

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1407

#### Portable Generators; Notice of Proposed Rulemaking; Proposed Labeling Requirements; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document the Consumer Product Safety Commission (Commission or CPSC) proposes to require manufacturers to label portable generators with performance and technical data related to performance and safety. The warning label would inform purchasers that: "Using a generator indoors will kill you in minutes;" "Exhaust contains carbon monoxide, a poison gas you cannot see or smell;" "Never use in the home or in partly enclosed areas such as garages;" "Only use outdoors and far from open windows, doors, and vents." The warning label will also include pictograms. The Commission believes that providing this labeling information will help reduce risks to consumers. The Commission invites public comment on this proposal.<sup>1</sup>

**DATES:** Written comments in response to this notice must be received by November 7, 2006.

**ADDRESSES:** Comments should be e-mailed to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), and should be captioned "PORTABLE GENERATOR NPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by facsimile to (301) 504-0127.

<sup>1</sup> Acting Chairman Nancy A. Nord and Commissioner Thomas H. Moore each filed a statement. The statements are available from the Office of the Secretary or on the Commission's Web site at <http://www.cpsc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Janet L. Buyer, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD; telephone (301) 504-7542 or e-mail: [jbuyer@cpsc.gov](mailto:jbuyer@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The total yearly estimated non-fire related carbon monoxide (CO) deaths for each of the years 1999 through 2002 are 109, 138, 130 and 188, respectively. Since 1999, the percentage of estimated CO poisoning deaths specifically associated with generators has been increasing annually. In 1999, generators were associated with 7 (6%) of the total yearly estimated CO poisoning deaths for that year. In 2000, 2001 and 2002, they were associated with 19 (14%), 22 (17%) and 46 (24%) deaths out of the total estimates for each of those years.

On October 12, 2005, Commission Chairman Hal Stratton sent a memorandum to the Executive Director directing the staff to undertake a thorough review of the status of portable generator safety. As part of this review, Chairman Stratton requested that the staff address the sufficiency of warning labels to address the CO poisoning hazard posed by portable generators that are used within or near residences.

##### B. The Product

Portable generators offer a portable means of providing electrical power to a location that either temporarily lacks it or is not provided with electrical service at all. A portable generator has an internal combustion engine to produce rotational energy, which is used to generate electricity. The engine may be fueled by gasoline, diesel, natural gas, or liquid propane. It is the engine that is the source of carbon monoxide.

Estimates of sales of portable generators for consumer use vary, but could be more than a million units annually. The most popular of these generators are gasoline-powered and are priced in the \$500 to \$800 range. The output of the majority of light duty generators sold to consumers in 2005 was in the 3.5 kW to 6.5 kW range. This is the size of most of the units involved in the fatal CO poisoning incidents CPSC staff investigated in which the

rating of the involved generator was identified.

##### C. Relevant Statutory Provisions

Section 27(e) of the Consumer Product Safety Act (CPSA) authorizes the Commission, by rule, to "require any manufacturer of consumer products to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act." As provided in section 2(b)(1) of the Consumer Product Safety Act (15 U.S.C. 2051(b)(1)), one purpose of the CPSA is "to protect the public against unreasonable risks of injury associated with consumer products."

##### D. Development of Proposed Rule

In 2002, CPSC staff assessed the effectiveness of current CO poisoning warnings found on the product and within the owner's manuals of several models of portable generators found on store shelves. Staff found that the guidance provided for avoiding the hazard was typically twofold: (1) Do not use in a confined or enclosed space, and (2) provide proper ventilation. None of the evaluated warnings defined "confined or enclosed space" or "proper ventilation."

The Commission believes these ambiguous instructions and warnings do not adequately advise the user how to avoid the CO poisoning hazard. Furthermore, the incident data includes fatalities where it appears that the victims attempted to provide adequate ventilation, to open confined areas, or to do both by, for example, opening doors, opening windows, and running exhaust fans. Prior research has shown that tools with gasoline-powered engines produce CO that "can rapidly accumulate, even in areas that appear to be well-ventilated, resulting in dangerous and fatal concentrations within minutes."<sup>2</sup> Thus, evidence suggests that the methods consumers typically use to

<sup>2</sup> Earnest, G.S., *Carbon Monoxide Poisonings from Small, Gasoline-Powered, Internal Combustion Engines: Just What is a "Well-Ventilated Area"?*, American Industrial Hygiene Association Journal, November 1997.

provide ventilation or to open confined areas are insufficient to prevent hazardous levels of CO buildup. Even locating a generator outdoors can be insufficient if the generator is near enough to openings to the home or other occupied structure to allow CO to permeate and subsequently accumulate indoors. CPSC is aware of at least five deaths that occurred when the generator was situated outdoors but near openings to the home. In addition, the Centers for Disease Control and Prevention recently reported the results of a study of post-hurricane related generator use in 2005 that found up to 50 percent of non-fatal CO poisoning incidents involved generators operated outdoors but within one to seven feet from the home.<sup>3</sup>

The staff believes that there are too many unknown variables to be able to recommend one single safe distance for the location of a portable generator relative to a home or dwelling. Variables such as the wind speed and direction relative to openings to indoor spaces, relative proximity of other structures in the area that could create wind vortices, direction in which the engine exhaust is pointing, and a multitude of other factors complicate attempts to define a safe distance. Notwithstanding the issue of defining a safe operating distance, the staff believes that warning labels must instruct consumers to keep generators outdoors and away from air intakes during use.

In 2003, the staff developed recommended warning language for engine-driven tools, with particular focus on portable generators, as a follow-up to the staff's assessment of the inadequacy of current warnings. This was later provided to the Underwriters Laboratories (UL) voluntary standard development committee. In February 2006, staff developed a further refined warning label for portable generators and presented it to UL in response to their request for CPSC staff comments on a proposed UL Outline of Investigation. UL incorporated staff's proposed warning label into their Outline of Investigation, which became effective April 2006 and serves as the requirements with which a product must conform in order to be eligible to bear the UL mark. This document is not a consensus standard. The Commission believes the proposed rule is needed to ensure that all products will bear the proposed warning label as opposed to only those that seek UL's mark.

<sup>3</sup> CDC, *Carbon Monoxide Poisoning After Two Major Hurricanes—Alabama and Texas*, August–October 2005, MMWR March 10, 2006; 55(09): 236–239.

### E. Description of the Proposal

The proposed warning label appears at fig. 1 (and fig. 3 for the on-package label). The warning label provides technical data, *i.e.*, it indicates the presence of carbon monoxide in the portable generator exhaust and informs that carbon monoxide is a gas you cannot see or smell. The label uses the phrase “you cannot see or smell” rather than terms such as “odorless” and “colorless,” because the latter terminology may be less familiar and understandable to some consumers.

The label also includes statements which connect the technical data with safety concerns. Specifically, the label warns: “Using a generator indoors WILL KILL YOU IN MINUTES.” The phrase “in minutes” is intended to emphasize the imminence of the carbon monoxide poisoning hazard to provide consumers with a better understanding of the speed with which incapacitation can occur. In addition, research indicates that information about hazard scenarios affects consumers' risk judgments. Thus, the label includes a description not just of the hazard, carbon monoxide, but of the primary hazard scenario associated with CO-poisoning deaths, *i.e.*, using a generator indoors. The label also warns, “NEVER use in the home or in partly enclosed areas such as garages.” The label warns specifically against use in the home and in garages, since these are known places in which consumers use generators. Furthermore, the use of a more wide-reaching phrase, “partly enclosed,” is intended to broaden the perceived range of potentially dangerous areas in which to operate a generator, since this range does include partly enclosed areas. The label includes prescriptive advice to “ONLY use outdoors and far from open windows, doors, and vents,” so consumers can know what positive action they can take to avoid the hazard, rather than focusing exclusively on prohibited behaviors, or what consumers should not do. This is consistent with the requirements of ANSI Z535.4–2002, which is the primary U.S. voluntary consensus standard on product safety signs and labels, and with warning design guidelines in general. The accompanying pictograms are based on the pictograms developed by the Underwriters Laboratories Standards Technical Panel. Research shows that labels with pictograms tend to capture a consumer's attention more readily than a label without pictograms.

### F. Unreasonable Risk of Injury

Portable generators are powered by gasoline, diesel, or propane engines and exhaust CO. If the generator is used in enclosed or even partially enclosed spaces, the CO can very quickly build to hazardous levels. Serious injury can also result when the generator is placed outdoors but near an open window or vent and the exhaust is pulled into a house. In the 6-year period from 2000 through 2005, CPSC staff is aware of at least 222 deaths related to CO poisoning associated with generators.<sup>4</sup> Non-fatal CO injuries can have serious consequences since permanent brain or neurological damage can result.

A well-designed warning label could inform the consumer of the CO hazard associated with generators and how to avoid the hazard while using the generator. A label placed in a prominent position on the generator could reinforce this information each time the consumer used the generator. For example, the proposed label reminds the consumer that generator exhaust contains CO, which cannot be seen or smelled, and can quickly kill. The label also clarifies that a generator should only be used outside and away from windows and vents and should not be used in partly enclosed spaces such as garages. This information is important since some consumers have apparently been aware that a CO hazard was associated with generators, but believed that they would avoid the hazard by running the generator in a garage with the door open or outside the house, but did not understand that it was necessary to place it away from open windows and vents.<sup>5</sup> The costs of a warning label include the one-time cost of designing the label and the continuing costs of printing and applying the labels to the generators and packages. These costs are expected to be low—less than one dollar per generator. The Commission therefore preliminarily concludes that there is an unreasonable risk of injury associated with portable generators and

<sup>4</sup> Natalie E. Marcy and Debra S. Ascone, “Incidents, Deaths and In-Depth Investigations Associated with Carbon Monoxide from Engine-Driven Generators and other Engine-Driven Tools, 1990–2004,” CPSC Memorandum to Janet Buyer, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, Washington, DC (1 December 2005) and Robin L. Ingle, “Non-fire Carbon Monoxide Fatalities Associated with Engine-Driven Generators and Other Engine Driven Tools in 2004 and 2005,” CPSC Memorandum to Janet Buyer, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, Washington, DC (3 January 2006).

<sup>5</sup> Timothy P. Smith, “Human Factors Assessment for the Small Engine-Driven Tools Project,” CPSC Memorandum to Janet L. Buyer, U.S. Consumer Product Safety Commission, Washington, DC (18 June 2002).

that providing the information required by the proposed rule will help reduce the rising CO death toll associated with consumer use of portable generators.

### G. Environmental Considerations

Labeling requirements are not expected to have an adverse impact on the environment and are considered to be “categorical exclusions” for the purposes of the National Environmental Policy Act according to the CPSC regulations that cover its “environmental review” procedures (16 CFR part 1021.5(c)(2)).

### H. Impact on Small Business

CPSC staff has identified more than 40 suppliers of generators to the U.S. consumer market. Although a few large firms dominate the market, a number of these suppliers are likely to be small businesses. The small businesses include firms that import generators from foreign manufacturers as well as equipment assemblers, which assemble generator sets from purchased components. The small manufacturers will be responsible for ensuring that their generators are properly labeled. However, the labeling requirement is not expected to pose a significant burden to small business because the cost of adding the labels per generator is expected to be less than a dollar per generator set.

### I. Effective Date

The proposed effective date of Part 1407, which requires labeling for portable generators, is 90 days from issuance of any final regulation in the **Federal Register**. The labeling requirement would apply to all portable generators imported or introduced into commerce after the 89th day following publication of any final regulation in the **Federal Register**.

### J. Request for Information and Comments

Interested persons are invited to submit comments regarding this proposal. The Commission specifically seeks comments on whether the proposed new warning label should be required or permitted to appear in a second language. If such dual language labeling is required or permitted, the Commission seeks further comments on the most effective manner to implement the second language warning. Comments should be e-mailed to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov) and should be captioned “PORTABLE GENERATOR NPR.” Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West

Highway, Bethesda, MD 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by telefacsimile to (301) 504-0127. All comments and submissions should be received no later than November 7, 2006.

### K. Conclusion and Proposal

On the basis of the information discussed above, the Commission preliminarily finds that there is an unreasonable risk of injury associated with portable generators, and concludes that a requirement for a carbon monoxide identification and warning statement on portable generators is necessary to help protect the public against the risk of CO poisoning associated with such products.

Therefore, under provision of the Consumer Product Safety Act (section 27(e), 86 Stat. 1227-9, as amended; 15 U.S.C. 2076(e)), the Commission proposes that Title 16, Chapter II, be amended by adding to Subchapter B the following new Part 1407:

#### List of Subjects in 16 CFR Part 1407

Consumer protection, labeling.

#### PART 1407—PORTABLE GENERATORS: REQUIREMENTS TO PROVIDE PERFORMANCE AND TECHNICAL DATA BY LABELING

Sec.

1407.1 Purpose, Scope, and Effective Date.

1407.2 Definitions.

1407.3 Providing performance and technical data to purchasers by labeling.

**Authority:** 15 U.S.C. 2076(e).

##### § 1407.1 Purpose, Scope, and Effective Date.

This part 1407 establishes requirements under section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e)) for manufacturers to provide consumers with a specified notification concerning the carbon monoxide poisoning hazard associated with the use of portable generators. The notification is intended to provide consumers with technical and performance information related to the safety of portable generators. This part becomes effective [90 DAYS FROM ISSUANCE OF FINAL RULE].

##### § 1407.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1407.

(b) A portable generator is an internal combustion engine-driven electric generator, which is intended to be moved for temporary use at a location where utility-supplied electric power is not available. It has receptacle outlets

for the alternating-current output circuits and may also have a direct current (DC) battery charging outlet.

##### § 1407.3 Providing performance and technical data to purchasers by labeling.

(a) *Notice to purchasers.*

Manufacturers of portable generators shall give notification of performance and technical data related to performance and safety to prospective purchasers of such products at the time of original purchase and to the first purchaser of such product for purposes other than resale, in the manner set forth below.

(1) *On-product label.* The CO poisoning hazard label shown in fig. 1 shall be used on the product. A different representation of the generator may be substituted for accuracy if consumers are more likely to recognize the substituted representation as the generator to which this label is affixed.

(i) The signal word “DANGER” shall be in letters not less than 0.15 inch (3.8 mm) high. The remaining text shall be in type whose uppercase letters are not less than 0.1 inch (2.5 mm) high.

(ii) The signal word “DANGER” shall appear in white letters on a safety red background. The safety alert symbol shown in fig. 2 shall appear immediately before and next to the signal word and be no smaller than the height of the signal word with the base of the triangle on the same horizontal line as the base of the signal word. The solid portion of the triangle (within the lines of the triangle, around the exclamation mark) shall be white and the exclamation mark shall be safety red. The prohibition “X”s shall be safety red.

(iii) The on-product hazard label shown in fig. 1 shall be located:

(A) On a part of the portable generator that, if removed, would impair the operation of the generator assembly, and

(B) On a location that is prominent and conspicuous to an operator while performing at least two of the following actions: filling the fuel tank, accessing the receptacle panel, and starting the engine.

(iv) The on-product hazard label shown in fig. 1 shall be designed to remain permanently affixed, intact, legible, and largely unfaded in the environment in which the product is expected to be operated and stored over the life of the product.

(2) *Carbon monoxide poisoning hazard label for package.* The CO poisoning hazard label shown in fig. 3 shall be affixed to the principal display panel(s) of the package, as well as the surface containing the top flaps of the package. The principal display panel(s)

of the package is the portion(s) of the outer packaging that is designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. Any panel of the package that includes text in a language other than English shall also include a CO poisoning hazard label in that language. Alternate-language versions of this label may also appear on the top flaps of the package as long as they are physically separate from one another. A different representation of

the generator may be substituted for accuracy if consumers are more likely to recognize the substituted representation as the generator contained within the packaging.

(i) The signal word "DANGER" shall be in letters not less than 0.15 inch (3.8 mm) high. The remaining text shall be in type whose uppercase letters are not less than 0.1 inch (2.5 mm) high.

(ii) The signal word "DANGER" shall appear in white letters on a safety red background. The safety alert symbol

shown in fig. 2 shall appear immediately before and next to the signal word and be no smaller than the height of the signal word with the base of the triangle on the same horizontal line as the base of the signal word. The solid portion of the triangle (within the lines of the triangle, around the exclamation mark) shall be white and the exclamation mark shall be safety red. The prohibition "X"s shall be safety red.

Figure 1 On-product carbon monoxide poisoning hazard label

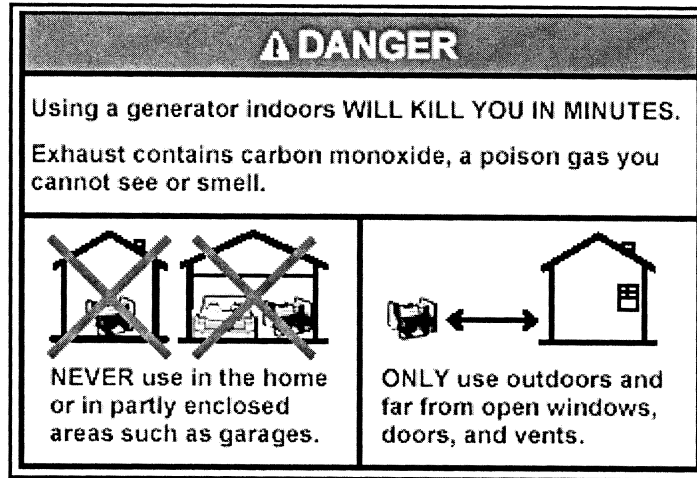
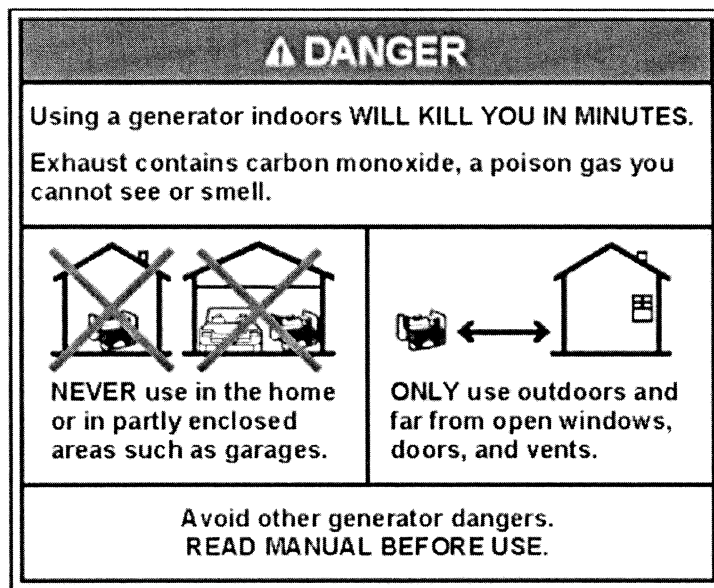


Figure 2 Safety Alert Symbol



Figure 3 Carbon monoxide poisoning hazard label for package



Dated: August 17, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 06-7069 Filed 8-23-06; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-109367-06]

RIN 1545-BF52

#### Section 1221(a)(4) Capital Asset Exclusion for Accounts and Notes Receivable

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects a notice of proposed rulemaking (REG-109367-06) that was published in the **Federal Register** on Monday, August 7, 2006 (71 FR 44600) clarifying the circumstances in which accounts or notes receivable are “acquired \* \* \* for services rendered” within the meaning of section 1221(a)(4) of the Internal Revenue Code.

**FOR FURTHER INFORMATION CONTACT:** K. Scott Brown (202) 622-7454 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The notice of proposed rulemaking (REG-109367-06) that is the subject of this correction is under section 1221 of the Internal Revenue Code.

#### Need for Correction

As published, REG-109367-06 contains an error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the proposed regulations (REG-109367-06) which was the subject of FR Doc. E6-12789, is corrected as follows:

1. On page 44600, column 1, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, line 2, the language “Scott Brown (202) 622-3920 (not a toll-” is corrected to read “Scott Brown (202) 622-7454 (not a toll-”.

**Guy Traynor,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E6-14003 Filed 8-23-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-158677-05]

RIN 1545-BF24

#### Effect of Election on Corporation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed regulations and notice of public hearing.

**SUMMARY:** These proposed regulations clarify that if a bank is an S corporation within the meaning of section 1361(a)(1), its status as an S corporation does not affect the applicability of the special rules for banks under the Internal Revenue Code.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 22, 2006.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-158677-05), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at <http://www.irs.gov/reg> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-158677-05). If a public hearing is requested, the public hearing will be held in the Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD.