Proposed § 897.14(b) would prevent the retailer or an employee of the retailer from using any electronic or mechanical device in providing cigarettes or smokeless tobacco products to the purchaser. Requiring the retailer's employees to hand cigarettes or smokeless tobacco products to customers, after checking identification, has the practical effect of making access to such products more difficult for young people.

Proposed §897.14(c) would prohibit the retailer or an employee of the retailer from opening a cigarette, cigarette tobacco, or smokeless tobacco product package to sell or distribute a cigarette, or cigarettes (often referred to as "singles" or "loosies") or any quantity of cigarette tobacco or of a smokeless tobacco product from that package. The agency is proposing this restriction because the primary market for "loosies" is children and adolescents. One California study found that 101 of 206 stores sold single cigarettes to minors and adults, and more stores sold single cigarettes to minors than to adults.25 A survey in Nashville, TN, found that one-quarter of the stores sold single cigarettes.²⁶

Additionally, the IOM noted that the sale of single cigarettes is attractive to children due to the low costs, could make children more willing to experiment with tobacco products, and that single cigarettes may be easier for children to shoplift.²⁷ Consequently, the IOM advocated banning the sale of single cigarettes. 28 Several States, including Mississippi, Oklahoma, South Dakota, Tennessee, and Washington, already restrict the sale of unpackaged tobacco products, and a working group of State attorneys general recently recommended that single cigarette sales be prohibited.29

4. Section 897.16—Conditions of Manufacture, Sale and Distribution

a. Restrictions on product names. Proposed 897.16(a) would prohibit prospectively the use of a trade or brand name for a non-tobacco product as the trade or brand name for a cigarette or smokeless tobacco product. The agency is aware of three brands of cigarettes that have used this strategy: Harley-Davidson, Cartier, and Yves St. Laurent's Ritz cigarettes. In the final rule, the agency intends to exempt those brands that already use the trade or brand name of a non-tobacco product.

This provision would complement the requirements in proposed subpart D (regarding labeling and advertising) that would reduce the appeal of cigarettes and smokeless tobacco products to people younger than 18. FDA believes

that this provision is necessary to prevent manufacturers from circumventing the purpose of this proposed rule. As discussed elsewhere, the imagery associated with tobacco products is an important factor in why young people smoke. This provision would prevent tobacco manufacturers from capitalizing on the imagery of other consumer products by using the brand name of those products for tobacco products.

b. Minimum package size. Proposed § 897.16(b) would make 20 cigarettes the minimum package size for cigarettes. FDA selected 20 because the vast majority of cigarette packs in the United States contain 20 cigarettes. The proposal is intended to preclude firms from manufacturing packages that contain fewer than 20 cigarettes; these packs, sometimes referred to as "kiddie" packs, usually contain a small number of cigarettes, are easier to conceal, and are less expensive than full-size packs. (Young people, who generally have little disposable income, can be particularly sensitive to the price of cigarettes and may choose not to smoke as the price increases.30) Further, FDA is aware that Lorrilard Tobacco Company is offering a pack containing only 10 cigarettes of its Newport brand for sale and that another firm is experimenting with single cigarettes packed in individual tubes.31

One study showed that 56.3 percent of all 14 to 15 year old adolescent smokers surveyed in one urban area of Australia had purchased kiddie packs in the month prior to the survey, compared with only 8.8 percent of adult smokers. The study concluded, "If we fail to take strong action against the well targeted marketing methods of tobacco companies then the adolescent smoking rates recorded in this study are likely to

remain high." 32

The Nova Scotia Council on Smoking and Health reported that 49 percent of tobacco users in the sixth grade purchased kiddie packs of 15 cigarettes.33 Another study of Australian schoolchildren reported that 30 percent of the 12-year olds preferred packages containing 15 cigarettes compared to 11 percent of the 17-year olds.34 The Australian study, however, also reported that older children preferred cigarette packages that contained 25 cigarettes. Consequently, even though FDA has no evidence that firms intend to market cigarette packages that contain more than 20 cigarettes, the agency invites comment as to whether proposed § 897.16(b) should also state the maximum package size for cigarettes.

c. Impersonal modes of sale. Proposed §897.16(c) would permit cigarettes and smokeless tobacco products to be sold

only in a direct, face-to-face exchange between the retailer or the retailer's employees and the consumer. The proposal would prohibit specifically cigarette vending machines, self-service displays, mail-order sales, and mailorder redemption of coupons.

i. Vending Machines. Studies indicate that a significant percentage of adolescents are able to obtain their cigarettes from vending machines and that such purchases occur regardless of locks, warning signs, and other restrictions. In 1994, CDC examined 15 recent tobacco inspection surveys to investigate underage sales to minors. While 73 percent of over-the-counter outlets made illegal sales to children and adolescents, 96 percent of vending machine sales were successful.35

A 1989 survey of 10th grade students in Minnesota indicated that 71 percent had purchased tobacco from vending machines.³⁶ Another 1989 report found that, in California, minors between the ages of 14 and 16 were able to purchase cigarettes from vending machines 100 percent of the time.³⁷ A 1992 study in Minnesota involving minors between the ages of 12 and 15 reported a 79 percent success rate in purchasing cigarettes from vending machines.38 Children in the Washington, D.C. area, New York, Colorado, and New Jersey who were sent to purchase cigarettes from vending machines achieved 100 percent success rates.³⁹ The 1994 Surgeon General's Report examined nine studies on cigarette purchases from vending machines and found that underage persons were able to purchase cigarettes 82 to 100 percent of the time, with a weighted-average rate of 88 percent.40

Moreover, younger children use vending machines to purchase cigarettes more often than older adolescents. A study commissioned by the vending machine industry revealed that 22 percent of 13-year olds who smoke reported purchasing cigarettes from vending machines "often" compared with only 2 percent of 17-year olds. Twenty-two percent of 13- to 17-yearolds who smoke report purchasing cigarettes from vending machines

'often" or "occasionally." 41

FDA is aware that some jurisdictions have attempted to place locks, post warning signs, or restrict placement of vending machines to curtail access by young people. These efforts have had only limited success. A 1992 report examining vending machines in St. Paul, MN, indicates the limitations of requiring locking devices on vending machines. Despite a 1990 city ordinance requiring locking devices on vending machines, the rate of noncompliance by