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United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

14 JUL 1998

To :Barbara Jacobson
Project Manager, Multi-purpose Lighters

Through :Warren Prunella, AED, Economic Analysis WP

From :Robert Franklin RF
Economist

Subject :Initial Regulatory Flexibility Analysis of Multi-purpose Lighters

Attached is an Initial Regulatory Flexibility Analysis of the draft rule, recommended by the staff, requiring multi-purpose lighters be child resistant.

Proposed Rule Making on Multi-Purpose Lighters: Initial Regulatory Flexibility Analysis

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Introduction

The Consumer Product Safety Commission (CPSC) is proposing a consumer product safety rule and certification requirements for multi-purpose or utility lighters (hereafter referred to as "the proposed rule"). The Commission published an advance notice of proposed rulemaking (ANPR) initiating a regulatory development proceeding for multi-purpose lighters on January 16, 1997. As noted in the ANPR, the proposed rule addresses the risk of accidental fire-related death and injury associated with young children, particularly those under age 5, playing with multi-purpose lighters. The rule is being proposed under the Consumer Product Safety Act (CPSA), and would apply to manufacturers and importers of multi-purpose lighters sold in the U.S.

The Regulatory Flexibility Act (RFA) requires that rules proposed by the Commission be reviewed for their potential economic impact on small entities, including small businesses. 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

5) an identification, to the extent possible, of all relevant Federal rules which 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 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.

Small Business Impact

Reasons for Agency Action

The Commission's proposed rule on multi-purpose lighters addresses the risk of death and injury from accidental residential fires started by young children playing with multi-purpose lighters. Since 1988, the Commission has identified 158 fires that were started by children under age 5 who were playing with multi-purpose lighters. These fires resulted in a total of 23 deaths and 58 injuries. Because these data are actual incidents rather than national estimates, the extent of the total problem may be greater. Based only on the fire incident data for the years 1995 through 1997, known incidents of fires started by children under age 5 resulted in societal costs that averaged $32.7 million per year. Fires started by young children (under age 5) are those against which the proposed rule would be most effective.

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

In February 1996, the Commission received a petition to "initiate Rulemaking Proceedings to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto® Tokai Aim 'n Flame™ disposable butane multi-purpose lighter within the scope of the standard and its child resistant performance requirement." In January 1997, the Commission granted the petition and commenced rulemaking by publishing the ANPR. The proposed rule developed by the Commission would cover all lighters that meet the definition of a "multi-purpose" lighter contained in the proposed rule, not just the Scripto® Tokai Aim 'n Flame™. 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.

The purpose of the proposed rule is to reduce the risk of accidental child-play multi-purpose lighter fires. It is expected that making multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose 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 non-complying 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 covers manufacturers and importers of multi-purpose lighters intended for sale to consumers. The number of firms that manufacture or import multi-purpose lighters is increasing. While 24 firms have been identified, there may be as many as 30 companies that manufacture or import multi-purpose 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 staff examined the information available on 24 firms that were identified as being manufacturers, importers, or private labelers of multi-purpose 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 also sell products other than multi-purpose lighters. One may manufacture its own multi-purpose lighters. The

information available was not sufficient to make such determinations on the remaining 3 small businesses. One small firm claims that its multi-purpose lighter has child-resistant features. However, it has not tested its product according to the requirements of the proposed rule.

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 multi-purpose lighters if some of the foreign suppliers opt not to develop child-resistant multi-purpose 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 multi-purpose lighters. Many of the smaller importers of multi-purpose 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. Multi-purpose lighters probably account for only a small percentage of these importers' sales. Therefore, even if a small importer stopped distributing multi-purpose lighters, it probably would not suffer a significant adverse effect.

Since the rule contains performance requirements, rather than requiring a specific technology, it allows some 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 multi-purpose lighters may not have the technical capability to develop multi-purpose 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 multi-purpose 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. No special skills not already available to manufacturers and importers would be required 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 proposed rule's certification and reporting requirements, 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 multi-purpose 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 to purpose of the proposed rule. The estimated reporting burden, however, is low, probably less than 100 hours per model per year.

Other Federal Rules

The staff is not aware of any Federal rules that may duplicate, overlap, or conflict with the proposed rule. Although the Cigarette Lighter Safety Standard is similar to the proposed rule, multi-purpose lighters are not subject to that rule, since multi-purpose lighters are not intended primarily for lighting tobacco products.

Alternatives to the Proposed Rule

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

Expanding the Scope

After due consideration, the staff 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 multi-purpose lighters can be used. However, the primary uses for micro-torches are probably for uses such as soldering and other repairs. Moreover, the staff 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 staff considered excluding from coverage of the proposed rule the more expensive multi-purpose lighters, some of which retail for more than $20, as opposed to the less than $8 for which most multi-purpose 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 multi-purpose lighters is thought to be low, probably one percent or less. There are at least three firms that are known to market multi-purpose 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 multi-purpose lighter has features that should make it child-resistant.)

While excluding the more expensive multi-purpose 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 multi-purpose 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 multi-purpose lighters are stored or used differently around the home than are the less expensive lighters. Therefore, the staff determined that the more expensive multi-purpose 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 staff did not believe that any additional labeling would have a significant impact on the incidence of child-play fires. Furthermore, all multi-purpose 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 multi-purpose lighters in existence or in the process of being developed, relying on (or deferring to) a voluntary standard is not an alternative for the Commission. Additionally, it seems unlikely that many firms would voluntarily market child-resistant multi-purpose lighters in the absence of a mandatory standard. If the non-child-resistant multi-purpose lighters cost less than the child-resistant lighters, the manufacturers of child-resistant lighters would be at a cost disadvantage in the market place. Consequently, not issuing a mandatory rule would not address the hazard associated with multi-purpose lighters.

Summary and Conclusions

The proposed rule on multi-purpose lighters will affect all manufacturers and importers of multi-purpose 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 multi-purpose lighters because of the proposed rule. However, it is uncertain whether any of these effects would be "significant." At least one small importer is already marketing a multi-purpose lighter that it claims has features that would make its product child-resistant, although it has not been tested against the requirements of the proposed rule.

In addition to the small importers, there may be a few small firms that manufacture their own multi-purpose 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 multi-purpose lighters. However, the number of small domestic manufacturers is thought to be small, perhaps numbering as few as one.

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 multi-purpose 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.

TAB F

UNITED STATES GOVERNMENT
MEMORANDUM

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON,D.C. 20207

JUL 2 1998

TO : Mary Ann Danello, Ph.D., Associate Executive Director for Epidemiology and Health Sciences

THROUGH: Marilyn L. Wind, Ph.D., Director
Division of Health Sciences

FROM : Barbara J. Jacobson, Project Manager
Division of Health Sciences

SUBJECT : Advance notice of proposed rulemaking

A. Introduction

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 received before the ANPR was published, but not addressed previously, are discussed in this package. Copies of all written comments are available from the 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 multi-purpose lighters to be child-resistant.

Conrad Guthrie of Vinson & Elkins, the petitioner's attorneys, and Mark W. Collmer, of McDowell Collmer, L.L.P. submitted information about incidents to support the Commission's rulemaking proceeding. D. Bruce Kehoe of Wilson, Kehoe & Winingham, submitted information on 60 incidents reported to them in response to their advertisement in the December 1997, issue of *Fire and Arson Magazine*. In thirty-five of the 60 incidents, the child who started the fire was reported 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 multi-purpose lighter obtained from the fireplace mantle.

Scripto-Tokai Corporation (Scripto) and Swedish Match North America Inc., (Swedish Match), importers of multi-purpose lighters, submitted comments. Scripto stated that during the past twelve years they have distributed approximately

100,000,000 multi-purpose lighters and have received only about two dozen reports of children allegedly operating a multi-purpose lighter. Scripto commented that most of the incidents did not involve any claim of personal injury. Swedish Match reported they have sold several million multi-purpose lighters since 1992 and never had a single report of any child-play incident.

Scripto, Swedish Match, and the Lighter Association, Inc., request 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 staff's responses are provided below.

B. Discussion of ANPR Comments

1. Issue: Risk of Injury

The President of the National Association of Pediatric Nurse Associates & Practitioners, Inc., "agrees that multi-purpose lighters which can be operated by children under the age of 5 pose an unreasonably dangerous risk to children and their families."

Scripto questioned whether multi-purpose lighters present an unreasonable risk of serious injury or death to consumers. Scripto stated that there would be a far greater societal benefit in regulating matches than in regulating multi-purpose lighters.

Response:

At this time the staff is aware of enough fires, injuries, and deaths associated with these products to preliminarily conclude that the recommended rule would address an unreasonable risk.

There are no data currently available to compare the per-unit risk associated with multi-purpose lighters with any other flame source including matches. As expected, there are many more child play incidents involving matches because of the larger number of matches in use. A 1991 CPSC report, "Lighters and Matches: An Assessment of Risks Associated with Household Ownership and Use," cited an estimated 1.1 billion books or boxes of matches present in households at that time. Even at current projected sales estimates of 20 million multi-purpose lighters for 1998, the difference in the numbers available for use between the two products is significant.

2. Issue: Effectiveness of the Cigarette Lighter Standard

The Lighter Association, Inc., Scripto, and Swedish Match commented that the Commission should defer a decision about requiring multi-purpose lighters to be child-resistant until there is evidence that the Safety Standard for Cigarette Lighters has effectively addressed the incidence of child-play fires started with cigarette lighters.

Response:

The staff does not believe that the Commission should defer a decision about publishing a proposed standard. To do so would allow the deaths and injuries associated with child-play with this product to continue unabated.

The Commission's experience with the PPPA 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 staff believes the child-resistant concept used under the PPPA is applicable to requiring child-resistant features on cigarette and multi-purpose lighters.

Additionally, estimates of fire and injury losses for lighters 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 reduction in child play lighter fires (23 percent) than in residential structure fires overall (6 percent). This could be the first indication that child-resistant cigarette lighters help prevent child play fires. However, there was also a 15 percent reduction in child play fires started with matches between 1994 and 1995, indicating that other factors, such as general fire prevention efforts, may explain these results.

More comprehensive information regarding the effectiveness of the cigarette lighter standard will be available when the staff completes its analysis of the results of the Cigarette Lighter Evaluation Study in 2000. This special study will provide information about the specific types of lighters involved in child play fires (e.g., cigarette lighter, multi-purpose) and will also identify the proportion of fires started by children under 5 years old (the group of children afforded the most protection by child-resistance). For the reasons stated above, the staff believes that the results of the study will show that the cigarette lighter standard is effective.

3. 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."

Response:

To our knowledge, no data are available on changes in the ways child-resistant cigarette lighters are stored. Additionally, the staff believes that the 1994 fire loss estimates are too near the July 1994, effective date to provide a measure of the effectiveness of the Safety Standard for Cigarette Lighters. More comprehensive information regarding the overall effectiveness of the standard will be available when the staff completes its analysis of the results of the Cigarette Lighter Evaluation Study in 2000.

4. 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 about the attractiveness of the design (gun or toy shape) and colorful packaging of multi-purpose lighters.

Response:

Multi-purpose 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 multi-purpose lighters. This issue was discussed by the staff in the November 1996, briefing package on the petition. The staff concluded that for some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of these lighters as play objects compared with ordinary cigarette lighters or matches.

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

5. Issue: Supervision

Scripto comments "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 staff agrees that proper adult supervision is very important. However, after reviewing the fire incident reports, the staff concludes that the children were under reasonable levels of supervision at the time they started the fires.

Many of the fires were started while parents or guardians were present in the house. Additionally, 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.

6. Issue: Voluntary Standards

The Lighter Association, Inc., 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

Response:

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 multi-purpose 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's action to develop a mandatory standard for multi-purpose lighters. Manufacturers whose multi-purpose 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 staff on the provisions of a mandatory standard. Based on these actions, the staff does not expect a voluntary standard to be developed.

7. Issue: Education and Labeling

The Lighter Association, Inc., Scripto, and Swedish Match, recommend that the Commission consider fire safety education and labeling as means to address child play fires started with multi-purpose lighters.

Response:

The staff does not believe that warning labels or education can effectively address the risks associated with multi-purpose lighters. Multi-purpose lighters have always been required to be labeled with a warning to "Keep out of the reach of children" under the Federal Hazardous Substances Act.

Furthermore, a review of the fire incidents associated with multi-purpose lighters indicate that many consumers are aware of the dangers 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 high storage place. However, the motor abilities of children in the age range that use multi-purpose lighters to start fires make it nearly impossible to find a storage place that provides both convenient access for users and safety for young children. Additionally, a number of the multi-purpose lighter brands have a "hook" feature which provides a convenient way to hang the lighter near the location it is used, e.g. near the fireplace.

Since most caregivers are already educated about the dangers of young children playing with lighters, and children access them in spite of attempts to store them out of reach, the staff cannot conceive of more effective warning statements. The staff believes that a child-resistant feature on multi-purpose lighters would be the most effective approach of addressing the hazard.

8. Issue: Scope

Swedish Match urges the Commission to determine whether the child-play problem is associated with one lighter brand rather than with all multi-purpose lighters.

Response:

Although the large majority of the reported fire incidents involved one manufacturer's brands, this is to be expected since that one company has about 90 of the market share. However, there were also five other brands identified in the fire incident data. In addition, the results of the baseline testing of five different models of multi-purpose lighters demonstrate that the majority of the children on the test panels were able to operate them, a range of child-resistance of 4 to 41 percent, in contrast to the minimum requirement of 85 percent in the Safety Standard for Cigarette Lighters.

9. Issue: Requirements for Multi-Purpose Lighters may Create New Hazards

Scripto, the Lighter Association, Inc., and Swedish Match expressed concern that a reset requirement for the child-resistant mechanism could create the potential for flashback explosions in situations such as igniting a gas grill. They state that environmental factors such as wind, low temperature, altitude or moisture can affect the consumer's ability to ignite a multi-purpose lighter.

Response:

The staff acknowledges that multi-purpose 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, multiple trigger operations, i.e. multiple sparks, may be required in order to achieve ignition. The staff also acknowledges that wind and other factors can affect lighting efficiency.

Staff in the Division of Engineering (LSE) conducted testing using three different gas grills. Results of that testing indicate that there is a risk of flame-up or small explosion for some grills if ignition is delayed, particularly if the gas is allowed to build up with the grill cover closed. The potential for injury from flame-up or small explosion for the grills tested would be minimal for short periods of delayed ignition such as 5 or 10 seconds. The staff believes that the potential for injury could increase as the period of delayed ignition increases depending on a number of factors including the size and construction of the grill, the rate of gas flow, and the air flow around the grill.

The staff noted that the grills used in the testing have instructions that warn the consumer to light the grill with the cover open. The instructions also advise the consumer to turn off the gas and allow residual gas to escape if the grill doesn't ignite after several attempts with the grill's piezo igniter. (This would apply to other ignition sources such as matches, cigarette lighters, and multi-purpose lighters.) Additionally, any likelihood of flame-up or small explosion could be eliminated by igniting the match, cigarette lighter, or multi-purpose lighter prior to turning on the gas.

In conclusion, the staff does not agree that child-resistant multi-purpose lighters would be any more hazardous than other grill ignition sources. To address the possibility of creating a hazardous use condition, the staff drafted the requirements of the proposed standard to allow multiple operation attempts of multi-purpose lighters before the child-resistant feature resets. With this provision, the lighting efficiency of child-resistant multi-purpose lighters should be essentially the same as for the non-child-resistant multi-purpose lighters currently in use. The current BIC child-resistant multi-purpose lighter design allows an unlimited number of operation attempts before the child-resistant feature resets.

10. Issue: Economic Issues

The Lighter Association, Inc., Scripto, and Swedish Match, commented on economic issues associated with a standard for multi-purpose lighters.

a. Market Impact

Swedish Match expressed concerns about the potential adverse impact a rule would have on competition.

Response:

It is possible that some firms with a marginal position in the multi-purpose lighter market may react to a standard by exiting the market. However, if this occurs, there should not be a significant adverse impact on competition. One firm has already entered the market with a child-resistant multi-purpose lighter, and at least one other firm is developing one. Furthermore, the staff believes that, as the market expands, the degree of competition in the market will increase as if expected, sales of multi-purpose lighters increase.

b. Estimates of Costs and Benefits

The Lighter Association, Inc., and Scripto stated that the staff under estimated the costs of modifying multi-purpose lighters to make them child-resistant.

Response:

The Lighter Association, Inc., estimated that it would cost $.25 to $.75 per unit to modify multi-purpose lighters. Discussions with manufacturers led the staff to believe that the high end of the range, $.75, was based on making design modifications that would improve the lighting efficiency of multi-purpose lighters as well adding a child-resistant feature. However, the draft proposed rule does not contain a requirement for lighting efficiency. For this reason, the staff believes that a cost estimate of $.25 to $.40 per unit is more reasonable.

The staff does not believe that manufacturers will need to improve the lighting efficiency of their multi-purpose lighters in order to comply with a rule as drafted. The staff has made accommodation for this by drafting the proposed rule to allow for multiple operation attempts before the child-resistant feature resets.

11. Issue: Consumer Resistance to Child-Resistant Features

The Lighter Association, Inc. and Scripto state that consumer resistance to child-resistant cigarette lighters continues in the form of thousands of complaints from every region of the country. They believe that many consumers would also resist the introduction of child-resistant multi-purpose lighters.

Response:

The staff acknowledges that some consumers have resisted the added inconvenience of a child-resistant feature on cigarette lighters. The staff would also expect some consumers to write about their dissatisfaction with child-resistant features on multi-purpose lighters. However, the staff does not believe that the level of consumer-resistance would prevent the expected reduction of child-play fires started with multi-purpose lighters.

The staff believes that manufacturers are fully capable of designing child-resistant multi-purpose lighters that offer minimal inconvenience to consumers. The requirements of the draft standard that allow multiple operation attempts before the child-resistant feature re-sets will make it easier for manufacturers to design lighters that are convenient for consumers to use.

12. 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:

It is important to note that the Commission does not "approve" child-resistant designs. 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 the CPSC 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 testing 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 staff points out that, just like the cigarette lighter standard, the proposed standard for multi-purpose lighters is drafted as a performance standard rather than a design standard. Any multi-purpose lighter that meets the following requirements is considered child-resistant:

(1) The lighter must resist operation by at least 85 percent of the children in the test panel.

(2) The child-resistant mechanism must:
(a) reset itself automatically after each operation of the ignition mechanism, or for designs allowing multiple operations, after the last operation.
(b) not impair safe operation of the lighter when used in a normal and convenient manner
(c) be effective for the expected life of the lighters, and
(d) not be easily overriden or deactivated.

The staff notes that the "reset" requirement has been modified for the draft standard for multi-purpose lighters to allow multiple operation attempts. This minimizes the possibility of creating a hazardous use condition as discussed earlier.

13. Issue: Technology for Modifying Multi-Purpose Lighters

The Lighter Association, Inc., and Scripto Tokai commented that the technology for multi-purpose lighters requires that the lighters be completely redesigned. This involves research and development costs, investment in new equipment or retooling of existing equipment, testing and other evaluations of the product.

Response:

The staff is aware that manufacturers will incur costs to develop and test new designs as well as retool their plants for production. Based on the best information currently available, the staff has attempted to account for these costs in the preliminary regulatory analysis. The staff will include updated cost information in any future analysis.

14. Issue: Enforcement of the Safety Standard for Cigarette Lighters

The Lighter Association, Inc., Scripto, and Swedish Match commented that new requirements for multi-purpose lighters should not be promulgated until the Commission can assure full compliance with the Safety Standard for Cigarette Lighters. The industry comments that consumer complaints about child-resistant lighters have resulted in some importers devising ways to evade the rule. They criticize the

Commission for not taking stronger action to prevent companies from marketing tools designed to permanently remove the child-resistant feature from cigarette lighters. One commenter suggested that the Commission support International adoption of lighter standards to minimize evasion of the requirements.

Response:

The Commission and Customs have taken vigorous action against firms that do not comply with the standard. While the staff is aware that some importers and distributors of lighters have taken actions to circumvent the intent and purposes of the standard, their overall numbers have been small.

The staff believes that the demand for tools to remove the child-resistant feature from cigarette lighters has declined since many companies have improved their child-resistant designs, making them easier for consumers to use.

The staff supports the adoption of international standards for multi-purpose lighters and agrees that such standards could reduce the likelihood of evasion of requirements in the United States.

TAB G

United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: June 29, 1998

TO : Barbara Jacobson
Division of Health Sciences
Directorate for Epidemiology and Health Sciences

Through: Andrew G. Ulsamer, PhD AGU
Associate Executive Director
Directorate for Laboratory Sciences

FROM : George F. Sushinsky GFS 301-413-0172
Division of Engineering Laboratory
Robert T. Garrett, Director 301-413-0155 RTG
Division of Engineering Laboratory
Directorate for Laboratory Sciences

SUBJECT: Gas Grill Ignition Tests

On January 16, 1997, the Commission published an advance notice of proposed rulemaking (ANPR) in the Federal Register soliciting comments on issues related to developing a rule that would require multi-purpose lighters to be child-resistant. Multi-purpose lighters are butane-filled lighters with a long nozzle. To activate the lighter a trigger or button is used. The trigger/button simultaneously releases gas down the nozzle and generates a spark near the tip of the nozzle. The length of the nozzle makes the lighter a convenient choice for igniting gas-fueled appliances such as gas grills, fireplaces, and camp stoves. The length of the nozzle may result in a delay of the transport of butane to the location of the initial spark, thereby requiring subsequent trigger activations to produce a flame.

Multi-purpose lighters may not have reliable first strike capability. This stems, in part, from the need for the gas to travel down the length of the nozzle to the tip. Also, the piezo-electric technology used in most multi-purpose lighters is not completely reliable in producing a spark each time it is activated.

TAB H

United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: April 28, 1998

TO : Barbara Jacobson, Project Manager, Multi-Purpose Lighter Petition

Through: Nicholas Marchica, Acting Associate Executive Director, NVM
Directorate for Engineering Sciences
Dr. Robert B. Ochsman, Director, Human Factors Division

FROM : Carolyn Meiers, Engineering Psychologist, Human Factors Division
Directorate for Engineering Sciences (x 1281) CM

SUBJECT: Response to Public Comments on Advance Notice of Proposed Rulemaking (ANPR) Requiring Multi-Purpose Lighters to be Child-Resistant (Petition CP 96-1)

The Consumer Product Safety Commission (CPSC) was petitioned in March 1996 (Petition CP 96-1) to require certain multi-purpose lighters to be child-resistant. The purpose of this memorandum is to provide staff comments on issues raised in response to an ANPR published on January 16, 1997. Human Factors staff analyzed CPSC in-depth-investigations of multi-purpose lighter incidents attributed to children under five years of age to provide responses to the issues.[1]

Issue: Supervision

Scripto-Tokai commented that "unsupervised young children are vulnerable to an array of environmental and household hazards" and that "unfortunately, a common element among the most serious injuries to young children is a lack of proper adult supervision."

Response: At the time of the incidents, the children were under reasonable levels of supervision. Fires were started with multi-purpose lighters while parents or guardians were present in the house. The following examples from multi-purpose lighter incidents describe the household locations of caregivers at the time their child started the fire.

- Mother was downstairs fixing lunch. (951107HCC1030)
- About five minutes before the fire started, the father saw his 3 and 4 year-old sons in their room and then he went to get cleaned up. (950301CWE5005)

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[1]Only incidents involving children under five years of age were analyzed since that is the age range covered by the standard for child-resistant disposable cigarette lighters.

- A four year old child went into the kitchen for yogurt while his parents were in the living room. While there, he climbed on a kitchen chair, retrieved the multi-purpose lighter from the top of a microwave oven and set the kitchen curtains on fire. (940526HWE5010)

- Mother was feeding her one-year-old daughter in the kitchen. Her three-year-old twins had climbed on a chair to reach the multi-purpose lighter that was stored on top of a 6' high gun cabinet. The children took the lighter to their room and set fire to the bed. (900424HCN1406)

- Mother and daughter were in the upper level of the house while her three-year-old son played in the lower level. He went into the kitchen, grabbed a stool and climbed on top of the counter. He went through the cabinets and found the multi-purpose lighter. He played with it in the family room where he lit a vinyl ball on fire. (960514HCC6212)

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. Child development experts state that beginning at certain ages, children can be given some freedom from direct adult supervision. For example, generally children around 3 and 4 years of age can be left alone while playing in their rooms.[2]

If family activities are centered in other rooms of the house (family room, living room, basement play area), it would be proper for caregivers to allow 3 and 4-year-old children to play in these areas without direct supervision. This is especially true if the children's toys, television, or videos are in the room.

Issue: Educational Efforts

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

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

Response: Educational efforts are important, but are not the primary or sole solution to the problem. 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. However, when children are determined to gain access to the

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[2]Shelvov, S.P.& Hanneman, R.E., editors. (1994). The American Academy of Pediatrics: Caring for Your Baby and Young Child - Birth to Age 5 - The Complete and Authoritative Guide. New York: Bantam Books

lighters, they often can circumvent the adults' efforts to keep them out of reach. The following examples from the multi-purpose lighter incidents illustrate this fact.

- A child aged 2 years and 4 months accessed a lighter that was stored in a tool shed in his back yard. "For safe keeping, the multi-purpose lighter had been stored at least seven feet up on the top shelf (6th shelf) of some shelving abutting a wooden work bench. It was assumed that there was no way the youngster could get to it. The child apparently moved a box lying on the ground to in front of the work bench, climbed up onto the work bench, then climbed up five shelves to where he could reach the top shelf and the lighter." (970811HCC2364)

- A grandfather thought a multi-purpose lighter, used to ignite the pilot light for a water heater and dryer, would be safe from children if stored above child-eye level, on top of the water heater tank, in a utility closet, with the door closed. His 2 year-old grandson set fire to a playpen in which his 18-month-old brother was sleeping. The baby was severely burned. Fire officials found a disposable grill-style lighter in the remains near the playpen. (960409CAA5100)

- A multi-purpose lighter was stored on top of a refrigerator. The 4 year-old child pulled a chair across the kitchen, climbed up and retrieved the lighter. (961016CCC5697)

- A multi-purpose lighter was stored on the top of a spice rack in the kitchen. A 3 year-old boy could not reach the top of the spice rack on his own. He pushed his ride-on car over to the spice rack, climbed on the seat, and reached up for the lighter. He went into his 12-month-old sister's bedroom and set fire to the bedding in the crib where she was playing. The sister was hospitalized for a month. (971212HCC1734)

When attempting to keep objects out of the reach of children, the most natural characteristic of the storage place to consider is height. However, children learn early how to climb on objects and conquer the height difference.

At 2 years of age a child can climb a play gym; at 2 ½ years of age a child is quite skillful in climbing.[3] By the time a child is 4 to 5 years of age, the motor abilities have evolved to point where a child has the coordination and balance of an adult. During this time frame, the ability to use the hands is almost fully developed.[4]

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[3] Ames, L.B., & Ilg, F.L. (1976). Your Two Year Old: Terrible or Tender. New York: Dell Publishing Co., Inc.

[4] Ames, L.B., & Ilg, F.L. (1976). Your Four Year Old: Wild and Wonderful. New York: Dell Publishing Co., Inc.

However, the children's motor skills are very much ahead of their judgment.[5] The motor abilities of the children in the age range in which multi-purpose incidents occur make it nearly impossible to find a storage place for the lighters that prevent children from accessing them while allowing the lighters to be convenient for use. Therefore, the staff does not believe that education or warning labels can effectively address the risks associated with multi-purpose lighters.

NOTE: Multi-purpose lighters are required by the Federal Hazardous Substance Act to be labeled "Keep out of the reach of children." Yet, a "hook" feature on some lighters provides a convenient way to hang the lighter near the location where it is used, e.g. by a fireplace.

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 & Practioners, Inc., expressed concern about the attractiveness of the design (gun or toy shape) and colorful packaging of multi-purpose lighters.

Response: There are references to a "gun" or "toy-like shape" in the multi-purpose lighters incidents. This issue was discussed by the staff in the November 1996 briefing package for the petition.[6] The staff concluded that for some children the combination of the "toy-like" shape and the size of the flame could enhance the attractiveness of these lighters as play objects compared to ordinary cigarette lighters or matches.

There do not appear to be any incidents in which the packaging was influential in attracting children to the lighters.

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[5]Shelvov, S.P.& Hanneman, R.E., editors. (1994). The American Academy of Pediatrics: Caring for Your Baby and Young Child - Birth to Age 5 - The Complete and Authoritative Guide. New York: Bantam Books

[6]"Attractiveness and Appeal of Multi-Purpose Lighters to Children (Petition CP 96-1). Memorandum to Barbara Jacobson, Project Manager from Carolyn Meiers, Engineering Psychologist. September 19, 1996.

TAB I

United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: 14 JUL 1998

TO : Barbara Jacobson
Project Manager, Multi-Purpose Lighter
Directorate for Epidemiology and Health Sciences

Through: Warren Prunella, AED, Directorate for Economic Analysis

FROM : Robert Franklin RF
Economist
Directorate for Economic Analysis

SUBJECT: Response to Comments Concerning Economic Issues Raised by Comments to the ANPR on Multi-Purpose Lighters

This memorandum contains a response to several comments regarding economic issues that were raised in response to the ANPR on multi-purpose lighters.

Comment: "*Market Impact.* The market for the multi-purpose 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 multi-purpose 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."[Swedish Match]

Response: The market for multi-purpose 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. Some firms with a marginal position in the market may react to the standard by exiting the market. However, the staff does not agree that this will likely have a significant adverse impact on competition.

Currently the market for multi-purpose lighters is highly concentrated, with one manufacturer having approximately a 90 percent market share. However, the staff expects that the degree of competition in the market may increase. One major cigarette lighter manufacturer has recently entered the market for multi-purpose lighters with a model that is child resistant. Additionally, the market for multi-purpose lighters is growing at a rate of 5 to 10 percent annually, according to industry sources. As the market expands, we expect more

manufacturers to enter it and thereby increase the level of competition. Furthermore, multi-purpose lighters face competition from other sources, including matches and cigarette lighters. These products are less expensive than multi-purpose lighters and, therefore, limit the amount that manufacturers can increase prices for multi-purpose lighters without significant sales loss, even if there are few manufacturers in the market. Finally, we expect that it is only the manufacturers with a minor presence in the market that might exit. The loss of these firms would not substantially reduce the level of competition.

Comment: "*International Application.* One way to attempt to address the evasion concern is the adoption, internationally of any standard that is applied in the United States."[Swedish Match]

Response: The staff agrees that international adoption of the standard would reduce the likelihood of some manufacturers or importers attempting to evade the requirements of the proposed rule. International adoption of a multi-purpose lighter standard would also benefit manufacturers since they would not have the burden of producing one type of multi-purpose lighter for distribution in the United States and another type for distribution in other countries.

Comment: The CPSC staff improperly used a peak year or years of injuries and fatality data in doing its cost benefit analysis rather than an average over a more reasonable period.[Lighter Association]

Response: In the preliminary regulatory analysis, included in this notice, the staff based its estimates on the incidents of which the staff is aware that occurred from 1995 through 1997. These are the best data available. The staff did not have a special project or study that attempted to collect data before 1995, and therefore, data before that time are incomplete. Furthermore, we note that our analysis of the data from 1995 through 1997 may underestimate the number of fires involving multi-purpose lighters because they consist strictly of cases of which we are aware. There are likely other cases of which we are not aware. Finally, preliminary data for 1998 suggests that the experience will be similar to the period 1995 to 1997. Already in 1998 we are aware of 16 fires that have resulted in 2 deaths and 6 injuries. The actual number is probably higher.

Comment: The Commission underestimates the costs of modifying multi-purpose lighters and ignored the Lighter Association-provided data that it would cost $.25 to $.75 per unit to modify multi-purpose lighters.[Lighter Association; Scripto-Tokai]

Response: These commenters are referring to an earlier examination of the economic issues made by the Commission based on very limited data. The preliminary regulatory analysis included with the NPR is based on more recent data.

Comments provided by the Lighter Association and conversations with several manufacturers suggest that the upper end of the cost estimates were based on the proposed rule containing provisions which it does not in fact have (e.g., requiring a minimum level of lighting efficiency). Therefore, we believe 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 is $0.40/unit. Even if retail markups added another $0.40/unit to the retail price, the proposed rule would result in net benefits to consumers of $0.57 per multi-purpose lighter sold.

Comment: It should be clearly understood that the technology for multi-purpose lighters cannot simply be added to a multi-purpose lighter. Rather the multi-purpose 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. The Commission's assumption that one simply takes an existing child-resistant feature and adds it to a multi-purpose lighter is simplistic and inaccurate. [Lighter Association; Scripto-Tokai]

Response: The staff is aware that manufacturers will incur costs to develop and test new designs for child-resistant multi-purpose lighters as well as to retool their plants for production. We have accounted for these costs in our preliminary regulatory analysis based on the information available (much of it provided by industry). We would appreciate receiving additional information on these costs from manufacturers or other parties with such knowledge, and we will include updated cost information in any future analysis of this issue.

Comment: Surely 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 multi-purpose lighters. Simple mathematics suggests that there would be a far greater benefit in regulating matches than multi-purpose lighters. [Scripto Tokai]

Response: The CPSC staff is indeed 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 likelihood of a solution and the costs that would be imposed by an action as well as the benefits of the action. The CPSC believes a technical fix is possible that will substantially reduce the number of incidents resulting from children playing with multi-purpose lighters that will increase societal benefits by a greater amount than it 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.

TAB J

United States
Consumer Product Safety Commission
Washington, D.C. 20207

MEMORANDUM

6/05/98

To: Barbara J. Jacobson
EHHS
Project Manager

Through: Alan Schoem, Director, EXC
Carlos Perez, Associate Director, CRC

From: Michael T. Bogumill
Compliance Officer, CRC

Subject: Response to Comments on Multi-Purpose Lighter ANPR

The Commission received comments on the Multi-Purpose Lighter ANPR from the Lighter Association, Inc., Scripto-Tokai, and Swedish Match North America Inc. concerning the Commission's enforcement of the Safety Standard for Cigarette Lighters (16 C.F.R. Part 1210). This memorandum addresses the issues raised by each of the above, in turn.

Lighter Association, Inc.

Comment: The Lighter Association, Inc. comments "... 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. 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 record is full of examples of problems with enforcement of the current child resistancy rule."

Compliance Response: Although there were numerous complaints about the safety standard when child-resistant (CR) lighter models first entered the marketplace in large numbers and the non-CR lighters became scarce, the number of complaints from consumers has dwindled

to almost nothing in 1998. Many of the initial complaints had to do with the difficulty of operating the CR 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 CR 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, and as a result consumer complaints about CR lighters are practically nonexistent.

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

While Compliance 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 cannot be construed to be a scheme-a-week 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 sold in violation of the standard, and filing legal actions against firms that purposely distributed and sold lighters that had the CR feature intentionally removed or disabled prior to sale to the public.

Finally, CPSC and Customs have seized several small shipments of lighters that originated in Europe (usually between 50 - 500 lighters per shipment) of popular name brand non-CR disposable lighters manufactured for the European market that were sent to United States importers as premium items included 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) and 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-CR 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.

<u>Scripto-Tokai (Scripto)</u>

Comment: Scripto-Tokai comments on page 8 of its letter "Scripto has been disappointed by the Commission's historical failure to evenly enforce the labeling requirements of the Federal Hazardous Substances Act on other multi-purpose lighter distributors. Similarly, the Commission's enforcement record with respect to the stockpiling provisions of the Cigarette Lighter Standard was extremely disappointing. In the ANPR, the Commission claims to have 'prevented the importation of millions of non-child resistant lighters.' Unfortunately, the Commission is simply reacting to ongoing illegal activities. A more proactive, affirmative

enforcement stance would operate to prevent the further violation of its regulations. Actions should be taken to remove the incentives for importers to bring non-child resistant cigarette lighters into the country. The Commission should actively prosecute and heavily fine those companies that violate either the letter or the spirit of its regulations. The Commission's apparent unwillingness to take any effective action against the 'Quick Fix' anti-safety tool has also been greatly disappointing. Surely the Commission can take stronger action than to simply 'request' the manufacturer to stop marketing a device to override one of its safety standards." "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."

Compliance Response: The Commission staff has taken an agressive proactive enforcement position since the publication date of the standard in July 1993, to ensure that manufacturers, importers, wholesalers, distributors, and retailers comply with first the anti-stockpiling provisions of the standard (between July 1993 and the effective date of the standard in July 1994), and secondly the child resistance requirements for disposable and novelty cigarette lighters. As stated above, millions of lighters were prevented from entering U.S. commerce during the anti-stockpiling period, and millions more have been seized, refused entry, or recalled since the standard went into effect in 1994. The CPSC continues to monitor the marketplace for compliance with the standard and continues to work with the Customs Service to prevent noncomplying lighters from entering the country.

Although the "Quick Fix" device (a.k.a. QuikFix™") designed to disable the CR mechanism on lighters is not a prohibited consumer product under the Consumer Product Safety Act, the Commission's legal staff has notified the promoter of this device that it is not in the public interest to promote and sell such devices in the United States.

Swedish Match (Cricket®)

Comment: Swedish Match, the importer of Cricket® brand cigarette lighters commented "Cricket® 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. Cricket® has submitted to the CPSC staff numerous lighter samples that appeared to be in violation of the CPSC's regulations. We understand that the Lighter Association, as well as other manufacturers, have similarly submitted samples to the CPSC. If the CPSC cannot assure full compliance with the existing standard, it is a fair question as to whether the Commission should expand the scope of the standard to encompass an entire new product category."

Compliance Response: During the period between July 12, 1993 and July 12, 1994 when the stockpiling provision of the standard was in effect, CPSC investigators and compliance officers worked closely with the Customs Service to monitor all imports of disposable and novelty cigarette lighters into the U.S. Firms which had no history of importing cigarette lighters during

the 5-year period immediately preceding July 1993 were not allowed to import noncomplying lighters during this period, and importers who had an importation record with Customs were not allowed to import more that 120% of the maximum amount the firm had imported in any consecutive 12-month period during the 5 years immediately prior to July 1993. Those few importers who would have exceeded their quota of lighters were prevented from importing any shipments over the quota by the shipments either being refused entry or being seized by Customs. Since the effective date of the standard, CPSC has maintained an aggressive enforcement posture to investigate all allegations of noncompliance with the standard, and has pursued all legitimate referrals by Swedish Match and other importers which indicate that someone is in violation of the standard. Some of the complaints and referrals made to CPSC staff have involved lighters that appear not to be child-resistant when, in fact, the lighter has a CR feature, and the importer has filed the proper documentation with Compliance to show that the lighter model has been tested with a panel of children according to the qualification requirements and test methods delineated in the standard at 16 C.F.R. § 1210.4.