any particular piece of information on the consumer would be greatly diluted. Therefore, the Commission will not take the action requested in this comment.

(7) *Installation of stoves in zero-clearance fireplaces.* One comment indicated that fires could occur as a result of installing wood or coal burning stoves in zero-clearance fireplaces. The commenter suggested that stove labels should state that a fire code violation may occur if the unit is installed inside a zero-clearance fireplace.

This comment appears to refer to fireplace inserts, which are not covered by the proposed rule. If the comment is viewed as applying to the appliances covered by the proposed rule, the Commission has insufficient data about this hazard to warrant a conclusion that the requested warning statement is needed. Accordingly, the Commission has not adopted this suggestion.

(8) *Glass in stoves.* One commenter wrote to say that he had several glass inserts for his stove break in use and that he had heard of a number of other persons that had the same difficulty. He suggested that an asbestos cushioning strip could solve the problem. Also, a glass manufacturer wrote to provide additional information on the care of glass used in stoves.

Although the Commission appreciates being advised of the potential problem with glass breakage in stoves, the rule being issued below does not address particular problems that may be present in a particular brand of stoves.

Furthermore, although the information provided by the glass manufacturer is interesting and should be provided by the stove manufacturer in a proper case, the rule issued below leaves to the stove manufacturer the responsibility for the exact wording and amount of necessary information for the use and maintenance of stoves with glass. Other brands of glass may need additional or different advice.

(9) *Confidentiality of test data.* The proposed rule (§ 1406.5) would require manufacturers to submit to the Commission a statement of how the clearance distances required by the rule were determined. One commenter stated that the proposed rule did not provide any protection against disclosure of test data submitted to the Commission to a party who requested it under the Freedom of Information Act. The commenter stated that the rule should provide such protection.

In general, the Commission does not have the authority to withhold information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, unless the information fits into one of the exemptions provided in 5 U.S.C. 552(b). The exemption that could fit the situation described by this commenter is in paragraph (4) of that section, which concerns "trade secrets and commercial or financial information obtained from a person and privileged or confidential." If the information submitted fits into this category, under 15 U.S.C. 2055(a)(2), the Commission would be prohibited from disclosing it. Therefore, exemption (3) of the FOIA would also be applicable. Disclosure of trade secrets and certain other types of confidential information is also prohibited by 18 U.S.C. 1905.

Furthermore, under 15 U.S.C. 2055 (with certain exceptions), the Commission may not release information that would enable the public to readily ascertain the identity of a manufacturer or private labeler of a consumer product unless (1) the Commission notifies the manufacturer or private labeler of the intended disclosure, (2) provides them an opportunity to comment, and (3) takes the reasonable steps provided in 15 U.S.C. 2055(b). This section provides such party with an opportunity to seek an injunction barring the disclosure if the party believes the information to be disclosed is inaccurate.

These statutory procedures should provide adequate protection against the disclosure of test data submitted to the Commission under the requirement of 16 CFR 1406.5. Therefore, no changes in the rule are needed in this regard. (As discussed above, § 1406.5 is not being issued at this time, but will be issued after the requirement has been approved by the Office of Management and Budget.)

5. *Effective date.* The Commission received a number of comments concerning the effective date of the rule. The rationale for the effective date of the rule is explained in section F of this notice.

The proposed rule would have applied to all subject appliances that would be first introduced into commerce in the United States after the effective date of the rule. The Commission received several comments asking that the rule should apply instead to all subject appliances manufactured after the effective date. These commenters feared that a rule applicable to first introduction into commerce could require the relabeling of appliances that were being kept in manufacturers' inventory and were not shipped until after the effective date.

As noted in the proposal, the Commission selected the effective date in the proposal on the basis of information indicating that manufacturers did not keep substantial amounts of inventory and that the rule would not require potentially costly retrofitting of the label to previously manufactured appliances. However, the information currently available to the Commission indicates that this may not always be the case.

The Commission believes that the rule should become effective as soon as is reasonably possible in order that consumers will begin receiving the needed information as soon as possible. However, as explained in the proposal, the keying of the effective date to the first introduction into commerce was primarily to simplify the task of determining which appliances were subject to the rule.

In order to avoid the problem noted by these commenters, the final rule has been changed so that the rule will apply initially only to appliances manufactured after the effective date, which is five months after the date of issuance of the rule. In order that the Commission's compliance tasks may eventually take advantage of an easier to determine effective date keyed to first introduction into commerce, the final rule also provides that the rule shall in addition apply to any subject appliance first introduced into commerce in the United States after May 16, 1984, which is twelve months after the rule is issued, regardless of the date of manufacture. This period should be sufficient so that no extensive retrofitting of previously-manufactured, non-complying products will be required.

Comments were also received concerning the amount of time after issuance of the rule that would be appropriate for the effective date. The proposal would have applied to stoves manufactured in the U.S. or imported after about four months from the date of issuance. Representatives of the Wood Heating Alliance have indicated to the Commission's staff that a period of four months would be required in order for manufacturers to design the necessary labels and instruction manuals, obtain the approval of their certifying organization to use the modified materials, order and receive the materials, and incorporate them into current production. The Commission agrees that this is a reasonable period. In addition, the Commission concluded that foreign manufacturers would require an additional month for shipment of their products to the U.S. Therefore, the Commission has

established that the rule shall become effective October 17, 1983, which is 5 months after the issuance of the rule.

The effective date of the final rule is one month longer after issuance than the date originally proposed. This is because the final rule is becoming effective during the peak period of production, whereas at the time of proposal it was estimated that the changes in labels and instructions could be incorporated well before the beginning of seasonal production. The need to change labels and instruction manuals during a production run requires the additional time. [The Commission staff's findings concerning the effective date are set forth in the briefing package dated 3/25/83, Tab B.]

6. *Authority to issue the rule.* The rule is issued under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2078(e), which authorizes the Commission to "by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to * * * [consumers]."

One commenter questioned the Commission's authority to issue the rule under section 27(e), implying that the information required by the rule does not fit within "the plain, obvious and rational meaning of performance and technical data," which is the test established in *Southland Mower Co. v. CPSC*, 619 F.2d 499 (5th Cir. 1980). The commenter noted that the Commission's authority to issue its chlorofluorocarbon propellant labeling requirement, 16 CFR Part 1401, under section 27(e) was being challenged in *United States v. Falcon Safety Products* (D. N.J., No. 80-1590). That case, however, ultimately upheld the Commission's action. The Commission concludes that labeling and directions for the installation, operation, and maintenance of the appliances subject to this rule come within the plain, obvious, and rational meaning of performance and technical data and that the rule is properly issued under section 27(e).

E. Economic Impact of the Rule¹

The average finished cost for purchase and installation of appliances

¹ The Commission staff's report concerning the economic impact of the rule is contained at Tab B of the briefing package dated 3/25/83.

covered by the rule is between \$600 and \$1,000. The direct cost of providing the written notice on the appliance and the required directions would be approximately \$1.85 per stove. Another element of cost for some manufacturers would be testing of the stove to determine or confirm the appropriate clearances. Not all manufacturers will have to perform such testing, however, since many manufacturers already know the appropriate clearances from previous tests or from past experience with the product. In one typical example examined by the Commission's staff, the cost attributable to this testing could be considered to be about \$0.20 per unit. Therefore, the staff believes that the cost of the rule to producers of these coal and wood burning appliances should not exceed about \$2.05 per stove. Depending on the markup on the additional costs, the increased cost to consumers could be as much as \$2.80 per stove. Many manufacturers are now labeling stoves and have already incurred some of those costs; thus, the average per stove cost of the rule could be less than \$2.80. The cost of providing copies of the written notice and directions to the Commission is expected to be negligible. The total annual cost of the rule to consumers may be up to about \$4.5 million. The rule is not expected to lead to a significant reduction in the number of these appliances purchased each year.

The cost stated above could be somewhat higher if manufacturers give the written notice by two labels instead of one. On the other hand, many manufacturers already provide a label and/or will not need to test their product, and the costs to these manufacturers should be substantially lower than those stated above.

However, the rule is expected also to result in savings due to reductions in property damage, death, and injuries associated with the products subject to the rule.

It has been estimated that fires directly attributable to these stoves and their venting systems caused some \$113 million in property damages in 1981. [Kale, D., *Fires in Woodburning Appliances*, U.S. CPSC, December 1982.] Although the Commission is unable to estimate the degree to which the rule may reduce fire incidents, a reduction of 5 percent (or possibly less) in these property damages alone would offset the total yearly cost of the rule.

In 1981, an estimated 160 deaths were attributed to fires associated with coal and wood burning stoves. *Ibid.* Based on available fire incident data, an estimated 1200 fire-related injuries were

associated with these articles in 1981. *Id.* There are significant economic and social costs of the deaths and injuries associated with these products. Any reduction in these injuries and deaths would result in significant benefits to consumers.

The Commission further concludes that the rule is not a major action that would have any significant effect on the environment. Thus, no environmental impact assessment is required.

F. Effective Date²

1. *Labels and directions.* The Commission estimates that a period of up to 4 months after issuance of this rule will be needed in order for manufacturers to do any testing needed to determine or confirm the appropriateness of clearance distances, develop and acquire the required labels and directions or modify existing ones, print the appropriate directions booklets, and incorporate the means to provide the labels into their normal production procedures. Although the traditional seasonality of production has been replaced with production to meet orders for most firms, some companies continue to produce these appliances year round. In either case, a four-month period after publication of the final rule should be sufficient for all domestic manufacturers to comply with the rule as to newly manufactured appliances. Importers of appliances, however, must also allow for the time required for the appliances to be shipped from the country of manufacture to the United States. The Commission estimates that this shipping time would not exceed another 30 days. Therefore, a 5 month period for an effective date as to newly manufactured appliances should allow both domestic and foreign manufacturers to comply with the rule with a minimum disruption of production.

However, it is often easier to determine the date when an appliance was first introduced into commerce in the United States than it is to determine when the appliance was manufactured. Therefore, an effective date that is keyed to the date of initial introduction into commerce in the United States makes it easier for the Commission's compliance staff to determine which appliances are subject to the rule and to prove this fact if such is necessary in an action based on noncompliance with the rule. Therefore, the rule is also being made effective as to all of the subject appliances that are first introduced into

² The Commission staff's findings concerning the effective date are contained in Tab B of the briefing package dated 3/25/83.

commerce in the United States after May 16, 1984. This date is 7 months after the effective date applicable to newly manufactured appliances in order to reduce the possibility that potentially costly retrofitting might be required for stoves that were manufactured before October 17, 1983, but not initially introduced into commerce in the United States until a later date. (This retrofitting could cost up to \$25 per stove, according to industry estimates.)

For the purpose of this rule, a product manufactured outside the United States is first introduced in U.S. commerce when it is first brought within a U.S. port of entry. A product manufactured in the U.S. is first introduced in U.S. commerce when it is shipped by the manufacturer or delivered to the next purchaser, whichever comes first.

Although these effective dates will require prompt action on the part of a number of manufacturers, the Commission believes that it is important to have the rule go into effect as soon as is reasonably possible in view of the fact that the production season for the 1983-1984 winter season begins in about May of 1983. The Commission would like for as many as possible of the stoves produced for the coming season to comply with this rule in order to reduce the injuries, deaths, and property damages that occur as the result of not providing consumers with adequate information on the installation, operation, and maintenance of these appliances.

2. Catalogs and point of sale literature. The requirement that catalogs and point of sale literature for the appliance that are provided by the manufacturer shall legibly and conspicuously state the appropriate minimum clearances from the back and sides of the appliance to walls and contain a direction to contact local building or fire officials about restrictions and installation inspection requirements will become effective for all such publications that are provided by the manufacturer on or after May 16, 1984. This additional time is needed since these types of publications are often prepared far in advance of their intended use and the Commission wishes to avoid imposing the possible increase in cost of requiring the replacement of catalogs and point of sale literature that were prepared before the rule was issued.

3. Submission of labels, directions, and rationale for clearances to the Commission. As discussed above in section C of this notice, "Description of the Rule", the Commission intends to issue proposed § 1406.5 after the requirement is approved by the Office of

Management and Budget. If this occurs, the Commission intends that this information would be submitted to the Commission by November 16, 1983 or within 30 days of the introduction of a new model of appliance that is subject to this rule.

G. Effect on State and Local Requirements

Many jurisdictions have requirements for installation of these appliances, inspections for the completed installation, testing and certifications programs, and labeling requirements. However, as discussed above in section D of this notice, "Comments on the Proposal," the information available to the Commission indicates that these local requirements are not sufficiently widespread or enforced that the existence of these requirements would remove the need for the regulation that is issued below.

The existence of state and local regulations in this area, however, raises the question of the degree to which the Commission's action may affect the application of state and local requirements. Section 26(a) of the act, 15 U.S.C. 207(a), provides that where a federal consumer product safety standard is in effect, state and local governments do not have the authority to establish or to continue in effect a different safety standard or regulation designed to deal with the same risk of injury as the federal standard. This statutory effect on state and local government regulations, known as preemption, applies only to a "consumer product safety standard", which is defined in section 7(a) of the act, 15 U.S.C. 2056(a). The statutory preemption provision is not applicable to a disclosure requirement issued under section 27(e), since the disclosure requirement is not a consumer product safety standard (which is issued under sections 7 and 9 of the act, 15 U.S.C. 2056, 2058). Interested persons should be aware, however, that even though the statutory preemption provision would not apply, there may be instances where certain state or local government actions could be preempted under other legal principles. However, the Commission does not intend that the rule would preempt any state or local requirements that are not inconsistent with the rule, even though the state or local requirements concern the same risk of injury addressed by the rule. Of course, any state or local requirements that were inconsistent with the rule would be invalid.

H. Penalties

Failure to comply with this regulation is a prohibited act, as specified in section 19(a)(9) of the CPSA, 15 U.S.C. 2068(a)(9), and could lead to civil and criminal penalties under sections 20 and 21 of the CPSA, 15 U.S.C. 2069, 2070. Section 21 provides criminal penalties for violations after notice, consisting of fines of not more than \$50,000 and imprisonment for not more than one year. Section 20 provides for a civil penalty not to exceed \$2,000 for each violation, with a maximum civil penalty of \$500,000 for any related series of violations. In addition, section 22 of the act, 15 U.S.C. 2071, authorizes the Commission to obtain an injunction from a United States district court to restrain a violation of the notification requirement.

I. Statutory Findings

The rule is issued under section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e). This section of the act authorizes the Commission to require manufacturers of consumer products to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the purposes of the act. Section 27(e) also authorizes the Commission to require manufacturers of consumer products to give notification of such performance and technical data to prospective purchasers at the time of original purchase and to the first purchaser for purposes other than resale, as it determines necessary to carry out the purposes of the act. As provided in section 2(b) of the CPSA, 15 U.S.C. 2051(b), two of the purposes of the act are (a) to protect the public against unreasonable risks of injury associated with consumer products and (b) to assist consumers in evaluating the comparative safety of consumer products.

1. Protecting the public from unreasonable risks of injury. The estimates of fire incidents that are associated with coal and wood burning appliances show that there is a substantial risk associated with their use. This risk can be addressed by the requirements of the rule proposed below at a minimal cost to the consumer. Providing this information to consumers should reduce the number of improperly installed appliances and increase the number of consumers who know how to properly operate and maintain these devices. The Commission therefore concludes that there is an unreasonable risk of injury associated with those coal

and wood burning appliances that do not provide the notices and directions provided for in Part 1406 below.

2. *Comparative safety.* The requirements of this rule will aid the public in determining which appliances can be safely installed in the space available. This knowledge facilitates the consumer's choice of an appliance to suit his or her installation situation.

Therefore, in order to carry out the purposes of the CPSCA to protect the public against unreasonable risk of injury and to assist the public in evaluating the comparative safety of consumer products, the Commission concludes that it is necessary to require manufacturers of these products to provide the notifications described in Part 1406 as set forth below.

Accordingly, under provisions of the Consumer Product Safety Act (secs. 2, 27(e), Pub. L. 92-573, 86 Stat. 1207, 1228; 15 U.S.C. 2051, 2076(e)), the Commission amends Title 16, Chapter II, of the Code of Federal Regulations by adding to Subchapter B a new Part 1406.

List of Subjects in 16 CFR Part 1406

Advertising, Consumer protection, Fire prevention, Housing standards, Labeling.

PART 1406—COAL AND WOOD BURNING APPLIANCES—NOTIFICATION OF PERFORMANCE AND TECHNICAL DATA

Sec.

- 1406.1 Scope, purpose, and effective date.
1406.2 Background.
1406.3 Definitions.
1406.4 Requirements to provide performance and technical data by written notice to purchasers and prospective purchasers.
1406.5 [Reserved]

Authority: Secs. 2, 27, Pub. L. 92-573, 86 Stat. 1207, 1228 (15 U.S.C. 2051, 2076).

§ 1406.1 Scope, purpose, and effective date.

(a) *Scope.* This Part 1406 requires manufacturers, including importers, of coal and wood burning appliances, as defined in § 1406.3(a), to provide consumers with a specified notification concerning the installation, operation, and maintenance of the appliances. The notification is intended to provide consumers with technical and performance information related to the safety of the appliances.

(b) *Purpose.* This regulation is intended to reduce the unreasonable risk of injury from fire associated with inadequate information provided with coal and wood burning appliances. This rule does not replace any voluntary standards applicable to these appliances

or any state or local requirements applicable to the installation, use, or maintenance of such appliances that are not inconsistent with this rule. Thus, for example, a local code could require the actual installation of appliances at different distances from combustibles than those specified on the label required by this rule, and voluntary standards or local codes could require labeling or instructions in addition to those required by this rule. The fact that a product complies with this regulation is not intended to be a substitute for the performance tests and other criteria established by listing organizations whose approval is required to meet some state or local requirements applicable to these appliances.

(c) *Effective date.* (1) Except as provided in paragraph (c)(2) of this section, manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3(a) must comply with this regulation with respect to stoves that are manufactured or imported after October 17, 1983, or that are first introduced into United States commerce after May 16, 1983, regardless of the date of manufacture. For the purposes of this rule, an appliance is manufactured when no further assembly of the appliance is required (i) before shipment by the manufacturer or (ii), if the product is not so shipped, before delivery to the first purchaser. A product manufactured in the United States (U.S.) is first introduced into U.S. commerce when it is shipped by the manufacturer or delivered to the next purchaser, whichever comes first. A product manufactured outside the U.S. is first introduced into U.S. commerce when it is first brought within a U.S. port of entry.

(2) The requirements of § 1406.4(d) apply to sales catalogs and point of sale literature provided by manufacturers after May 16, 1984.

§ 1406.2 Background.

(a) Fire data analyzed by the Consumer Product Safety Commission disclose a number of incidents involving coal and wood burning appliances. Many of these cases involve improper installation of the appliances, especially where they are installed with insufficient clearances to adjacent combustibles such as walls, ceilings, floors, draperies, carpets, or furnishings. Another common installation problem involves the use of improper types of chimneys or chimney connectors and insufficient clearances between these devices and combustibles. Other incidents involve improper operation of the appliance, such as by overfiring it or

using flammable liquids to start the fire. Still other incidents occur when appliances are improperly maintained and develop mechanical defects or excessive deposits of flammable creosote.

(b) After considering the available data on the causes of fires in these appliances, the Commission concludes that there is an unreasonable risk of injury associated with appliances that are sold without notifying consumers of the information they need to prevent many of these occurrences. Accordingly, the Commission has determined that disclosure of the information required by § 1406.4 is necessary to help the Commission in carrying out the purposes of the Consumer Product Safety Act of (1) helping to protect the public against unreasonable risks of injury associated with consumer products and (2) assisting consumers in evaluating the comparative safety of consumer products.

§ 1406.3 Definitions.

For the purposes of this rule:

(a) "Coal and wood burning appliances" means fireplace stoves, room heater/fireplace stove combinations, cookstoves and ranges, and radiant and circulating heaters. It does not include central heating units, masonry fireplaces and chimneys, fireplace inserts, or factory built fireplaces (zero clearance fireplaces).
(b) "Central heating units" include boilers, furnaces, and furnace add-ons. These appliances are designed to be connected to hot water distribution or ductwork systems for heating several rooms. The furnace add-on converts an existing gas, oil, or electric heating system to one capable of using solid fuel as well as its original fuel.

(c) A "chimney" is a vertical or nearly vertical enclosure containing one or more passageways called flue passages for conveying combustion wastes to the outside atmosphere.

(d) A "chimney connector" is the stovepipe which connects the appliance flue with the chimney flue.

(e) "Cookstoves and ranges" are chimney connected solid fuel burning appliances that are used primarily for cooking. In addition to the firechamber, there may be one or more ovens or warmer compartments and several removable cooking space pothole lids. The intensity of the fire is controlled by damper and draft regulators.

(f) A "factory built fireplace" is a firechamber and chimney assembly consisting entirely of factory made parts. It is designed for component assembly without requiring field

construction. These "zero clearance" units are fabricated for safe installation against combustible surfaces and for burning fireplace fuel.

(g) "Fireplace inserts" are heating units that fit into a fireplace and connect to the fireplace flue. These units function like radiant and circulating heaters.

(h) A "fireplace stove" is a freestanding, chimney-connected firechamber which is constantly open to view. It is designed to burn regular fireplace fuel and function as a decorative fireplace.

(i) A "masonry chimney" is a chimney field-constructed of solid masonry units, brick, stones, or reinforced concrete.

(j) A "masonry fireplace" is an open firechamber built into a structure along with a chimney and hearth. It is constructed of solid masonry units such as bricks, stones, or reinforced concrete.

(k) "Radiant and circulating heaters" have firechambers which may be airtight¹ or non-airtight and are available in a number of sizes, shapes, and designs. The firechamber is closed in use, but there may be a window of specially formulated glass for viewing the fire. Drafts and dampers are used to control the burning process. There may be a secondary combustion chamber, baffles, a thermostat, a blower, or other components which function to improve combustion efficiency or to control heat output. The primary function of these appliances is as space heaters. However, some have lift-off cooking pothole lids, and the top surface of most can be used for cooking. The fuel may be wood, coal, or both. Radiant heaters transmit heat primarily by direct radiation. Circulating heaters have an outer jacket surrounding the fire chamber. Air enters from the bottom, is warmed by passing over the fire chamber, and exits at the top. Movement is by natural convection or forced air circulation.

(l) A "room heater/fireplace stove combination" is a freestanding, chimney-connected fire chamber with doors. It is designed to be used to burn fireplace fuels with the firechamber either open or closed to view. This appliance functions as a decorative fireplace when the doors are open and as a non-airtight heater when the doors are closed.

¹ An airtight stove is defined as "A stove in which a large fire can be suffocated by shutting the air inlets, resulting ultimately in a large mass of unburned fuel remaining in the stove." Jay W. Shelton, *Wood Heat Safety*, Garden Way Publishing, Charlotte, Vermont (1979), p. 160.

§ 1406.4 Requirements to provide performance and technical data by written notice to prospective purchasers and purchasers.

Manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3 shall give notification of performance and technical data related to performance and safety to prospective purchasers at the time of original purchase and to the first purchaser of such products for purposes other than resale, in the manner set forth below:

(a) *Written notice on appliance.* (1) The appliance shall bear a legible notice containing the following performance and technical data.

(i) Appropriate minimum clearances from unprotected combustibles to avoid the occurrence of fire.² The clearances shall include:

(A) Distance from the back and sides of the appliance, and the chimney connector, to walls, stated in diagrammatic form.

(B) Distance to be maintained between the chimney connector and ceilings, in either diagrammatic or written form.

(ii) Type and dimensions of floor protection, if necessary to protect combustible floors.

(iii) Proper type(s) of chimney and chimney connector to be used with the appliance. This information should include the proper designations so that the chimney and chimney connector are of suitable design and construction to withstand the temperature of the flue gases and other probable environmental stresses and so that the inside dimensions are suitable to adequately vent the products of combustion. See Figs. 1 and 2 for examples of an acceptable designation for a chimney and chimney connector.

(iv) Identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls. The following statement is an example of one that complies with this requirement:

Special methods are required when passing through a wall or ceiling. See instructions or building codes.

(v) A statement not to overfire the appliance, and a description of at least 1 condition which signals overfiring.

(vi) A statement of how often the chimney and chimney connector should

² Appropriate distances are to be determined by the manufacturer. The Commission expects that test procedures utilized by a nationally recognized testing organization would be suitable for determining appropriate distances.

be inspected and that it should be cleaned when necessary.

(vii) Information explaining that the appliance should be installed and used only in accordance with the manufacturer's directions and local building codes.

(viii) A direction to contact local building or fire officials about restrictions and installation inspection requirements.

(ix) A statement that furnishings and other combustible materials should be kept a considerable distance from the appliance.

(x) The types of fuel suitable for use in the appliance.

(xi) The name and address of the manufacturer, importer or private labeler to which the owner can write for a copy of the manufacturer's directions or for additional information, and a sufficient identification of the appliance model so that the appropriate information can be supplied.

(2) No specific wording is required on the written notice, but the information shall be printed in legible English in clear and readily understandable language. Examples of acceptable labels are given in Figs. 1 and 2, Appendix I.

(3) The written notice shall be placed in a location that is conspicuous before the appliance is installed. In addition, the written information required by paragraphs (a)(1)(v), (a)(1)(vi), (a)(1)(ix), and (a)(1)(x) of this section shall be readily visible during normal use of the appliance. A label on the back of the stove would not be considered "readily visible" during normal use if the stove is suitable for installation with its back within a few feet of the wall. Locations within compartments or behind doors or panels may be readily visible during normal use if the location is readily visible when the door or panel is opened or removed and the door or panel must be opened or removed, or the compartments used, as part of the normal operating procedures for the appliance. An example of a notice format where the information required to be readily visible during normal use is separated from the remainder of the notice is given in Fig. 1, Appendix I. The Commission recommends the use of this 2 label format in order to provide more consumer awareness of the operation and maintenance information after the appliance is installed, since this information would be on a simpler label that would not have installation information competing for the consumer's attention.

(4) The written notice shall be provided so that it will remain legible

for the maximum expected useful life of the appliance in normal operation.

(b) *Directions.* All appliances covered by this rule shall be accompanied by directions that include the following technical and performance information:

(1) The following notice shall be placed on the first page of the document(s) containing the directions and at the beginning of the directions:

SAFETY NOTICE: IF THIS _____ IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA.

This statement shall be conspicuous and in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, and similar designations. At the manufacturer's option, other information may be added to this notice.

(2) Step by step installation directions shall be provided, including all

necessary information regarding parts and materials. This information shall include an explanation of the consequences which could result from failure to install the appliance properly. These directions shall include a direction to refer to the chimney and chimney connector manufacturers' instructions and local building codes for installation through combustible walls or ceilings.

(3) These directions shall also include a clearly identified section containing complete use directions, including what types of fuel(s) can be used and how to fire the unit to avoid fire hazards, and a clearly identified section containing complete maintenance directions, including how and when to clean the chimney and chimney connector. A statement that flammable liquids should not be used with the appliance shall also be included where applicable. These sections shall contain a description of the consequences that could result from failure to use or maintain the appliance properly.

(4) The directions required by paragraphs (b)(2) and (b)(3) of this section shall include all the information

required by paragraph (a)(1) of this section and shall be in legible English in readily understandable language. A recommended outline for the directions is given in Appendix II.

(c) *Catalogs and point of sale literature.* Literature for the appliance that is intended to induce an immediate order or sale (such as catalogs and point of sale literature) and that is provided by the manufacturer, shall legibly and conspicuously include the information required by paragraph (a)(1)(viii) of this section and shall state the appropriate minimum clearances, to avoid the occurrence of fire, from the back and sides of the appliance to walls.

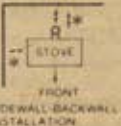

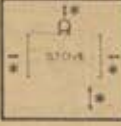
Note.—General advertising would not be subject to this requirement.

Appendix I.—Recommended Format and Wording for Written Notice

The following are examples of formats and suggested wording for the written notice required by § 1406.4(a). Information to be supplied by the manufacturer is indicated by underlined blank spaces or by asterisks. The Commission recommends the "two label" format shown in Fig. 1.

BILLING CODE 6355-01-M

Fig.1 - Example of how written notice requirements are satisfied with two labels. Label (A) is located so that it is conspicuous before installation. Label (B) is located so that it is readily visible during normal use. Insert appropriate information or numbers at "*". Words or diagrams should be changed to suit particular appliance.

CONTACT YOUR LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION IN YOUR AREA		
(A) INSTALL WITH MINIMUM CLEARANCES TO WALLS AS SHOWN (IN INCHES)  FRONT SIDEWALL-BACKWALL INSTALLATION  CORNER INSTALLATION	PREVENT HOUSE FIRES INSTALL AND USE ONLY IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS AND LOCAL BUILDING CODES CHIMNEY TYPE: MINIMUM * INCH DIAMETER APPROVED RESIDENTIAL TYPE * CHIMNEY CONNECTOR: * INCH DIAMETER MINIMUM * GAUGE BLUED STEEL * INSTALL AT LEAST * INCHES FROM WALL AND * INCHES FROM CEILING SPECIAL METHODS ARE REQUIRED WHEN PASSING THROUGH A WALL OR CEILING SEE INSTRUCTIONS AND BUILDING CODES	FLOOR PROTECTOR MINIMUM SIZE (IN INCHES)  FLOOR PROTECTOR MATERIAL * * (OR EQUIVALENT)
	MANUFACTURER'S NAME, MAILING ADDRESS, CITY, STATE, ZIP MODEL NO. *	

(B)



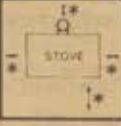
PREVENT CREOSOTE FIRE: INSPECT CHIMNEY CONNECTOR AND CHIMNEY TWICE MONTHLY AND CLEAN IF NECESSARY.

DO NOT OVERFIRE: IF UNIT OR CHIMNEY CONNECTOR GLOWS YOU ARE OVERFIRING.

KEEP FURNISHINGS AND OTHER COMBUSTIBLE MATERIALS A CONSIDERABLE DISTANCE AWAY FROM APPLIANCE.

TYPE OF FUEL: WOOD ONLY *

Fig. 2 - Example of how written notice requirements are satisfied by a single label that is readily visible during normal use of the appliance and conspicuous before installation. Insert appropriate information or numbers at "*". Words or diagrams should be changed to suit particular appliance.

CONTACT YOUR LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION IN YOUR AREA		
INSTALL WITH MINIMUM CLEARANCES TO WALLS AS SHOWN (IN INCHES)  FRONT SIDEWALL-BACKWALL INSTALLATION  CORNER INSTALLATION	PREVENT HOUSE FIRES INSTALL AND USE ONLY IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS AND LOCAL BUILDING CODES CHIMNEY TYPE: MINIMUM * INCH DIAMETER APPROVED RESIDENTIAL TYPE * CHIMNEY CONNECTOR: * INCH DIAMETER MINIMUM * GAUGE BLUED STEEL * INSTALL AT LEAST * INCHES FROM WALL AND * INCHES FROM CEILING SPECIAL METHODS ARE REQUIRED WHEN PASSING THROUGH A WALL OR CEILING SEE INSTRUCTIONS AND BUILDING CODES	FLOOR PROTECTOR MINIMUM SIZE (IN INCHES)  FLOOR PROTECTOR MATERIAL * * (OR EQUIVALENT)
	PREVENT CREOSOTE FIRE: INSPECT CHIMNEY CONNECTOR AND CHIMNEY TWICE MONTHLY AND CLEAN IF NECESSARY.	DO NOT OVERFIRE: IF UNIT OR CHIMNEY CONNECTOR GLOWS YOU ARE OVERFIRING.
	TYPE OF FUEL: WOOD ONLY * MODEL NO. *	
MANUFACTURER'S NAME, MAILING ADDRESS, CITY, STATE, ZIP		

Appendix II.—Recommended Outline for Directions

The following is a recommended outline for the directions required by § 1406.4(b). This outline is a guide and should not be considered as including all of the information that may be necessary for the proper installation, use, and maintenance of the appliance since the necessary information may vary from product to product.

"HOW TO INSTALL, USE, AND MAINTAIN YOUR _____"

I. Safety Precautions

A. The Safety Notice required by this rule.
 • "SAFETY NOTICE: IF THIS _____ IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA."

B. Statements of other important safety messages, including:

- "Creosote may build up in the chimney connector and chimney and cause a house fire. Inspect the chimney connector and chimney at least twice monthly and clean if necessary."
- "Overfiring the appliance may cause a house fire. If a unit or chimney connector glows, you are overfiring."
- "Never use gasoline or other flammable liquids to start or 'freshen up' a fire."
- "Dispose of ashes in a metal container."

II. Installation Instructions

A. The parts and materials required, including:

- The size and type of chimney to which the appliance is to be connected.
- The size and thickness or gage of metal of the chimney connector.
- The thimble or type of connection through a combustible wall or ceiling.

B. The step-by-step directions for installing the appliance and its accessories, chimney connector, and chimney. The directions would include:

- clearances from the appliance and chimney connector to combustibles,
- methods to safely join the chimney connector to the chimney and how to pass these parts through a combustible wall or to pass the chimney through a ceiling.
- the joining of two or more parts to constitute a safe assembly such as attaching and securing the chimney connector to the appliance and to each adjoining section, and
- where required, the parts or materials to be used for the floor protector (hearth). The minimum areas to be covered and their relation to the appliance should be stated.

III. Use Instructions

A. Recommendations about building and maintaining a fire, warnings against overfiring, and condition(s) that signal(s) overfiring.

B. Caution against the use and storage of flammable liquids, as follows: "Do not use gasoline, gasoline-type lantern fuel, kerosene, charcoal lighter fluid, or similar liquids to start or 'freshen up' a fire in this appliance. Keep these flammable liquids well away from this appliance while it is in use."

C. Explanation about the use or nonuse of grates, irons and or other methods of supporting the fuel.

D. How to use manual or thermostatic controls.

E. Explanation about the use of any electrical assemblies including care and routing of power supply cord.

F. Caution about disposing of ashes, as follows:

"Disposal of Ashes

Ashes should be placed in a metal container with a tight fitting lid. The closed container of ashes should be placed on a noncombustible floor or on the ground, away from all combustible materials, pending final disposal. The ashes should be retained in the closed container until all cinders have thoroughly cooled."

G. Keep furnishings and other combustible materials away from appliance.

IV. Maintenance Instructions

A. How to inspect and maintain the appliance, chimney, and chimney connector.

B. Explanation about the formation and removal of creosote buildup in the chimney connector and chimney as follows:

"Creosote Formation and Need for Removal"

When wood is burned slowly, it produces tar and other vapors, which combine with moisture to form creosote. Creosote vapors condense in the relatively cool chimney flue, and creosote residue accumulates on the flue lining. When ignited, this creosote make an extremely hot fire.

The chimney connector and chimney should be inspected at least twice monthly during the heating season to determine if creosote buildup has occurred.

If creosote has accumulated, it should be removed to reduce the chance of a chimney fire."

C. Explain how to remove creosote.

V. References

A. The name and address of the manufacturer or private labeler from which the owner can obtain additional information if needed. Include other sources of information as appropriate.

B. The manufacturer's or private labeler's catalog designations, model numbers or the equivalent for the appliance and related parts.

§ 1406.5 [Reserved]

Dated: May 9, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Relevant Documents¹

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¹ The Relevant documents list will not be shown in the CFR.

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Tab A—Draft Proposed Rule: Provision of Performance and Technical Data for Coal and Wood Burning Appliances

Tab B—Staff Hazard Assessment Memoranda

B-1—Hazard Identification, February 1980.

B-2—Human Factors, Feb. 29, 1980.

B-3—Health Sciences, Jul. 14, 1980.

Tab C—Communications Evaluation, Aug. 20, 1980

Tab D—Engineering Evaluation

D-1—Product Definitions & Information Evaluation, February 25, 1980.

D-2—Comparison of Proposed Rule to Existing Standards, June 24, 1980.

Tab E—Economic Analysis Report, Feb. 1980

Tab F—Enforcement Considerations

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F-2—Engineering Enforcement Resource Estimates, May 7, 1980

F-3—Estimates of Industry Size, April 21, 1980

Tab G—Survey of State and Local Regulations, June 19, 1980

Tab H—Correspondence

H-1—Letter from Terry Ellsworth, Fireplace Inst., regarding Industry Conformance to Voluntary Standards, April 14, 1980

H-2—Letter from Frank Stanonik, Gas Appliance Manufacturers Association, regarding Industry Conformance Labeling requirements, May 23, 1980

Tab I—Suggested Formats for Written Notices

Coal and Wood Stove Installation Guide, Fourth Edition, Commonwealth of Massachusetts, Sept. 1980.

Memo, H. Ewell, Vote Sheet, Proposed Rule, 10/2/80.

Record of Commission Meeting of 10/9/80.

Memo, S. Zagoria, Coal and Woodburning Appliances, Proposed 27(e) Rule, 10/10/80.

CPSC staff memorandum, E. Perry, October 14, 1980, (concerning clearances between chimney connector and ceiling)

Memo, S. M. Statler, 10/15/80, with attached correspondence from A. R. Spreen, Suburban Manufacturing Co., relating to production and shipments by month 1980, 10/10/80 and E. B. Priest, Martin Industries, relating to production and sales by month from 1979, 10/10/80.

Memo, J. F. Hoebel, Additional Information Requested by Commission Re: Proposed Rule

on Coal and Wood-Burning Appliances, 10/15/80 with attached T. Karels memo, 10/14/80 relating to seasonal production and sales of wood stoves.

Minutes of Commission meeting; 10/16/80.

Memo, Office of General Counsel, revised Federal Register notice, 11/5/80.

Federal Register, 45 FR 78018, 11/17/80.

Provision of Performance and Technical Data for Coal and Wood Burning Appliances; Proposed Rule.

Memo of telephone call, C. Keithley, Wood Heating Alliance, relating to industry areas of concern, 11/18/80.

Memo of telephone call, E. Priest, Martin Industries, relating to proposed effective date, 11/19/80.

Minutes of Commission meeting, 11/19/80.

Ballot vote of final version of proposed rule read into record.

ANSI/NFPA 211 Standard, Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances, Nov. 20, 1980.

Correspondence, C. Keithley, Wood Heating Alliance, requesting appearance at 12/2/80 public meeting, 11/24/80.

SBCCL Description of Listing Services, Nov. 1980.

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Correspondence, M. J. Smith, Wood Stove and Fireplace Journal, requesting extension of comment period, 12/1/80.

Memo, Office of Program Management, public meeting, 12/1/80.

Transcript of Public Meeting on Coal and Wood Burning Stoves Proposal, 12/2/80.

Correspondence, R. A. Minards, Jr., Senate Office Building, with material from telephone survey of safety and building codes, 12/11/80.

Memo, Office of the General Counsel, request for extension of comment period, 12/22/80.

Memo, Office of the Secretary, additional request for extension of comment period, 12/23/80.

Memo of telephone call, W. J. Thompson, Montgomery Ward, relating to installation of stoves, 12/23/80.

SBCCL Compliance Report Listing, Oct./Dec. 1980.

Memo of telephone call, G. Timdira, Jackes Evans Co., relating to concerns with label, 1/5/81.

Memo, S. M. Statler, with attached correspondence, D. M. Fergusson, Nationwide Insurance, related to language on hot ash disposal, 1/7/81.

Minutes of Commission meeting of 1/14/81, Ballot vote to extend comment period read into record.

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Memo of telephone call, B. Holmes, R. F. Geisser and Associates, relating to lab testing, 1/26/81.

BOCA, Research Report listing, Jan. 1981.

Building Standards, Vol. L, No. 1, Part II ICBO, Jan./Feb. 1981, Research Committee Reports.

Correspondence, P. R. Quinn-McNiel, PFS Corporation, re: inspection and certification process, 3/5/81.

Correspondence, G. L. Weinlagen, Building Officials & Code Administrators International, Inc., concerning evaluation service, 3/5/81.

Correspondence, C. Keithley, Wood Heating Alliance, sale estimates, 3/6/81.

Log of Meeting, UL comments on proposed rule, 3/6/81.

Memo, A. Pavlich and S. Meadows, Consumer Opinions on Coal and Wood Burning Stove Labeling, 3/20/81.

Memo of telephone call, D. Fergusson, Nationwide Insurance, communication of information, 3/24/81.

Memo of telephone call, S. Peterson, National Association of Independent Insurers, Position on labeling and testing, 3/24/81.

Correspondence, UL Extension of Effective Dates for Requirements of the Standard For Fireplace Stoves, UL 737, 4/1/81.

CPSC Fact Sheet No. 92, Wood and Coal Burning Heating Stoves, Revised 5/81.

Correspondence, L. Dosedlo, UL Proposed Revisions to Marking Requirements in Standards for Solid Fuel Room Heaters, UL 1482, and Fireplace Stoves, UL 737, 5/20/81.

Memo of telephone call, N. Randall, Senator Tsongas' office, explaining activities, 6/2/81.

Comments received on proposed rule:

Comment	Date	Correspondent
CC9-80-1	10-31-80	Miami Township, Miamisburg, Ohio.
CC9-80-2	11-3-80	Dr. and Mrs. R. T. Reed, New Carlisle, Ohio.
CC9-80-3	11-25-80	Centre Region Code Enforcement, State College, Pa.
CC9-80-4	11-26-80	August West Chimney Sweep, Richison Ind., Inc., Kettering, Ohio.
CC9-80-5	11-26-80	Nancy Kirk, Upper Darby, Pa.
CC9-80-7	11-26-80	Mrs. Doris Gensher, Pennsauken, N.J.
CC9-80-8	11-26-80	Mrs. A. L. Cramer, Kettering, Ohio.
CC9-80-9	11-26-80	Anne Burner, Dayton, Ohio.
CC9-80-10	11-26-80	Gregory S. Rhoads, Lewisburg, Ohio.
CC9-80-11	11-26-80	Mr. William M. Fischer, Beaverwalk, Ohio.
CC9-80-12	11-26-80	Mrs. Lloyd A. Ramsey, Parkside, Pa.
CC9-80-13	11-26-80	City of Bedford, Bedford, Va.
CC9-80-14	12-2-80	Vermont Castings, Inc., Randolph, Vermont.
CC9-80-15	12-5-80	J. Sargeant Comm. College, Ashland, Va.
CC9-80-16	12-8-80	Virginia Cooperative Extension Service, Blacksburg, Va.
CC9-80-17	12-15-80	Main Line Stove, Bala Cynwyd, Pa.
CC9-80-18	12-18-80	State of New Mexico, Santa Fe, New Mexico, Energy and Minerals Dept.
CC9-80-19	12-17-80	Charles H. Kelley, Bemis, La.
CC9-80-20	12-17-80	Bear River Community Action Agency, Logan, Utah.
CC9-80-21	12-17-80	New River Community Action, Inc., Christiansburg, Va.
CC9-80-22	12-17-80	North American Industries, Inc., Walla Walla, Washington.
CC9-80-23	12-23-80	Aadselgrib Advertising Co., Portland, Ore.
CC9-80-24	12-23-80	The Virginia Division of Forestry, Charlottesville, Va.
CC9-80-25	12-23-80	Monticello Area Community Action Agency Community Programs, Charlottesville, Va.

Comment	Date	Correspondent	Comment	Date	Correspondent
CC9-80-26	12-23-80	Northeast Missouri Community Action Agency, Kirksville, Missouri.	CC9-80-66	2-4-81	Martin Industries, Florence, Ala.
CC9-80-27	12-29-80	Consumers Union, Mount Vernon, N.Y.	CC9-80-67	2-4-81	F. A. Gardner Electric, Albuquerque, N.M.
CC9-80-28	12-29-80	Commonwealth of Pa., Dept. of Agriculture, Harrisburg, Pa.	CC9-80-42A	2-10-81	Wood Heating Alliance, Washington, D.C.
CC9-80-29	12-30-80	Arrowhead Economic Opportunity Agency, Virginia, Minn.	CC9-80-44A	2-6-81	Washington Stove Works, Everett, Wash.
CC9-80-30	12-30-80	Gerald L. Griswold, Scappoose, Ore.	CC9-80-68	2-9-81	National Assoc. of Independent Insurers, Des Plaines, Ill.
CC9-80-31	12-30-80	West Virginia University, Div. of Agriculture, Forestry and Community Development, Morgantown, West Virginia.	CC9-80-69	2-9-81	W. J. Thompson, Deerfield, Ill.
CC9-80-32	12-30-80	Old Country Stoves, Bend, Ore.	CC9-80-70	2-11-81	Wood'n Heat, Clear Lake, Iowa.
CC9-80-33	1-8-81	Haynes Equipment Corp., Unionville, Conn.	CC9-80-71(1)	2-13-81	Mrs. L. F. McDonald, Suwanee, Fla.
CC9-80-34	12-30-80	David W. Day, Portland, Ore.	CC9-80-72(L)	2-17-81	Apache Stove, G & G Stove Distributors, Inc., Marshville, N.C.
CC9-80-35	12-30-80	David Bruce, Juneau, Alaska.	CC9-80-73(L)	2-13-81	Tennessee Valley Authority, Chattanooga, Tenn.
CC9-80-36	12-30-80	West Central Minn., Communities Action, Inc., Elbow Lake, Minn.	CC9-80-74(L)	2-19-81	Griffin Furniture & Appliance, Inc., Marshville, N.C.
CC9-80-37	12-30-80	Anchor Tools & Woodstoves, Inc., Portland, Ore.	CC9-80-75(1)	2-20-81	Rick Graham, Midale, Id.
CC9-80-38	12-30-80	The Delmar Co., Charlotte, N.C.	CC9-80-76(L)	4-15-81	Arnold Greene Testing Laboratories, Inc., Natick, Mass.
CC9-80-39	12-31-80	Larry Miller, Macon, Miss.	CC9-80-42B(L)	3-4-81	Wood Heating Alliance, Washington, D.C.
CC9-80-40	12-31-80	Locke Stove Co., Kansas City, Missouri.			
CC9-80-41	1-2-81	Underwriters Laboratories, Inc., Northbrook, Ill.			
CC9-80-42	1-2-81	Wood Heating Alliance, Washington, D.C.			
CC9-80-43	1-2-81	Community Action Program, Belknap-Merrimack Counties, Inc., Concord, N.H.			
CC9-80-44	1-5-81	Washington Stove Works, Everett, Washington.			
CC9-80-45	1-5-81	The City of Oregon, Fire Marshal Fire Prevention Div., Portland, Ore.			
CC9-80-46	1-6-81	Corning Glass Works, Corning, N.Y.			
CC9-80-47	1-7-81	Commonwealth of Virginia, County of Prince William, Manassas, Va.			
CC9-80-48	1-7-81	Gulf Coast Community Services Association, Houston, Tex.			
CC9-80-49	1-7-81	Jody James Eckan, Ottawa, Kan.			
CC9-80-50	1-7-81	Dept. of Energy, Salem, Ore.			
CC9-80-51	1-7-81	Atlanta Stove Works, Inc. and d/b/a Birmingham Stove & Range Co., Atlanta, Ga.			
CC9-80-52	1-8-81	Gary Cassill & Assoc., Inc., Sumner, Wash.			
CC9-80-53	1-8-81	International Conference of Building Officials, Whittier, Calif.			
CC9-80-54	1-8-81	Irons in the Fire, Portland, Ore.			
CC9-80-55	1-8-81	Economic Opportunity Corp., Ithaca, N.Y.			
CC9-80-56	1-8-81	North County Stove Works, Helena, Mont.			
CC9-80-57	1-13-81	Nationwide Insurance, Columbus, Ohio.			
CC9-80-58	1-21-81	The Woodburners, Apple-gate, Ore.			
CC9-80-59	1-21-81	Fireplace Distributors of Idaho, Oakley, Idaho.			
CC9-80-60	1-29-81	B & B Stoves, Inc., Elkton, Md.			
CC9-80-61	2-2-81	Nelson & Small, Inc., Manchester, New Hampshire.			
CC9-80-62	2-2-81	J. C. Penney Co., Inc., New York, N.Y.			
CC9-80-63	2-2-81	National Retail Merchants Association, New York, N.Y.			
CC9-80-64	2-2-81	Energy Alternatives, Inc., Wood Energy Association, Tualatin, Ore.			
CC9-80-65	2-4-81	American Retail Federation, Washington, D.C.			

Briefing package, Labeling Rule for Coal and Wood Burning Appliances—Final Rule, J. F. Hoebel and S. Morrow, 6/9/81

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Tab J—Issue: Inclusion of Test Method in Final Rule

J-1—Technical Discussion for Inclusion of Test Method

J-2—Compliance and Enforcement Discussion for Inclusion of Test Method

Memo, J. F. Hoebel and S. Morrow, Proposed Coal and Wood-Burning Stove Labeling Rule: Additional Information, transmitting proposed changes to UL Standards 1482 and 737, 6/23/81

Attachment—Report of Meeting of Underwriters Laboratories Inc. Industry Advisory Conference for Solid-Fuel Burning Appliances and Chimney Systems; Proposed Revision of The Standards Enumerated in Appendix I, and Proposed Effective Date, 6/18/81

Memo, S. Morrow, Coal and Wood-Burning Stove Labeling Rule; Additional Information About Fire Loss, transmitting property losses in 1978 and 1979, 7/6/81.

Minutes of Commission Meeting, 7/9/81, deferring action on final rule pending evaluation of voluntary efforts.

Contract Report, Use of Heating Systems and Appliances and Energy Conservation Devices in the Home, A. D. Little, Inc., 7/81

UL Request for Comments on the Proposed Fifth Edition of the Standard for Fireplace Stoves, UL 737, and Proposed Effective Date, 8/12/81

UL Adopted Requirements for the First Edition of the Standard for Room Heaters, Solid Fuel Type, UL 1482, 8/20/81

UL Adopted Requirements for the Fourth Edition of Standard for Fireplace Stoves, UL 737, 8/20/81

UL Revised Marking Requirement in the Standard for Fireplace Stoves, UL 737, and Standard for Room Heaters, Solid Fuel Type, UL 1482, 11/13/81

Memo, B. Harwood, National Projections of Losses from Residential Fires Involving Heating Equipment (1979), 11/30/81

International Conference of Building Officials Research Report No. 3699, Fireplaces, 12/81

Request for OMB Review, Survey of Voluntary Labeling, 12/4/81

Briefing package, Fire Hazards Associated with Fireplaces, Chimneys, and Accessories—Final Report, S. Morrow, 12/11/81

Tab A—Fires Involving Fireplaces, Chimneys, and Related Appliances, B. Harwood and D. Kale, 9/81

Tab B—Memo, J. Clones, The Use of Solid Fuel Burning Heating Systems and Appliances in the Home, 9/17/81

Tab C—E. Perry, Solid Fuel Burning Appliances, 9/81

Tab D—Rhode Island Consumer Information Project

Tab E—National Chimney Sweep Guild Promotion Kit

Tab F—Memo, P. Helms, Fire Incident Reports for State of Rhode Island [excluding Providence] from 1/1/81 to 5/31/81, 8/15/81

Memo, J. F. Hoebel, Solid Fuel Burning Heating Equipment, 12/17/81 with attachments

—Memo, B. Harwood, National Projections of 1980 Fire Losses Involving Heating Equipment, 12/10/81

—Memo, R. Kurtz, Use of Solid Fuel Burning Heating Systems and Appliances in the Home, 12/15/81

Speech, N. H. Steorts, Coal and Wood Burning Stoves, 1/13/82

Press Release, CPSC, CPSC Chairman Warns of Coal and Wood Burning Stove Hazards, 1/11/82

Memo, J. F. Hoebel, participation in voluntary standard activity, 2/3/82

Memo, R. Kurtz, Commissioner Statler's Request for Information on the Relative Risk of Heating Systems and Appliances, 2/11/82

Memo, J. F. Hoebel, Wood and Coal Burning Heating Equipment, team meeting, 2/16/82

Memo, Office of General Counsel, draft Federal Register notice of deferral of consideration of labeling rule, 2/17/82

UL 737—Fireplace Stoves Fifth Edition, Underwriters Laboratories, Inc. 3/29/82

Memo, J. F. Hoebel, Wood and Coal Burning Heating Equipment, team meeting, 3/29/82

State of Maine, Act, regulating materials, construction and installation of chimneys, fireplaces, vents and solid fuel burning appliances, 4/1/82

Federal Register, 4/6/82, deferral of consideration of final rule.

Correspondence, M. Jorgenson and L. Dosedlo, UL, CPSC Report Dated 9/1981, Covering Investigation of Fires Involving Fireplaces, Chimneys, and Related Appliances, 4/15/82

Memo, J. F. Hoebel, National Estimates of Heating Equipment Fires for 1981, 10/29/82

Report, T. Karels, U.S. Imports of Heating Apparatus, 11/82

Speech, J. F. Hoebel to NFPA, Residential Auxiliary, Heating Equipment Fires: CPSC Projects, 11/15/82

Briefing package, Labeling Rule for Wood and Coal Burning Appliances, J. F. Hoebel, 11/26/82

Tab A—Federal Register, 11/17/80, Coal and Wood Burning Appliance Proposed Rule

Tab B—Draft Coal and Wood Burning Appliance Final Rule

Tab C—Report on the Coal and Woodburning Stove Survey, E. Gomilla and E. Kessler, 7/14/82

Tab D—Memo, E. Perry, Provisions for Labeling and Instruction Manuals in the UL Standards for Fireplace Stoves and Solid Fuel Room Heaters, 5/25/82

Tab E—Memo, E. Perry, Labeling and Instruction Manual Requirements for Wood and Coal Burning Fireplace Stoves and Room Heaters, 11/8/82

Tab F—Memo, W. Mathers, Wood Heating Appliances: Comparison of UL 1482 Installation and Labeling Requirements to CPSC's Proposed Requirements, 5/24/82

Tab G—Memo, W. Mathers, Wood Stove Chimney Connector Pipe/Owner's Installation Manual, 8/11/82

Tab H—Memo, D. Ray, Wood Stove Labeling Rule Briefing Package, Economic Analysis, 11/24/82

Tab I—Examples of Existing Labels

Memo, B. Harwood, Chimney Fires in Wood Stoves, 11/30/82

Log of Meeting, 12/2/82, Wood Heating Alliance, Comments on possible voluntary labeling

Record of Commission Briefing, 12/9/82

Correspondence, C. Keithley, Wood Heating Alliance, willingness to facilitate a

voluntary program, 12/28/83

Correspondence, J. Nosse, International Conference of Building Officials, Comments on 11/24/82 briefing package, 1/4/83

Correspondence, E. Morgan to J. E. Evered, Department of Energy, Concerning DOE wood stove data, 1/10/83

Record of meeting, Chairman Steorts with industry, 1/11/83, Concerning current labeling practices

Correspondence, C. Keithley, Wood Heating Alliance, Contacts with certifying laboratories, 1/14/83

Federal Register, 45 FR 1954, 1/17/83, Use of Materials Bulletin No. 84—HUD Building Products Certification Program for Solid Fuel Type Room Heaters and Fireplace Stoves

Record of Commission meeting, 1/19/83

UL 1482—Solid Fuel Type Room Heaters, Second Edition, Underwriters Laboratories, Inc., 1/24/83

Memo, H. Ewell, 1/24/83 concerning HUD Use of Materials Bulletin No. 84.

Correspondence, C. Keithley, Wood Heating Alliance, invitation to participate in seminar on compliance with new CPSC labeling rule, 1/25/83

Correspondence, D. Stimson, Vermont Castings Inc., economic effects of rule, 2/7/83

UL 103—Factory Built Chimneys, Residential Type and Building Heating Appliances; Sixth Edition, Underwriters Laboratories, Inc., 333 Pflingster Road, Northbrook, Illinois 60062, 2/9/83.

Correspondence, J. Hoebel to J. Nosse, International Conference of Building Officials, response to 1/4/83 correspondence, 2/15/83

Log of meeting, 2/18/83, Wood Heating Alliance, concerning effective date and furnishings provisions of rule.

Correspondence, M. Herschel, Wood Heating Alliance, concerning effective date, 2/22/83

Report on Woodburning Heating Equipment Project, J. F. Hoebel, 2/24/83

Tab A—Fires in Woodburning Appliances, D. Kale, 12/82

Tab B—Memo, T.R. Karels, Year End Report—Woodburning Heating Equipment, 12/21/82

Memo, D. Ray, Comparative Risk Table for Home Heating Appliances, 12/29/82

Tab C—Memo, W. A. Mathers, Wood Stove Year End Report, 12/23/82

Tab D—Memo, E. Perry, Wood and Coal Burning Heating Equipment, 1/10/83

Tab E—Memo, E. F. Johnson, Wood Heating Appliance Information Report, 1/19/83

Correspondence, R. Robinson, Grand Haven Fire Department, supporting labeling, 2/10/83

Correspondence, J. Nosse, International Conference of Building Officials, adoption of UL Standards, 2/18/83

National Voluntary Laboratory Accreditation Program Stove LAP Handbook, 2/83

NVLAP Proficiency Testing, Stove LAP, Round 1, 2/83

Log of meeting, 2/28/83, Underwriters Laboratories, concerning furnishings and visibility provisions of rule.

Memo, T. Karels and D. Ray, Wood and

Coal Stove Labeling Rule, 3/4/83.

Correspondence, E. Morgan to M. Herschel, responding to 2/22/83 correspondence, 3/8/83

Memo, E. Perry, Requirements for Coal and Wood Burning Appliance Labeling and Instructions, 3/9/83

Log of Meeting, 3/11–15/83, Wood Heating Alliance Annual Trade Show and Seminars

Speech, N. H. Steorts, "Label We Must", 3/13/83

Briefing package, Labeling Rule for Wood and Coal Burning Appliances, J. F. Hoebel, 3/25/83

Tab A—Draft Federal Register notice to issue a final rule

Tab B—Memo, T. R. Karels and D. R. Ray, Wood and Coal Stove Labeling Rule, 3/4/83

Tab C—48 FR 1954; Use of Materials Bulletin No. 84—HUD Building Products Certification Program for Solid Fuel Type Room Heaters and Fireplace Stoves, 1/17/83

Memo, W. R. Hobby, Wood/Coal Stove Labeling Rule: Installation and Maintenance Requirements, 3/25/83

Letter, C. Keithley, Executive Director of the Wood Heating Alliance, to N. H. Steorts, concerning "considerably away from" language, 4/29/83

Memo, H. Ewell, Changes to the Wood and Coal Burning Stoves Federal Register Notice, 4/29/83

Woodstove incidents from September 1981 Special Study:¹

801205DEN5005

801205PHL3003

801205PHL3008

801205PHL3010

801213BOS0110

801223BOS0119

801224HIA2022

801229HIA3024

801231HIA2033

810102HIA1047

810105HIA2048

810106BEP0013

810113HIA2083

810117SEA0188

810121HIA1092

810129HIA2105

810122BOS0172

810203MIN5045

810206CEP1048

810206SFO5034

810210BOS0207

810210HIA1123

810210HIA1124

810210HIA1128

810217HIA2139

810217SEA0238

210219HIA1142

810224HIA3150

810224HIA3155

810303HIA2196

810304HIA2206

810304HIA2207

810309HIA2216

810317HIA2226

810324DEN5048

810409HIA3231

810413HIA1207

810413HIA3238

810413HIA3239

¹ Fires Involving Fireplaces, Chimneys, and Related Appliances, B. Harwood and D. Kale, 9/81.

310414HIA3242	810428HIA1229
810415HIA2281	810504HIA3305
810415HIA3255	810504HIA3308
810423HIA2304	810504HIA3307
810424HIA2320	810505HIA1237
810424HIA3289	810505HIA2330
810427HIA1224	810512HIA3334
810427HIA1225	791126CEP0906
810427HIA1226	801125CEP0124
810426HIA1227	810127SFO5065

[FR Doc. 83-12738 Filed 5-13-83; 8:48 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 12****Emergency Interim Rules; Rules Relating to Reparation Proceedings****AGENCY:** Commodity Futures Trading Commission.**ACTION:** Promulgation of interim rules and Statement of Interpretation.

SUMMARY: On January 11, 1983, amendments to Section 14 of the Commodity Exchange Act (the "Act") were enacted effective May 11, 1983. Among other things the amendments narrow the class of persons against whom reparations actions may be brought and enable the Commission to adopt rules of procedure to streamline the entire reparations process. Section 14(a) of the Act, as so amended, will permit reparations claims to be filed based on violations of the Act or the Commission's rules committed only by persons who are registered with the Commission. Previously, reparations claims could also be brought based on violations committed by persons who, although not registered under the Act, had engaged in activities requiring them to be registered. Section 14(b) of the Act, as amended, authorizes the Commission to "promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious administration of * * * [Section 14 of the Act]."

The Commission is amending § 12.21 of its Reparation Rules, 17 CFR 12.21, effective May 11, 1983, to bring the rule into conformity with new Section 14(a) of the Act. In so doing, the Commission also is stating its interpretation concerning the class of persons who may be sued in reparations on and after the effective date of the amendment to Section 14(a). The Commission also has determined to amend § 12.1 of the Rules Relating to Reparation Proceedings to make clear that the balance of the reparations rules will continue to apply to proceedings pending on May 11, 1983, or instituted thereafter, until the Commission revises those rules with

new rules of procedure promulgated pursuant to new Section 14(b) of the Act. Although the Amendments to Reparation Rules 12.1 and 12.21 become effective on May 11, 1983, the Commission nevertheless invites public comment on these amendments and the matters discussed herein.

DATE: Interim rules are effective on May 11, 1983; comments must be received on or before July 15, 1983.

ADDRESS: Interested persons should submit comments to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention of the Secretariat. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Raisler, Acting General Counsel, or Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 2254-9880.

SUPPLEMENTARY INFORMATION:**I. Background**

Prior to the enactment of the Futures Trading Act of 1982,¹ Section 14(a) of the Commodity Exchange Act provided: "Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered or required to be registered under * * * this Act may, at any time within two years after the cause of action accrues, apply to the Commission * * * [for an award]." (Emphasis added.) Thus, prior to the 1982 amendments, Section 14(a) permitted reparations claims to be filed against registrants as well as persons who, although not registered under the Act, had engaged in activities requiring them to be registered. Recognizing that "unregistered firms and individuals often file in bankruptcy, are destitute, or have disappeared by the time a claim is asserted, resulting in uncollectible reparations awards," and that claims against such persons "delay the entire reparations process," H.R. Rep. No. 565, 97th Cong., 2d Sess. 56 (1982), see also S. Rep. No. 384, 97th Cong., 2d Sess. 48 (1982), Congress, in its amendments to Section 14(a), omitted the phrase "or required to be registered" in order to limit reparations complaints to those concerning violations committed by persons registered under the Act.

Because § 12.21 of the Commission's existing Reparation Rules, 17 CFR 12.21, currently permits reparations claims to be filed for violations committed against

both registrants and those "required to be registered," that rule must be revised to conform with amended Section 14(a) of the Act, which becomes effective on May 11, 1983. Accordingly, the Commission has determined to adopt an amendment to § 12.21, which omits any reference to persons "required to be registered" in defining the class of persons against whom reparation claims may be filed.²

Section 14(a) of the Commodity Exchange Act, as amended by Section 231 of the Futures Trading Act of 1982, provides:

Any person complaining of any violation of any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.

Although it is clear that on May 11, 1983 claims may be filed in reparations only alleging violations of the Act or Commission's rules committed by registrants, a question has arisen whether the registered status of a person against whom a claim is filed must exist at the time the violation occurs, or at the time when the complaint is filed. The Commission interprets Section 14(a) as creating a cause of action whenever there has been a "violation of any provision of this Act * * * by any person who is registered," causing loss to another person. Accordingly, the critical inquiry will be whether the person against whom the reparation claim is filed was registered at the time of the alleged violation.

In practical terms, as long as a complainant has alleged a violation of the Act, or Commission regulation or order, committed by a person who was registered at the time of the violation, the Commission will regard such person as a "person who is registered" within the meaning of Section 14(a) of the Act. Accordingly, the Commission may exercise its reparations jurisdiction over that person as to any claim filed against him within two years after the cause of action accrues, even though, for example, the alleged violator may have permitted his registration to lapse before the claim is filed.³

¹ The Commission has also determined to delete from Section 12.21 references to the different classes of commodity professionals who are subject to registration requirements as well as the provisions of law under which they are required to register. This change is consistent with the language of amended Section 14(a) of the Act which no longer contains references to specific categories of registrants.

² Conversely, the Commission normally will not exercise its reparations jurisdiction over a person

³ Pub. L. No. 97-444, 98 Stat. 2294 [January 11, 1983].

Under Section 4m of the Act, 7 U.S.C. 6m, certain dealers, processors, brokers, or sellers in cash market transactions in agricultural commodities and non-profit general farm organizations who provide advice on agricultural commodities are exempt from having to register as a commodity trading advisor. Nevertheless Section 4m provides that such persons are subject to proceedings in reparations. Nothing in the 1982 amendments has affected this provision of the Act. Thus, after May 11, 1983, the Commission will continue to hear reparations claims filed against persons who, at the time of the violation, were exempt from registration pursuant to Section 4m of the Act. Section 12.21 has been modified to make this clear.

Finally, Section 14(b) of the Act, as amended, authorizes the Commission to "promulgate such rules, regulations and orders as it deems necessary or appropriate for the effective and expeditious administration of * * *

[Section 14]." Section 14(b) continues: [n]otwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

On February 15, 1983, the Commission published in the *Federal Register* advance notice of proposed rulemaking concerning rules to be promulgated pursuant to Section 14(b). 48 FR 6720. Although the Commission expects to publish notice of proposed rules in the near future, the new rules will not be ready for final adoption on May 11, 1983. Accordingly, the Commission has determined to amend § 12.1 of the Reparation Rules to provide that these rules shall continue to be applicable to reparation proceedings pending on May 11, 1983, or commenced thereafter, until the Commission adopts its new rules.

II. Basis for Emergency Adoption of Interim Regulations

The Administrative Procedure Act, 5 U.S.C. 553, generally provides that a notice of proposed rulemaking must be published in the *Federal Register* and that an opportunity for comment be afforded to the public when an agency proposes new regulations. However, the notice and comment requirements do

not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. The Commission's interpretation concerning the class of registered persons who may be sued in reparations after the effective date of amended Section 14(a) of the Act, see Part I above, even if considered to be a "rule" within the purview of the Administrative Procedure Act, is wholly "interpretative" in nature, and thus, not subject to section 553's notice and comment requirements. Moreover, the Commission's amendments to §§ 12.1 and 12.21 of the Rules Relating to Reparation Proceedings are related solely to agency organization, procedure or practice. Nevertheless, the Commission invites public comment on the amendments and any matters discussed herein. Such comments must be received by the office of the Secretariat by July 15, 1983.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁴ requires that agencies, in proposing rules, consider their impact on small businesses. Section 3(a) of the RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public comment." As the amendments to §§ 12.1 and 12.21 announced in this Release have not been effected pursuant to 5 U.S.C. 553(b), they are not "rules" as defined in the RFA and the analysis or certification specified in that Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—[AMENDED]

In consideration of the foregoing, and pursuant to sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(j) and 12a(5), the Commission hereby amends Chapter 12 of Title 17 of the Code of Federal Regulations by revising §§ 12.1 and 12.21 as follows:

1. Section 12.1 of the Reparation Rules is revised to read as follows:

§ 12.1 Scope and applicability of rules of practice relating to reparation proceedings.

These rules of practice are applicable to reparation proceedings pursuant to section 14 of the Commodity Exchange

Act, as amended, 7 U.S.C. 18. The rules in this part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties to the proceedings envisioned by the Commodity Exchange Act, as amended. These rules shall continue to apply to reparation proceedings pending on May 11, 1983, and to all proceedings commenced thereafter until further rule, regulation or order of the Commission.

2. The introductory paragraph of § 12.21 of the Reparation Rules is revised to read as follows:

§ 12.21 Complaint.

Any person complaining of any violation of any provision of the Act or any rule, regulation, or order thereunder by any person who is registered with the Commission under the Act or who is exempt from registration as a commodity trading advisor by virtue of the second sentence of Section 4m of the Act, may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by petitioning the Commission to determine the amount of damage, if any, to which the complainant is entitled as a result of the violation and to issue an order directing the offender to pay that amount to the complainant on or before a date fixed by the order. Provided that no such application shall be considered with respect to claims that arise prior to January 23, 1975.

Issued in Washington, D.C. on May 11, 1983 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-13089 Filed 5-13-83; 9:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits; Lump-Sum Death Payment Changes, Changes in Month Benefits Begin, Termination of Mother's and Father's Benefits When Child Attains Age 16, Change in Benefits to Students

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement sections 2202, 2203, 2205 and 2210 of

who, although not registered at the time when the violation occurred, later does become registered, and is registered at the time a complaint is filed.

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980), 5 U.S.C. 801 *et seq.*

⁵ 5 U.S.C. 601(2).

Pub. L. 97-35. These provisions: (1) Eliminate payment of the lump-sum death payment on the basis of the payment of burial expenses; (2) Change the first month of entitlement for a retired worker under age 65, the spouse, under age 65, of a retired or disabled worker, and certain children to the first month throughout which they each meet the requirements for entitlement; (3) Terminate mother's and father's benefits and wife's and husband's benefits based on child "in-care" when the child becomes 16 years of age; and (4) Pay benefits to students in elementary and secondary schools to age 19, phase out benefits to certain students age 18 or over attending post-secondary schools, and end payment of benefits to all other students age 18 or over attending post-secondary schools after July 1982.

DATES: These rules are effective May 16, 1983, but the statutory changes which the regulations reflect are generally effective on earlier dates.

FOR FURTHER INFORMATION CONTACT:

Dave Smith, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7336.

SUPPLEMENTARY INFORMATION:

Lump-Sum Death Payment Changes

The amendments to the regulations implement section 2202 of Pub. L. 97-35 by changing the manner in which lump-sum death payments are made effective with respect to deaths after August 1981. Under the new provision, such payments are only payable to certain surviving relatives of the deceased. Burial expenses are no longer a factor in determining entitlement to the lump-sum death payment. Where death occurs after August 1981, the lump-sum death payment will be made to the widow or widower of the deceased who was living in the same household as the deceased at the time of death. If no such person survives, payment will be made to the widow or widower who is entitled (or would have been entitled had a timely application been filed) to monthly benefits on the work record of the deceased for the month of death. Persons entitled to divorced spouse's benefits do not qualify. If no such widow or widower survives, the payment will be made to the surviving children who are entitled (or would have been entitled had a timely application been filed) to benefits on the work record of the deceased for the month of death. If no such spouse or child survives the worker, no lump-sum death payment will be made.

Changes in Month Benefits Begin

The amendments to the regulations implement section 2203 of Pub. L. 97-35. The amendments affect the first month of entitlement for a person filing for retirement or spouse's benefits who becomes age 62 after August 1981. The person must be age 62 for a full month or, in the case of a spouse under age 62, must have a child "in-care" throughout a full month.

Thus, an individual born on the first or second day of the month (attainment of age 62 on the last day of the preceding month or the first day of the current month) could be entitled to benefits for the month of his or her 62nd birthday. Birth on any other day of the month would preclude entitlement for the month in which the birthday occurs since the individual would not be age 62 for the entire month. Similarly, a spouse filing to receive benefits on the basis of having an entitled child "in-care" cannot be first entitled for a month unless a child was "in-care" for every day of that first month.

Effective September 1981, a claimant for child's monthly benefits based on the earnings of a living worker can become entitled effective only with the first full month throughout which he or she meets all the requirements. Thus, a child must have the appropriate relationship to the worker, be dependent on the worker, be unmarried, be under age 18 or age 18 or over and a student, or be disabled throughout the entire month to be entitled for that month. There are some exceptions to this provision relating to students, stepchildren, grandchildren, stepgrandchildren, and certain deemed children.

Termination of Certain Benefits When Child Attains Age Sixteen

The amendments to the regulations implement section 2205 of Pub. L. 97-35. Under this provision, entitlement to wife's and husband's benefits based on child "in-care" and to mother's and father's benefits will terminate when the child "in-care" becomes 16 years of age, unless the child is disabled. Under the previous law, these benefits were terminated when the child became age 18, unless the child was disabled. For a person entitled to these benefits for August 1981, there is a grace period which ends when the child becomes age 18, or in September 1983, whichever comes first. For all other persons the provision is effective immediately.

Changes in Benefits to Students

The amendments to the regulations implement section 2210 of Pub. L. 97-35. Under this provision, benefits terminate

at age 19 to a child who attends an elementary or secondary school, effective with benefits payable for the month of August 1982. A student who first became entitled to a child's benefit after August 1981 and who was in full-time attendance at a post-secondary school by July 1982 can receive benefits from age 18 through age 21 but only for months before August 1982. A student who was entitled to a child's benefit for August 1981 and was in full-time attendance at a post-secondary school before May 1982 can receive benefits from age 18 through age 21, but those benefits will be gradually reduced and phased out. Under the "phase out" provision, no benefits are payable for May through August beginning in 1982. After August 1981, benefits are figured without regard to changes in the cost-of-living. Benefits for September 1982 through April 1983 will be reduced by 25 percent; benefits for September 1983 through April 1984 will be reduced by 50 percent; benefits for September 1984 through April 1985 will be reduced by 75 percent; and no benefits will be payable for months after April 1985.

We have also made a minor technical change in § 404.346(b) to indicate that a spouse by a deemed marriage may qualify for benefits if the legal spouse loses his or her status as such under State law. The current regulation does not clearly state this provision which is in section 216(h)(1)(B)(i) of the Social Security Act.

Minor technical changes were also made in §§ 404.315(a) and 404.320(b)(2) to correct cross-references.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received eight comments from seven sources. A single response follows the listing of the following five comments.

Comment: Although the parent's benefits stop when the child reaches the age of 16, the parents have a legal responsibility to the minor until the child reaches the age of 18. The Social Security benefits should continue to be paid to the parents until the child reaches the age of 18. Continuation of parent's benefits would enable the parent to continue to fulfill his or her duties as a full-time homemaker.

Comment: The phase out of Social Security benefits to students attending post-secondary schools has a dramatic impact on the number of students applying for financial aid. This is aggravated by the Federal reduction in the amount of funds available to

institutions to award to needy students seeking to develop employable skills.

Comment: The phase out of Social Security benefits to students attending post-secondary institution is the calloused act of an insensitive Federal agency in dealing with the poorest element of our society.

Comment: Many children of disabled and deceased parents have been able to obtain a post-secondary education because they were eligible for student benefits. The Social Security Administration should not terminate these benefits when a child reaches the age of 18. The benefits should remain the same as the former program or at least the Administration should extend child's benefits to full-time (post-secondary) students to age 19 to give students a chance to get a start on their education.

Comment: A commenter objected to the "reduction" of the lump-sum death payment as being unfair.

Response: The regulations objected to by the foregoing comments merely apply provisions mandated by Pub. L. 97-35. The regulations do not grant or deny rights or do not impose obligations which do not already exist in the statute; hence, they may not be changed without legislation.

Comment: Three commenters reflected a misunderstanding as to the circumstances under which adult children may receive the lump-sum death payment under the new provisions.

Response: Under the statute, surviving children may receive the lump-sum death payment only if no widow or widower qualifies for the payment and only if such surviving children were eligible for benefits, (as a child, disabled adult child, or student) on the work record of the deceased worker for the month of his or her death.

Regulatory Procedures

Economic Impact: (Executive Order 12291 and Regulatory Flexibility Act)

These regulations merely conform the existing rules to the changes legislated by Pub. L. 97-35. Although the law created substantial changes in the structure of certain benefits in the Old-Age, Survivors and Disability Insurance program, the resulting impact was solely the result of legislation and is in place and effective regardless of regulatory action on our part. Therefore, these regulations do not "result in" a cost impact of \$100 million or more or otherwise trigger the criteria for a major rule established in Executive Order 12291.

Similarly, although these changes may adversely affect some small entities, such as funeral homes and educational institutions, such impact is not the result of these regulations. Therefore, we certify that promulgation of these regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis as provided in Pub. L. 96-354. The Regulatory Flexibility Act, is not required.

Paperwork Reduction Act—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

These amendments are issued under the authority contained in sections 202, 205, 216, and 1102 of the Social Security Act, as amended; Secs. 2202, 2203, 2205 and 2210 of Pub. L. 97-35; 49 Stat. 623, as amended; 53 Stat. 1362, as amended; 49 Stat. 647, as amended; 64 Stat. 510, as amended; 42 U.S.C. 402, 405, 416, and 1302. These amendments are hereby adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, Survivors, and Disability Insurance.

Dated: February 23, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE (1950—)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.311 is revised to read as follows:

§ 404.311 When entitlement to old-age benefits begins and ends.

(a) You are entitled to old-age benefits at age 65 beginning with the first month covered by your application in which you meet all the requirements for entitlement.

(b) You are entitled to old-age benefits if you have attained age 62, but are under age 65, beginning with the first month covered by your application throughout which you meet all the requirements for entitlement.

(c) Your entitlement to benefits ends with the month before the month of your death.

2. Section 404.330 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 404.330 Who is entitled to wife's or husband's benefits.

You are entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits if—

(a) * * *

(1) Your relationship to the insured as a wife or husband has lasted at least 1 year. (You will be considered to meet the one year duration requirement throughout the month in which the first anniversary of the marriage occurs.)

(c) You are age 62 or older throughout a month and you meet all other conditions of entitlement, or you are the insured's wife or husband and have "in your care" (as defined in §§ 404.348-404.349), throughout a month in which all other conditions of entitlement are met, a child who is entitled to child's benefits on the insured's earnings record and the child is either under age 16 or disabled; and

3. Section 404.331 is amended by revising paragraphs (c) and (d) to read as follows:

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

(c) You are not married. (For purposes of meeting this requirement, you will be considered not to be married throughout the month in which the divorce occurred).

(d) You are age 62 or older throughout a month in which all other conditions of entitlement are met; and

4. Section 404.332 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (c) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application throughout which you meet all the other requirements for entitlement under § 404.330 or § 404.331.

(b) * * *

(4) If you are under 62 years old, the child who was in your care becomes age 16 (unless disabled) or is otherwise no longer entitled to child's benefits. (See paragraph (c) of this section if you were entitled to wife's or husband's benefits

for August 1981 on the basis of having a child in care.)

(c) If you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b)(1), (2), (3), (5), (6) or (7) of this section occurs, whichever is earliest.

5. Section 404.339 is amended by revising paragraph (e) to read as follows:

§ 404.339 Who is entitled to mother's or father's benefits.

(e) You have "in your care" the insured's child who is entitled to child's benefits and he or she is under 16 years old or is disabled. Sections 404.348 and 404.349 described when a child is "in your care."

6. Section 404.340 is amended by revising paragraph (e) to read as follows:

§ 404.340 Who is entitled to mother's or father's benefits as a surviving divorced spouse.

(e) You have "in your care" the insured's child who is under age 16 or disabled, is your natural or adopted child, and is entitled to child's benefits on the insured person's record. Sections 404.348 and 404.349 describe when a child is "in your care."

7. Section 404.341 is amended by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 404.341 When mother's and father's benefits begin and end.

(b) * * *

(2) The child "in your care" becomes age 16 and not disabled or is otherwise no longer entitled to child's benefits. (See paragraph (c) of this section if you were entitled to mother's or father's benefits for August 1981.)

(c) If you were entitled to spouse's benefits on the basis of having a child in care, or to mother's or father's benefits for August 1981, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b)(1), (3), (4) or (5) of this section occurs, whichever is earliest.

8. Section 404.346 is amended by revising paragraph (b) to read as follows:

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. You may not be entitled to benefits as the result of a deemed valid marriage if at the time you apply, another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured and this person is a wife, husband, widow, or widower under State law as explained in § 404.345. If this person loses his or her status as a wife, husband, widow or widower under State law you may become entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, your entitlement will end with the month before the month in which this determination is made.

9. Section 404.348 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 404.348 When a child living with you is "in your care."

(b) The child is 16 years old or older and not disabled;

(c) The child is 16 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decisions about his or her needs, either alone or with help from your spouse; or

(d) The child is 16 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are services such as dressing, feeding, and managing money that the child cannot do alone because of a disability.

10. Section 404.349 is amended by revising the material in paragraph (a)(2) preceding paragraph (a)(2)(i), and paragraphs (a)(3) and (b)(4) to read as follows:

§ 404.349 When a child living apart from you is "in your care."

(a) * * *

(2) The child is under 16 years old, you supervise his or her activities and make important decisions about his or her

needs, and one of the following circumstances exist:

(3) The child is 16 years old or older, is mentally disabled, and you supervise his or her activities, make important decisions about his or her needs and help in his or her upbringing and development.

(b) * * *

(4) The child is 16 years old or older, is mentally competent, and either has been living apart from you for 6 months or more or begins living apart from you and is expected to be away for more than 6 months:

11. Section 404.350 is amended by revising paragraph (e) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(e) You are under age 18, you are 18 years old or older and have a disability that began before you became 22 years old, or you are 18 years old or older and qualify for benefits as a full-time student as described in § 404.367 or § 404.369.

12. Section 404.351 is amended by revising paragraph (a) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

(a) The first month in which you qualify as a full-time student. (See §§ 404.367 and 404.369.)

13. Section 404.352 is amended by revising paragraphs (a), the introductory text of (b) and (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

(a) *When benefits begin.* (1) If the insured is deceased, you are entitled to child's benefits beginning with the first month covered by your application in which you meet all other requirements for entitlement.

(2) If the insured is living, you are entitled to child's benefits beginning with the first month covered by your application:

(i) *Throughout* which you meet all the other requirements for entitlement if your first month of entitlement is September 1981 or later; or

(ii) *In* which you meet all the other requirements for entitlement if your first month of entitlement is before September 1981.

(b) *When benefits end.* Your entitlement to benefits ends with the

month before the month in which one of the following events first occurs:

(1) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, your entitlement ends, subject to the exception in paragraph (c) of this section, with the second month following the month in which your disability ends. If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you became age 19 (age 22 in certain situations described in § 404.369). If you become age 19 in a month in which you have not completed the requirements for, or received, a diploma or equivalent certificate from an elementary or secondary school, your entitlement will end with the month in which the quarter or semester in which you are enrolled ends if you are required to enroll for each quarter or semester. If the school you are attending does not have a quarter or semester system which requires reenrollment, your benefits will end with the month you complete the course or, if earlier, the first day of the third month following the month in which you become 19 years old.

§ 404.353 [Amended]

14. In § 404.353, the reference in the last sentence of paragraph (a) is changed from "§ 404.304" to §§ 404.304 and 404.369".

15. Section 404.355 is amended by revising paragraph (c) to read as follows:

§ 404.355 Who is the insured's natural child.

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court to contribute to your support because you are his child. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred if you are entitled on the earnings record of a retirement beneficiary.

16. Section 404.357 is revised to read as follows:

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after you birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a marriage which would be valid except for a "legal impediment" described in § 404.346(a). If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), you will be considered to meet the one year duration requirement throughout the month in which the anniversary of the marriage occurs. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under the conditions described in § 404.335(a)(2).

17. Section 404.358 is amended by revising paragraph (a) to read as follows:

§ 404.358 Who is the insured's grandchild or stepgrandchild.

(a) *Grandchild and stepgrandchild defined.* You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355-404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. If your parent is deceased, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), your parent will be considered to be deceased as of the first day of the month of death.

18. Section 404.366 is amended by revising the heading, revising paragraph (c), and adding paragraph (d) to read as follows:

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined—determining first month of entitlement.

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison. If "living with" is used to establish dependency for your eligibility to child's benefits and the date your application is filed is used for establishing the point for determining dependency, you must have been living with the insured throughout the month your application is filed in order to be entitled to benefits for that month.

(d) *Determining first month of entitlement.* In evaluating whether dependency is established under paragraphs (a), (b), or (c) of this section, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), we will not use the temporary separation or temporary interruption rules.

19. Section 404.367 is revised to read as follows:

§ 404.367 When you are a "full-time elementary or secondary school student".

Beginning August 1982 you may be eligible for child's benefits if you are a full-time elementary or secondary school student. You are a full-time elementary or secondary school student if you meet all the following conditions:

- (a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;
- (b) You are in full-time attendance in a day or evening non-correspondence course and are carrying a subject load which is considered full-time for day students under the institution's standards and practices, with scheduled attendance at the rate of at least 20 hours per week and a course of study which is at least 13 weeks in duration. For purposes of determining whether the conditions of entitlement are met

throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance;

(c) You are not being paid while attending the school by an employer who has requested or required that you attend the school; and

(d) You are in grade 12 or below.

20. Section 404.368 is revised to read as follows:

§ 404.368 When you are considered a full-time student during a period of nonattendance.

If you are a full-time student, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less;

(b) You show us that you intend to resume your studies as a full-time student at the end of the period or at the end of the period you are a full-time student; and

(c) The period of nonattendance is not due to your expulsion or suspension from the school.

21. A new § 404.369 is added to read as follows:

§ 404.369 Special rules for entitlement to child's benefits if you are a full-time student for months before August 1982.

(a) *Full-time student for months before August 1982.* You are a full-time student for purposes of benefits for months before August 1982 if:

(1) You are under age 22;

(2) You are attending an educational institution as defined in paragraph (b) of this section;

(3) You are enrolled in noncorrespondence courses and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you are enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full-time student in the month you graduate if you complete your course of study and stop carrying a full-time subject load in a month before the month preceding the month you graduate; and

(4) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the school.

(b) *Educational institution defined.* An educational institution is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, by any State or local government, or by a political subdivision of any State or local government;

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally recognized accrediting body. A nationally recognized accrediting body is one determined to be such by the U.S. Secretary of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution or approval of one or more of the courses offered by a school, college or university; or

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least 3 educational institutions that have been accredited by a State or nationally recognized accrediting body.

(c) *When benefits can be paid after July 1982 based on attendance at a school other than an elementary or secondary school.* If you meet the conditions for entitlement to student benefits for months before August 1982 as explained in paragraphs (a) and (b) of this section, but do not meet the conditions for entitlement beginning in August 1982 (see § 404.367), your benefits will end with July 1982 unless you meet the following requirements:

(1) You have attained age 18;

(2) You are not under a disability;

(3) You were entitled to child's benefits (as a child, student or disabled child) for August 1981; and

(4) You were in full-time attendance as described in paragraph (a)(3) of this section at a post-secondary school for any month before May 1982. (A post-secondary school is any school which meets the definition of an educational institution as defined in paragraph (b) of this section but is not an elementary or secondary school as defined in § 404.367(a).)

(d) *Limitations on payments for months after July 1982.* If you are entitled to child's benefits based on the requirements of paragraphs (a) and (c)

of this section, your benefit amount (prior to any reduction due to the family maximum or deduction on account of work) will be subject to the following limitations:

(1) You will receive no benefits for May through August beginning with calendar year 1982;

(2) Your benefit for September 1982 through April 1983 will be 75 percent of the benefit to which you were entitled for August 1981;

(3) Your benefit for September 1983 through April 1984 will be 50 percent of the benefit to which you were entitled for August 1981;

(4) Your benefit for September 1984 through April 1985 will be 25 percent of the benefit to which you were entitled for August 1981;

(5) You will receive no benefit for months after April 1985; and

(6) If your student benefits continue beyond July 1982 but later end for any reason, you may not become reentitled to student benefits.

§ 404.390 [Amended]

22. Section 404.390 is amended by changing the reference in the last sentence from "§ 404.392" to "§§ 404.392 and 404.393".

23. Section 404.391 is amended by revising the heading and introductory language to read as follows:

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower who was living in the same household.

You are entitled to the lump-sum death payment as a widow or widower who was living in the same household if—

24. Section 404.392 is redesignated as § 404.393, § 404.393 is redesignated as § 404.394, § 404.394 is redesignated as § 404.395, and a new § 404.392 is added to read as follows:

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs after August 1981.

(a) *General.* If the insured individual dies after August 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(1) To a person who is entitled (or would have been entitled had a timely application been filed) to widow's or widower's benefits (as described in § 404.335) or mother's or father's benefits (as described in § 404.339) on the work record of the deceased worker for the month of that worker's death; or

(2) If no person described in (1) survives, in equal shares to each person who is entitled (or would have been entitled had a timely application been filed) to child's benefits (as described in § 404.350) on the work record of the deceased worker for the month of that worker's death.

(b) *Application requirement.* A person who meets the requirements of paragraph (a)(1) of this section need not apply to receive the lump-sum death payment if, for the month prior to the death of the insured, that person was entitled to wife's or husband's benefits on the insured's earnings record. Otherwise, an application must be filed within 2 years of the insured's death.

25. The heading and introductory language of § 404.393 as redesignated are changed to read as follows:

§ 404.393 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs before September 1, 1981.

If the insured individual dies before September 1, 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

26. The reference in the first sentence of the text of § 404.394 as redesignated is changed from "§ 404.392" to "§ 404.393".

§ 404.315 [Amended]

27. Section 404.315(a) is amended by changing the reference from "§ 404.116" to "§ 404.130".

§ 404.320 [Amended]

28. Section 404.320(b)(2) is amended by changing the reference from "§ 404.116" to "§ 404.130".

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20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Withdrawal of Applications of Deceased Claimants

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration is amending its regulations on withdrawal of applications for benefits. The applications affected are those for old-age benefits that would be reduced

because of the worker's age. Currently, even if the worker dies before we take action to pay the first of the reduced old-age benefits for which he or she applied, the amount of the widow's or widower's benefits must be limited because the worker was technically entitled to reduced benefits. These regulations will remedy this by permitting the person eligible for widow's or widower's benefits based on the worker's earnings to withdraw the worker's application if the worker died before we certified his or her benefit entitlement to the Treasury Department for payment.

EFFECTIVE DATE: These regulations are effective on May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6629.

SUPPLEMENTARY INFORMATION:

Background

Our existing regulations permit one person, under certain conditions, to withdraw another person's application for social security benefits but only if the person whose application is being withdrawn is alive at the time the withdrawal request is filed.

This was a reasonable requirement until Congress amended the law to require limitation of the amount of widow's or widower's benefits if the worker was ever entitled to old-age benefits that were reduced because of his or her age (under 65). Since then there have been instances in which the worker died after applying for reduced benefits, and thus the widow's or widower's benefits were limited, even though the worker died before we certified his or her entitlement to the Treasury Department for payment of any benefits whatsoever. This is because the worker is technically "entitled" to benefits as soon as he or she meets all the requirements for benefits which includes filing an application for those benefits.

We do not believe it was the intent of Congress to limit the widow's or widower's benefit amount where the worker met the technical requirements for entitlement, including the filing of an application, but then died before we actually certified his or her entitlement to the Treasury Department for payment.

New Regulations

There is no statutory provision governing withdrawal of an application for benefits. Accordingly, it is left wholly to the discretion of the Secretary

of Health and Human Services to establish criteria for a valid withdrawal of an application. Since under the current law and regulation the worker's entitlement to reduced retirement benefits, regardless of whether actually paid to the worker, will permanently limit the benefit amount payable to the widow or widower, these regulations allow the withdrawal of the application after the worker's death, but only if the worker died before we certified the worker's entitlement to the Treasury Department for payment. The withdrawal may be accomplished by the person eligible for widow's or widower's benefits or by someone else on the widow's or widower's behalf, but requires the consent of any other individual who would lose benefits as a result of the withdrawal.

Public Comments

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rule Making in the Federal Register on September 28, 1982 (47 FR 42587). The public was invited to submit comments pertaining to the proposed amendment within a period of 60 days from the date of publication of the notice. The comment period closed on November 27, 1982. There were no comments received during the comment period.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required. We estimate that by the end of the fifth year from the time that this regulation is first implemented, the Federal cost for the payment of the full amount of benefits to survivors affected by the regulation would be approximately \$3 million. Any resulting administrative costs would be negligible.

Paperwork Reduction Act—These regulations impose no new reporting/recordkeeping requirements requiring OMB clearance. Our form SSA-521, Request for Withdrawal of Application, has OMB approval under control number 0960-0015.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis is