2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Elkins, WV

Elkins-Randolph County-Jenings Randolph Field Airport, WV
(Lat 38°53′22″ N, long. 79°51′25″ W)

That airspace extending upward from 700 feet above the surface within a 11-mile radius of Elkins-Randolph County-Jennings Randolph Field Airport.

* * * * *

Issued in Jamaica, New York, on November 30, 1995.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 95–29352 Filed 11–30–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents: Findings of the Focus Group Testing of Brief Statements for Cigarette Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of findings.

SUMMARY: The Food and Drug Administration (FDA) is announcing the findings of focus groups concerning the brief statements that would be required on all cigarette advertising. On August 11, 1995, FDA issued a proposed rule which, among other things, would require cigarette advertising to carry a brief statement on the relevant warnings, precautions, side effects, and contraindications pertaining to cigarette use. The agency said it would perform extensive focus group testing on the proposed brief statement. This document announces the findings of that focus group testing.

DATES: Written comments by January 2, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 11, 1995 (60 FR 41314), FDA published a proposed rule that would restrict the sale and distribution of cigarettes and smokeless tobacco products in order to protect children and adolescents. The proposed rule, among other things, would require cigarette advertising to carry a brief statement, such as ''About one out of three kids who become smokers will die from their smoking.'' The preamble to the proposed rule stated that FDA would conduct focus group testing of this proposed brief statement to evaluate the content and various formats for the brief statement to determine if the warnings are communicated effectively (60 FR 41314 at 41338). FDA also stated that it would base the design, format, and content of the brief statement which is required by section 502(r) of the Federal Food, Drug, and Cosmetic Act on all advertisements and other descriptive printed matter pertaining to restricted devices) on the results of the focus group testing and on comments to the proposed rule.

FDA has completed the focus group testing and, through this document, is announcing the focus groups' findings. FDA will use the report, as well as comments submitted on the report, to determine the design, format, and content of the brief statement when preparing a final rule. The report is accompanied by sample graphics illustrating how a brief statement might be presented and by two moderator's guides.

Interested persons may on or before January 2, 1996, submit to the Dockets Management Branch (address above) written comments on the focus group report. Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The report, entitled, ''Findings of the Focus Group Testing of Brief Statements for Cigarette Advertisements,'' is as follows:

Executive Summary

Macro International, a research firm which provides survey, market research, and focus group services worldwide, was awarded a contract from the U.S. Food and Drug Administration (FDA) to conduct a series of focus groups with adolescents to compare and evaluate brief statements directed to teens that address the risks of smoking. Macro has done nationally-representative surveys and demographic studies in 80 countries and has offices with state-of-the-art focus group facilities in its headquarters outside Washington DC, New York City, Moscow, Warsaw, Prague, Budapest, and Burlington VT.

This contract included two series of focus groups. The purpose of the first series of groups, held in Calverton, Maryland, was to examine a number of brief statements about smoking to determine which of several kinds of messages teens found most compelling. The purpose of the second series of focus groups, held in cities around the U.S., was to evaluate a shortened list of messages and consider methods of presentation that would be most effective in informing teens about the risks of smoking. Participants in these focus groups were 12–17 year old males and females, and included both smokers and non-smokers. The focus groups were held during October and November, 1995.

I. Assumptions and Basic Perceptions of Adolescent Smoking

According to the participants in the focus groups, smoking among teenagers is widespread. Almost all teens will try smoking at some point during their adolescence. There is little stigma attached to experimentation with smoking, since many teens consider it to be a ''rite of passage''. Few teens who are just beginning to smoke consider themselves at risk for becoming addicted to cigarettes because they are convinced that they can quit at any time. The groups said that teens try smoking because of peer pressure; the desire to do something that they perceive to be an adult activity; and as a way to rebel against their parents, either overtly or covertly.

Some of the focus groups did have active, regular smokers as part of the group, and the attitudes about smoking expressed by these participants was quite different than those expressed by non-smokers or occasional smokers. Participants who indicated that they were regular smokers did not mention any of the reasons given by ''social smokers'' as their reasons for smoking. They do not smoke in groups, nor do they smoke for social acceptance. Rather, they smoke because it ''calms them down'' or satisfies a physical need. Non-smokers or infrequent smokers indicated that they felt most people could stop smoking at any time; the teens who said they were addicted to smoking made it clear that, for them, smoking was no longer a matter of choice but a matter of need.

II. Perceptions of Cigarette Advertising

All of the groups expressed familiarity with the cigarette advertisements shown to them, and many were aware of incentive programs sponsored by major cigarette manufacturers, whereby cigarette smokers could receive clothing items or other products by cashing in ''Camel dollars'' or ''Marlboro miles'' for products from a catalog. The focus groups said that they felt the

primary target of cigarette ads were teens and young adults, and that ads show people having a good time so that kids will think that their lives will improve if they smoke.

III. Perceptions of Surgeon General's Warnings

Unless prompted, the participants did not think of the Surgeon General's warning as part of the advertisement. They are aware that it is there, but it is considered a required element that is skipped over as a matter of course. Participants thought that it was required by the government or that it was there to keep people from suing the manufacturer for smoking-related illnesses or death. Participants did not think that the current Surgeon General's warnings were effective. They said that the terminology used was too complex (emphysema and carbon monoxide were two terms cited repeatedly as being too complex for them to understand), and that the ads seem to be designed to make the messages as unnoticeable as possible.

IV. Perceptions of New Brief Statements

All groups were shown a variety of new brief statements that were intended to be directed primarily toward teenagers. Responses to the messages appeared to fall into three general categories: positive responses from most or all of the participants; mixed responses, where some groups responded positively but others did not; and messages that were poorly received by all groups. A ''positive'' response was defined as one where participants indicated that teens their age would read the message, consider the implications of the message, and perhaps change behavior because of it. Mixed responses included some positive responses, but also included neutral or negative responses to the brief statement. A response was categorized as negative if a whole group never liked the message.

The message that received the most positive response from groups across the country was one that said, ''Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs, and fires * * * combined.'' Other messages that received generally positive responses from most groups were, ''About one out of three kids who become smokers will die from their smoking,'' ''Of the 3000 young people who begin smoking each day, 1000 will die from their smoking,'' and ''Tobacco causes shortness of breath, coughing, yellow teeth and wrinkles.'' It is notable that the messages that received the most positive responses from the groups were those which presented facts and figures.

Messages that received mixed consideration from the groups were those that were directed at a limited audience such as ''Smoking hurts your athletic performance''; or those that the groups considered to be ''slogans,'' such as ''Addiction happens much faster than you think'' or ''Everyone now addicted to cigarettes started out 'just trying' cigarettes.''

Several brief statements received negative responses from all groups to whom they were shown. They included most of the messages addressing the issue of addiction, such as ''Addiction sucks you in to a lifetime of smoking,'' ''Smoking is a deadly addiction,'' and ''Kids who start smoking find they can't stop—once it's too late.''

V. Perceptions of Possible Design Elements for the Brief Statements

The major design elements that groups saw as leading to visual prominence were type size, distinctive borders, a color that contrasted with the rest of the ad, and to a lesser extent use of a distinctive icon. Most groups recommended using a very large type size to increase the visual prominence of the brief statement and to make it easier to read. All groups were enthusiastic about the use of a jagged border to draw attention to the brief statement. They also recommended varying the message and varying its appearance over time so that consumers would not habituate to its appearance.

Participants said that a brief statement would be most effective if it was visually prominent in the ad, and that the optimal design of the brief statement would necessarily depend upon the design of a particular advertisement. Thus, several groups recommended that the brief statements should be added after the advertisement was designed to minimize the likelihood of it being designed to reduce the impact of the brief statement. If that was not possible, many groups indicated that placing the message at the top of the advertisement or in the middle would be optimal for getting attention.

Many of the groups said that the new brief statement should be more visually prominent than the Surgeon General's warning, and that the new statement should be distinct from the Surgeon General's warning.

VI. Other Findings

1. A common sentiment expressed by participants in some groups was that the best way to present the information would be as a stand-alone advertisement portraying the risks of smoking rather than as part of a cigarette advertisement.

2. Smokers and non-smokers expressed similar sentiments about messages that were effective, and about how to convey messages about the risks of smoking in ways that would appeal to adolescents.

3. Most groups expressed the belief that any messages about the risks of smoking would be most effective with younger children or with people who had not yet started to smoke, rather than with current smokers.

Methodology

Number and Composition of Groups

A total of 19 focus groups were held in five cities across the United States. Cities were selected to reflect a diversity of populations. The cities used for this study included Calverton, Maryland (a suburb of Washington, DC); Minneapolis, Minnesota; Charlotte, North Carolina; Houston, Texas; and San Francisco, California. Groups included participants that represented the ethnic diversity of the geographical area. All groups were segmented by age, with approximately one-half of the groups comprised of 12–14 year olds and the rest of 15–17 year olds. All groups were single sex groups with the exception of a mixed group of 15–17 year old males and females in Calverton. The groups in Calverton, Charlotte and Minneapolis were pre-screened to determine smoking status of participants; the groups in San Francisco and Houston were not pre-screened for smoking status since the recruiting experiences from Calverton, Charlotte and Minneapolis assured the project personnel that both smokers and non-smokers would be included in all groups regardless of whether or not participants were pre-screened.

All of the focus groups for this project were 90–120 minutes long. During Phase I of the project (the Calverton groups), the primary objective was to determine which of 15 messages presented to participants were received the most positively. During Phase II of the project, the primary objectives were to refine the list of acceptable messages even further; and to obtain feedback about how the brief statements could be presented to showcase the message most effectively.

Schedule of Groups

Calverton, Maryland: 3 groups at Macro's focus group facility

October 17, 5:30 p.m. - 8 Boys, 12–14 years old - Smokers

October 18, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers

October 18, 6:30 p.m. - 8 Boys and Girls, 15–17 years old - Smokers

Charlotte, North Carolina: 4 groups at FacFind, Inc.

October 24, 4:30 p.m. - 7 Girls, 12–14 years old - Smokers

October 24, 6:30 p.m. - 8 Girls, 15–17 years old - Mix of smokers and non-smokers

October 25, 4:30 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers

October 25, 6:30 p.m. - 9 Boys, 15–17 years old - Smokers

Minneapolis, Minnesota: 4 groups at Orman Guidance Research

October 24, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers

October 24, 6:30 p.m. - 8 Girls, 15–17 years old - Smokers

October 25, 4:30 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers

October 25, 6:30 p.m. - 8 Boys, 15–17 years old - Mix of smokers and non-smokers

Houston, Texas: 4 Groups at CQS Research Inc.

October 31, 4:30 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers

October 31, 6:30 p.m. - 5 Girls, 15–17 years old - Mix of smokers and non-smokers

November 1, 4:30 p.m. - 9 Boys, 12–14 years old - Mix of smokers and non-smokers

November 1, 6:30 p.m. - 7 Boys, 15–17 years old - Mix of smokers and non-smokers

San Francisco, California: 4 groups at Fleischman Field Research, Inc.

November 8, 4:00 p.m. - 8 Girls, 12–14 years old - Mix of smokers and non-smokers

November 8, 6:00 p.m. - 8 Girls, 15–17 years old - Mix of smokers and non-smokers

November 9, 4:00 p.m. - 8 Boys, 12–14 years old - Mix of smokers and non-smokers

November 9, 6:00 p.m. - 8 Boys, 15–17 years old - Mix of smokers and non-smokers

Recruitment

Calverton Groups

Macro used Olchak Market Research, Inc. (OMR) to recruit the 3 groups in Calverton. OMR had been used successfully by Macro in the past to conduct recruitment efforts for focus groups. OMR maintains a randomly collected database of individuals who are likely to participate in focus groups or other market research projects. To maintain and add to this database, OMR calls individuals at random and explains that they are a market research firm which periodically performs market surveys and recruits for focus groups. They inform the individual that participants in these projects are paid for their time, then they ask whether the individual would be interested in participating in a future project. If the individual is interested in participating, his/her demographic information is recorded for future use. OMR does not use address lists provided by organizations, nor does it use individuals who contact them and ask to be placed on their list since many of these people are ''professional'' survey and focus group participants.

To ensure that a sufficient sample of adolescents attended, 14 youths were recruited for each group so that each group had 9 participants. OMR called adult individuals who were known to have children in the desired age range (12–17 years old), and used the attached screening instrument in their recruiting efforts. OMR made first contact with the parents of each youth. If the parents approved of their child's participation in the group, the child was then screened to determine if his/her age group (12–14 or 15–17 years old), gender, ethnicity, and smoking status fit the profiles called for in any of the 3 Calverton groups. If the youth's profile matched the desired profile for one of the groups, he/she was asked to participate and offered a $40 incentive. Cash incentives are routinely used in focus group projects to ensure that participants attend groups that they have been asked to attend. All recruits were sent a confirmation letter by OMR, and OMR also telephoned them within 36 hours of the focus group to confirm their attendance. Each confirmation letter also contained a parental permission form which had to be completed and signed before any youth was allowed to participate in a group or receive the incentive payment.

Other Cities

Recruiting in Charlotte, Minneapolis, Houston, and San Francisco was performed by the individual focus group facilities with guidance from Macro staff. Each facility's recruiting methodology mirrored OMR's in most respects, except that the facilities in Houston and San Francisco did not screen participants for their smoking status for any group. Pre-screening for these groups was not required because the recruiting patterns in Calverton, Charlotte and Minneapolis indicated that a mix of smokers and non-smokers would result whether smoking status was pre-screened or not.

Statement of Limitations

In market research, the focus group approach seeks to develop insight and direction rather than quantitatively precise or absolute measures. Because of the limited number of respondents and the restrictions of recruiting, this research must be considered in a qualitative frame of reference.

This study cannot be considered reliable or valid in a statistical sense since the recruiting of participants cannot be replicated, nor can the moderator ask the same questions of other respondents. This type of research is intended to provide guidance in determining knowledge, awareness, attitudes and opinions about concepts, products, or advertising formats.

Certain biases are inherent in this type of study and are stated here to remind the reader that focus group data cannot be projected to any universe of individuals. First, participants tend to be risk takers and may be somewhat more assertive than non-participants. Second, participants in a focus group study ''self-select'' themselves by the very fact that they are those people who were available at a time a particular group was scheduled. Participants thus were not selected randomly so that each person in a pool of possible participants did not have an equal chance of being selected. Third, participants who attend focus group sessions may be more articulate and willing to express opinions in a group than non-participants. And finally, people in groups may respond differently to a question than if asked the same question individually. They may follow the lead of a strong speaker or someone they perceive as ''expert,'' despite efforts of the moderator to eliminate this bias.

This report cannot accurately detail the wealth of information in the non-verbal area, such as ''body language,'' (posture, sleepiness, wiggling in the chair, etc.) or the amount of time elapsed between questions from the moderator and actual responses from the group. It also cannot report on the subtle area of ''peer pressure''—the willingness to avoid making a particular response because of fear of what others in the group might think, or quickly changing a response when others in the group appear to oppose a particular position.

Finally, the reader is reminded that this report is intended primarily to clarify cloudy issues and point the direction for future research, and that data here cannot be projected to a universe of similar respondents.

Moderators

Two moderators were used for this project. Both are Macro employees with professional moderator training and significant practical experience moderating focus groups. The moderator for the Charlotte and San Francisco groups was trained at the Burke Institute in Cincinnati, Ohio. The moderator for the groups in Calverton, Minneapolis, and Houston was trained at the Riva Institute in Bethesda, Maryland.

Data analysis

All of the focus groups were taped. The tapes were used to develop transcriptions of the sessions for preparation of the report. All direct quotations in this report were identified via the professional transcriptions, which were produced by SAG Corporation in Washington, DC with tapes supplied by Macro.

Protection of privacy of participants

All participants and their parents were promised anonymity for their participation in this study. Thus, no participant names or other identifying characteristics appear in this report.

Format for Discussion

Phase I—Calverton

The primary objective of the Calverton groups was to obtain adolescents' reactions to 15 messages that had been developed as possible brief statements directed towards teens. In addition, participants were queried about attitudes toward smoking among their contemporaries and attitudes toward cigarette advertising among this population. Thus, the discussion for these groups followed the following format:

A. Discussion of Cigarette Advertising

Participants were queried about their knowledge of cigarette advertising and their perceptions of what messages cigarette advertisements were attempting to convey. Sample cigarette advertisements were present to aid the discussion.

B. Discussion of Surgeon General's Warnings

The moderator focused discussion upon the Surgeon General's warnings currently appearing on cigarette advertisements and elicited reactions to those warnings.

C. Presentation of Sets of Brief Statements

Participants were presented with four sets of brief statements, with each set containing messages that addressed different aspects of smoking. Statements were presented in sets to ease the process of comparison and selection of the most effective messages, due to the large number of brief statements that were presented to this group. The four sets of messages presented to the Calverton groups were:

Set 1

Kids who smoke like adults get addicted like adults.

Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs and fires * * * combined.

The earlier you start smoking the greater your risk of lung cancer.

Smoking harms your baby.

Set 2

Most teen smokers believe they can quit but after six years 75% still smoke.

About one out of three kids who become smokers will die from it.

Tobacco causes shortness of breath, coughing, wheezing, yellow teeth and wrinkles.

Cigarette smoke has more than 4000 chemicals including ones that cause cancer.

Set 3

Tobacco kills more people every day than 2 jumbo jets crashing with no survivors.

Smoking is a deadly addiction.

Smoking today leads to fewer tomorrows.

Set 4

Kids who start smoking find they can't stop—once it's too late.

Everyone now addicted to cigarettes started out 'just trying' cigarettes.

Most smokers wish they could quit but can't.

70% of smokers wish they could quit.

Addiction happens much faster than you think.

D. Discussion of Similarities and Differences of Preferred Messages

Based upon the responses to the messages listed above, each group selected their preferred messages and discussed the reasons why they chose certain messages over the others presented.

Phase II—Charlotte, Minneapolis, Houston, San Francisco

The primary objective of the groups in the cities outside the Washington, DC area was to further refine the list of appropriate messages and then develop presentation criteria that would make the brief statements most effective within the context of cigarette advertisements.

A. Discussion about Kids and Smoking

Participants were asked to talk about the number of their peers that smoked, reasons teenagers smoke, and situations in which teens would most likely be smoking. The topic of addiction and how teens perceive addiction also was discussed in many of the groups. Participants were told at the outset that whether or not they personally smoked was their own business, and that what the moderator was interested in was their perception of how teens in general regarded smoking. Participants also were told about and asked to discuss recent trends in the rate of adult and teen smokers.

B. Cigarette Advertising

Examples of cigarette ads on pasteboard displays were shown to the groups and the participants' familiarity with the ads, as well as their reactions to them, were discussed. The moderator also focused discussion upon the Surgeon General's warnings currently appearing on cigarette advertisements and elicited reactions to those warnings.

C. Presentation of New Brief Statements

Based upon the responses to the brief statements of the Calverton groups, seven message were tested in the focus groups held in Charlotte and Minneapolis. These messages were discussed individually and favorite messages were selected by each group. The messages presented included:

Smoking today leads to fewer tomorrows.

Of the 3000 young people who begin smoking each day, 1000 will die from their smoking.

About one out of three kids who become smokers will die from their smoking.

Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicide, illegal drugs and fires * * * combined.

Everyone now addicted to cigarettes started out ''just trying'' cigarettes.

Tobacco causes shortness of breath, coughing, yellow teeth and wrinkles.

Addiction happens much faster than you think.

In addition to the seven messages listed above, three new messages were tested in Houston and San Francisco. These messages were:

Smoking hurts your athletic performance.

Addiction sucks you into a lifetime of smoking.

Non-smokers run faster than smokers.

D. Discussion of Message Format and Placement

Each group then was asked to discuss the issue of presentation of brief statements on advertisements. Using the pasteboards of existing advertisements, each group examined issues such as: the size of the message; position of the message; different types of boundaries; whether or not attribution of the message was effective (for example, attribution of a factual statement to the Centers for Disease Control); the use of icons to draw attention to a message; or other factors identified by the groups. To evaluate each of these factors, sample messages in different sizes, shapes, with/without attribution, with/without icons, and with/without specialized borders were developed so that the moderator (or participants) could demonstrate placement of the brief statements in various configurations.

Participants were presented with sample brief statements in three sizes. The ''large'' messages were 25 percent of the total height of the ads used as samples for the groups. The statements identified as ''medium'' sized were 15 percent of the total height, and the ''small'' versions were 8 percent of the total height, which is the approximate size of the Surgeon General's warning.

E. Summary of Preferences

Each group summarized its preferences for the messages that participants preferred and the placement and design elements that would be most effective in drawing the attention of adolescents to the dangers of smoking. Participants also used this occasion to make other recommendations that might make the messages more effective.

General Findings

I. Assumptions and Basic Perception of Adolescent Smoking

1. All of the groups indicated that a high percentage of adolescents will try cigarette smoking at some point during their teenage years. Estimates of the number of teens who will try smoking ranged from 50 to 99 percent. The major reasons given for why teens try smoking included: peer pressure; doing something that adults would not approve of; the perception of smoking as a ''cool'' activity; curiosity; and being around parents, other family members and friends who smoke.

''pressure from your friends''

''It's kind of like you go out and somebody offers you a cigarette and everybody else has one * * *.''

''It's more they're being rebels.''

''Some people, well, you know, like, do it to be cool.''

''Lots of people, most of the kids I know, my friends, their, like, their brothers and sisters give them a cigarette, saying, 'You want to try it yet?'''

2. The adolescents in our groups indicated that teens attach little stigma to smoking because it is seen as an exploratory behavior rather than as a permanent lifestyle choice. Smoking appears to be not a lifestyle choice, but rather a matter of ''trying it out,'' ''exploring what it is like,'' and an informational pre-decisional behavior.

''* * * you know, other people are doing it, so why not try it?''

''At the beginning, it would be like just curiosity and wanting to know what it's like.''

3. When asked where they get cigarettes, the adolescents in these groups indicated that they get them from family or friends who smoke; they buy them at convenience stores or other retail outlets known for allowing minors to purchase cigarettes; or they steal them.

''Well, I'm speaking from experience because when I was growing up my brother would buy them for me.''

''You just go up to the counter, and even if you don't have any ID, you can still get them.''

4. Teens that are just trying smoking stated very different reasons for smoking than teens who regularly smoke. The teens in these focus groups said that people try smoking to feel cool; to experience something that they consider to be ''adult'' behavior; and because of social pressures to try smoking in group situations. In contrast, the participants who identified themselves as smokers said that they smoked because it calms them down, or because smoking satisfies a physical and mental need. They indicated that they do not smoke in groups, nor do they smoke for social acceptance, but rather to meet bodily needs.

''It's like, oh, I smoke but I just do it after school. Have a cigarette to calm down or something.''

''I used to be real jittery and nervous all the time, and it really calms me down.''

''Your body craves it. You don't think about it anymore. It just becomes part of your life, just to have a cigarette.''

5. Some of the practiced smokers in the groups expressed a very fatalistic attitude about their lives, and they questioned the likelihood of whether they would live a long time.

''They're going to die anyway. At least they're doing something they want to do.''

6. Non-smokers in these groups were often critical of people who smoke regularly as adults, calling the behavior ''stupid'' or ''unhealthy.'' However, their criticism often was tempered by the fact that they know family members, relatives or other respected adults who are or have been longtime smokers.

''People smoke because they're putting lots of nicotine in their blood and killing themselves.''

''I mean, it's like suicide, you know?''

II. Perceptions of Cigarette Advertising

1. The adolescent participants in the focus groups were very familiar with cigarette advertising. There was 100% recognition of familiar ads, such as Camel, Marlboro, Virginia Slims, and Newport ads. There also was high awareness of the availability of promotional items with cigarette logos on them, such as T-shirts, book bags, etc. Participants explained how one could accumulate ''Marlboro Miles'' or ''Camel C Dollars'' to acquire such items.

''Yeah, you get, like, at certain brands you get points for them and you can turn them points in for, like, Zippo lighters or jackets and bags.''

''They're every camel with a cigarette in his mouth. They go like, 'Everyone have a good time.'''

2. There was high awareness in all of the groups of familiar slogans, logos on billboards, and point-of-purchase displays. Some participants expressed the belief that cigarettes are advertised on television, although others in the groups usually pointed out that cigarette advertising was not allowed on TV.

''It showed him smoking a Winston and said, 'See, you really can be a winner!'''

''Everyone associates that orange and green with Newport * * *''

3. Most of the participants indicated that they did not believe that they were influenced by cigarette advertisements.

''I mean, it has nothing to do with the ads. They don't keep me from it, nor they don't make me do it.''

''If you're just flipping through a magazine and you see it, you might stop and you might see something you like about it, and then flip on through. You don't really think of smoking or not smoking.''

4. Participants in all of the groups responded that text-only ads are less attractive and less likely to be effective than ads with pictures. Although they indicated that consumers would be less likely to read the new warnings on text-only advertisements, they felt that text-only ads may serve to lessen teen smoking. The younger participants in particular said that anything requiring reading was boring and much less likely to attract their attention.

''I probably wouldn't look at it in the first place because it's black and white.''

''People like pictures, not a whole bunch of words.''

''Yeah, you won't even look at it. It's just a bunch of words.''

''It's like a birthday card. You get a birthday card that has too many words, you just skim through it and get the money out of it.''

III. Perceptions of Surgeon General's Warning Statements

1. All of the groups recognized the Surgeon General's warnings, but unless they were prompted, they did not appear to consider the Surgeon General's warning a part of the advertisement. Participants expressed the belief that it was there because it was required by the government, or because cigarette manufacturers were trying to protect themselves from lawsuits.

''They are required by law. They wouldn't put it on there if they weren't.''

''If they didn't put them on there, they would get sued.''

2. Participants also commented that the Surgeon General's warnings often were too small and camouflaged within the context of the ad, either through the use of colors that helped the warning ''blend in'' with the background colors—the Marlboro ad, for example, which features white snow or sand surrounding the white Surgeon General's warning—or with images that directed the eye away from the warning message. Most groups also mentioned that the warning itself was often quite small in relation to the ad on which it appeared.

''You can see, like, on that one [Virginia Slims ad], they put it down in the bottom corner, when you're looking, like, at that lady.''

''They glance at it, but what they see is the thing that's being advertised. They don't notice that little small print.''

''They blend it in with that white with the white snow on it, they just put it right at the bottom in the white snow.''

3. Many participants expressed the belief that the Surgeon General's warnings were difficult to understand. They did not know what effect carbon monoxide would have on them, for example, and many participants did not know what emphysema was.

''Kids are not going to know what carbon monoxide is.''

IV. Perception of New Brief Statements

1. There was a high degree of consensus about which statements were more or less liked.

2. The statements that were received most positively were those that included factual statements about the health risks associated with regular (i.e. long term) smoking.

''Dying means a lot.''

''I think the numbers * * * might make it a little more noticeable.''

''It makes it more real.''

''Picture like 1,000 people dying at once, you know?''

3. The one brief statement that consistently was identified as effective was the one that stated, ''Tobacco kills more Americans each year than AIDS, alcohol, accidents, murder, suicides, illegal drugs and fires * * * combined.'' Most of the participants indicated that, although they knew that smoking was not good for them, they were unaware that smoking was as dangerous as this statement indicated. They mentioned AIDS, accidents, illegal drugs, and suicide as well-publicized causes of death, but that cigarette-related deaths were not so obvious because they generally occurred among older people as a result of long illnesses rather than in sensational situations that were covered by the nightly news.

''You are always hearing about how many people die from AIDS and alcohol and murder, and tobacco kills more than all of them combined. That ought to freak them out.''

''I think even little kids who are younger, people do realize the serious effect of AIDS, and if they think that AIDS is bad then they have to realize that tobacco is worse.''

''Because you hear about those things more than you ever hear about tobacco.''

4. A message that stated that ''About 1 in 3 kids who become smokers will die from it'' also was considered effective by many of the groups. A similar statement that said ''1000 out of 3000'' was also considered effective by some participants, while others said that teens would be likely to think that they could ''beat the odds'' if they became smokers.

''Well, they'll think, 'It won't happen to me. I'll go ahead and do it anyway.' They'll think they'll be one of the two.''

5. Many of the groups indicated that, if one of the brief statements listed above was included on advertising, it is likely that people who were considering smoking might reconsider, due to the seriousness of the consequences.

6. The message about the short term effects of smoking on physical appearance and fitness appealed to some groups, particularly the girls, who were more concerned about yellow teeth and wrinkles. Groups thought that such a message about the more immediate effects smoking would be useful because it spoke to everyday concerns of kids.

''That will make them realize that if they are going to smoke, it will have an effect on their looks.''

''I think people like are more worried about what they look like on the outside than like maybe like lung cancer or something.''

''* * * that's one of the main reasons why I don't smoke because it affects how I run and stuff like that.''

7. No other message of those tested received support from more than a few groups. Individual groups were favorable toward ''Everyone now addicted to cigarettes started out 'just trying,'' ''Smoking today leads to fewer tomorrows,'' or ''Smoking hurts your athletic performance,'' but other groups did not see these messages as particularly effective.

8. Other messages were universally disliked or ineffective.

9. There was no discernible difference in reactions to messages between smokers and non-smokers. Both smokers and non-smokers appeared to have similar taste in messages.

10. Several messages addressing the addiction aspect of smoking were tried and proved ineffectual.

V. Perception of Possible Design Elements for New Brief Statements

1. All groups indicated that the guiding design principle for the brief statements was for the statements to be visually prominent in the ad.

2. All groups recognized that the optimal design of the brief statement, particularly placement, would necessarily depend on the design of the particular advertisement. For example, all groups indicated that advertisers would try to design their ads to diminish the visual performance of the brief statement, like they do with the Surgeon General's warning. Some groups recommended that the brief statements be added after the advertisement was designed to minimize the possibility of it being designed to reduce the impact of the brief statement.

''Well, if it's in the middle then they will be forced to read it, because you have to look at it.''

''If it's possible, right in the middle.''

''I am an artist and I notice that a lot of propaganda is, they have a pattern through the picture, so your eyes tend to follow the pattern. Like when you see the cigarette it sort of points to her face, you see the pizza and her laughing and you see him, and the Surgeon General's warning is always somewhere obscured.''

''They'll design the picture to avoid it, I think.''

3. Many of the groups said that the new brief statement should be more visually prominent than the Surgeon General's warning—which led them to say that the new

brief statements needed to be distinct from the existing Surgeon General's warning.

''I mean, because if you have one of those, except bigger, you know, 'Oh, it's another Surgeon General's warning.' I mean, you skip over it again. But they do it, say, right in the middle, if they do write it in the same kind of style but make it look different some sort of way, you know, have it kind of in similar writing but not necessarily the block writing, it might be—people are more apt to read it.''

''The little one is almost the size of the Surgeon General's itself, so you're not improving it too much.''

4. Although placement was seen as the design element most dependent upon the specific advertisement, many groups recommended that, if possible, the message be put at the top of the ad or in the middle to ensure the greatest visibility.

''Because when you pick it up that's where you start reading.''

''If you put it in a place where it stays away from all the words, it would do a lot to make it stand out.''

''Put either one [Surgeon General's warning or brief statement] at the top. You are going to read that before you read the thing [ad].''

5. The major design elements that groups saw as contributing to visual prominence were type size, distinctive borders, and to a lesser extent, the use of a distinctive icon. Most groups said that the bigger the type size, the better, because it made it easier to read and more likely that the brief statement would be read. In fact, none of the groups felt that the smallest type size would be acceptable, although several groups approved of the middle type size if it would be placed appropriately. Several of the groups said that the middle size represented the best trade-off of the needs of the advertiser and the need to have the brief statement noticeable.

''Something flashy.''

''If they're going to allow people to sell cigarettes, then I don't think they should have them put big letters on the cigarette box that make people not want to smoke.''

6. Groups were mixed about the desirability of the ''arrow-type'' border for a brief statement, but were universally enthusiastic about the properties of a jagged-type border as a way to capture the attention of readers.

''Because it's [the jagged edge border] almost like a coupon.''

''It catches your eye more.''

7. Some groups were positive about the icon, with others less so. While most group said it would marginally improve the salience of a message, some groups thought the icon itself was not optimal and suggested other alternatives. Some groups worried that the trade-off between the extra space required by the icon and a larger message was not justified.

8. Groups frequently suggested that the appearance of a message be changed regularly so that consumers would not habituate to its appearance.

''You ought to change it periodically. I don't know what all you could change it to, but have it somehow different because I'm sure when they first started putting the Surgeon General's warning on there it caught peoples' eyes because it was new.''

9. Most groups mentioned that color would be a good way to increase the prominence of a message. Almost every group mentioned neon shades, either in jest or in a serious manner, or at the very least a shade that contrasted with the colors in the advertisement itself.

''I just think that in general a different color from the whole poster, but still where it doesn't look tacky. It still blends in, but not in a similar color.''

''If it was in a different color, that stands out no matter how much you try to avoid some of the stuff, it's going to catch your eye no matter what.''

''A vibrant color.''

''I think it should be like a neon orange.''

''I think there should be like two or three colors that it can be and you have to not use that color in your ad.''

10. Some participants suggested that the best way to present the information would be as a stand-alone advertisement rather than as part of a cigarette advertisement.

''Just have more ads against smoking.''

''I know. Yeah, for a good commercial, you go, put, like, for a commercial, somebody smokes, put, like, you know, on the Indiana Jones where all his skin comes off and the blood's running out!''

11. The reaction to attribution to a source of information (Centers for Disease Control, FDA, other sources of attribution) also received a mixed response. While some groups said that attribution would strengthen a statement, others disagreed with that viewpoint.

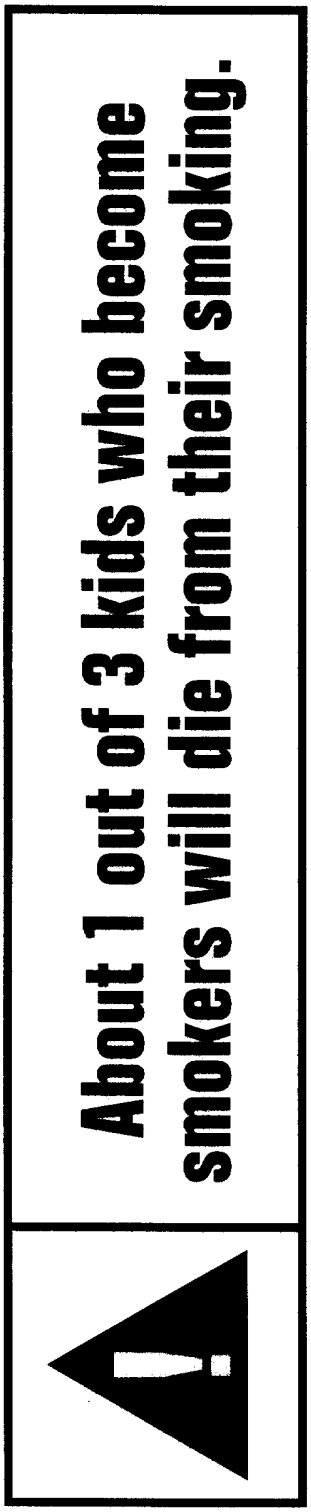
''It doesn't really matter (who said it) * * * as long as it's fact.''

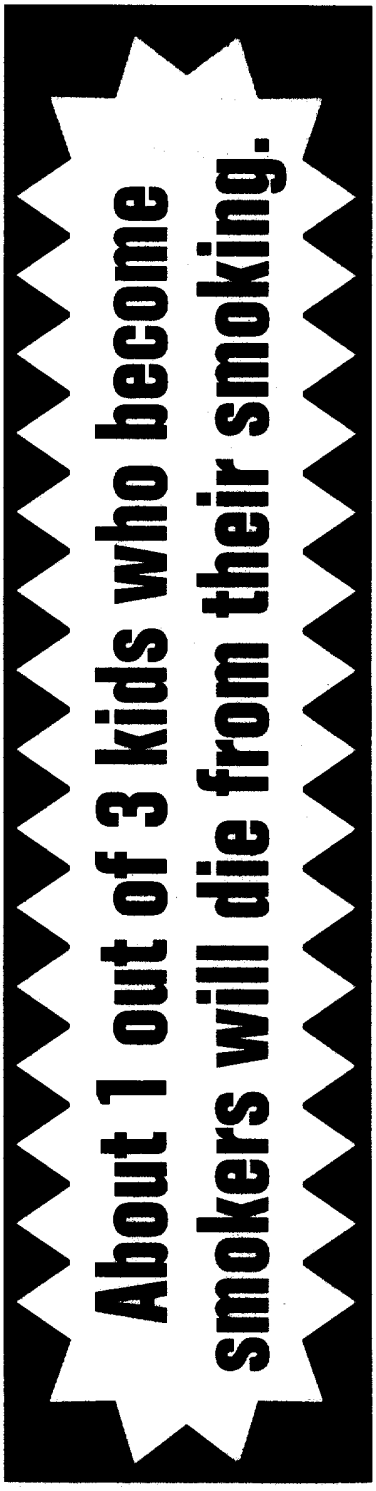
''Someone with a degree who graduated—the Surgeon General.''

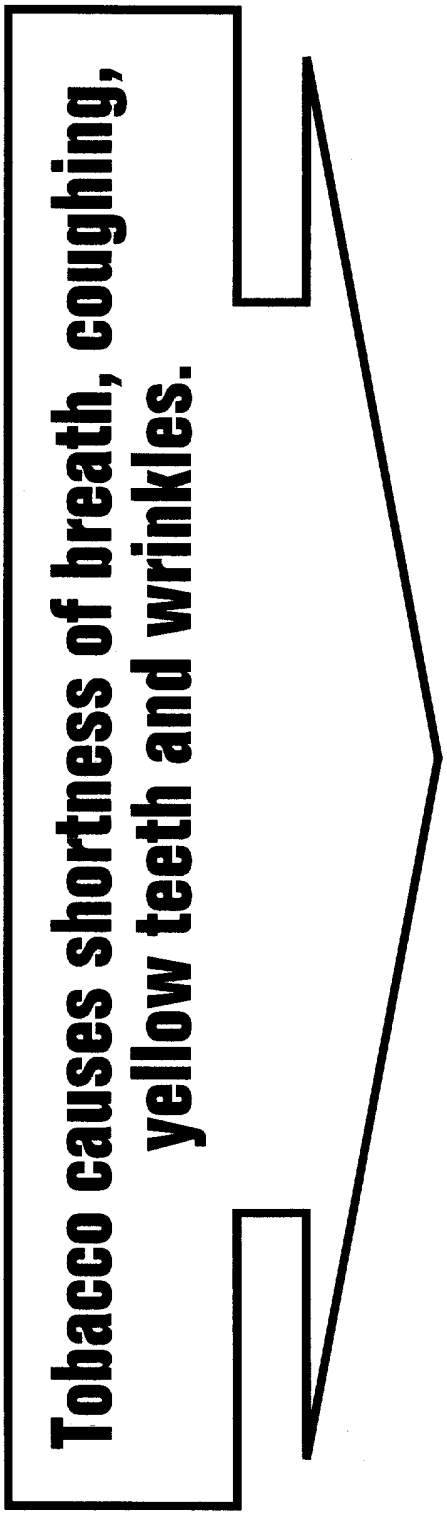
Addenda

1. Sample graphics
2. Moderator's Guides
   a. Phase I
   b. Phase II

BILLING CODE 4160–01–F







BILLING CODE 4160–01–C

Cigarette Advertising Focus Groups Phase I Moderator's Guide

Outline

1. Introductions
2. Presentation of Examples of Cigarette Ads
3. Discussion of Cigarette Advertising in General
4. Discussion of Warning Statements
5. Presentation and Discussion of First Set
6. Presentation and Discussion of Second Set
7. Presentation and Discussion of Third Set
8. Presentation and Discussion of Fourth Set
9. Discussion of Similarities and Differences of the Winners

Materials:

3–5 Examples of Cigarette Ads (Relevant to this Age Group).

Sheets of Paper with 3 or 4 Possible Brief Statement Wordings. Each Participant Will Get Four of These During the Session.

1. Introductions

Summary:

Moderator and respondents introduce themselves to one another. Overall plan for the focus groups is discussed. ''Today, we'll be looking and talking about some examples of cigarette advertising.'' Important points to emphasize in the introduction. We are not here to talk about whether you do or do not smoke. That's your business. Nothing you say in the group will get back to your parents or anyone else. We care about how cigarette advertising works, and we want to talk to people of your age to get a better idea of how they see and understand advertising.

2,3. Discussion of Cigarette Advertising: General

Materials:

Examples of cigarette ads on pasteboard displays are shown to the group and remain on display throughout the session.

''Here are some examples of cigarette advertising.''

Have you seen these kinds of ads before?

Where do you usually see them?

Do you notice anything different or special about cigarette ads compared to other kinds of products that are advertised, or are they basically the same as other ads?

What other kinds of ads do cigarette ads remind you of?

What kind of person is most likely to look at cigarette ads?

Who is not likely to pay much attention to these kinds of ads?

—The 3 ads are present at this point, but they are not the focus of the discussion. Smokers and non-smokers will almost certainly be brought up in this discussion, but we do not want participants to focus on their own behavior at this point.

—Warning statements are not cued by the moderator, but will probably come up in the discussion. Moderator needs to explore issues as they arise, but there is no need to focus on warning messages at this point.

—An important point here is to let people reveal their own *natural categories* about cigarette advertising and warning statements before the concept of ''warning statements'' is explicitly introduced.

Do you think these 3 ads are different from each other, or are they basically the same?

How are they different/same?

4. Discussion of Warning Messages

—The discussion is turned toward issues related to the warning statements, which may or may not have been discussed already. The moderator needs to explore the issues below without being repetitive or redundant with any previous discussion.

''Let's talk a little bit about the warning messages in the ads—which you may or may not have noticed.''

—The moderator refers here to the Surgeon General's Warning statements in the ads as examples of warning messages.

Why are these messages there?

Do you think they work?

Why? Why not?

Who looks at these messages?

Who is supposed to look at these messages?

When did you first notice that these messages were in cigarette advertising? What did you think when you first saw them?

How could you improve these kinds of messages?

5. Presentation of Set of Warning Messages

Materials: 81/2″ X 11″ pages, containing several different possible warning messages.

''The warning messages that we have seen so far are not the only possible warning messages. What I'd like to do now is show you possible wordings for warning statements and get your reactions to these. These messages could be used in cigarette advertisements in the same way as in the ads we have here today.

''Here are some possible wordings for warning statements.''

—Each participant gets a sheet with examples of possible warning messages. The sets of possible warning messages will have to be determined. The intent is to present participants with a small number of statements they can compare and contrast rather than one at a time or in one big list. The selection of statements should take advantage of the ability to elicit direct comparisons.

Do you feel any of these statements is particularly good or bad? credible/not credible personally relevant/not relevant Why?

What does (pick one of the messages at a time/but get reactions to as many as you think are necessary) mean to you?

How would you describe the differences, if any, between these messages?

Would you be more likely to pay attention to some of these messages? Which ones? Why?

What sort of young person would be likely to pay/not pay attention to these messages?

Do they all have the same target audience?

Which messages will appeal to which groups?

Which one(s) do you like best? (Get them to rate the messages and record consensus choice(s).)

6,7,8. Repeat the same discussion above for each new set of warning statements

9. Discussion of similarities and differences of the 4 winners.

''Here are the messages the group thought were best''

Are there other kinds of warning messages that we haven't included that you think should be in cigarette advertising? What would those be? Why do you think they would be good?

—moderator needs to include suggestions that are reasonably well received by the group as part of the final set of messages that will be discussed below.

How would you describe the differences, if any, between these messages?

Is there anything that these messages have in common that makes them superior to the other kinds of messages that did not make the final cut?

How would you describe the intended audiences for the different messages? Same? Different? Which messages appeal to what kinds of people?

Of all these messages, which one do you think is most likely to be effective? Why?

Which one(s) do you personally like the most?

At the end of the session, the participants will fill out a short outtake questionnaire that will contain some questions about smoking status, number of cigarettes smoked, brands smoked, and other relevant information.

Cigarette Advertising Focus Groups Phase II Moderator's Guide

Outline:

1. Introductions
2. Kids and Smoking
3. Information Piece
4. Cigarette Advertising
5. Warning Messages
6. Presentation of New Warning Messages: Content
7. Size of Message
8. Position
9. Boundaries
10. Attribution
11. Icons
12. Summary

Materials:

3–5 Examples of Cigarette Ads (Relevant to this Age Group).

Visuals Examples of Ads (Could Be Same Ads as Used Above) That Embody Various Format and Design Features That We Want to Evaluate—as Many as Needed.

1. Introductions

Summary:

A. Moderator and respondents introduce themselves to one another.

B. Overall plan for the focus groups is discussed:

Today, we want to talk about kids and smoking. Some of you may be smokers, but we're not here to talk about whether you smoke or not. That's your business.

But what we do care about is how kids in general think about smoking. In particular, we want to get a better idea of how kids in your age group think about smoking.

Nothing you say in the group will get back to your parents or anyone else. The best way

you can help us is to tell us what you really think, not what you think we want to hear, or what you think you should say.

2. Kids and Smoking

This is a warmup activity. Questions below are suggestions, not requirements. You don't need to ask every question. Try to get people interested and comfortable. Should take about 5–10 minutes

A. Do kids smoke at your school? How many kids smoke? Who smokes? Are boys as likely to smoke as girls?

B. When do kids first try smoking? How old are they? Is it the same for girls and boys? What kinds of things make a difference in kids' decision to try a cigarette?

C. What kinds of situations are kids in when they try smoking? Is this the same for girls and boys? Is the situation the same for younger and older kids?

D. Are the kinds of things that lead kids to try a first cigarette the same kinds of things that lead them to smoke regularly? If not, what are the differences?

E. Where do kids get cigarettes? Where do they smoke?

Other possible questions.

Who do they smoke with? Do they smoke alone, or mostly with others? Who are the others? Does this change as they smoke more regularly? Is how kids get cigarettes different if they smoke occasionally or regularly?

3. Information Piece

I want to get your reaction to this piece of information—I assure you that it is true.

Did you know that over the last 25 years the number of adults who smoke has gone down. And the number of adults who smoke keeps going down.

But the number of young people who smoke has not gone down, and is actually going up in some groups—such as 12–14 year olds.

Are you surprised by this? Why do you think this is happening?

4. Cigarette Advertising

Materials:

Examples of cigarette ads on pasteboard displays are shown to the group and remain on display throughout the session.

Here are some examples of cigarette advertising.

Have you seen these kinds of ads before?

Where do you usually see them?

What other kinds of ads do cigarette ads remind you of?

Who is most likely to look at cigarette ads?

Who is not likely to pay much attention to these kinds of ads?

—Warning statements are not cued by the moderator, but will probably come up in the discussion. Moderator needs to explore issues as they arise but does not need to focus on warning messages at this point.

—An important point here is to let people reveal their own natural categories about cigarette advertising and warning statements before the concept of ''warning statements'' is explicitly introduced.

5. Discussion of Warning Messages

''Let's talk a little bit about the warning messages in the ads—which you may or may not have noticed.''

—The moderator refers here to the Surgeon General's Warning statements in the ads as examples of warning messages.

Why are these messages there?

Do you think they work?

Why? Why not?

Who looks at these messages?

Who is supposed to look at these messages?

What do you think about the placement of the Surgeon General's warning?

What about the size of the warning message?

How could you improve these kinds of messages?

6. Presentation of New Warning Messages: Content

Materials: Sheet containing six messages

As background for the next section, laws are being considered to require that all cigarette advertisements have information about the risks of teenage smoking. This would be in addition to the Surgeon General's warning already required on cigarette advertisements.

What I want to do now is show you some examples of possible messages and see what you think.

Let's look at these 6 messages. Moderator reads the 6 messages.

Moderator re-reads the first message.

What does this mean to you?

Do you think it is effective?

Would it appeal to kids your age?

Repeat with the other 5 messages—re-read each, one at a time, and discuss the content.

What does this mean to you?

Do you think it is effective?

Would it appeal to kids your age?

Ask them which they think is most effective. As much as possible, use that one for the example in the other tasks.

7. Size of Message

Materials: A message (perhaps the message chosen in 6) in the three different sizes on appropriate ads

Here are some examples of how these messages might actually look in cigarette advertising.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the size of the warning information change the way kids are likely to react to an ad.

Will the size of the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

8. Position

Materials: Three more ads with the same message and size in the 3 different placements on the ad.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the placement of the warning information change the way kids are likely to react to an ad.

Will the placement of the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

9. Boundaries

Materials: Three more ads with messages in the same size and placement (probably top placement) but with different boundaries.

Which of these ads presents the warning information in the best way? Why do you say that?

Does the boundary of the warning information change the way kids are likely to react to an ad.

Will the kind of boundary for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

10. Attribution

Materials: Two ads with the same message, size and placement, but one with the CDC attribution

Which of these ads presents the warning information in the best way? Why do you say that?

Does giving the source of the warning information change the way kids are likely to react to an ad.

Will giving the source for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

Are there other organizations that kids would be more likely to believe? What?

11. Icons

Materials: Three ads with more or less the same message, boundary, size, placement, but one without an icon, one with a larger icon, and one with a smaller icon.

Which of these ads presents the warning information in the best way? Why do you say that?

Does having an icon for the warning information change the way kids are likely to react to an ad.

What does the icon look like to you.

Will having an icon for the message have the same kind of effect on all ads, or will it work differently for some ads.

Would it make a difference whether the ad it was on was in color like this or only black and white?

Are there other icons that kids would be more likely to understand? What?

12. Summary

As you see, there are many possible features that make up a total presentation. We couldn't show you all possible combinations, but we want your opinions and ideas about how different features go together or don't go together. You may have suggestions about trying combinations that we haven't tried, and that's good. Let's look think about the whole picture you have put together from your choices.

Do you think this message, size, placement, with this boundary and picture (icon), and with the organization you chose it should come from, would look right? Would it be an

effective whole ad? Why or why not? How might it be improved?

At the end of the session, the participants will fill out a short outtake questionnaire that will contain some questions about smoking status, number of cigarettes smoked, brands smoked, and other relevant information.

Dated: November 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29299 Filed 11–30–95; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Proposed permanent modification of rules upon expiration of one-year experiment.

SUMMARY: The National Labor Relations Board (NLRB) issues a document proposing to make permanent, following expiration of the one-year experimental period on January 31, 1996, the experimental modification to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions.

DATES: Comments must be received on or before December 29, 1995.

ADDRESSES: Comments should be sent to: Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

Thereafter, on December 22, 1994, following consideration of the comments received to the NPR, the Board [1] issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

Recently, on November 6 and 8, 1995, the Board met with the Management and Union-side Panels of the NLRB Advisory Committee on Agency Procedure to discuss, among other matters, the experience to date with the experimental modifications and whether the modifications should be extended or made permanent following expiration of the one-year experimental period.[2] The following is a summary of the information that the Board provided to the members of the Advisory Committee Panels on this question.

Settlement Judges

Since February 1, 1995, settlement judges have been assigned in 55 cases. There have been settlements in 35 of the cases. Eighteen cases did not settle and went to trial. Settlement is still possible in some of the remaining cases. Some of the cases which settled did so after a trial judge was assigned and occurred either after conference calls conducted by the trial judge or at the hearing site. Twenty seven, or just about half of the cases in which settlement judges were assigned, were Region 4 (Philadelphia) cases in which the region played an active role in setting up settlement conferences. In about half a dozen other cases appointment of a settlement judge was requested by the General Counsel or a party. In the remaining 22 cases, settlement judges were assigned at the initiative of the Division of Judges. The Division of Judges has suggested appointment of settlement judges in other cases, but not all the parties have agreed. At the end of August 1995, there were a total of 577 settlements by ALJs compared to 544 at the end of August 1994. The difference is almost the same as the number of cases in which settlement judges were assigned and settlements were reached.

Bench Decisions

Ten bench decision have issued since February 1, 1995 (out of approximately 400 total ALJ decisions). Several of the bench decisions turned on simple credibility determinations. None of the cases involved complex legal issues. The average transcript length was 144 pages; the median length was slightly higher. All of the cases took less than one day. In six of the 10 cases, no exceptions were filed to the ALJ's bench decision, and the Board therefore adopted the ALJ's decision in the absence of exceptions. Of the four other bench-decision cases, the Board short-form adopted the ALJ's decision in three of the cases,[3] and the other case is still pending before the Board on exceptions.

The response of both the Management and the Union-side Panel of the Advisory Committee generally favored a continuation of the modifications, with the exception of the modification authorizing bench decisions, which received a mixed response from the Management-side Panel. The response of the Management-side Panel of the Advisory Committee generally favored a continuation of the modification authorizing the use of settlement judges. Several members of the Panel stated that they favored extending the settlement judge procedure, provided that the use of settlement judges continued to be consensual as currently provided. One member, however, stated the view that the emphasis with respect to settlement should be on the trial judges themselves and the Regional Office staff rather than on settlement judges. With respect to bench decisions, one member of the Management-side Panel stated the view that this procedure should also be extended and used in more cases. However, two other members expressed concern about the lack of discovery and the absence of an opportunity to file a brief.

The Union-side Panel also generally favored continuation of the settlement judge procedure. The Panel emphasized, however, that the settlement judge should not have the authority to postpone the trial date. Further, the Panel indicated that it was not necessarily opposed to eliminating the requirement that all parties agree to the use of a settlement judge or mandating that parties appear at an initial settlement conference. Finally, the

[1] Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting in part.

[2] A notice of these meetings was issued on October 19, 1995, advising the public of the agenda and of the right to attend and file written comments on the matters discussed within 30 days thereafter (60 FR 54090). To date, no written public comments have been received.

[3] *Sylvan Industrial Piping, Inc.*, 317 NLRB 772 (1995); *The Riverboat Hotel*, 319 NLRB No. 30 (Sept. 29, 1995); and *Kinco, Ltd.*, 319 NLRB No. 56 (Oct. 23, 1995) (Member Cohen dissenting in part).