PLAINTIFF'S EXHIBIT

GP-1429

CONSUMER PRODUCT SAFETY COMMISSION

Respirable Free-form Asbestos

PROPOSALS TO BAN TWO CONSUMER PRODUCTS

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed banning rules.

SUMMARY: In this document, the Commission proposes to ban two consumer products containing asbestos that can be inhaled (respirable, free-form asbestos): (1) consumer patching compounds, including asbestiform tremolite, used to join or repair walls and ceilings. (Sanding of the product after it is applied releases asbestos fibers that can be inhaled); (2) Artificial fireplace logs and ash made with respirable free form asbestos for use in fireplaces to simulate log embers and ash. The Commission is proposing the bans to eliminate or reduce the risk of asbestosis or cancer that may result from inhaling these substances.

DATES: The proposed effective date of the bans is _____ days after publication of any final banning rule. Comments must be submitted by _____ (insert date 30 days after publication of the proposal in the FEDERAL REGISTER). There will be an opportunity for interested persons to orally present data, views, or arguments on _____ at _____.

Those wishing to make oral presentations should notify the Office of the Secretary by _____.

ADDRESSES: Written comments should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Persons wishing to make oral presentations should contact _____ in the Office of the Secretary (202) 634-7700. All material which the Commission has that is relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, and copies may be obtained from, the Office of the Secretary of the Commission, 3rd floor, 1111 18th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Francine Shacter, Office of the Executive Director, Consumer Product Safety Commission, Washington, D.C. 20207 (301-492-6550).

SUPPLEMENTARY INFORMATION: Commission decision. After consideration of three petitions concerning respirable free-form asbestos in consumer patching compounds and in artificial fireplace ash and logs, as well as other information presently available to the Commission concerning respirable free-form asbestos, some of which is noted in this document, the Commission has concluded that these products should be banned. In addition, the Commission has directed the staff to investigate what other consumer products contain respirable asbestos.

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[describe petitions]

Although these petitions were filed under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261, et seq., and it appears that the risks of injury from carcinogenicity described by petitioners are regulatable under the FHSA, the Commission proposes to ban these products under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051, et seq. Section 30(d) of the CPSA, 15 U.S.C. 2064(d), as amended, provides that a risk of injury associated with a consumer product which can be eliminated or reduced to a sufficient extent by action under a transferred Act such as the FHSA, may nevertheless be regulated under the CPSA if the Commission, by rule, determines that regulation under the CPSA is in the public interest. The Commission preliminarily finds that is is in the public interest to ~~declare~~ issue this ban under the CPSA.

The Commission also preliminarily determines that consumer patching compounds containing respirable free-form asbestos including asbestiform tremolite, and artificial fireplace ash and logs containing respirable free-form asbestos are being and will be distributed in commerce, that they present an unreasonable risk of injury to the public due to carcinogencity, and that no feasible standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with these

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products. Therefore, in accordance with section 8 of the CPSA (15 U.S.C. 2057), the Commission proposes that these products be declared banned hazardous products.

The petitions, relevant scientific and technical information, and Commission conclusions are more fully described below.

BACKGROUND

"Asbestos" is a general term for any of several varieties of mineral fibers composed of silica, oxygen, hydrogen, and other elements such as sodium, calcium, iron, or magnesium. The name is derived from the ancient Greek term for "incombustible". There are six basic varieties of asbestos minerals which are found in fiber form: chrysolite (the most common variety, and that ordinarily found in asbestos-containing products), anthophyllite, amosite, crocidolite, actinolite, and tremolite.

Most of the world supply of commerical asbestos is chrysotile, the fibrous form of serpentine. Asbestos has a variety of industrial uses related to its heat and moisture resistance.

Asbestos fibers are used in patching compounds to reinforce the material as it cures, to control shrinkage and cracking, and as the compound is alternately exposed to heat, cold and moisture after curing. Asbestos also provides a measure of sound and heat insulation to the material, and enhances the workability of the compound,

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particularly during troweling. The following properties are strongly considered by industry in the preparation of patching compounds: Asbestos is not affected by fungus, mildew, vapor, etc.; it has low density, good absorption qualities, high electrical resistivity, fire resistance, resistance to alkalines, low magnetic permeability and it not a smooth fiber.

Medical consequences of using asbestos.

[This will come from BBS and will be based on epidemiological literature in addition to the summary below:]

The inhalation of asbestos dust has been associated with the production of a variety of diseases, namely asbestosis (fibrotic, non-malignant scarring of the lungs), mesothelioma (cancer of the chest wall or abdominal lining) and cancers of the lung and digestive tract. Asbestosis and asbestos cancers usually do not become clinically evident for more than 20 years after initial exposure. Variation in the time of occurrence of these diseases may depend on the intensity and duration of exposure and on individual sensitivity. [(OMD, memo, 7/30/76)]

Mesothelioma, as well as other cancers and even asbestosis can result from mild intermittent exposure to asbestos. Among the many reported cases of mesothelioma following short, non-occupational exposure to asbestos

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include cases which followed exposure to dusty (asbestos) clothes in the homes of person with reported mesotheliomas, many of whom had worked or lived near an asbestos plant and also included members of families whose relatives worked in asbestos plants. [(BBS, Tab B-8)]

Based on clinical and epidemiological data collected over many years, it is generally accepted by medical authorities that heavy exposure to asbestos dust over prolonged periods or intense intermittent exposure as encountered in certain occupational situations has been associated with the development of asbestosis as well as cancers of the lung and digestive trace and of mesothelioma.

Other agency actions to regulate exposure to asbestos.

The Occupational Safety and Health Administration of the Department of Labor (OSHA), the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) each has a responsibility to regulate exposure to asbestos.

OSHA regulates exposure to asbestos by workers in all industrial and commerical settings except agriculture. The regulation (29 CFR) permits exposure not to exceed contact or inhalation potential of ambient air containing more than five fibers five micrometers in length per cubic centimeter of breathing air over an eight-house time weighted average limit. In 1975, OSHA proposed an amendment to lower exposure to .5 fibers per cubic centimeter of breathing air.

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FDA has banned the use of asbestos in filters used in the formulation of parenteral drugs (21 CFR) and, prior to the establishment of the Consumer Product Safety Commission, banned the use of asbestos in fabric used for general wearing apparel. (21 CFR)

EPA regulates asbestos which is released into the air and into the water. These regulations (CFR) do not set standards for allowable amounts of asbestos in the breathing air but rather minimize or eliminate emissions from industrial locations. These regulations specifically prohibit the present of asbestos in emissions from plants manufacturing materials for use in building roadways and in manufacturing items such as cloth, textiles, cement, fireproofing and friction products, paper, felt, flooring materials, paints, adhesives, sealants, caulks, and a variety of other items.

Consumer use of asbestos.

[The staff is accumulating information on respirable free-form asbestos in consumer products.] The proposed ban covers the following products:

Consumer patching compounds: Patching compounds are mixtures of talcs, pigments, clays, casein, ground marble, mica or other similar materials with water and a binding material such as asbestos. Patching compounds is sold in a dry form (to be mixed with water by user)

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or a ready mix paste form. It is used to cover, seal or mask cracks, joints, holes and similar openings in the trim, walls, ceilings, etc. of buildings. After drying it is sanded to a smooth finish. (See also the definition at section 1304.__ of proposed rule.)

In consumer patching compounds, asbestos is released in one of two ways: either when using the dry form and mixing it with water or by sanding or scraping the dried patching compound in the process of finishing and smoothing the surface or during demolition.

Artificial fireplace ash. Artificial fireplace ash is a material containing asbestos placed under logs in gas-burning fireplace systems or in artificial fireplaces for decorative purposes. The asbestos material may also be glued to logs or artificial logs. When subjected to high temperatures, the material glows like real embers and ash.

In fireplace logs, asbestos fibers might be released when they are attached to the logs with ordinary household glue which melts at high temperatures or the asbestos in the material scattered under the logs to simulate ashes could become airborne as a consequence of air currents and down drafts generated in the house and near the fireplace. (See also the definition at section 1304.__ of proposed rule.)

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Petitions.

HP 76-18 (consumer patching compounds containing respirable asbestos): On July 15, 1976, the National Resources Defense Council (NRDC) and Consumers Union (CU) petitioned the Commission under the FHSA to ban consumer patching compounds containing asbestos that are used for drywall taping, spackling and sealing of joints. The petitioners believe that high quantities of asbestos fibers remain in the air after these products are sanded and that the fibers substantially increase the risk of mesothelioma and lung cancer.

HP 77-9: On February 9, 1977, the Public Citizens Health Research Group (HRG) petitioned the Commission under the FHSA to declare that tremolitic talcs containing asbestos fibers (asbestiform tremolite) are banned hazardous products and an imminent hazard to the public health.

HP 77-11: On April 15, 1977, a request from Ms. Rachel Scott that had been investigated as a consumer complaint was jointed by the Environmental Defense Fund (EDF). The Commission designated the requests a petition to ban the use of artificial fireplace as containing respirable free-form asbestos. This product is used on artificial logs and on fireplace floors beneath them to simulate embers and ashes.

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Risk of injury.

Most of the risk and injury information reviewed by Commission staff in response to these petitions deals with occupational exposure. In addition recent clinical evidence suggests that low levels of exposure to asbestos dust can product asbestos cancers. These levels are much lower than encountered in occupational situations and lower than known to cause asbestosis. Specifically, adverse effects have been known to occur in family members of asbestos workers, persons living near asbestos plants, individuals having brief work exposure to asbestos, and those only indirectly exposed to asbestos by working in the same general area. (OMD memo, 7/76)

[at this point we need to plug in some information from the literature on deaths from asbestos exposure either from BBS or OMD. It should tell that most of the data on the risk of exposure comes from industrial data but that there are numerous incidents of death from mesothelioma, a cancer caused only be asbestos, after more limited exposure and link this with the exposure of consumers]

The data on asbestos insulation workers indicate that after a 1-year exposure of approximately 10 to 20 times

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that projected for frequent consumer use of spackling or joint compounds (the Bureau of Economic Analysis projection is 4 times during one year, heavy exposure), there are no additional lung cancers during the first 20 years of follow-up than might be expected normally (relative risk equals 1.0). At levels of exposure 40 to 80 times that of projected consumer exposure, the relative risks are 1.3 and 2.5 respectively during the first 20 years (Enterline and Henderson, 1976).

* * * * * * * * *

Decision to regulate under CPSA.

The Commission considered, upon review of all the information presently available to it, that the products in question should be regulated. Consideration was initially given to banning these products under section 2(q)(1)(B) of the FHSA since it appeared that the statutory requirements for regulating these products under FHSA could be met and it appeared that the hazard presented by these products could be sufficiently reduced or eliminated under FHSA. Under the FHSA, however, a person affected by a regulatory decision may file objections and if valid objections are filed an evidentiary hearing would be conducted, in accordance with section 701(e) of the Federal Food, Drug, and Cosmetic Act . The nature of a "701(e) hearing" (see 21 U.S.C. 371(e) and 21 CFR 2.48 et seq.) is very time-consuming and a regulatory action

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would be held in abeyance during the pendency of the 701(e) proceeding.

In considering alternative regulatory action, the Commission noted that section 30(d) of the CPSA (15 U.S.C. 2079(d)), as amended by the Consumer Product Safety Commission Improvements Act of 1976 (Pub. L. 94-284; 90 Stat. 510), provides for certain regulatory actions to proceed under the CPSA rather than the FHSA and reads as follows:

(d) A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act. Such a rule shall identify the risk of injury proposed to be regulated under this Act and shall be promulgated in accordance with section 553 of the Title 5, United States Code, except that the period to be provided by the Commission pursuant to subsection (c) of such section for submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.

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Section 9 of the CPSA which governs the issuance of consumer product safety rules requires that notice of a proposed rule be published in accordance with 5 U.S.C. 553. In addition, any interested person must be provided an opportunity to make an oral presentation of data, views or arguments on the rule.

Therefore, in order to save the time that would be expended in a 701(e) hearing under FHSA and since full provision for public notice as well as written and oral comment is available under CPSA, the Commission, in accordance with the provisions of section 30(d) of the CPSA, as amended, finds that it is in the public interest to regulate these products under the CPSA. (The Commission seeks data, views and arguments from the public on this Commission finding. Such comments should be made in writing and forwarded to the Commission's Office of the Secretary. Section 30(d) of the CPSA, as amended, requires that comments made on this Commission finding that it is in the public interest to regulate these products under the CPSA, must be made within 30 days of this publication date.)

The Commission preliminarily determines in accordance with section 8 of the CPSA which sets forth the findings that must be made to ban consumer products under the CPSA, that consumer patching compounds and artificial fireplace ash containing respirable free-form asbestos are being and

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will be distributed in commerce. Having concluded from materials available to the Commission that these products are associated with the hazard of carcinogenicity, the Commission preliminarily determines that these products present an unreasonable risk of injury to the public. Presently available information (cite OSHA, NCI data) indicate that a safe threshhold level of respirable free-form asbestos is unknown (add here more information on no feasible standard from BES). Therefore, the Commission believes that no feasible consumer product safety standard under the CPSA can adequately protect the public from the unreasonable risk of injury associated with these products and the Commission proposes to issue this rule declaring that the consumer patching compounds defined at section 1304.__ and the artificial fireplace ash defined at section 1304.__ are banned hazardous products.

SUMMARY OF PROPOSAL

Need information from BES, BCM

Proposed banning criteria.

(Need input from BES, BCM)

Test.

(Lemberg, Shacter)

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Industry resource considerations.

A wide range of economic effects may result from a Commission banning action which affects some or all of the above product classes. The Commission has already voted to ban free-form asbestos-containing artificial fireplace ashes and patching compounds. The following issues are being investigated with respect to both the proposed ban and the Commission's options concerning the other product groups:

Identification of types and numbers of products subject to a ban. In order to assess the economic effects of a ban, we will have to determine the exact nature and number of products subject to the ban. Some figures on artificial fireplace logs and patching compounds are or will soon be available, but we have little or no information on the other categories. We suspect, however, that a ban on paints, coatings, and wallboard containing asbestos would have far-reaching implications.

Assessment of substitutes. We currently know of two substitutes for asbestos in fireplace ashes, and at least two in patching compounds. Questions concerning the relative safety of these substitutes have not yet been resolved. Some substitutes for asbestos such as steel and glass fiber have apparently been tested for use in wallboard and paints (primarily as a result of OSHA's efforts to limit exposure to asbestos in occupational

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settings), but with limited success. Substitution may also lead to higher costs and prices from some of these products. Some firms (including some manufacturers of patching compounds) may not yet have the technical capability to reformulate their products without asbestos; many paint and coatings producers are, however, either presently marketing asbestos-free foundations or expect to in the near future.

Cost and Price Effects. The actual cost to most patching compound and gas log manufacturers of chemically reformulating products or simply substituting another material for asbestos is not expected to be large; it is, however, expected that some cost increases will occur which will likely be passed on in the form of higher prices (for patching compounds this may be as high as 10-15 percent, according to an economic study prepared for OSHA). We expected that substitute paint formulations and substitute wallboard products will be somewhat more expensive than those containing asbestos, but we have no specific information on probable percentage increases at this time.

Other effects. The principal adverse effect of the use of substitutes for asbestos in these classes of products will probably be on the utility of the products. Asbestos possesses a unique combination of strength,

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pliability, and heat, cold, and moisture-resistant qualities; substitutes which have been tested in these product categories often do not last as long, are less workable, and may take a long time to perfect (asbestos-free spackling compounds were at least five years in development). Some products not readily reformulatable may be dropped from the market. Availability of substitute products may also be limited temporarily on a regional basis, depending on the paint and building materials industries' ability to reformulate asbestos-containing products.

Effective date. Inventories of existing products in distribution channels may vary from very small (e.g., a few small manufacturers' inventories of modelling clay) to very large (e.g., thousands of retailers' inventories of paint products). Similarly, inventory turnover cycles at various points in distribution may vary considerably. A set of effective dates may be desirable. Alternatively, several individual ban could be proposed under section 8 of the CPSA on a product-by product basis rather than one general ban.

All of the above considerations may be further affected by OSHA's course of action on asbestos. Should a commercial/industrial use ban be imposed, the industry will probably eliminate asbestos from all consumer patching

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compounds, paints, and wallboard products as well since consumer sales constitute such a small percentage (probably under 5 percent) of toal building material sales. This would, of course, minimize the marginal impact of a CPSC ban on similar products. On the other hand, certain patching compounds in container sizes intended for sale to commercial users, i.e., contractors, may be construed to be "consumer products" (and therefore banned if they contained asbestos) since they are available in some retail stores. We expect that publication of a proposed ban in the FEDERAL REGISTER, will prompt a great deal of comment, providing us with further specific information on the potential economic effects of such a ban.

Environmental issues. The Commission has begun the study of environmental effects of this proposal as required by the National Environmental Policies Act. The Commission requests comment on other environmental issues as well as those raised here.

Asbestos is a ubiquitous mineral fiber that has been used for many years in the U.S. in occupational settings (primarily building construction). This has led to low-level, but widespread consumer exposure. Asbestos is found in the air, water, and land (in minute concentrations relative to those found in or near asbestos miner or processing facilities).

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The elimination of asbestos from consumer patching compounds will reduce environmental asbestos fiber release from all patching compounds by less than 5 percent. This constitutes a negligible percentage of all asbestos fiber release. Disposal of present inventories is also expected to pose no significant problems since it would account for a miniscule portion of all asbestos disposal. Similar the elimination of asbestos from gas log emberizing kits is not expected to reduce free fiber emissions significantly, either nationally or regionally (most of the manufacturers are located in California). Further, the staff is issuing guidelines to minimize consumer exposure to floating fibers during cleanup and disposal of embers. Thus, no significant effects are expected from the ban itself.

The potential environmental (i.e., health) effects of the use of substitutes, is however, an issue which needs further study before we can prepare a complete environmental assessment. To the best of our knowledge, there are two currently-available substitutes for asbestos in artificial fireplace ashes, and two substitutes for asgestos in patching compounds. We currently have no information concerning the safety of the ember materials (one is a synthetic fiber and may be similar in shape and size the asbestos). Animal testing is underway to develop a body of knowledge about the patching compound

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substitutes; no conclusions about their safety have yet been made. Thus, although we cannot show evidence that the known substitutes are hazardous, we also cannot show evidence that they are not.

This discussion is linked to the notion that specific chronic hazards policy decision may become necessary on the question of how the Commission wishes to treat potential or suspected, but not proven, carcinogens and other long-term or chronic health hazards. More laboratory testing may be desirable before regulatory decisions on substitutes are made.

Effective date considerations. The Commission staff is currently assessing the probable effects on the relevant industries or effective dates of 30, 180 and 360 days after publication of the ban in the FEDERAL REGISTER. It appears that many of the gas log manufacturers have already caused shipment of asbestos-containing merchandise. We expect that the gas log manufacturers can produce complying (non-asbestos-containing) merchandise for shipment in a relatively short period of time (perhaps 30 days after publication) with less disruption of manufacturing and marketing practices than can those manufacturers of patching compounds who have not reformulated their products. Both groups, however, may have considerable difficulty in tracing their products through the channels of distribution, which often may be long and complex. We know little about the

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current state of inventories at various levels of distribution at this time. We are attempting to determine typical turnover cycles, etc., as we further define the products to be covered by the ban.

We are also assessing the potential effects of a prospective versus retroactive ban (i.e., one applicable to products in distribution channels as of the effective date). A retroactive ban would probably result in greater total cost to an disruption of the industry than a prospective one. Further consideration of the potential benefit to the public of a retroactive ban is needed. We have no information to indicate that a retroactive ban would significantly reduce total annual fiber release. The Commission seeks further comment on this matter.

FINDINGS

The CPSA requires that before issuing a consumer product safety rule, the Commission make certain findings.

Although section 9(c) of the CPSA does not require that those findings be made when a proposal is published, the Commission is publishing the preliminary findings set forth below to assist in making findings in any final rule the Commission issues.

(a) The degree and nature of the risk of injury. To be submitted by BBS and the Medical Director.

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(b) The approximate number of consumer products, or types or classes thereof, subject to the ban.

This ban covers two basic kinds of consumer products: artificial fireplace ashes, and patching compounds, including tape joint, spackling, and caulking compounds, crack patches, putties, and other substances intended for use in patching, masking, or sealing cracks or holes in walls, ceilings, etc.

The Commission estimates annual sales of artificial gas logs or emberizing kits potentially subject to the ban at 25,000-30,000 units, assuming a sales rate of one emberizing kit per log. Some of these logs come "frosted" with asbestos, in which case the entire log would be banned; others come packaged with emberizing kits including; still other are sold independently of the emberizing kits.

The Commission is currently investigating the category or products called "patching compounds" to determine which products should properly fall in that category and how many units of production and inventories might be subject to the ban. There may be millions of individuals units of product in distribution which would be banned.

(c) The need of the public for the consumer products subject to the ban, and the ban's probably effects upon the utility, cost of availability of such products to meet such need.

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Artificial fireplace ashes serve a decorative purpose, and do not materially affect the actual performance of the log, its gas jets, or its ability to provide heat. There is a certain aesthetic desirability, however, since the product (the gas log, ashes and embers) is intended to simulate something, i.e., a real burning log. To the extent that artificial emberizing material enhances consumers' enjoyment of the product, there is some perceived need for the material.

Patching compounds, though used primarily by commercial construction workers, are also used by consumers, and are used for the patching and sealing of holes, cracks, etc., in and around the household. As such they are thereby subject to consumer maintenance, including sanding or cutting, regardless of who the installer was. The compounds are used to cover holes and cracks which might otherwise lead, to structural damage, energy loss, and lower property value. Not all patching compounds contain asbestos. In those that do, asbestos is used as a strutural reinforcing agent. There are not substitutes for patching compounds in these applications.

The elimination of asbestos from these products will necessitate the use or development of substitutes which have similar properties to those of asbestos, or

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which impart similar qualities to the product. There are two known substitutes for asbestos in artificial fireplace ashes. The use of these substitutes is already growing in the industry; it is not expected to affect the utility consumers derive from the product. One substitute's reported cost to producers is about ten times that of raw or milled asbestos fiber. This may lead to a price rise for some separately-sold emberizing kits (which currently sell for about $3-$5). This is not expected to affect significantly the price of frosted gas logs, however, since the "frosting" constitutes a negligible percentage of the cost of the item. No effect on the overall price level of gas logs is anticipated. Neither the availability of the asbestos substitute to producers nor the availability of non-asbestos-containing logs and emberizing kits to consumers is expected to be restricted significantly by the imposition of the ban.

We currently are aware of two substitutes for asbestos in patching compounds. Some industry sources have reported that at this time the substitute formulations are not as effective as asbestos-containing formulations in controlling shrinkage and cracking over a period of several years. The pliability of some compounds may be diminished somewhat as well. This may adversely affect the utility derived from the product by consumers until such time as

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improved substitutes are developed and are available to consumers. The use of substitutes is not expected to have a bearing on the other properties of patching compounds (e.g., color, smell, sandability, etc.). A study performed for OSHA on the effects of reformulating certain kinds of commercial patching compounds estimated at 12-13 percent price increase associated with that reformulation. Similar increases may occur in the consumer segment of this market for some products; other products, there may be smaller or larger increases (if any). Prices currently vary over a fairly wide range among and between products; thus, direct price comparisons of asbestos-containing versus non-asbestos-containing brands may not be useful at this time. The availability of asbestos-free patching compounds may be restricted to some extent. We are currently investigating alternate effective date recommendations. It appears that those patching compound manufacturers whose products are already asbestos-free may have a temporary competitive advantage (in terms of availability in distribution and to consumers) over those firms whose products will have to be reformulated.

(d) Any means of achieving the objective of the ban while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

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The primary method by which the Commission can minimize any adverse effects of the ban is to adjust the effective date. As discussed above, the cost and availability of substitute patching compounds may be significantly affected by the chosen effective date. The Commission is currently considering effective dates of 30, 180, and 360 days after publication of the ban in the FEDERAL REGISTER. A date will be chosen which reasonably considers the potential effect of a delay on the public health and the relative economic impact of such a decision on the industry and on consumers.

CONCLUSION AND PROPOSAL

Based on the foregoing information, the Commission proposes to declare that consumer patching compounds containing respirable, free-form asbestos and artificial fireplace ash containing respirable free-form asbestos are banned hazardous products. (Phrase needed here on separability).

Accordingly, pursuant to provisions of the CPSA (sections 8, 9, 30(d), 86 Stat. 1215-17, 1231 as amended, 90 Stat. 506, 510; 15 U.S.C. 2057, 2058, 2079(d)), the Commission proposes that Title 16, Chapter II, be amended by adding to Subchapter B the following new sections 1145.3 and 1145.4 and Part 1304.

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Section 1145.3 Consumer patching compounds containing respirable, free-form asbestos

(a) The Commission finds that it is in the public interest to regulate the risk of carcinogenicity from consumer patching compounds under the CPSA rather than under the FHSA because of the undue time that would need to be expended for an evidentiary hearing required by the FHSA upon filing of objections by adversely affected persons. The Commission finds that regulation under the CPSA provides ample opportunity for interested persons to present data, views or arguments, both oral and written while protecting the public in a timely fashion from the unreasonable risk of injury associated with consumer patching compounds.

(b) The consumer patching compounds described in section 1304.__ and defined in section 1304.__ are the subject of this rule.

Section 1145.4 Artificial fireplace ash containing respirable, free-form asbestos

(a) The Commission finds that it is in the public interest to regulate the risk of carcinogenicity from artificial fireplace ash containing respirable, free-form asbestos under the CPSA rather than under the FHSA because of the undue time that would need to be expended for an evidentiary hearing required by FHSA upon filing of objections by adversely affected persons. The Commission finds that regulation under the CPSA provides

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ample opportunity for interested persons to present data, views or arguments both oral and written while protecting the public in a timely fashion from the unreasonable risk of injury associated with artificial fireplace ash containing respirable, free-form asbestos.

(b) The artificial fireplace ash defined at section 1304.__ is the subject of this rule.

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Part 1304.__ BANNED HAZARDOUS PRODUCTS CONTAINING ASBESTOS.

Section 1304.1 Scope and application.

In this Part 1304 the Consumer Product Safety Commission (Commission) declares certain consumer products containing asbestos and designed for use in such a manner that the asbestos fibers can become airborne under reasonably foreseeable conditions of use to be banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058.) This ban applies to (1) patching compounds which are sold to consumers to cover, seal or mask cracks, joints, holes and similar openings in the trim, walls, ceilings, etc. of buildings, which after drying are sanded to a smooth finish; and (2) artificial fireplace ash which are sold along with artificial fireplace logs to be installed in fireplaces and sprinkled or coated with

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the material or have the material sprinkled beneath the artificial logs to simulate ashes and to give the appearance of glowing (referred to in the trade as emberizing). In addition, bags of material containing asbestos and sold separately to be sprinkled on and under gas fired logs to simulate burning and glowing ashes come within the scope of this ban.

Section 1304.2 Purpose.

The purpose of this rule is to ban consumer patching compounds containing respirable, free-form asbestos, including asbestiform tremolite, and artificial fireplace ash containing respirable free-form asbestos. These products present an unreasonable risk of injury due to inhalation of fibers which increase the risk of developing asbestosis and mesothelioma, diseases which have been demonstrated to be caused only be exposure to asbestos fibers.

Section 1304.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this Part 1304.

(b) "Asbestos" means a group of mineral fibers composed of silica, oxygen, hydrogen and other elements such as sodium, iron, magnesium and calcium in diverse combinations and includes the following asbestiform minerals;

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tremolite, chrysotile, crocidolite, anthophyllite, amosite, and actinolite.

(c) "Free-form asbestos" is that which is not bound, woven, or otherwise "locked-in" to a product by resins or other bonding agents, or those from which fibers can readily become airborne with any reasonable foreseeable use.

(d) "Patching compounds" are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials with water and a binding material such as asbestos which are sold in a dry form ready to be mixed with water or a ready mix paste form.

(e) "Artificial fireplace ash" is a material containing asbestos sold to be placed under artificial gas logs or glued to the logs and which is designed to simulate ash and glowing embers.

Section 1304.4 Findings.

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Section 1304.5 Banning criteria.

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Section 1304.6 Testing.

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Section 1304.7 Effective date.

* * * * * * *

Dated: _____

_____
RICHARD BAPPS, Secretary
Consumer Product Safety
Commission

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