resistant lighters. Although the portion of the market that would be captured by manufacturers of child-resistant lighters is not known, it is reasonable to assume it would be substantially less than 100 percent. Perhaps only two or three firms would offer such products. If child-resistant lighters captured 20 percent of the market under this alternative, and assuming total sales of 20 million units), the annual benefits would be approximately $5.5 million ($1.37 x 4 million) compared to costs of $3.2 million ($0.80 x 4 million) This would result in net benefits of approximately $2.3 million annually. Under more optimistic assumptions, if the child-resistant lighters captured 80 percent of the market, the benefits to society would be approximately $21.9 million (1.37 x 16 million) annually, compared to annual costs of $12.8 million. This would result in net benefits of approximately $9.1 million annually.[14] Under both assumptions, the net benefits are less than the $11.4 million estimated for the proposed rule.[15]

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[14]80 percent of 20 million units is 16 million units. The cost to consumers would be $0.80 x 16 million units or $12.8 million annually. The benefits would be $23 million ($1.28 x 16 million).

[15]The net benefits could be greater if consumers in households where small children were likely to be exposed were more likely to purchase child-resistant models than households where children were unlikely to be exposed. However, the Commission does not know the extent to which this would happen.

2. *Rely on a voluntary standard*. There is no voluntary standard for the child resistance of utility lighters. However, the Commission could work with the appropriate standards organizations to establish such a voluntary standard. If most of the current manufacturers agreed to conform to the standard, the costs and benefits could approach those projected under the proposed rule. This assumes, of course, that the voluntary standard is substantially similar to the proposed rule and that compliance with the voluntary standard is very high. However, if the market for utility lighters is very price-competitive, the market share for child-resistant lighters would be uncertain, since their retail price may be higher and the manufacturers will be relying on a product differentiation other than price (child resistance) to sell their product. If some firms did not comply, as seems likely, the expected net benefits (in terms of reduced fires, deaths, and injuries) would be lower than under the mandatory standard.

3. *Labeling requirements*. The Commission could choose not to issue a performance standard, but instead opt to rely on labels warning parents to keep lighters out of the hands of children. However, the Commission believes this label would not be effective. Most manufacturers already place such a warning on their products. Consequently, the impact

of this option would probably be similar to the "no action" option already discussed.

4. *Broadening the scope*. The Commission could broaden the rule to include small, portable butane torches, sometimes called micro-torches. Micro-torches share some features with utility lighters. The base of both products are of similar size, although micro-torches usually do not have the extended nozzle that utility lighters have. The fuel supply in several models of micro-torches is provided by a butane disposable lighter that is placed inside the base of the torch. However, the flame from a micro-torch is much hotter than the flame from a utility lighter. The micro-torches emit flames that may be as hot as 2,400°F, about twice the temperature of most utility lighters. Micro-torches generally retail for $20 or more.

The Commission concludes that micro-torches constitute a different product class than utility lighters. Although micro-torches can be used for some of the same purposes as utility lighters, they are generally sold for uses such as welding, brazing, soldering, and other repairs. Some are sold with attachments such as soldering irons and flame spreaders. Whereas the most likely substitutes for utility lighters are cigarette lighters or matches, the most likely substitutes for micro-torches are other types of torches. It is unknown whether child-resistant features would affect

consumers' utility from micro-torches. Furthermore, at this time, the CPSC is aware of only one incident in which a micro-torch was involved in a child-play incident. There were no injuries in that incident, and only minor property damage. Therefore, including these products in the scope of the rule would increase the costs of the proposed rule without evidence that any corresponding benefits would accrue to consumers.

5. *Narrowing the scope.* The Commission considered exempting the more expensive lighters (*e.g.*, those retailing for more than $20) from the proposed rule. This would have been similar to the exemption in the cigarette lighter standard for lighters with a customs value or ex-factory value greater than $2.00. This was intended to exempt certain luxury cigarette lighters for which there was little evidence of involvement in child-play fires. However, the CPSC does not have evidence that the more expensive utility lighters are less likely to be involved in child-play fires than the less expensive models. There is no evidence that the more expensive utility lighters are stored or used differently around the home than are the more common and less expensive lighters. Furthermore, baseline testing indicates that some of the expensive lighters are at least as easy for children to operate as less expensive models. Therefore, there is insufficient evidence to conclude that

exempting the more expensive utility lighters from the proposed rule would significantly reduce the costs without significantly reducing the benefits.

Conclusion. The proposed rule would have substantial net benefits to consumers. Under fairly conservative estimates of the costs and benefits, the net benefit is expected to be approximately $0.57 per lighter sold. At current levels of sales, this would result in annual net benefits of over $11.4 million, which should increase as sales of utility lighters increase. The rule should approach its maximum effectiveness within a couple of years after its effective date, since utility lighters typically have useful lives of about one year or less. At that time, as a result of the proposed rule, the number of fires started by young children playing with, or otherwise attempting to operate, utility lighters should be at least 75 percent lower than what would be expected in the absence of the proposed rule.

There is a utility lighter on the market now that would probably comply with the proposed rule. Another utility lighter on the market is claimed to be child resistant. It is expected that other manufacturers should be able to produce complying utility lighters before a final rule goes into effect. Therefore, the Commission does not anticipate that the rule will cause any disruption in the utility lighter supply.

Some manufacturers, especially those with a small share of the market, may decide not to make the needed investment to develop child-resistant utility lighters. However, since the market for utility lighters is growing, other firms can be expected to enter the market as the market expands. Therefore, since a permanent reduction in the number of firms affected by the rule is not expected, any adverse impact on competition in the market would be small and temporary. Any adverse impacts would be mitigated even further if the standard in the proposed rule were adopted internationally.

A number of alternatives to the rule exist, including options regarding various aspects of the proposed rule itself. The impacts of each alternative considered are summarized in Table 6. While some of the options may reduce total costs, none would likely increase expected net benefits. Further, none of the alternatives would increase the overall level of safety to consumers.

The proposed rule is not expected to have any significant impact on raw material usage, air or water quality, manufacturing processes, or disposal practices in such a way as to have any significant impact on the environment.

Table 6. Summary of Annual Benefits and Costs of Alternatives to Proposed Rule (based on annual sales of 20 million units)

Alternative	Benefits	Costs	Net Benefits
Proposed Rule	$27.4 million	$16 million	$11.4 million
No Action **If CR capture 20%** **If CR capture 80%**	 $5.5 million $21.9 million	 $3.2 million $12.8 million	 $2.3 million $9.1 million
Voluntary Standard (assuming 95 % conformance)	$26.0 million	$15.2 million	$10.8 million
Broadening the Scope	uncertain if any increase in benefits over the proposed rule	costs would be greater than under the proposed rule	net benefits would likely be less than under the proposed rule
Narrowing the Scope	benefits would likely be lower than under the proposed rule	costs would likely be lower than under the proposed rule	Effect on net benefits is uncertain

H. Comments on the ANPR

The public comment period on the ANPR closed on March 17, 1997. The Commission received nine written comments, including two received after the comment period closed. Three additional written comments that were received before the ANPR was published, but not addressed previously, are

also discussed in this notice. Copies of all written comments are available from the Commission's Office of the Secretary.

The President of the Ohio Chapter of the International Association of Arson Investigators Inc., and the President of the National Association of Pediatric Nurse Associates and Practitioners, Inc., wrote in support of Commission action to require utility lighters to be child resistant.

Conrad Guthrie of Vinson & Elkins, the petitioner's attorneys, submitted information on four additional incidents, involving three deaths. Mark W. Collmer, of McDowell Collmer, L.L.P., submitted information about another incident involving a death.

D. Bruce Kehoe of Wilson, Kehoe & Winingham submitted information about an incident involving a child who is permanently disabled due to severe burns. This law firm also submitted information on 60 incidents reported to them in response to their advertisement requesting information on utility lighter incidents in the December 1997 issue of *Fire and Arson Magazine*. For a number of these incidents, the submitted information did not state that a utility lighter was used. In 22 of the 60 incidents, the child who started the fire was reported to have used a utility lighter and to be under age 5.

Carrie Craig wrote a letter describing her experience when her home burned down after her 3-year-old daughter ignited a couch with a utility lighter obtained from the fireplace mantle.

Scripto-Tokai Corporation (Scripto) and Swedish Match North America Inc., (Cricket®), importers of utility lighters, submitted comments regarding incidents. Scripto stated that during the past twelve years it has distributed approximately 100 million utility lighters and have received only about two dozen reports of children allegedly operating a utility lighter. Scripto commented that most of the incidents did not involve any claim of personal injury. Cricket® reported it has sold several million utility lighters since 1992 and never had a single report of any child-play incident.

Scripto, Cricket®, and the Lighter Association, Inc., requested that any requirement for child resistance be developed as a separate standard from the Safety Standard for Cigarette Lighters.

A summary of other issues raised by the commenters, and the Commission's responses, are provided below.

Issue: Risk of Injury

The President of the National Association of Pediatric Nurse Associates & Practitioners, Inc., "agrees that utility lighters which can be operated by children under the age of

5 pose an unreasonably dangerous risk to children and their families."

The Lighter Association, Inc., questions the validity of the Commission's incident data on utility lighters and whether the incidents resulting in deaths involved a fire started by children under the age of 5.

Scripto states that the data reported in the ANPR (53 fires over 106 months) equates to one child-play fire incident every two months that may have involved a utility lighter. "Based upon available data, Scripto does not believe that utility lighters, as a class of products, present an unreasonable risk of serious injury or death to consumers under the definitions provided by either the Consumer Product Safety Act or the Federal Hazardous Substances Act." Scripto states that it is unclear why the Commission has selected utility lighters for possible regulation as opposed to arguably more hazardous fire producing consumer products such as matches, stoves, candles, and heaters, as evidenced in the Commission's report, "1994 Residential Fire Loss Estimates." Scripto states that "there would be a far greater societal benefit in regulating matches than utility lighters."

Response:

All of the 158 fire incidents reported by the staff involved a fire started by children under the age of 5. The

staff did not include incidents in this tabulation where there was a question about the age of the child who started the fire or where there was a question about whether a utility lighter was involved.

There are no data currently available to compare the per-unit risk associated with utility lighters with any other flame source. As expected, there are many more child-play incidents involving matches because of the larger number of these products in use. The per-unit risk for other products may or may not be greater than the per-unit risk for utility lighters. However, this does not preclude Commission action on utility lighters if the risk of injury and death can be addressed at a reasonable cost.

Issue: Effectiveness of the Cigarette Lighter Standard

The Lighter Association, Inc., states that several of the larger distributors of disposable cigarette lighters began selling child-resistant lighters before the July 12, 1994, effective date of the Safety Standard for Cigarette Lighters. The Association cites an increase in the estimated number of child-play deaths from lighters, from 170 in 1993 to 230 in 1994, as evidence that the Cigarette Lighter Standard has not been effective.

Scripto states that there are no available data to conclude that incorporating child-resistant mechanisms into utility lighters will reduce the incidence of child-play

fires. "Until the Commission has analyzed the accident data for 1995 and 1996, there is no empirical basis to conclude that the Cigarette Lighter Safety Standard has been effective in reducing the number of child play fire incidents."

Cricket® also comments that the Commission should defer a decision about extending the standard to utility lighters until it is determined whether the cigarette lighter standard has had an impact on the incidence of child-play fires.

Response:

Fire loss estimates are now available for 1995. These data were not previously available to the commenters. There were an estimated 8,200 residential structure fires caused by children playing with all types of lighters in 1995, resulting in 180 deaths and 1,220 injuries. Fire and injury estimates are lower for 1995 than for any of the four preceding years. Comparing 1995 to 1994, when the Safety Standard for Cigarette Lighters went into effect, there was a greater percentage reduction in child-play lighter fires than the reduction in residential structure fires overall. This reduction could be the first indication that child-resistant cigarette lighters help prevent child-play fires. However, there was also a reduction in child-play fires started with matches in 1995, indicating that other factors,

such as general fire prevention efforts, could also be involved. However, the reduction for child-play lighter fires was greater than the reduction for child-play match fires.

The Commission's experience with the Poison Prevention Packaging Act, 15 U.S.C. 1471-1476, provides ample evidence that requiring a product to be child resistant effectively reduces the risk of injury. An article published in the June 5, 1996, Journal of the American Medical Association, "The Safety Effects of Child-Resistant Packaging for Oral Prescription Drugs," demonstrates that child-resistant packaging has reduced childhood poisonings from oral prescription drugs for children under age 5 by about 45 percent since 1974, the year these drugs became subject to the packaging requirements. The Commission believes the child-resistant concept used under the PPPA is applicable to requiring child-resistant features on cigarette and utility lighters.

More accurate information about the effectiveness of the cigarette lighter standard will be available when the Commission completes a lighter study in the year 2000. The results of this special study will identify the specific types of lighters involved in child-play fires (*e.g.*, cigarette lighter or utility lighter) and will also identify the proportion of fires started by children under 5 years

old (the group of children most afforded protection by child resistance).

Despite the current lack of specific information on the effectiveness of the cigarette lighter standard, the Commission concludes that it should proceed with the development of a standard for utility lighters. The Commission has no reason to conclude that the Safety Standard for Cigarette Lighters is not reasonably effective in reducing child-play fires started by children under age 5 with lighters. When the cigarette lighter standard was issued, the Commission estimated that it would eventually prevent about 70 percent of child-play fire deaths with cigarette lighters. Since an even higher percentage reduction is expected from a standard for utility lighters, the Commission cannot justify risking possibly dozens of lives while waiting for enough time to pass to complete a detailed study of the effectiveness of the cigarette lighter standard.

Issue: False Sense of Security

The Lighter Association, Inc., and Scripto question whether the 1994 fire incident data, showing an increase in child-play fires involving cigarette lighters, indicate that smokers are becoming more careless in storing child-resistant lighters away from children because they assume "child resistant" means "child-proof." The Lighter

Association, Inc., states that some distributors began selling child-resistant lighters as early as mid-1992, in advance of the July 1994 effective date. Therefore, it contends, one would not expect the number of child-play deaths to increase 35 percent (from 170 in 1993 to 230 in 1994.)

Response:

The Commission is unaware of any evidence that the number of child-play deaths associated with cigarette lighters increased in 1994 as a result of smokers becoming more careless in storing child-resistant lighters away from children. The 1994 fire loss estimates are too near the July 1994 effective date of the Safety Standard for Cigarette Lighters to provide a measure of its effectiveness. The 1995 Residential Fire Loss Estimates are now available. Fire and injury losses associated with lighters are lower for 1995 than for any of the 4 preceding years. In 1995, the number of child-play deaths associated with cigarette lighters is down to 180 from the 230 estimated for 1994.

Issue: Attractiveness

The President of the Ohio Chapter of the International Association of Arson Investigators Inc., and the President of the National Association of Pediatric Nurse Associates & Practitioners, Inc., expressed concern that the attractiveness of the design (gun or toy shape) and colorful

packaging of utility lighters would attract children to play with them.

Response:

Utility lighters do have physical characteristics similar to a gun (barrel, trigger, and in some cases, trigger guard). Most are also functionally similar to a gun since they are activated by pulling a trigger mechanism. It seems likely that children might play with these lighters by "shooting" them as they would a toy gun. There are references to a "gun" or "toy-like shape" in a number of the reports of fires associated with utility lighters. It seems likely that, for some children, the combination of the "toy-like" shape of utility lighters and the size of the flame could enhance the attractiveness of these lighters as play objects compared with ordinary cigarette lighters or matches. Even without a toy-like appeal, knowledge that the lighter can produce a flame would motivate many children to play with it. This is one reason the Commission is proposing this new rule.

The Commission is not aware of any incidents in which the packaging was influential in attracting children to the lighters.

Issue: Supervision

Scripto comments "that unsupervised young children are vulnerable to an array of environmental and household

hazards .... Unfortunately, a common element among the most serious injuries to young children is a lack of proper adult supervision."

Response:

The Commission agrees that proper adult supervision is very important. However, after reviewing the fire incident reports, the Commission has concluded that the children were under reasonable levels of supervision at the time they started the fires. Fires were started while parents or guardians were present in the house.

Furthermore, children of the ages of those involved in the incidents are old enough to engage in play activities in rooms other than where their parents or guardians are present. In fact, child development experts state that at 3 and 4 years of age, children can be given some freedom from direct adult supervision. Thus, it is not realistic to expect parents to directly observe children of these ages during each moment of the day.

Issue: Voluntary Standards, Education, and Labeling as Alternative Means to Address the Hazard

The Lighter Association, Inc., refers to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056), which states that the Commission can issue performance and/or labeling standards in addressing potential risks. The Association states the ANPR ignores voluntary standards,

education, and labeling, in favor of a position that product design is the most effective approach to address a hazard.

Cricket® suggests that the Commission consider addressing identified problems with "enhanced public awareness and education programs."

Scripto states, "Whether or not the Commission elects to mandate a child resistancy standard for utility lighters, it must not lose sight of the goal of educating children and parents on fire safety."

Scripto comments, "Clear, effective warnings and labels must be provided with fire sources to adequately inform consumers of the applicable hazards.... such efforts must receive immediate top priority."

Response:

The Commission does not agree that the advance notice of proposed rulemaking ignores education, labeling, and voluntary standards as possible means to address the risk of injury associated with utility lighters. The ANPR specifically invited interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death associated with utility lighters. The ANPR also solicited comments on other possible means to effectively address the hazard.

At an April 16, 1998, meeting of ASTM Subcommittee F15.02, Safety Standards for Cigarette Lighters, the members voted to support the Commission action to develop a mandatory standard for utility lighters. Manufacturers whose utility lighters comprise a major share of the market are members of this subcommittee. The members also voted to form a technical task group for the purpose of providing input to the Commission on the provisions of the draft standard. Based on these actions, the CPSC does not expect a voluntary standard to be developed.

The Commission does not believe that warning labels or education alone can effectively address the risks associated with utility lighters. Utility lighters have always been subject to labeling requirements under the Federal Hazardous Substances Act. The required statements include: "Keep out of the reach of children." The incidents indicate that many consumers were aware of the danger of lighters and took precautions to keep them out of the reach of their children.

When attempting to keep objects out of reach, caregivers often find a storage place that is up high. However, children learn to conquer height at an early age. At 2 years of age, a child can climb a play gym; at 2½ years of age, a child is quite skillful in climbing. By the time a child is 4 to 5 years of age, the motor abilities have

evolved to the point where a child has the coordination and balance of an adult. The motor abilities of children in these age ranges make it very difficult to find a storage place that provides both convenient access for users and safety for young children.

Since most caregivers are fully aware of the dangers of young children playing with lighters, and since children access them in spite of attempts to store them out of reach, the Commission concludes that additional or different warning statements would not reduce the incidence of fires. The Commission preliminarily concludes that a child-resistant feature on utility lighters would be the most effective approach of addressing the hazard.

Issue: Scope

Cricket® urges the Commission to determine whether the child-play problem is related to "issues with a particular product" rather than to all utility lighters.

Response:

Although the large majority of the reported fire incidents involved one manufacturer, there were also five other brands identified. In addition, the results of the baseline testing of five different models of utility lighters demonstrate that the majority (59 to 96 percent) of the children on the test panels were able to operate them. This is a range of child resistance of 4 to 41 percent, in

contrast to the minimum requirement of 85 percent in the standard proposed below. The baseline results indicate that when the on/off switch is left unlocked, as is expected to be the case in many households, most of the children in the test panel could operate the lighters.

Issue: Requirements for Utility Lighters may Create New Hazards

Scripto states that there is a concern that requiring the child-resistant mechanism to reset itself automatically after each operation of the ignition mechanism, as required in the cigarette lighter standard, "could create new and serious hazards for the product's users." Scripto states, "It is not uncommon for piezo ignition devices to require more than one attempt to ignite. Environmental factors such as wind, low temperature, altitude or moisture can also affect the consumer's ability to properly ignite the piezo lighter." Scripto states that, because a child-resistant mechanism would further delay ignition, the potential for "flashback explosions or fires" is increased in applications such as igniting a gas grill.

Cricket® states that utility "mechanisms do not light 100% of the time, particularly when used in *outdoor conditions*." They strongly believe that the Commission should analyze the potential for a small fire or explosion

as a result of the delays associated with a child-resistant mechanism before proceeding to institute a standard.

The Lighter Association, Inc., comments that "Flashback fire is a very real issue ... If the new regulation reduces risks to children, but increases risks to adults (the ones who are supposed to be using the product!), then the regulation should be rejected."

Response:

The Commission acknowledges that piezo devices, such as utility lighters, often require more than one attempt to ignite. This is due, in large part, to the fact that the fuel may not reach the end of the lighter nozzle at the same time the spark is generated. Therefore, the consumer may need to pull the trigger more than once in order to create multiple sparks.

However, the Commission does not agree that child-resistant utility lighters will create hazardous use conditions. Based on testing using gas barbecue grills, the Commission's Division of Engineering Laboratory concluded that the risk of flame-up or small explosion for some grills is minimal for short periods of delayed ignition, such as 5-10 seconds. The consumer can avoid this risk altogether by igniting the lighter before turning on the gas.

To further minimize the possibility of creating a hazardous use condition, the requirements of the draft

standard allow multiple operation attempts of utility lighters before releasing the lighter causes the child-resistant feature to reset. One manufacturer is currently marketing a child-resistant utility lighter with such a design. This manufacturer has tested the lighter according to the protocol specified in the Safety Standard for Cigarette Lighters to establish that it is child resistant. The Commission is aware of other manufacturers who are working on child-resistant designs that function similarly. With such designs, the lighting efficiency of a child-resistant utility lighter should be essentially the same as that of the non-child-resistant utility lighters currently in use. If further measures are needed to address the risk of flare-up, the Commission could consider requiring that the lighter be capable of multiple operations before the child-resistant feature resets.

Issue: Consumer Resistance to Child-Resistant Features

Scripto challenges the Commission's position in the ANPR that consumer resistance to a child-resistant feature on utility lighters will not negate the feature's effectiveness. Scripto states that "many consumers would resist the introduction of child-resistant utility lighters. Scripto's experience with the tremendous negative reactions to its child-resistant cigarette lighters form a solid basis for this assertion.... Consideration must be given to those

populations that may be exposed to potentially greater fire hazards if they were physically unable to successfully operate a child resistant utility lighter. Such individuals may switch to such less safe 'non-CR' alternatives as long stem matches or a rolled up newspaper...."

The Lighter Association, Inc. states that "contrary to the [CPSC] staff's representations, complaints regarding lighters that comply with the rule continue to come in from every region of the country.... Industry receives thousands of complaints every year. Products are being invented every month to override child-resistant lighters."

Response:

Although there were numerous complaints about the safety standard when child-resistant cigarette lighter models first became available in large numbers and non-child-resistant lighters became scarce, the number of complaints from consumers to the Commission has dwindled to almost nothing in 1998. Many of the initial complaints had to do with the difficulty of operating the child-resistant mechanism on the lighter models that were generally available in the marketplace in 1994 and early 1995. These early models usually had a lever or push-in tab to permit the gas release lever to function when the flint wheel was rotated to generate a flame. Later models of child-resistant lighters employ features that are invisible or transparent

to adults so that the lighters function much like the pre-standard roll-and-press lighters functioned.

In the four years since the lighter standard became effective, the Commission is aware of two devices that were designed and promoted for defeating the child-resistant mechanisms on certain brands of disposable child-resistant lighter models. CPSC contacted both of those firms to discourage them from selling these devices.

The Commission would also expect some consumers to write about their dissatisfaction with child-resistant features on utility lighters. However, the Commission believes that the level of consumer resistance would not prevent the expected reduction of child-play fires started with utility lighters.

Furthermore, the Commission believes that manufacturers are fully capable of designing child-resistant utility lighters that offer minimal inconvenience to consumers. For example, the requirements of the draft standard that allow multiple operation attempts before the child-resistant feature resets will make it easier for manufacturers to design lighters that are convenient for consumers to use.

Issue: Enforcement

The Lighter Association, Inc., comments, "The record is full of examples of problems with enforcement of the

current child resistancy rule... Importers are devising new ways every week to evade the rule. Indeed, Compliance has recently advised industry that it is now reviewing non-child-resistant lighters from Europe and Asia being rerouted to the U.S. for sale. Substantial premiums are paid for non-child-resistant lighters."

The Lighter Association, Inc., states that the Commission's enforcement program is inadequate because of the cost of testing to assure compliance. "If the Commission cannot enforce the existing regulation, it is absurd to extend it to another product line. Ultimately, non-complying imports will take over this product line as well."

Scripto states that it has "been disappointed by the Commission's historical failure to evenly enforce the labeling requirements of the Federal Hazardous Substances Act on other utility lighter distributors." Additionally, Scripto expresses disappointment that the Commission has not taken action against the "Quick Fix," a device being sold to disable the child-resistant mechanism on cigarette lighters. It suggests that the cigarette lighter standard be amended to prohibit the intentional disarming of lighter safety devices. It also recommends that the Commission take a more proactive enforcement stance to prevent further violations of the Cigarette Lighter Standard. "Before moving forward to implement new regulations, the Commission must be prepared

to ensure consumers, distributors and manufacturers that any such regulation will be fully enforced, without loopholes and without exception."

Cricket® comments that it has "seen ample anecdotal evidence that disreputable importers have violated, and are continuing to flout, both the stockpiling and substantive requirements of the child-resistancy standard" in spite of information about apparent violations provided to the Commission staff by importers and the Lighter Association.

Cricket® urges the Commission to work for international acceptance of lighter standards to address the enforcement evasion issue.

Response:

While CPSC is aware that some unscrupulous importers and distributors of lighters have taken actions to circumvent the intent and purposes of the standard, their overall numbers have been small, and hardly constitute a large number of schemes to "evade the rule," as alleged in this comment. CPSC and Customs have taken vigorous action against importers and distributors who do not comply with the standard, seizing and refusing entry to millions of noncomplying lighters since July 1994, working with importers to recall millions of lighters that made it into the marketplace before their noncompliance with the standard was discovered, and filing legal actions against firms that

purposely distributed and sold lighters that had the child-resistant feature intentionally removed or disabled prior to sale to the public.

Finally, CPSC and Customs have seized several small shipments that originated in Europe of popular name brand non-child-resistant disposable cigarette lighters manufactured for the European market that were sent to United States importers as premium items with other products intended for sale in the United States. These lighters invariably were decorated with product logos (*e.g.*, liquor or beer brands, or other consumer product logos). They were included in the shipment by the European exporter as advertising items, not products intended to be sold separately from the main goods in the shipment. Evidence in these cases suggests that in almost every instance, the inclusion of the non-child-resistant lighters in the shipment was done due to ignorance of the standard on the part of the exporter in Europe, not on an intentional attempt to thwart the safety standard. Based on this experience with the cigarette lighter standard, the Commission concludes that the compliance with a utility lighter standard will be sufficient to produce the benefits discussed above.

Issue: Requirements

Scripto comments, "The cigarette lighter experience has seen the approval of some mechanisms which are so easy to operate that safety objectives are compromised.... Any device which lends child resistancy to a product must be more inconvenient to use or it will not be effective.... Therefore, definitions must recognize and clarify this fundamental trade-off between safety and convenience."

Response:

The Safety Standard for Cigarette Lighters requires manufacturers to conduct testing to assure that their lighters comply with all of the requirements. The manufacturers are also required to report the results of this testing to CPSC's Office of Compliance and to certify to their distributors or retailers that the lighters comply. If there is any reason to believe that the lighters are not child resistant, the Office of Compliance requests further substantiation from the manufacturer. Additionally, a program is in place at CPSC to conduct enforcement testing of cigarette lighters where warranted.

In regard to Scripto's recommendation that definitions be developed to preclude child-resistant mechanisms that are too easy to operate, the Commission points out that, just like the cigarette lighter standard, the proposed standard for utility lighters is drafted as a

performance standard rather than a design standard. Any utility lighter, however designed, that meets the requirements in the proposed rule would be considered child resistant:

Issue: Market Impact

Swedish Match stated:

> The market for the utility lighters is totally different from the one analyzed by the CPSC in connection with the cigarette lighter standard. As there are fewer competitors, we strongly urge the CPSC to study closely the likely competitive impact of the imposition of a child resistancy requirement on the utility lighter industry.... Any company would have to consider whether it could absorb successfully the added research, development, and production costs that surely would be associated with the standard and still remain competitive in the market.... Many firms (especially those with a marginal position in the market place) likely will react to the standard by exiting the market, thereby resulting in less competition and higher prices to be borne by the consuming public.

Response:

The market for utility lighters is obviously smaller than the market for cigarette lighters, in terms of both the number of units sold annually and the number of manufacturers. It is conceivable that some firms may react to the standard by exiting the market. However, the CPSC does not agree that this will likely have a significant adverse impact on competition.

Currently, the market for utility lighters already is highly concentrated, with one manufacturer having approximately a 90 percent market share. However, CPSC expects that the degree of competition in the market may increase. One major cigarette lighter manufacturer recently entered the market for utility lighters with a model that is child resistant. Additionally, the market for utility lighters is growing at a rate of 5 to 10 percent annually, according to industry sources. As the market expands, CPSC expects more manufacturers to enter it and thereby increase the level of competition. Furthermore, utility lighters face competition from other flame sources, including matches and cigarette lighters. These products are less expensive than utility lighters and, therefore, limit the amount that manufacturers can increase prices for utility lighters without significant sales loss, even if there are few manufacturers in the market. Finally, CPSC expects that only

manufacturers with a minor presence in the market might exit. The loss of these firms would not substantially reduce the level of competition in this already highly-concentrated industry.

Issue: International Application

Swedish Match commented that one way to attempt to address the concern about the evasion of a standard by foreign manufacturers is "the adoption, internationally of any standard that is applied in the United States."

Response:

The CPSC agrees that international adoption of the standard would reduce the likelihood that some manufacturers or importers would attempt to evade the requirements of the rule. However, CPSC does not have the authority to regulate products intended solely for use in other countries.

Issue: Lulling Effect

The Lighter Association and Scripto-Tokai stated that "child resistant" is often incorrectly construed by the general public as "childproof." They argue that this can create a false sense of security and sometimes results in parents taking less care to protect children from the product.

Response:

The CPSC agrees that parents sometimes mistake child resistant as meaning childproof. However, the evidence

suggests that the impact is less significant than some claim. For example, studies of poisoning deaths of children have shown that child-resistant packages have been effective in reducing poisonings in young children. Therefore, on balance, even if some parents do become less vigilant, the overall impact of the rule is expected to be positive.

Issue: Estimates of Incidents

The Lighter Association states that the Commission improperly used a peak year or years of injuries and fatalities for its cost-benefit analysis, rather than an average over a more reasonable period.

Response:

In the preliminary regulatory analysis included in this notice, the Commission based its estimates on the incidents of which CPSC is aware that occurred from 1995 through 1997. These are the best data available. CPSC did not have a special project or study that attempted to collect data before 1995, and, therefore, data before that time are incomplete. Furthermore, our analysis of the data from 1995 through 1997 may understate the number of fires involving utility lighters because they consist strictly of cases of which the CPSC is aware. There are likely other cases of which we are not aware. Finally, preliminary data suggest that the 1998 experience will be similar to the period 1995 to 1997. Already in 1998, the CPSC knows of 16

fires that resulted in 2 deaths and 6 injuries. The actual number is probably higher.

Issue: Costs of Modifying Lighters

The Lighter Association and Scripto-Tokai commented that the Commission underestimates the costs of modifying utility lighters and ignored the Lighter Association-provided data that it would cost $.25 to $.75 per unit to modify utility lighters.

Response:

These commenters are referring to a preliminary examination of the economic issues made by the Commission that was based on very limited data. The regulatory analysis included with this notice is based on more recent data.

Comments provided by the Lighter Association, and conversations between the CPSC's staff and several manufacturers, suggest that the upper end of the industry's cost estimates were based on the assumption that the proposed rule would contain provisions which it does not (*e.g.*, requiring a minimum level of reliability in achieving ignition on each attempt). Therefore, the Commission believes that the low and middle ranges of the cost estimates provided by the Lighter Association are more reasonable. The cost estimate included in the preliminary regulatory analysis was $0.40 per unit. This is roughly in the mid-range of these estimates. Even if retail markups

added another $0.40/unit to the retail price, the proposed rule would result in net benefits of $0.57 per utility lighter sold.

Issue: Costs of Development

The Lighter Association and Scripto-Tokai argued that it should be clearly understood that the technology for cigarette lighters cannot simply be added to a utility lighter. Rather, the utility lighter must be completely redesigned, resulting in research and development costs, investment in new equipment or retooling of existing equipment, testing of the product, and further review of the product. These commenters contend that the Commission's assumption that one simply takes an existing child-resistant feature and adds it to a utility lighter is simplistic and inaccurate.

Response:

CPSC is aware that manufacturers will incur costs to develop and test new designs for child-resistant utility lighters, as well as to retool their plants for production. The CPSC accounted for these costs in its preliminary regulatory analysis, which is based on the information currently available (much of it provided by industry). CPSC does not assume that any particular child-resistant design can be adapted from a cigarette lighter to a utility lighter without further development, if at all. CPSC welcomes

additional information on these costs from manufacturers or other parties with such knowledge, and will include the most recent cost information in any future analysis of this issue.

Issue: Need for Regulation of Matches

Scripto-Tokai stated that the 750 injuries and 140 deaths attributable to children playing with matches in 1994 represents a societal cost in the billions of dollars, as opposed to $10.2 million for children playing with utility lighters. The commenter concludes that there would be a far greater benefit in regulating matches than utility lighters.

Response:

The CPSC is concerned about the societal costs of fires attributable to children playing with matches. However, in taking action to address a problem, it is necessary to take into account the feasibility of a solution and its costs, as well as its benefits. The manner in which utility lighters are operated can be changed in ways that will substantially reduce the number of incidents resulting from children playing with utility lighters. Such changes will increase societal benefits more than they will increase societal costs. According to the preliminary regulatory analysis, the proposed rule is expected to result in net benefits to consumers of $11.4 million annually. The fact that the Commission might investigate or regulate other

products, which present their own feasibility and cost-benefit issues, does not counsel against action on utility lighters.

I. Preliminary Environmental Assessment

Pursuant to the National Environmental Policy Act and in accordance with CPSC's procedures, the Commission considered the potential environmental effects of the proposed rule. Less than 1 percent of the approximately 20 million non-child-resistant utility lighters that are sold in this country each year are manufactured domestically. One large manufacturer has begun to produce utility lighters domestically, but these lighters are already child resistant.

The proposed rule is not expected to significantly alter the amount of materials, energy, or waste generated during production of the lighters. Nor is the proposed rule expected to cause manufacturers to shift production to other countries or locations. Molds and other tools used by manufacturers in the production of utility lighters or their components are periodically replaced. The proposed rule may cause some manufacturers to replace the molds and other tools earlier than they would have otherwise. However, the proposed effective date of one year from the publication date of a final rule should allow manufacturers time to plan and minimize any impact.

Pursuant the section 9(g)(1) of the CPSA, 15 U.S.C. 2058(g)(1), the proposed rule does not apply to non-child-resistant lighters manufactured before the rule's effective date. Therefore, no non-child-resistant lighters in use or in U.S. commerce on the effective date will need to be recalled or disposed of. The proposed rule is not expected to affect the manner in which utility lighters are packaged for sale or the amount of butane or other fuel used in the operation of the lighters.

From the available information, the Commission concludes that the proposed rule would not significantly affect raw material use, air or water quality, manufacturing processes or disposal practices in such a way as to cause any significant impact on the environment.

J. Paperwork Reduction Act

As explained above, the standard and certification provisions will require manufacturers and importers of utility lighters to perform testing, maintain records, and report data to the Commission relating to the utility lighters that they produce or import. For this reason, the rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501-3520. Therefore, the proposed rule has been submitted to the Office of Management and

Budget ("OMB") in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11.

Based on estimates made in the course of developing the cigarette lighter standard and on information obtained from industry sources, the Commission estimates that complying with the testing, recordkeeping, and reporting requirements of the proposed rule will require approximately 100 hours per model annually. The time required for testing is expected to average about 80 hours per model per year. The time required for recordkeeping and reporting is expected to be about 10 hours for each model per year. The exact number of manufacturers and importers is not known. However, the number of manufacturers and importers appears to be increasing. Currently, the Commission believes that there may be as many as 30 different models of utility lighters on the market. With a few exceptions, most manufacturers and importers have only one model. Therefore, the total amount of time that will be required for complying with the testing, recordkeeping, and reporting requirements of the proposed rule is approximately 3,000 hours annually.

OMB may comment to CPSC between 30 and 60 days after the publication of the proposal. Therefore, although OMB will accept comments until [insert date that is 60 days after publication], a comment will be assured of having its

maximum effect if it is filed by [insert date that is 30 days after publication].

Comments to OMB should be directed to the Desk Officer for the Consumer Product Safety Commission, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503; telephone (202)395-7340. The Commission encourages commenters to provide copies of such comments to the Commission's Office of the Secretary, with a caption or cover letter identifying the materials as comments submitted to OMB on the proposed collection of information requirements for utility lighters.

K. Initial Regulatory Flexibility Analysis

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the RFA, as stated in § 2(b)(5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the

scale of the businesses, organizations, and governmental jurisdictions subject to the regulations.[16]

Section 603 of the RFA calls for the Commission to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. The initial regulatory flexibility analysis is to contain:

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and

[16]The Regulatory Flexibility Act provides than an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

(5) an identification, to the extent possible, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Suggested alternatives for discussion include: different compliance or reporting requirements for small entities; clarification, consolidation, or simplification of compliance or reporting requirements for small entities; the use of performance rather than design standards; and partial or total exemptions from coverage for small entities.

The Commission routinely considers the potential effects on competition and small businesses as part of the agency's overall evaluation of potential economic effects of rulemaking actions. A summary of these effects is included in the preliminary regulatory analysis required for the proposed rule under section 9(c) of the CPSA. Since some number of the affected firms are considered to be small companies, the Commission gives particular consideration to the potential economic effects of the proposed rule on such firms, and is issuing a separate initial regulatory flexibility analysis of the proposed rule.

Reasons for Agency Action. The Commission's proposed rule on utility lighters addresses the risk of death and injury from accidental residential fires started by young children playing with these lighters. Detailed data concerning these fires is presented in Section B of this notice.

The Commission is required to consider whether appropriate voluntary standards could adequately address the problem rather than imposing a mandatory rule. However, no voluntary standard was submitted to the Commission for its consideration in response to the ANPR, and the Commission is not aware of any voluntary standard that addresses the problem. Therefore, deferring to a voluntary standard does not represent an alternative to the proposed mandatory rule.

Objectives of and Legal Basis for the Proposed Rule. The history of this rulemaking proceeding is set forth in Section A of this notice. The legal basis for this action is described in Section E of this notice, which discusses the Commission's statutory authorities. Other than the definition of the covered product, the provisions of the proposed rule are essentially the same as the Safety Standard for Cigarette Lighters, 16 CFR Part 1210.

The purpose of the proposed rule is to reduce the risk of accidental child-play utility lighter fires. It is expected that making utility lighters child-resistant will substantially reduce the incidence and cost to society of these fires. The rule is

being proposed under the authority of the CPSA. Section 9(c) of the CPSA requires the agency to consider economic effects of the proposed rule on industry and consumers, and to consider alternatives that might reduce the burden of the rule generally.

Requirements of the Proposed Rule. The proposed rule contains performance requirements that would require all lighters that meet the definition of a utility lighter to be child-resistant. It also describes the test protocol to be used in establishing and verifying compliance. The protocol prescribes tests in which panels of young children attempt to operate modified or non-fuel-containing utility lighters. Manufacturers and importers would be required to label individual lighters, certify that their products comply with the rule, provide evidence of a reasonable testing program to support such certification, maintain testing and production records, and provide reports and product samples to the Commission.

Most manufacturers would build modified or surrogate lighters to perform the test protocol. Complying lighter designs would be those for which the test lighters or surrogates were successfully operable by fewer than 15 percent of children tested. All utility lighters manufactured or imported 12 months after the date of publication of a final rule in the Federal Register would have to comply. In addition, proposed anti-stockpiling provisions would limit the production or

importation of noncomplying lighters between the publication date and the effective date of a final rule.

Firms Subject to the Proposed Rule and Possible Impacts. The proposed rule applies to manufacturers and importers of utility lighters. The number of firms that manufacture or import utility lighters is increasing. The CPSC staff has identified 24 firms, and there may be as many as 30 companies that manufacture or import utility lighters in the U.S. With the exception of one large manufacturer and perhaps one other smaller manufacturer, all firms are believed to be importers rather than domestic manufacturers. Several of the firms are affiliates or subsidiaries of larger firms or foreign manufacturers. Although the dominant firms are not small, more than half of the remaining firms are believed to have fewer than 100 employees and may be considered small according to the size standards established by the Small Business Administration (13 CFR 121.601).

The CPSC staff examined the information available on the 24 firms that were identified as being manufacturers, importers, or private labelers of utility lighters. Of these, 13 are believed to have fewer than 100 employees and are, therefore, considered to be small businesses. Of these 13 small businesses, 9 are believed to be importers that sell other products in addition to utility lighters. One of the 13 firms may manufacture its own utility lighters. The information available was not sufficient to make such determinations on the remaining three small businesses.

One small firm claims that its utility lighter has child-resistant features. However, it has not tested its product according to the protocol in the Safety Standard for Cigarette Lighters.

Most of the small importers and private labelers distribute lighters produced by manufacturers based (for the most part) in other countries. It is likely that the manufacturers will bear most of the costs for development and testing of the child-resistant models and amortize these costs over several years of production. These costs, as well as increases in the costs of production attributable to the child-resistant mechanism, are expected to be passed through importers and private labelers to the consuming public.

Some small importers may experience some disruption in their supply of utility lighters if some of the foreign suppliers opt not to develop child-resistant utility lighters. However, the 12-month period between the publication of the final rule and its effective date should allow time for most importers to take action to ensure that they have a source for child-resistant utility lighters. Many of the smaller importers of utility lighters appear to be primarily engaged in manufacturing or importing other products, such as housewares, kitchen and barbecue utensils, hardware products, cigarette lighters, and other tobacco accessories. Utility lighters probably account for only a small percentage of these importers' sales. Therefore,

even if a small importer stopped distributing utility lighters, it probably would not suffer a significant adverse effect.

Since the rule contains performance requirements, rather than requiring a specific technology, it allows flexibility to firms in designing child-resistant mechanisms. This should reduce the burden of compliance on many firms, both large and small. However, some small firms that manufacture their own utility lighters may not have the technical capability to develop lighters that would meet the proposed rule. It is also possible that some small manufacturers will determine that the cost of developing a product that complies with the proposed rule is too high relative to their market share or output level. This could lead some small manufacturers to leave the market. However, the number of small firms that actually manufacture their own utility lighters is believed to be low. As noted above, we are aware of only one small firm that may manufacture its own lighters.

Small manufacturers and importers would be subject to all of the performance, testing, certification, and reporting provisions of the proposed rule. Manufacturers and importers would not be required to develop any new special skills in order to establish, or verify compliance with the proposed rule. Some small manufacturers and importers may not possess the necessary skills to conduct the required testing. However, there are independent quality control and engineering laboratories, and other private consultants, that could perform the required testing, which,

based on CPSC experience, may cost about $25,000 per model. Records of the testing would probably be compiled by the testing laboratory and maintained by the manufacturer personnel. Copies of the reports and certification records would probably be maintained by the importers or their legal counsels.

The proposed rule allows importers to rely on testing that has been performed by or for a foreign manufacturer to support the certification and reporting requirements of the proposed rule, provided that the records (1) are in English, (2) are complete, (3) can be provided to the Commission within a reasonable time period, if requested, and (4) provide reasonable assurance the utility lighters are child resistant. This provision may reduce the testing burden on some small importers, since some manufacturers may supply product to more than one importer.

The reporting requirements of the proposed rule are necessary for the CPSC staff to monitor compliance. The staff is not aware of any method by which the reporting burden on small businesses could be reduced while still accomplishing the purpose of the proposed rule. The estimated reporting burden, however, is low, probably less than 100 hours per model per year.

Other Federal Rules. No Federal rules are known to exist that may duplicate, overlap, or conflict with the proposed rule. Although the Cigarette Lighter Safety Standard is similar to the proposed rule, utility lighters are not subject to that rule,

because utility lighters are not intended primarily for lighting tobacco products.

Alternatives to the Proposed Rule. The Commission considered three basic alternatives to certain elements of the proposed rule. Specifically, the CPSC considered (1) expanding the scope of the proposed to cover other products, such as some small torches, (2) narrowing the scope to exclude more expensive utility lighters, (3) requiring only additional labeling, (4) taking no action, and (5) relying on a voluntary standard.

Expanding the Scope. After due consideration, the Commission excluded small, portable butane torches, sometimes called micro-torches, from the scope of the rule. Micro-torches can be used for some of the same purposes for which utility lighters can be used. However, micro-torches are primarily used for soldering and other repairs. Moreover, the CPSC was aware of only one child-play fire incident involving a micro-torch, which resulted in no injuries and minimal damage. Excluding micro-torches from the scope of the proposed rule reduces the number of firms that must comply with the proposed rule, including some small businesses.

Narrowing the Scope. The CPSC considered excluding from coverage of the proposed rule the more expensive utility lighters, some of which retail for more than $20, as opposed to the less than $8 for which most utility lighters retail. This would have been similar to the exemption in the cigarette lighter

standard for lighters with a customs value or ex-factory value greater than $2.00.

The market share of the more expensive utility lighters is thought to be low, probably one percent or less. There are at least three firms that are known to market utility lighters that retail for more than $20. All of these firms have fewer than 100 employees and are considered to be small businesses. (One firm claims that its utility lighter has features that should make it child-resistant.)

While excluding the more expensive utility lighters from the scope of the proposed rule might reduce the impact of the rule on some small businesses, the CPSC does not have evidence that the more expensive utility lighters are less likely to be involved in child-play fires than the less expensive models. Baseline testing indicates that some of the more expensive models are at least as easy to operate as some less expensive models. And, there is no evidence that the more expensive utility lighters are stored or used differently around the home than are the less expensive lighters. Therefore, the staff determined that the more expensive utility lighters should be required to meet the same child-resistance standard that the less expensive ones must meet.

Labeling Requirements. Although a labeling-only requirement would significantly reduce the burden of the proposed rule on all firms, large and small, the Commission did not believe that any additional labeling would have a significant impact on the

incidence of child-play fires. Furthermore, all utility lighter labels are already labeled "Keep out of reach of children." Therefore, a labeling only rule was not considered to be a preferable alternative to the proposed rule.

Taking No Action or Relying on a Voluntary Standard. Because there currently is no voluntary standard for child-resistance for utility lighters and none is being developed, relying on a voluntary standard is not an alternative for the Commission. Additionally, it seems unlikely that many firms would voluntarily market child-resistant utility lighters in the absence of a mandatory standard. If the non-child-resistant utility lighters cost less than the child-resistant lighters, the manufacturers of child-resistant lighters would be at a cost disadvantage in the marketplace, resulting in a limited market share for the child-resistant lighters. Since many non-child-resistant lighters would remain on the market, the effectiveness of this alternative would be unacceptably low.

Summary and Conclusions. The proposed rule for utility lighters will affect all manufacturers and importers of such lighters in the U.S. Perhaps half or more of these firms would be considered to be small businesses. Most of the small firms are believed to be importers of lighters manufactured by foreign suppliers. These importers will be impacted by the proposed rule's certification, recordkeeping, and reporting requirements. The higher costs of manufacturing child-resistant lighters

incurred by their suppliers will likely be passed onto to these firms as well. Some of the firms may also have temporary disruptions in their supply of utility lighters. However, it is uncertain whether any of these effects would be "significant." At least one small importer is already marketing a utility lighter that it claims to be child-resistant, although it has not been tested using the protocol specified in the Safety Standard for Cigarette Lighters.

In addition to the small importers, there may be a few small firms that manufacture their own utility lighters. The proposed rule may have a significant impact on these firms if the firms do not have the technical expertise or resources to develop child-resistant mechanisms for their utility lighters. However, there may be only one small domestic manufacturer at this time.

Some alternatives to the proposed rule were considered that may have reduced the burden on small manufacturers. However, these alternatives were rejected, since the net benefits to society were lower under these alternatives than under the proposed rule. These alternatives included taking no action, requiring additional labeling only, and exempting the more expensive utility lighters from the scope of the proposed rule. One alternative that would have increased the burden on some small manufacturers was also rejected. That alternative would have included micro-torches in the scope of the proposed rule.

L. Executive Orders

This proposed rule has been evaluated in accordance with Executive Order No. 12,612, and the rule raises no substantial federalism concerns.

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given to the regulation. The preemptive effect of this rule is established by 15 U.S.C. 2075(a), which states:

> (a) Whenever a consumer product safety standard under the CPSA applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribed any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

Subsection (b) of 15 U.S.C. 2075 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political

subdivision of a State from establishing or continuing in effect a safety standard applicable to a consumer product for its own [governmental] use, and which is not identical to the consumer product safety standard applicable to the product under the CPSA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 2075 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a consumer product safety standard. The Commission may grant such a request, by rule, where the State or political subdivision standard or regulation (1) provides a significantly higher degree of protection from such risk of injury than does the consumer product safety standard and (2) does not unduly burden interstate commerce.

L. Extension of Time To Issue Final Rule

Section 9(d)(1) of the CPSA, 15 U.S.C. 2058(d)(1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the FEDERAL REGISTER.

Executive Order No. 12,662, which implements the United States-Canada Free-Trade Implementation Act, provides that publication of standards-related measures shall ordinarily be at least 75 days before the comment due date. Accordingly, the

Commission provided a comment period of 75 days for this proposal.

After the comment period ends, the CPSC's staff will need to prepare draft responses to the comments, along with a draft regulatory analysis and either a draft regulatory flexibility analysis or a draft finding of no substantial impact on a significant number of small entities. Then the staff will prepare a briefing package for the Commission. The Commission is likely to then be briefed, and will later vote on whether to issue a final rule. The Commission expects that this additional work will take about 9 months. Accordingly, the Commission extends the time by which it must either issue a final rule or withdraw the NPR until [insert date that is 9 months from publication of this notice in the FEDERAL REGISTER]. If necessary, this date may be further extended.

List of subjects in 16 CFR Part 1212.

Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Utility lighters.

For the reasons set out in the preamble, Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations is amended as set forth below.

1. A new Part 1212 is added to read as follows:

DRAFT

PART 1212--Safety Standard for Utility Lighters

Subpart A--Requirements for Child-Resistance

Sec.

1212.1 Scope and application.

1212.2 Definitions.

1212.3 Requirements for utility lighters.

1212.4 Test protocol.

1212.5 Findings.

Authority: 15 U.S.C. 2056, 2058, 2079(d).

Subpart B--Certification Requirements

Sec.

1212.11 General.

1212.12 Certificate of compliance.

1212.13 Certification tests.

1212.14 Qualification testing.

1212.15 Specifications.

1212.16 Production testing.

1212.17 Recordkeeping and reporting.

1212.18 Refusal of importation.

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

DRAFT

Subpart C-- Stockpiling

Sec. 1212.20 Stockpiling.

Authority: 15 U.S.C. 2058(g)(2), 2079(d).

Subpart A--Requirements for Child-Resistance

§ 1212.1 Scope, application, and effective date.

This Part 1212, a consumer product safety standard, prescribes requirements for utility lighters. These requirements are intended to make the utility lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all utility lighters, as defined in § 1212.2, that are manufactured or imported after the date that is 12 months after publication of a final rule in the FEDERAL REGISTER.

§ 1212.2 Definitions.

As used in this part 1212:

(a) "Multi-purpose lighter." See "utility lighter."

(b)(1) "Utility lighter," (also known as grill lighter, fireplace lighter, multi-purpose lighter, or gas match) means: a

hand-held, self-igniting, flame-producing product that operates on fuel and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices or pilot lights.

(2) The following products are not utility lighters:

(i) Devices intended primarily for igniting smoking materials that are within the definition of "lighter" in the safety standard for cigarette lighters (16 CFR 1210.2(c)).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Devices intended, or marketed, primarily for activities such as soldering, brazing, or welding.

(iv) Matches.

(c) "Successful operation" means one signal of any duration from a surrogate utility lighter within either of the two 5-minute test periods specified in § 1212.4(f).

(d) "Surrogate utility lighter" means a device that (1) approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a utility lighter intended for use by consumers, (2) has no fuel, (3) does not produce a flame, and (4) produces an audible, or audible and visual, signal that will be clearly discernible when the

surrogate utility lighter is activated in each manner that would produce a flame in a fueled production utility lighter. (This definition does not require a utility lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a utility lighter without fuel as a surrogate utility lighter if a distinct audible signal, such as a "click," can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production utility lighter without the signal. But see § 1212.4(f)(1).)

(e) "Model" means one or more utility lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child resistance. Lighter characteristics that may affect child resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

1212.3 Requirements for utility lighters.

(a) A utility lighter subject to this Part 1212 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1212.4.

(b) The mechanism of a utility lighter subject to this Part 1212 that makes the product resist successful operation by children must:

(1) reset itself automatically either after each operation of its ignition mechanism or when the utility lighter is released after one or more operations,

(2) not impair safe operation of the utility lighter when used in a normal and convenient manner,

(3) be effective for the reasonably expected life of the utility lighter, and

(4) not be easily overridden or deactivated.

§ 1212.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a utility lighter is resistant to successful operation by children uses a panel of children to test a surrogate utility lighter representing the production utility lighter. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1212.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be: (i) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 42 through 44 months old; (ii) 40 ± 2 children (26 ± 1 males; 14 ± 1 females) 45 through 48 months old; (iii) 30 ± 2 children (20 ± 1 males; 10 ± 1 females) 49 through 51 months old. Note: To calculate a child's age in months: 1) Subtract the child's birth date from the test date. The following calculation shows how to determine the age of the child at the time of the test. Both dates are expressed numerically as Month-Day-Year.

Example: Test Date (*e.g.*, 8/3/94) minus Birth Date - (*e.g.*, 6/23/90). Subtract the number for the year of birth from the number for the year of the test (*i.e.*, 94 minus 90 = 4). Multiply the difference in years by 12 months (*i.e.*, 4 years X 12 months = 48 months). Subtract the number for the month of the birth date from the number of the month of the test date (*i.e.*, 8 minus 6 = 2 months). Add the difference in months obtained above to the number of months represented by the difference in years described above (48 months + 2 months = 50 months). If the difference in days is greater than 15 (*e.g.*, 16, 17 ...), add 1 month. If the difference in days is less than -15 (*e.g.*, -16, -17), subtract 1 month (*e.g.*, 50 months - 1 month = 49 months). If the difference in days is between -15 and

15 (*e.g.*, -15, -14, ... 14, 15), do not add or subtract a month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate utility lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate utility lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate utility lighter. No child shall participate in both surrogate utility lighter testing and either surrogate cigarette lighter testing or child-resistant package testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate utility lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate utility lighters may be tested within the United States at one or more central locations, provided the

participating children are drawn from a variety of geographical locations.

(2) Testing of surrogate utility lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate utility lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate utility lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from the 100-child test panel (20 ± 2 children each for 5 testers and

17 ± 2 children each for 6 testers). *Note*: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate utility lighters*. (1) Six surrogate utility lighters shall be used for each 100-child panel. The six utility lighters shall represent the range of forces required for operation of utility lighters intended for use. All of these surrogate utility lighters shall have the same visual appearance, including color. The surrogate utility lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate utility lighters shall be used for the entire 100-child panel. The surrogate utility lighters may be used in more than one 100-child panel test. The surrogate utility lighters shall not be damaged or jarred during storage or transportation. The surrogate utility lighters shall not be exposed to extreme heat or cold. The surrogate utility lighters shall be tested at room temperature. No surrogate utility lighter shall be left unattended.

(2) Each surrogate utility lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 ± 2 children). Note: If a surrogate utility lighter is permanently damaged, testing shall continue with the remaining utility lighters. When a utility lighter is dropped out, the requirement that each utility lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate utility lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production utility lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for the corresponding production utility lighter.

(5) Before and after testing surrogate utility lighters with each child, each surrogate utility lighter shall be operated outside the presence of any child participating in the test to verify that the surrogate utility lighters produce a signal. If the surrogate utility lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate utility lighter does not produce a signal when it is operated after the test, the results for the preceding test

with that utility lighter shall be eliminated. An explanation shall be recorded on the data collection record. The utility lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement*. (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate utility lighter at any time (either verbally or with body language such as facial expressions), unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of utility lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate utility lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right -- never touch a real lighter -- but your [parent,

etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate utility lighter and may tell or show each other how to operate it. (This interaction is not considered to be disruption as described in paragraph (e)(2) below.) However, neither child shall be allowed to touch or operate the other child's utility lighter. If one child takes the other child's surrogate utility lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He(she) has to try to do it himself(herself)."

(e) *Children who refuse to participate*. (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than 1 minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate utility lighter throughout the entire test period, that child shall be eliminated from the test results and

an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure*. (1) To begin the test, the tester shall say "I have a special utility lighter that will not make a flame. It makes a noise like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate utility lighter, so that the surrogate utility lighter cannot be seen by the child, and shall operate the surrogate utility lighter once to produce its signal. The tester shall say "Your parents said it is OK for you to try to make that noise with your lighter." The tester shall place a surrogate utility lighter in each child's hand and say "now you try to make a noise with your lighter. Keep trying until I tell you to stop." *Note:* For utility lighters with an "off/on" switch, the surrogate lighter shall be given to the child with the switch in the "off," or locked, position.

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate utility lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark -- it won't hurt you -- try to make a noise with your lighter." If any child successfully operates the surrogate utility lighter during

this first 5-minute period, the lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate utility lighter during the 5-minute period specified in § 1212.4(f)(3), the adult tester shall demonstrate the operation of the surrogate utility lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighter(s) now." Take the surrogate utility lighters and place them on the table in front of you out of the children's reach. Then say, "I'll show you how to make the noise with your lighters. First I'll show you with (child's name) lighter and then I'll show you with (child's name) lighter." Pick up the first child's surrogate utility lighter. Hold the lighter approximately 2 feet in front of the children at their eye level. Hold the surrogate utility lighter in a vertical position in one hand with the child-resistant feature exposed (not covered by fingers, thumb, etc.). Orient the child-resistant mechanism on the utility lighter toward the children. [This may require a change in your orientation to the children such as sitting sideways in the chair to allow a normal hand position for holding the utility lighter while assuring that both children have a clear view of the mechanism. You may also need to reposition your chair so your hand is centered between the

children.] Say "now watch the lighter." Look at each child to verify that they are looking at the lighter. Operate the utility lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, "Okay, now watch this lighter." Repeat the demonstration as described above using the second child's utility lighter. *Notes:* The demonstration is conducted with each child's lighter, even if one child has successfully operated the lighter. Testers shall be trained to conduct the demonstration in a uniform manner, including the words spoken to the children, the way the utility lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate utility lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate utility lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate utility lighter. After the