PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Reform, AL [New]

North Pickens Airport
(Lat. 33&°23′20″ N, long. 88°00′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of North Pickens Airport.

* * * * *

Issued in College Park, Georgia, on October 11, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–26924 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA 2001–10527, Airspace Docket No. 01–ASW–10]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–4403; Gainesville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area 4403 (R–4403), Gainesville, MS, from ''Continuous,'' to ''Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance.'' The FAA is taking this action in response to a request from the National Aeronautics and Space Administration (NASA) which is the designated using agency for R–4403.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area activity, NASA has requested the FAA to reduce the time of operation for R–4403 to more accurately reflect actual requirements for the airspace. This change reduces the burden on the flying public. This action does not alter the boundaries, designated altitudes, or type of activities conducted within the restricted area.

The Rule

This amendment to 14 CFR part 73 changes the time of designation for R–4403, Gainesville, MS, from ''continuous'' to ''Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance.'' The FAA is taking this action in response to written notification from the using agency that a reduction in the time of designation for the restricted area is appropriate.

Since this change reduces the burden on the flying public by reducing the amount of time that R–4403 is activated, and because this action does not affect the boundaries, designated altitudes, or activities conducted therein; I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Environmental Review

In accordance with FAA Order 1050.1D, ''Policies and Procedures for Handling Environmental Impacts,'' and the National Environmental Policy Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.44 [Amended]

2. § 73.44 is amended as follows:

* * * * *

R–4403 Gainesville, MS [Amended]

By removing ''Time of Designation. Continuous.'' and inserting ''Time of Designation. Intermittent, 0600–2300 local time daily; other times by NOTAM 24 hours in advance.''

* * * * *

Issued in Washington, DC, on October 18, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–26919 Filed 10–24–01; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR 1700

Household Products Containing Hydrocarbons; Final Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rules.

SUMMARY: These rules, promulgated under authority of the Poison Prevention Packaging Act (PPPA), require child-resistant (CR) packaging for certain products that contain low-viscosity hydrocarbons. (The Commission voted 3–0 to issue this final rule. The statements of Chairman Brown and Commissioners Gall and Moore concerning the vote are available from the CPSC Office of the Secretary.) This requirement is intended to protect children under five years of age from serious injury associated with aspiration of hydrocarbon products. The requirement applies to certain prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain ten (10) percent or more hydrocarbons by weight and have a viscosity of less than one hundred (100) Saybolt Universal Seconds (SUS) at 100 °F (covered products). For purposes of these rules, hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For a product that contains multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

DATES: These rules become effective October 25, 2002, and apply to covered products packaged on or after that date.

ADDRESSES: Copies of documents relevant to this rulemaking can be

requested from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, (301) 504–0800, e-mail *cpsc-os@cpsc.gov,* or in person at Room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Geri Smith, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608, ext. 1160.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476, authorizes the U.S. Consumer Product Safety Commission (CPSC or Commission) to require child-resistant (CR) packaging of hazardous household substances in appropriate cases. These rules require CR packaging for certain low-viscosity hydrocarbon products.

Direct aspiration into the lung, or aspiration during vomiting, of small amounts of petroleum distillates and other similar hydrocarbon solvents can result in chemical pneumonia, pulmonary damage, and death. These chemicals are the primary ingredients in a multitude of consumer products to which children have access.

The viscosity of a hydrocarbon-containing product contributes to its potential toxicity. Viscosity is the measurement of the ability of a liquid to flow. Liquids with high viscosities are thick or ''syrupy.'' Liquids with low viscosities are more ''watery.'' Products with low viscosity pose a greater risk of aspiration into the lungs.

Under regulations issued pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, the CPSC regulates the labeling of hazardous household substances containing 10 percent or more by weight of petroleum distillate hydrocarbons because these products may cause injury or illness if ingested. 16 CFR 1500.14. The PPPA regulations in effect as of this date also require child-resistant packaging for certain household products containing petroleum distillates. 16 CFR 1700.14. Under these regulations, the specified consumer products containing 10 percent or more by weight of petroleum distillates, and having viscosities less than 100 Saybolt Universal Seconds (SUS) at 100 °F, are subject to child-resistant packaging standards. These PPPA-regulated products include prepackaged liquid kindling and illuminating preparations (*e.g.,* lighter fluid) (16 CFR 1700.14(a)(7)), prepackaged solvents for paint or other similar surface-coating materials (*e.g.,* paint thinners)(16 CFR 1700.14(a)(15)), and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)).

Because hydrocarbons are not now regulated as a chemical class under the PPPA, many other hydrocarbon-based consumer products are not required to be in child-resistant packaging. Cleaning solvents, automotive chemicals, shoe-care products, and cosmetics may contain large amounts of various hydrocarbons and are not required to be in child-resistant packaging. For example, an existing child-resistant packaging standard requires child-resistant packaging of prepackaged kerosene for use as lamp fuel.

However, a gun cleaning solvent that contains over 90 percent kerosene does not have to meet this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, but spot removers containing 75 percent mineral spirits, and water repellents containing 95 percent mineral spirits, do not.

On January 3, 2000, the CPSC issued a Notice of Proposed Rulemaking (NPR) proposing CR packaging requirements for consumer products that contain hydrocarbons of low viscosity. 65 FR 93.

The Commission proposed two discrete rules, one for products regulated under the FHSA and the other for products regulated under the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 301–397. The proposed rules would require CR packaging of prepackaged nonemulsion-type liquid household chemical products or drugs and cosmetics that contain 10 percent or more hydrocarbons [1] by weight and have a viscosity of less than 100 SUS at 100 °F. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

The NPR outlined several packaging types that would be exempted from the rules. These included products packaged in aerosol cans, and mechanical pumps or trigger sprayers, provided the aerosol, mechanical pump, or trigger sprayer expelled the product as a mist. For mechanical pumps and trigger sprayers, the spray mechanism would be required to be permanently attached to the bottle or have a CR attachment. However, if the mechanical pump or trigger sprayer expelled product as a stream (either solely or as an option), the entire package including the pump mechanism would have been required to be CR. Aerosol products that formed a stream by the addition of an extension tube inserted into the nozzle would have been excluded from the packaging requirements if, without the extension tube, the product would be expelled as a mist.

Writing markers and ballpoint pens are exempted from full cautionary labeling requirements under the FHSA relating to ingestion toxicity if they meet certain specifications prescribed by regulation. 16 CFR 1500.83. The Commission proposed that these products also be exempted from CR packaging requirements. In addition, the NPR proposed that cosmetics and other household substances, such as battery terminal cleaners, paint markers, and make-up removal pads, that do not have product free flowing from the packaging, be excluded from the CR packaging requirements, even if they contained 10 percent or more hydrocarbons by weight and have a viscosity under 100 SUS.

The NPR was sent to 375 trade associations and businesses believed to be involved with hydrocarbon-containing products. Seven individuals and groups submitted comments. Most of the comments focused on which products should be subject to the rules. Many of them reiterated comments that were previously submitted in response to the advance notice of proposed rulemaking (ANPR) and addressed in the NPR.

Several commenters requested a test method to define ''stream'' for aerosol and pump and trigger spray products. Aerosols and the discharge from pump and trigger spray mechanisms are not subject to the final rules being issued today. The CPSC expects to address the ''stream'' vs. ''mist'' issue in a subsequent proceeding.

At the Commission meeting on December 3, 1999, Commissioner Gall requested that the CPSC staff develop a plan for the collection of additional data related to ingestion incidents involving mineral oil-based cosmetics. To this end, the Commission approved the purchase from the American Association of Poison Control Centers (AAPCC) of additional information on exposures to mineral oil-based cosmetics. These data were evaluated by the CPSC staff. In an April 11, 2001 supplemental **Federal Register** notice of data availability, the Commission provided an opportunity for the public to comment on this information. 66 FR 18738. The comment period, which was extended at the request of the Cosmetic, Toiletry, and Fragrance Association (CTFA), ended on June 11, 2001. Four

[1] Hydrocarbons are defined for purposes of these rules as compounds that consist solely of carbon and hydrogen.

comments were received in response to the notice.

The comments on the NPR and the additional data, the CPSC's responses, the scope of these final rules, and the Commission findings required under the PPPA for issuance of the rules, are discussed below.

B. Response to Comments on the NPR

1. Mechanical Pumps and Trigger Sprayers

Comment: One commenter (CP00–1–6) requested that the language of the proposed provision that would exempt pump-or trigger-actuated sprays that form a mist be modified to state clearly that the exemption is only available for pump/trigger sprays that have the pumping unit permanently affixed to the product container.

Response: The exemption provision proposed in the NPR read, ''Products in packages in which the only non-CR access to the contents is by a spray device (*e.g.* aerosols or pump-or trigger-actuated sprays) that expels the product solely as a mist.'' The phrase ''the only non-child-resistant access to the contents is by a spray device'' implicitly requires that the trigger or pump have either a permanent or a CR attachment to the package.

The final rules being issued today do not cover aerosols or pump or trigger spray mechanisms. However, irrespective of the absence from the final rules of a requirement for the aerosol or pump/trigger spray mechanism itself to be child-resistant, products in trigger or pump sprayers that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F must still have either a CR or permanent attachment to the product container. The language of the final rules clarifies this requirement.

Comment: One commenter (CP00–1–4) suggested that senior testing should not be required for assessing the removability of a trigger sprayer from the product container because a senior does not need to remove the trigger mechanism to use the product.

Response: Mechanical pumps and trigger sprayers have two routes of access to the package contents—via the spray mechanism and via the attachment of the spray mechanism to the product container. Companies have two options concerning the attachment of the sprayer to the container. The sprayer can be either permanently attached or have a CR attachment. A CR attachment is required if the container is refillable.

The senior test protocol at 16 CFR 1700.20 directs that the senior adults on the test panel open and close the packaging properly according to the instructions found on the package. If the instructions for use are to operate the trigger, this feature should be tested (for a product where the trigger mechanism is required to be child-resistant). If no instructions are found, activation of the trigger would still be considered the ''normal usage'' of the package. This approach is consistent with the commenter's view. However, if the trigger mechanism itself is removable, manufacturers would need to test to see if senior adults could remove and properly replace the trigger sprayer mechanism onto the product container.

2. Single-Use Products

Comment: A comment (CP00–1–1) was received requesting that products intended for ''total package use'' not require CR packaging. The commenter supported the addition of a labeling statement, and provided as an example, ''Add entire contents to gasoline tank.''

Response: This comment was addressed previously in the preamble of the NPR. CPSC reiterates that any regulated product that is intended to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for the first opening, since regulations require that the CR packaging be effective for the life of the product. However, for example, an automotive additive would not necessarily be a ''single-use-product'' if only a portion of the contents were to be added to certain engine sizes.

Comment: Two commenters (CP00–1–4, 5) requested that language be added to the rules to address single-use products. They suggested, ''Any regulated product that is intended and likely to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for only the first opening.''

Response: Additional language is not necessary in the rules to address CR packaging of single-use-products. The regulation clearly states that special packaging must continue to function for the number of openings and closings customary for its size and contents. 16 CFR 1700.15(a). One opening would be customary for a single-use product.

3. Turpentine

Comment: One commenter (CP00–1–7) requested that the CR packaging requirement of the proposed rules be applied to turpentine with a viscosity level of less than 100 SUS at 100° F in addition to hydrocarbons.

Response: While turpentine presents an aspiration hazard, turpentine is also readily absorbed following ingestion and systemic toxicity can result. The systemic toxicity associated with turpentine is different from the hazards of many hydrocarbons which have low systemic toxicity but a significant risk of chemical pneumonitis following aspiration. Turpentine, if ingested, is hazardous regardless of the viscosity. Liquid household products that contain 10 percent or more turpentine by weight now require CR packaging. 16 CFR 1700.14(a)(6). These final rules do not amend or supersede the turpentine CR packaging regulation, which remains applicable without regard to the viscosity of the turpentine product.

4. Writing Instruments

Comment: One commenter (CP00–1–7) stated a concern that if a marker contained a substance newly covered by these final rules that was not exempted from FHSA labeling, the marker would require CR packaging.

Response: In the NPR, the Commission proposed an exemption from CR packaging for hydrocarbon-containing writing implements exempted from the FHSA labeling requirements. 16 CFR 1500.83. In addition, the Commission proposed to exempt products from which the liquid could not flow freely. This would include paint markers or other such products not exempted from the FHSA labeling regulations. Therefore, under the rules as proposed, if a marker contained a ''hydrocarbon'' not specifically exempted from the FHSA labeling requirements, it would still not require CR packaging if the hydrocarbon did not freely flow from the implement. However, the proposed exemption would not extend to substances beyond ''hydrocarbons'' as defined in the proposed rule. The final rules issued today adopt these exemption provisions.

5. Effective Date

Comment: Two commenters (CP–00–1–4, 5) stated that an effective date of at least one year was appropriate. The commenters requested that the Commission incorporate a procedure for companies to apply for a temporary stay of enforcement as was done previously in the CPSC rulemaking to revise the CR packaging protocol test methods. 60 FR 37710.

Response: The Commission believes that one year is sufficient for manufacturers to adopt CR packaging for hydrocarbon-containing products. The commenter provided no specific information that would demonstrate the need for additional time. The

Commission is not including a special procedure for the submission of requests for stays of enforcement as was done in the previous CPSC rulemaking to revise the CR packaging protocol test methods. The large volume of products affected by that rule, the technical difficulties involved with changing many different closure types, and the availability of a large supply of CR closures justified the incorporation of a special procedure. This rulemaking does not involve those considerations. However, a company can request a stay of enforcement from the Commission or enforcement discretion from the CPSC Office of Compliance at any time on a case by case basis.

Comment: One commenter (CP00–1–2) requested that the effective date take into account the schedule for the development and marketing of suntan products, which have a long lead-time. In addition, the commenter stated that products not sold in one season may be held until the next year's season.

Response: The PPPA requires that no standard take effect later than one year from the date a rule is issued. 15 U.S.C. 1471n. However, the standard applies only to products packaged on or after the effective date. Therefore, suntan products packaged before the effective date but sold thereafter are not subject to the rules. According to the commenter, the timing of bringing products to market is over a year. However, the schedule from product development to packaging described in the commenter's submission is less than one year. (Product lines are decided by December and production of those lines begins in August of the following year.) The one-year effective date thus allows ample time for suntan products subject to these final rules to comply with the CR packaging requirement.

6. Additional Data on Mineral Oil-Based Cosmetics

The following comments were received in response to the **Federal Register** notice providing a public comment period on the CPSC staff analysis of the additional brand name data purchased from the AAPCC on exposures to mineral oil-based cosmetics. 66 FR 18738–40 (April 11, 2001). Also, two commenters submitted comments about aerosol products. Since, as was stated previously, the final rules issued today do not apply to aerosols, these comments are not addressed here.

Comment: One commenter (CP–01–3–1) stated that it was important that the CPSC identify all cosmetic products that would meet the criteria for requiring CR packaging.

Response: Applicability of the proposed rules is based on the physical and chemical characteristics of the product, not its product category. That is, any product that contains 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F is required to be in CR packaging, unless otherwise exempted. The purpose of the rules promulgated today is to protect children from exposure to any product that contains low viscosity hydrocarbons that have the potential for serious injury. The CPSC staff solicited information about products and categories of products that might be subject to the rules to assess their scope and to determine if CR packaging is available or can be developed for those types of products. Under these final rules, it is the responsibility of the packager of a product exhibiting the specified physical and chemical characteristics to comply. What category the product type happens to fall within is irrelevant.

Comment: One commenter (CP–01–3–4) stated that the TESS data and staff analyses are not valid for making the conclusion that mineral oil-containing cosmetics require CR packaging.

Response: The TESS database is a specialized data collection system that contains information about calls to Poison Control Centers. The staff agrees that there are limitations to the TESS data. However, these data support the fact that children do access cosmetic products that contain hydrocarbons. See, 66 FR 18739 (April 11, 2001) (*The CPSC staff analysis of the additional data on mineral oil-based cosmetics shows at least 1,460 cases of access*). CTFA in its comment concurs that the data demonstrate that children access mineral oil-based cosmetics. If these products, or any others, have 10 percent or more hydrocarbons by weight with a viscosity less than 100 SUS at 100 °F, serious injury could result from ingestion with accompanying aspiration. The TESS data simply further confirm this.

Comment: One commenter (CP–01–3–4) stated that the data show a low incidence of serious injuries and that several of the deaths would not have been prevented by CR packaging.

Response: The PPPA does not require a minimum number of deaths and serious injuries before the Commission can proceed with a child-resistant packaging rule. Rather, the PPPA requires that the Commission find that a substance is capable of causing serious injury or illness to young children that are exposed to it. The purpose of the human experience data is to demonstrate that children access products that may contain hydrocarbons and to further validate the fact that aspiration of hydrocarbon-containing products with viscosities under 100 SUS at 100 °F can result in serious injury. The data presented demonstrate these points. 66 FR 18739. However, the commenter states that the descriptions of the incidents do not support the conclusion that child-resistant packaging would have protected these children from death. The commenter attributes this either to the closure apparently being left off in one instance or to information being inconclusive in the other scenarios. While it is unknown if child-resistant packaging would have saved the lives of these children, the effectiveness of child-resistant packaging in reducing deaths is well documented. For prescription medicines and aspirin alone, CPSC estimates that the lives of over 900 children have been saved since child-resistant packaging was first required for these products. The commenter does not attempt to refute that aspiration of mineral oil-based cosmetics may be associated with serious injury. Requiring child-resistant packaging would limit access to these products by children in the future.

Comment: One commenter (CP–01–3–4) provided a calculation of relative risk and compared the risk of a baby oil fatality to the risk of death by other products and the risk levels apparently used by the Department of Defense and the Federal Aviation Administration.

Response: The PPPA requires that the Commission find: 1) that a substance is capable of causing serious injury or illness to young children that are exposed to it and 2) that CR packaging is technically feasible, practicable, and appropriate. 15 U.S.C. 1472(a). The PPPA does not require a relative risk evaluation as a prerequisite to requiring CR packaging.

C. Additional Death

CPSC staff has become aware of an additional death resulting from aspiration of baby oil (010628HAA3357). The victim's twin brother opened the closed bottle of baby oil and gave it to the victim. According to the mother, the child, a 15–16 month-old who had a history of respiratory problems, then ingested baby oil. The child was admitted to the hospital on the following day with breathing problems and died 29 days after the exposure. The death certificate lists respiratory failure due to acute respiratory distress syndrome (ARDS) and oil aspiration.

D. The Scope of the Regulations

After reviewing the comments submitted in response to the NPR and the supplemental notice of data availability, the Commission has decided to issue final PPPA rules for household products that contain hydrocarbon chemicals capable of causing chemical pneumonia and death following aspiration. The remainder of this section describes the scope and form of the final rules.

The rules apply to prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F. Hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

The final rules exclude aerosol products (*i.e.,* pressurized spray containers). The rules also exclude products packaged in mechanical pumps and trigger sprayers, provided that the spray mechanism is either permanently attached to the product container or has a child-resistant attachment. Potential coverage of aerosols, pump and trigger sprayers will be addressed separately in a future proceeding.

The definition of what is a ''household substance'' that can be regulated under the PPPA includes, inter alia, both a ''hazardous substance'' as defined in the FHSA and a ''food, drug, or cosmetic'' as those terms are defined in the Federal Food, Drug, and Cosmetic Act (FDCA). Enforcement of the PPPA with respect to hazardous substances is accomplished using the misbranding and prohibited acts sections of the FHSA. Enforcement of child-resistant packaging requirements applicable to foods, drugs, or cosmetics relies on comparable provisions of the FDCA. Therefore, the Commission is issuing two discrete rules, one for hazardous substances and one for drugs and cosmetics, to closely associate a particular rule with the applicable enforcement mechanism. Foods are not covered under the rules, because there currently are no data indicating a need for CR packaging of food products.

Current FHSA regulations partially exempt small packages, minor hazards, and certain special circumstances from the FHSA's labeling requirements. 16 CFR 1500.83(a). Writing markers and ballpoint pens are exempt from full cautionary labeling requirements relating to toxicity if they meet specifications listed in the regulations. These products are also excluded from the child-resistant packaging requirements in this final rule due to the difficulty a child would have in obtaining a toxic amount of fluid from these types of products. For the same reason, products that are packaged so their contents are not free-flowing, such as some battery terminal cleaners, paint markers, and make-up removal pads, are also excluded from the child-resistant packaging requirements of the final rules.

E. Statutory Considerations

1. Hazard to Children

Before issuing rules requiring CR packaging, the Commission must find that the degree or nature of the hazard to children in the availability of the products in question by reason of their packaging is such that special packaging is required to protect children from serious injury or illness from handling, using, or ingesting the products. 15 U.S.C. 1472(a)(1). The Commission made these findings preliminarily with regard to household chemicals and cosmetics in the preambles to the ANPR and NPR for the rules that are being issued in final form today.[2] Subsequent CPSC staff review of additional data on mineral oil-based cosmetics, as discussed above, validate that children access these products and that those that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F can result in serious injury. In fact, it is worth noting that several brands of baby oil, a product obviously intended for use on small children, are labeled with a warning as follows:

> For external use only. Keep out of children's reach to avoid drinking and accidental inhalation, which can cause serious injury. Should breathing problems occur, consult a doctor immediately.

That warning is in effect the required PPPA statutory finding.

With respect to the general category of hydrocarbon-containing products, Congress, in enacting the original PPPA in 1970, specifically addressed the hazard of ingesting and aspirating hydrocarbon-containing products as one of the fundamental bases of the need for the PPPA:

> In the household specialties area, some chemicals cause serious illness requiring lengthy hospitalization from which the child may never recover. * * * On ingestion, these petroleum distillates [hydrocarbons] are readily aspirated into the lungs and may lead to severe chemical pneumonitis in a matter of minutes.

H.R. Rep. No. 91–1642 at 5 (1970)

For the foregoing reasons, the Commission finds that the degree or nature of the hazard to children in the availability of products that contain 10 percent or more hydrocarbons with viscosities under 100 SUS at 100 °F, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the products.

2. Technical Feasibility, Practicability, and Appropriateness

As a prerequisite to CR packaging rules, the Commission must also find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use. See S. Rep. No. 91–845, at 10 (1970).

The Commission made these findings preliminarily and issued the proposed rules. Those findings, which appear at 65 FR 99–100, are hereby incorporated by reference. No comments were received in response to the NPR regarding the technical aspects of child-resistant packaging. Therefore, the Commission concludes that CR packaging is technically feasible, practicable, and appropriate for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F.

3. Other Considerations

Section 3(b) of the PPPA requires that the Commission consider the following in establishing special packaging standards:

[2] See 62 FR 8661–2 (February 26, 1997) and 65 FR 98–9 (January 3, 2000), which are hereby incorporated by reference.

It is also worth noting that the PPPA ''hazard to children'' finding with respect to these hydrocarbons has also been made as a prerequisite to issuing the three current child-resistant packaging regulations that address specific household products containing hydrocarbons: prepackaged liquid kindling and illuminating preparations (*e.g.,* lighter fluid), 16 CFR 1700.14(a)(7); prepackaged solvents for paint or other similar surface coating materials (*e.g.,* paint thinners), 16 CFR 1700.14(a)(15); and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2).

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this rulemaking, and finds no reason to conclude that the rules are unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year after the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. The NPR proposed an effective date of one (1) year after publication of the final rules.

Two comments received on the NPR requested additional time for companies that may need it. However, no information was submitted to demonstrate that more than one year would be necessary to adopt child-resistant packaging for any product.

The CPSC staff estimated that any necessary packaging changes could be achieved during a one-year time frame. Therefore, the Commission is issuing these final rules with an effective date of one year after the date of their publication in the **Federal Register**. The Commission is not establishing a general procedure for stays of enforcement of the requirements of these final rules. However, there is nothing to preclude an individual company from requesting relief from the CPSC Office of Compliance if specific difficulties arise in complying by the effective date.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared an assessment of the impact of rules to require CR packaging for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F. A copy of the assessment is available for inspection in the docket for this rulemaking. The assessment reports that the incremental cost of providing basic CR packaging is usually small ($0.005-$0.02/per package), and confirms the staff's previous experience with child-resistant packaging and current packaging. Child-resistant packaging is widely available and the incremental costs are small relative to the cost of most household chemicals and cosmetic products. In addition, the one (1) year effective date should include enough lead-time for companies to use up existing package inventory.

Based on that assessment, the Commission certified in the NPR that the rules, if promulgated as proposed, would not have a significant economic effect on a substantial number of small entities.

The NPR was sent to 375 trade associations and companies believed to make products that contain hydrocarbons. The Commission did not receive any comments in response that questioned the certification. Therefore, there is no evidence available that the rules would have a significant economic impact on a substantial number of small entities.

Based on the foregoing analysis, the Commission certifies that these final rules do not have a significant impact on a substantial number of small businesses or other small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has analyzed the possible environmental effects associated with the proposed PPPA requirements on products that contain 10 percent hydrocarbons or more by weight and have a viscosity less than 100 SUS at 100 °F.

The Commission's regulations state that rules requiring special packaging normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in these rules alters that expectation. Therefore, because the rules would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Order No. 12988

As provided in Executive Order No. 12988 the CPSC states the preemptive effect of these final rules as follows.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through procedures specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, these rules preempt non-identical state or local special packaging standards for such drug products.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Reporting and record keeping requirements.

For the reasons stated in the preamble, the Commission amends 16 CFR 1700.14(a) as follows.

PART 1700—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–1476. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In § 1700.14 add new paragraphs (a)(31) and (32) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(31) *Hazardous substances containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are hazardous substances as defined in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.,* aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Writing markers and ballpoint pens exempted from labeling requirements under the FHSA by 16 CFR 1500.83.

(iii) Products from which the liquid cannot flow freely, including but not limited to paint markers and battery terminal cleaners. For purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

(32) *Drugs and cosmetics containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are drugs or cosmetics as defined in the Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. 321(a)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100 °F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.*, aerosols, or pump-or trigger-actuated sprays where the pump or trigger mechanism has either a child-resistant or permanent attachment to the package).

(ii) Products from which the liquid cannot flow freely, including but not limited to makeup removal pads. For the purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbons in the product is the sum of the percentages by weight of the individual hydrocarbon components.

* * * * *

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, ''Final Rule to Require Special Packaging for Hydrocarbons of Low Viscosity,'' September 12, 2001.

2. Memorandum from Robert L. Franklin, EC to Suzanne Barone, Ph.D., EH, ''Economic Considerations Regarding the Final Rule to Require CR Packaging for Products Containing Low Viscosity Hydrocarbons,'' August 24, 2001.

3. ''Pediatric Potential Aspirations of Cosmetic Products: 1998 Data,'' C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, March 2001.

4. ''Pediatric Hydrocarbon Exposures and Potential Aspirations,'' C. Craig Morris, Ph.D., U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis, February 2001.

[FR Doc. 01–26837 Filed 10–24–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 40, 42, 46, 51, 55, 62, 63, 65, 72, 76, 79, 89, 98, 102, 103, 111, 114, 115, 132, 157, 159, 159a, 171, 186, 188, and 194

Removal of Regulatory Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is removing various parts from chapter I, Office of the Secretary of Defense. This administrative action removes obsolete information from the Code of Federal Regulations and notifies readers of the availability of the current DoD documents that contain the information being removed.

DATES: This rule is effective October 25, 2001.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–601–4722.

SUPPLEMENTARY INFORMATION: The chart below identifies the status of the parts being removed. All documents with a current date status may be found as a DoD Directive (D), DoD Instruction (I), or DoD Publication on the Washington Headquarters Services Web site at *http://www.dtic.mil/whs/directives.*

Part No.	Document No.	Status
40	Standard of Conduct Cross-Reference	No replacement.
42	D5200.24	Canceled by D5505.9, 4/20/95.
46	D1000.4	Current date 9/4/96.
51	D1350.2	Current date 8/18/95.
55	D1205.9	Completely canceled 9/19/97.
62	D1010.4	Current date 9/3/97.
63	D1340.16	Current date 9/20/97.
65	D1304.19	Current date 9/18/93.
72	I1322.9	Current date 10/5/95.
76	D1235.10	Current date 7/1/95.
79	D1412.2	Completely canceled 4/3/97.
89	D1418.4	Completely canceled 4/3/97.
98	D7050.1	Current date 12/4/98.
102	D1215.6	Current date 3/14/97.
103	D1205.14	Current date 5/24/74.
111	I1205.13	Current date 12/26/95.
114	I7730.54	Current date 3/15/99.
115	I1200.15	Current date 9/18/97.
132	D1215.9	Completely canceled 2/7/97.
157	I5200.21	Canceled by I3200.14, 5/13/97.
159	D5200.1	Current date 12/13/96.
159a	5200.1–R	Current date 1/14/97.