

for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Therefore, as stated in the proposed rule, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.[3]

**H. Preemption**

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

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 a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). Also, 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, the rule requiring CR packaging for ketoprofen would preempt non-identical state or local special packaging standards for ketoprofen.

**I. Other Executive Orders**

The Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment under Executive Order 12612 (October 26, 1987). Independent regulatory agencies are encouraged, but not required, to comply with Executive Order 13045 (April 23, 1997). This rulemaking is not subject to that order because it is not a "covered agency action" as defined in the order and because the rulemaking was initiated before the order was issued. In any event, the Commission's discussion in this notice of the issues involved in the

rulemaking comply with the order's requirements for an analysis of the rule and its environmental, health and safety effects on children.

**List of Subjects in 16 CFR Part 1700**

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, 16 CFR part 1700 is amended as follows:

**PART 1700—[AMENDED]**

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

**Authority:** Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and adding new paragraph (a)(26) to read as follows:

**§ 1700.14 Substances requiring special packaging.**

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, 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 such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

\* \* \* \* \*

(26) *Ketoprofen.* Ketoprofen preparations for human use and containing more than 50 mg of ketoprofen in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a), (b) and (c).

\* \* \* \* \*

Dated: May 21, 1997.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

**List of Relevant Documents**

(Note. This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Proposed Rule to Require Child-Resistant Packaging for Ketoprofen," October 15, 1996.
2. Memorandum from Susan C. Aitken, Ph.D., HShe, to Jacqueline Ferrante, Ph.D., HSPS, "Toxicity of Ketoprofen," August 19, 1996.

3. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for OTC Pharmaceuticals Containing Ketoprofen," August 19, 1996.
4. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Child-Resistant Packaging for OTC Products Containing Ketoprofen," August 20, 1996.
5. Vale, J.S. and Meredith, T.J., Acute Poisoning Due to Non-steroidal Anti-inflammatory Drugs: Clinical Features and Management. *Med. Toxicol.* 1:12-31, 1986.
6. Letter from Gary C. Stein, Ph.D., Senior Government Affairs Associate, American Society of Health-System Pharmacists, to Office of the Secretary, CPSC, dated January 30, 1997.
7. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Final Rule to Require Child-Resistant Packaging for Ketoprofen," May 5, 1997.
8. Memorandum from Susan C. Aitken, Ph.D., HShe, to Jacqueline Ferrante, Ph.D., HSPS, "Update of Injuries to Accidental Ingestion of Ketoprofen Products," March 4, 1997.
9. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., HSPS, "Final Rule for Child-Resistant Packaging for OTC Packages Containing More than 50 mgs Ketoprofen: Regulatory Flexibility Issues," February 18, 1997.
10. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Child-Resistant Packaging for OTC Products Containing Ketoprofen," February 27, 1997.

[FR Doc. 97-13842 Filed 5-27-97; 8:45 am]  
BILLING CODE 6355-01-P

**UNITED STATES INFORMATION AGENCY**

**22 CFR Part 514**

**Exchange Visitor Program**

**AGENCY:** United States Information Agency.

**ACTION:** Final rule.

**SUMMARY:** This rule amends existing regulations governing requests for waiver of the two-year home-country physical presence requirement made by interested United States Government agencies on behalf of an exchange visitor. Changes to the regulations governing waiver requests by interested United States Government agencies are

necessary to provide for uniform administration of such requests. The Agency anticipates that such changes will increase administrative efficiency and speed of response and also ensure that multiple waiver requests on behalf of an individual exchange visitor are not processed.

**EFFECTIVE DATE:** This regulation is effective May 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; Telephone, (202) 619-6829.

**SUPPLEMENTARY INFORMATION:** Under the aegis of the Exchange Visitor Program, some 175,000 foreign nationals work, study, or train in the United States annually. As part of the public diplomacy efforts of the United States Government, these foreign nationals enter the United States as participants in the Agency administered Exchange Visitor Program which seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a statutory provision, set forth at 8 U.S.C. 212(e), which requires that they return to their home country for a period of two years to share with their countrymen the knowledge, experience and impressions gained during their sojourn in the United States.

Foreign nations entering the United States as Exchange Visitor Program participants are subject to the return home requirement if they: (i) receive U.S. or foreign government financing for any part of their studies or training in the U.S.; (ii) studies or trained in a field deemed of importance to their home government and such field is on the "skills list" maintained by the Agency in consultation with foreign governments; or, (iii) entered the U.S. to pursue graduate medical education or training. An exchange visitor subject to Section 212(e) is not eligible for an H or L visa, or legal permanent resident status until the return home requirement is fulfilled or waived.

If subject to the two-year return home requirement, an exchange visitor may seek a waiver of such requirement. The bases upon which a waiver may be granted are: (i) a no objection statement from the visitor's home government; (ii) exceptional hardship to the visitor's U.S. citizen spouse or child; (iii) a request, on the visitor's behalf, by an interested United States Government agency; (iv) a reasonable fear of

persecution if the visitor were to return to his or her home country; and, (v) a request by a state on behalf of an exchange visitor who has pursued graduate medical education or training in the U.S. Section 212(e) also prohibits a foreign medical graduate from applying for a waiver on the basis of a no objection statement from the visitor's home government.

The exact number of exchange visitors that are subject to the 212(e) requirement is not known; but, a careful examination of this matter would suggest that upwards of 100,000 exchange visitors are in fact currently subject to the return home requirement.

#### **Interested U.S. Government Agency Waiver Requests**

The Agency Exchange Visitor Program Services, Waiver Review Branch, is responsible for processing waiver applications. Last year, this branch processed over 6,000 waiver applications, 95 percent of which were based upon either a no objection statement from the visitor's home government or a request from an interested government agency. Over the past three years, the number of interested government agency requests submitted to the Agency has increased five-fold to some 1700 annually.

The vast majority of interested government agency requests processed by the Agency involve foreign medical graduates who entered the United States to pursue graduate medical education or training. Currently, the Department of Agriculture and the Appalachian Regional Commission will act as an interested government agency on behalf of a foreign medical graduate seeking a waiver of his or her two-year home-country physical presence requirement in order to work in health professional shortage area. The Department of Veterans Affairs has acted on behalf of foreign medical graduates in the past but is not prevented from doing so by Section 622 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Department of Housing and Urban Development has also acted on behalf of foreign medical graduates in the past but has now placed a moratorium on such requests.

As explained in the supplementary information of the Agency's September 4, 1996 **Federal Register** announcement of proposed rules for this type of waiver request, inconsistency in the administration of such requests among the participating agencies has created a degree of confusion in the administrative process. Further, foreign medical graduates have also pursued concurrent waiver requests with

multiple agencies. These concurrent requests reflect conflicting commitments and are therefore inappropriate, waste limited administrative staff resources, and do not further the requesting agency's mission and policy objectives. Further, such concurrent requests are unfair to the communities named in the unapproved applications given the considerable expenditure of resources that local communities devote to the waiver process.

To address these concerns, the Agency adopts at 22 CFR 514.44(c)(4) specific provisions regarding the documentation that must accompany an interested government agency waiver request submitted on behalf of a foreign medical graduate. These requirements were developed by an inter-agency working group comprised of representatives from the Departments of Health and Human Services, Housing and Urban Development, Agriculture and Veterans Affairs as well as the Appalachian Regional Commission. These requirements are designed to enhance the underlying programmatic objectives that the submitting agency seeks to meet, viz., making primary medical care available to Americans living in areas without adequate access to medical care.

To this end, an employment contract that specifies the foreign medical graduate will provide not less than 40 hours per week of primary medical care, for a period of not less than three years, in a designated primary care Health Professional Shortage Area ("HPSA") or designated Medically Underserved Area ("MUA") or psychiatric care in a designated Mental Health Professional Shortage Area ("MHPSA") will be required. As the underlying policy objective for an agency to act on behalf of a foreign medical graduate is to provide primary health care to the residents of such areas, the contract shall not include a non-compete clause enforceable against the foreign medical graduate. This provision is adopted to ensure that the foreign medical graduate is not forced to leave a HPSA, MHPSA, or MUA at the end of his or her contract. In similar fashion, the Agency also sought public comment regarding the inclusion of liquidated damages clauses in these contracts of employment. No clear evidence exists that such clauses either enhance or are detrimental to the underlying policy objectives of interested government agencies and accordingly, no regulatory provision governing this matter is adopted.

In addition to a copy of the employment contract, each waiver request filed on behalf of a foreign

medical graduate by an interested United States Government agency must include two written statements. The first statement must be signed and dated by the head of the health care facility that will employ the foreign medical graduate. The head of the facility will attest that the facility is located in a designated HPSA, MHPSA, or MUA and that the facility provides medical care to Medicaid or Medicare eligible and indigent uninsured patients. These requirements must be met in order to satisfy the underlying program and policy interests of the requesting agency. A second statement must be submitted by the foreign medical graduate that declares he or she does not have a pending interested federal agency or state department of health request awaiting administrative action and will not request that another agency pursue a waiver request on his behalf while the immediate request is being processed.

Nine comments were received in response to the Notice of Proposed Rulemaking published on September 4, 1996. A detailed comment was submitted by the American Immigration Lawyers Association. This comment presented an argument that agencies should request waivers on behalf of specialists as well as primary care physicians and that the physical location of the health care facility that employs the foreign medical graduate need not be physically located in a HPSA, MHPSA, or MUA. Other comments received advanced similar arguments. The working group carefully considered, but decided against, these suggestions because of the predicted over-supply of specialists in the United States, the greater need for primary medical care in health professional shortage areas, and in order to confirm with such programs as the National Health Service Corps established within the United States to provide health care in shortage areas.

Further, specific unmet needs for physicians in prisons, mental hospitals, or specific population groups may be met by obtaining the required designation from the Department of Health and Human Services. Designation of these facilities or population groups as site-specific HPSA, MHPSA, or MUA areas will allow foreign medical graduates to provide primary care services or psychiatric care to these populations. Such designation takes into account the suggestion in certain comments received by the Agency, that limiting the practice of foreign medical graduates to the geographic environs of a HPSA, MHPSA, or MUA would prevent these

site-specific populations from receiving primary care or psychiatric care services.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

#### List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: May 21, 1997.

**R. Wallace Stuart,**

*Acting General Counsel.*

Accordingly, 22 CFR Part 514 is amended as follows:

#### PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.44 is amended by revising paragraph (c) to read as follows:

##### § 514.44 Two-year home-country physical presence requirement.

\* \* \* \* \*

(c) *Requests for waiver made by an interested United States Government Agency.* (1) A United States Government agency may request a waiver of the two-year home-country physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity sponsored by or of interest to such agency.

(2) A United States Government agency requesting a waiver shall submit its request in writing and fully explain why the grant of such waiver request would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor is unable to continue his or her involvement with the program or activity.

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her designee, and shall include copies of all IAP–66 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary medical care in a designated primary care Health Professional Shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirements set forth in § 514.44(c) (2) and (3), include:

(i) A copy of the employment contract between the foreign medical graduate and the health care facility at which he or she will be employed. Such contract shall specify a term of employment of not less than three years and that the foreign medical graduate is to be employed by the facility for the purpose of providing not less than 40 hours per week of primary medical care, i.e. general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology, in a designated primary care Health Professional Shortage Area or designated Medically Underserved Area (“MUA”) or psychiatric care in a designated Mental Health Professional Shortage Area. Further, such employment contract shall not include a non-compete clause enforceable against the foreign medical graduate.

(ii) A statement, signed and dated by the head of the health care facility at which the foreign medical graduate will be employed, that the facility is located in an area designated by the Secretary of Health and Human Services as a Medically Underserved Area or Primary Medical Care Health Professional Shortage Area or Mental Health Professional Shortage Area and provides medical care to both Medicaid or Medicare eligible patients and indigent uninsured patients. The statement shall also list the primary care Health Professional Shortage Area, Mental Health Professional Shortage Area, or Medically Underserved Area/Population identifier number of the designation (assigned by the Secretary of Health and Human Services), and shall include the FIPS county code and census tract or block numbering area number (assigned by the Bureau of the Census) or the 9-digit zipcode of the area where the facility is located.

(iii) A statement, signed and dated by the foreign medical graduate exchange visitor that shall read as follows:

I, \_\_\_\_\_ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that I do not now have pending nor am I

submitting during the pendency of this request, another request to any United States Government department or agency or any State Department of Public Health, or equivalent, other than \_\_\_\_\_ (insert name of United States Government Agency requesting waiver) to act on my behalf in any matter relating to a waiver of my two-year home-country physical presence requirement.

(iv) Evidence that unsuccessful efforts have been made to recruit an American physician for the position to be filled.

(5) Except as set forth in § 514.44(f)(4), *infra*, the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

\* \* \* \* \*

[FR Doc. 97-13918 Filed 5-27-97; 8:45 am]

BILLING CODE 8230-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 97-002]

RIN 2115-AA97

#### Safety Zone; San Pedro Bay, CA, Cerritos Channel

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in San Pedro Bay within the Cerritos Channel near the Henry Ford (Badger Avenue) Railroad Bridge, from 6 a.m. PDT on Monday, May 5, 1997 to 12 p.m. PDT on Thursday, October 2, 1997.

This regulation is needed to restrict vessel traffic in the regulated area due to construction operations on the Henry Ford Bridge involving the addition of new bridge towers and replacement of its movable spans. For construction purposes, the bridge will need to be in the closed (down) position, effectively closing the Cerritos Channel in the vicinity of the bridge to navigation and leaving only nine (9) feet of vertical clearance available over Mean High Water. This regulation prohibits general navigation in the regulated area until the bridge renovation is completed; upon completion, it will become a lift bridge, allowing for general vessel navigation, except to allow a train to cross or for maintenance purposes.

**EFFECTIVE DATES:** This regulation is effective from 6:00 a.m. PDT on Monday, May 5, 1997 to 12:00 p.m. PDT on Thursday, October 21, 1997 unless cancelled earlier by the Captain of the Port.

**ADDRESSES:** Marine Safety Office/Group Los Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Keith T. Whiteman, Chief, Port Safety and Security Division, Marine Safety Office/Group Los Angeles-Long Beach at (562) 980-4454.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the Henry Ford (Badger Avenue) Railroad Bridge construction were not finalized until a date fewer than 30 days prior to the event date.

**Drafting Information:** The drafters of this regulation are Lieutenant (junior grade) Kevin M. Nagata, Project Officer, Marine Safety Office/Group Los Angeles-Long Beach, CA and Lieutenant Kevin Bruen, Project Attorney, Maintenance and Logistics Command Pacific Legal Division.

##### Discussion of Regulation

The renovation of the existing Henry Ford (Badger Avenue) Railroad Bridge located in the San Pedro Bay Cerritos Channel from a drawbridge into a lift-type bridge similar to the adjacent Commodore Heim Bridge has an estimated timetable of 150 calendar days. During this time period, the Henry Ford Bridge will need to be in the closed (or down) position in order to install new bridge towers and replace movable spans, effectively closing down the channel to vessel navigation. The period of channel closure will last from May 5, 1997 to October 2, 1997 unless cancelled earlier by the Captain of the Port. The bridge, which is the only rail connection to Terminal Island, is currently under construction and several short-term modifications of the drawbridge regulation have already been authorized to facilitate piledriving and cofferdam installation among other operations. The bridge replacement requires significant channel adjacent to the bridge. In most cases it would be unsafe or impractical to have vessels

transiting this area during the construction period.

Vessels desiring to transit through the Cerritos Channel in the vicinity of the Henry Ford Bridge during the period of the safety zone will need to use an alternate route via the outer harbor or outside the Federal Breakwater. These alternate routes, although longer, should accommodate the reasonable needs of navigation.

##### Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Due to the short duration of the safety zone and the availability of alternate routes, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

##### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.