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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

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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 multi-purpose lighters because they consist strictly of cases of which the CPSC is aware. There are likely other cases of which the Commission is not aware. Finally, preliminary data suggest that the 1998 experience will be similar to the period 1995 to 1997. Already in 1998,

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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 multi-purpose lighters and ignored the Lighter Association-provided data that it would cost \$.25 to \$.75 per unit to modify multi-purpose 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, including the Lighter Association's estimates of costs.

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

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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 \$0.53 per multi-purpose lighter sold.

### **Issue: Costs of Development**

The Lighter Association and Scripto-Tokai argued that it should be understood that the technology for cigarette 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. These commenters contend that 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.

### **Response:**

CPSC 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. 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

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a multi-purpose 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 multi-purpose lighters. The commenter concludes that there would be a far greater benefit in regulating matches than multi-purpose 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 multi-purpose lighters are operated can be changed in ways that will substantially reduce the number of incidents resulting from children playing with multi-purpose 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

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in substantial net benefits to consumers. 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 multi-purpose 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 multi-purpose lighters that are sold in this country each year are manufactured domestically. One large manufacturer has begun to produce multi-purpose 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 multi-purpose 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 1 year from the publication

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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. Accordingly, there are not disposal issues with regard to such lighters. Further, the proposed rule is not expected to affect the manner in which multi-purpose 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 multi-purpose lighters to perform testing, maintain records, and report data to the Commission relating to the multi-purpose 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

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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 40 different models of multi-purpose 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 4,000 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

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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 multi-purpose 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

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jurisdictions subject to the regulations.<sup>15</sup>

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

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<sup>15</sup>The Regulatory Flexibility Act provides that 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.

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(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 describe 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. RFA-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 this initial regulatory flexibility analysis of the proposed rule.

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**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 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 adequate 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 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

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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

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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 covers manufacturers and importers of multi-purpose lighters intended for sale to consumers. The number of firms that manufacture or import these lighters is increasing. While at least 30 firms have been identified, there probably are other companies that manufacture or import multi-purpose lighters in the U.S. that have not been identified. 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.

The Commission examined the information available on 30 firms that were identified as being manufacturers, importers, or private labelers of multi-purpose lighters. Of these, 16 are believed to have fewer than 100 employees and are, therefore, considered to be small businesses according to size standards established by the Small Business Administration. 13 CFR 121.601. Of these 16 small businesses, 12 are believed to be importers that also sell products other than multi-purpose lighters. One of these firms may manufacture its own multi-purpose lighters. At least two importers have lighters that are produced exclusively for them by foreign manufacturers. The information available was not sufficient to make such determinations on the remaining 3

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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 foreign manufacturers. 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

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a significant adverse effect if sales of multi-purpose lighters accounted for only a small percentage of the firm's total sales.

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 multi-purpose lighters may not have the technical or financial resources 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 multi-purpose lighters is believed to be low. As noted above, the Commission is aware of only one small firm that may manufacture its own lighters and two small firms that have their proprietary designs of lighters that are manufactured for them overseas.

Small manufacturers and importers would be subject to all of the performance, testing, certification, and reporting provisions of the proposed rule. Although some small manufacturers and importers may not possess the necessary skills to conduct the required testing, there are independent quality control and engineering laboratories, and other private consultants, that

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could perform the required testing with which these firms could contract. 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 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 to monitor compliance. The Commission 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, multi-purpose lighters are not subject to that

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rule, because multi-purpose lighters are not intended primarily for lighting tobacco products.

**Alternatives to the Proposed Rule.** The Commission considered four basic alternatives to certain elements of the proposed rule. Specifically, the CPSC considered (1) narrowing the scope to exclude micro-torches and the more expensive multi-purpose lighters, (2) requiring only additional labeling, (3) taking no action and relying on voluntary efforts, and (4) changing the effective date.

**Narrowing the Scope.** The CPSC 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 CPSC also considered excluding micro-torches from coverage.

Industry sources believe that the market share of the more expensive multi-purpose lighters, including micro-torches, is low, probably accounting for less than three percent of the unit sales. There are three firms that are known to market high-end multi-purpose lighters. 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.) Of the six firms that are known to

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distribute micro-torches, three have fewer than 100 employees and are considered to be small businesses.

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 these 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 Commission determined that the more expensive multi-purpose lighters and micro-torches 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 multi-purpose 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

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multi-purpose 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 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 marketplace, resulting in a limited market share for the child-resistant lighters. Consequently, reliance on voluntary efforts would not adequately address the hazard associated with multi-purpose lighters.

**Summary and Conclusions.** The proposed rule for multi-purpose 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 multi-purpose lighters. However, it is uncertain whether any of these effects would be "significant."

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In addition to the small importers, there may be a few small firms that manufacture their own multi-purpose lighters or have their own proprietary designs manufactured for them. 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.

Some alternatives to the proposed rule were considered that might have reduced the burden on small manufacturers. However, these alternatives were rejected, since the number of injuries would be larger. These alternatives included taking no action, requiring additional labeling only, exempting micro-torches or the more expensive multi-purpose lighters from the scope of the proposed rule, and different effective dates.

### **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

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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

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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

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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, Multi-purpose lighters.

For the reasons set out in the preamble, the Commission proposes to amend Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as set forth below.

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

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## PART 1212--Safety Standard for Multi-purpose lighters

### Subpart A--Requirements for Child-Resistance

Sec.

1212.1 Scope and application.

1212.2 Definitions.

1212.3 Requirements for multi-purpose 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).

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## Subpart C-- Stockpiling

Sec. 1212.20 Stockpiling.

Authority: 15 U.S.C. 2058(g)(2), 2065(b), 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 multi-purpose lighters. These requirements are intended to make the multi-purpose lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all multi-purpose 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)(1) "Multi-purpose lighter," (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match) means: a hand-held, self-igniting, flame-producing product

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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, or for uses such as soldering or brazing.

(2) The following products are not multi-purpose 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) Matches.

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

(c) "Surrogate multi-purpose 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 multi-purpose 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 multi-purpose lighter is activated in each manner that would produce a flame in a fueled production multi-purpose lighter. (This definition does not require a multi-purpose

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lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a multi-purpose lighter without fuel as a surrogate multi-purpose 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 multi-purpose lighter without the signal. But see § 1212.4(f)(1).)

(d) "Child-resistant mechanism" means the mechanism of a multi-purpose lighter that makes the lighter resist successful operation by young children, as specified in § 1212.3.

(e) "Model" means one or more multi-purpose 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 multi-purpose lighters.

(a) A multi-purpose 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.

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(b) A multi-purpose lighter must:

(1) allow multiple operations of the ignition mechanism (with fuel flow) without further operation of the child-resistant mechanism, unless the lighter requires only one motion to both

(i) overcome the child-resistant mechanism and (ii) ignite the fuel,

(2) not allow the lighter to remain lit after the user has let go unless an additional manual operation is performed after the lighter is lit,

(3) return automatically to the child-resistant condition either (i) when or before the user lets go of the lighter or (ii), for multi-purpose lighters that remain lit after the users have let go, when or before the user lets go of the lighter after turning off the flame,

(4) operate safely when used in a normal and convenient manner,

(5) comply with this § 1212.3 for the reasonably expected life of the lighter, and

(6) not be capable of having its child-resistant mechanism easily deactivated or prevented from complying with this § 1212.3.

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### § 1212.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a multi-purpose lighter is resistant to successful operation by children uses a panel of children to test a surrogate multi-purpose lighter representing the production multi-purpose 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.,

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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 multi-purpose lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate multi-purpose 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.

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(7) No child shall participate in more than one test panel or test more than one surrogate multi-purpose lighter. No child shall participate in both surrogate multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose 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

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to work with their surrogate multi-purpose 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 multi-purpose 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 ( $20 \pm 2$  children each for 5 testers and  $17 \pm 2$  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 multi-purpose lighters.* (1) Six surrogate multi-purpose lighters shall be used for each 100-child panel.

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

(2) Each surrogate multi-purpose lighter shall be tested by an approximately equal number of children in a 100-child test panel ( $17 \pm 2$  children). Note: If a surrogate multi-purpose lighter is permanently damaged, testing shall continue with the remaining multi-purpose lighters. When a multi-purpose lighter is dropped out, the requirement that each multi-purpose 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 multi-purpose lighter shall be examined to verify that it

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approximates the appearance, size, shape, and weight of a production multi-purpose 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 multi-purpose lighter.

(5) Before and after testing surrogate multi-purpose lighters with each child, each surrogate multi-purpose lighter shall be operated outside the presence of any child participating in the test to verify that the surrogate multi-purpose lighters produce a signal. If the surrogate multi-purpose lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate multi-purpose lighter does not produce a signal when it is operated after the test, the results for the preceding test with that multi-purpose lighter shall be eliminated. An explanation shall be recorded on the data collection record. The multi-purpose 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

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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 multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose lighter. If one child takes the other child's surrogate multi-purpose lighter, that

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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 multi-purpose 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 multi-purpose 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 multi-

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purpose lighter, so that the surrogate multi-purpose lighter cannot be seen by the child, and shall operate the surrogate multi-purpose 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 multi-purpose 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 multi-purpose 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 childrer for 5 minutes to determine if either or both of the children can successfully operate the surrogate multi-purpose 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 multi-purpose 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 multi-purpose lighter during the 5-minute period specified in § 1212.4(f)(3), the adult tester shall demonstrate the operation of the surrogate multi-purpose

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lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighter(s) now." Take the surrogate multi-purpose 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 multi-purpose lighter. Hold the lighter approximately 2 feet in front of the children at their eye level. Hold the surrogate multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose 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

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described above using the second child's multi-purpose 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 multi-purpose 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 multi-purpose 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 multi-purpose lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate multi-purpose lighter. After the demonstrations, give the same surrogate multi-purpose lighter back to each child who did not successfully operate the surrogate multi-purpose lighter in the first 5 minutes by placing the multi-purpose lighter in the child's hand. Say "Okay, now you try to make the noise with your lighter(s) - keep trying until I tell you to stop." If any child successfully operates the surrogate multi-purpose lighter during this period, the surrogate

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multi-purpose lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. If the other child has not yet successfully operated the surrogate multi-purpose lighter, the tester shall ask the successful child to remain until the other child is finished. Note: Multi-purpose lighters having an on/off switch shall have the switch returned to the position the child left it at the first 5-minute test period before returning the lighter to the child.

(5) At the end of the second 5-minute test period, take the surrogate multi-purpose lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: "These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that if you find a real lighter you won't touch it and that you'll tell a grownup right away?" Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate multi-purpose lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to a parent or guardian of each child. The notification shall state that the child participated, shall ask

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the parent or guardian to warn the child not to play with matches or lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate multi-purpose lighter, the notification shall state that the child was able to operate the child-resistant multi-purpose lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the multi-purpose lighters, so that the tester's full attention is on the children during the test period. If actual testing is videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken after actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

- (1) Sex (male or female).
- (2) Date of birth (month, day, year).
- (3) Age (in months, to the nearest month).

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(4) The number of the multi-purpose lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, and the name of the site).

(7) The name of the tester who conducted the test.

(8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the multi-purpose lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate multi-purpose lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered to be resistant to successful

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operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate multi-purpose lighter, the test results are inconclusive, and the surrogate multi-purpose lighter shall be tested with a second 100-child test panel in accordance with this § 1212.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate multi-purpose lighter is required by § 1212.4(h)(1) above, conduct the test specified by this § 1212.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered not

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resistant to successful operation by 85 percent of the child test panel, and no further testing is conducted.

Thus, for the first panel of 100 children, the surrogate passes if there are 0-10 successful operations by the children; the surrogate fails if there are 19 or greater successful operations; and testing is continued if there are 11-18 successes. If testing is continued with a second panel of children, the surrogate passes if the combined total of the successful operations of the two panels is 30 or less, and it fails if there are 31 or more.

§ 1212.5 Findings.

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with multi-purpose lighters. The CPSC's staff has identified 178 fires that occurred between January 1988 and August 6, 1998, that were started by children under age 5 playing with multi-purpose lighters. These fires resulted in a total of 29 deaths and 71 injuries. Fire-related injuries include thermal burns -- many of high severity -- as well as anoxia and other,

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less serious injuries. The annual cost of these fires, which averaged about \$34.4 million per year during 1996-1997, are now estimated to exceed \$35 million annually. This is based on increases in the sales and use of multi-purpose lighters in recent years. Because these data are from known fires rather than national estimates, the extent of the total problem may be greater. Fires started by children under age 5 are those which the standard would most effectively reduce.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as multi-purpose lighters, that are defined in § 1212.2(a) of this Part 1212. This definition includes products that are referred to as micro-torches. Multi-purpose lighters may use any fuel and may be refillable or nonrefillable. Over 20 million multi-purpose lighters are expected to be sold to consumers in the U.S. during 1998. Multi-purpose lighters manufactured after [insert date that is 1 year after publication of a final rule] will be required to meet child-resistance requirements.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.*

Consumers use multi-purpose lighters primarily to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, or fuel-fired

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appliances or devices or their pilot lights. The following products are not multi-purpose lighters: 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)); devices that contain more than 10 oz. of fuel; and matches. The standard's requirements should ensure that most children under 52 months of age cannot operate the lighters.

There will be several types of costs associated with the rule. Manufacturers would have to devote some resources to the development or modification of technology to produce child-resistant multi-purpose lighters. Before being marketed, the lighters must be tested and certified to the new standard. It is also possible that manufacturing child-resistant lighters may require more labor or material than non-child-resistant lighters.

Manufacturers will have to modify their existing multi-purpose lighters to comply with the rule. In general, costs that manufacturers would incur in developing, producing, and selling new complying lighters include the following:

- Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child panel testing;
- Retooling and other production equipment changes required to produce more child-resistant multi-

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purpose lighters, beyond normal periodic changes made to the plant and equipment;

- Labor and material costs of the additional assembly steps, or modification of assembly steps, in the manufacturing process;
- The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each new model;
- Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and
- Lost revenue if sales are adversely affected.

Industry sources have not been able to provide firm estimates of these costs. One major manufacturer has introduced a child-resistant multi-purpose lighter. However, because that company did not previously manufacture a non-child-resistant lighter, it was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

Assuming that there are 15 manufacturers and that each invests an average of \$2 million to develop and market complying lighters, the total industry cost for research development, retooling, and compliance testing would be approximately \$30 million. If amortized over a period of 10 years, and assuming a modest 3 percent sales growth each year, the average of these

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costs would be about \$0.13 per unit.<sup>16</sup> For a manufacturer with a large market share (i.e., selling several million units or more a year) the cost per unit of the development costs could be lower than the estimated \$0.13 per unit, even at the high end of the estimates. On the other hand, for manufacturers with a small market share, the per-unit development costs would be greater. Some manufacturers with small market shares may even drop out of the market (at least temporarily) or delay entering the market.

In addition to the research, development, retooling, and testing costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to obtain reliable estimates, some industry sources indicated that they believed that these costs would be relatively low, probably less than \$0.25 per unit.

Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial

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<sup>16</sup>If 20 million lighters are sold in the first year (approximately the current annual sales volume) and sales increase at the rate of 3 percent a year (industry sources indicate that they have been growing at 5 to 10 percent annually), then over a 10-year period approximately 230 million lighters would be sold. \$30 million/230 million = \$0.13/unit.

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flexibility to the manufacturer in terms of things such as color, size, and location, this requirement is not expected to increase the costs significantly.

Certification and testing costs include costs of producing surrogate lighters; conducting child panel tests; and issuing and maintaining records for each model. The largest component of these costs is believed to be building surrogates and conducting child panel tests, which, based on CPSC experience, may cost about \$25,000 per lighter model. Administrative expenses associated with the compliance and related activities are difficult to quantify, since many such activities associated with the rule would probably be carried out anyway and the marginal impact of the recommended rule is probably slight. Overall, certification, testing, and administrative costs are expected to add about \$0.02 per unit to the cost of producing multi-purpose lighters. Because of lower sales volume, the per-unit cost for micro-torches is expected to be higher.

Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include extra administrative costs required to maintain different lines and the

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incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would, however, be mitigated if similar or identical standards were adopted by other countries.

In total, the rule will likely increase the cost of manufacturing multi-purpose lighters by about \$0.40 per unit. The proposed rule will likely increase the per-unit cost of manufacturing micro-torches and other high-end multi-purpose lighters by a greater amount. However the available information is insufficient to make a reliable estimate of this cost.

At the present time, one manufacturer has about 90 percent of the market for multi-purpose lighters. The other manufacturers, importers, and private labelers divide up the remaining 10 percent of the market. Thus, there is already a very high degree of concentration in the market. Even so, at least two manufacturers have already entered the market with models that are believed to meet the requirements of the rule and at least one other firm is believed to be actively developing a child-resistant lighter. Therefore, the rule is not expected to have any significant impact on competition. Moreover, other firms are expected to enter the market for multi-purpose lighters, and thereby increase competition, as the market expands. Firms that market child-resistant multi-purpose lighters before the standard's effective date may gain an initial competitive advantage. However, any differential impact is likely to be

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slight and short-lived. Other manufacturers can be expected to have child-resistant multi-purpose lighters developed and ready to market before or soon after the rule goes into effect.

*Impact on consumers.* Aside from increased safety, the rule is likely to affect consumers in two ways. First, the increased cost for producing the child-resistant models will likely result in higher retail prices for multi-purpose lighters. Second, the utility derived from child-resistant lighters may be decreased if complying lighters are less easy to operate.

Assuming a 100 percent markup over the incremental cost to manufacturers (estimated at \$0.40/unit), the rule may be expected to increase the retail price of multi-purpose lighters by \$0.80 per unit. The per-unit price increase for micro-torches and other high-end multi-purpose lighters may be higher due to the smaller numbers of such lighters produced.

The utility that consumers receive from multi-purpose lighters may be reduced if the rule makes the lighters more difficult to operate. This could result in some consumers switching to substitute products, such as matches. However, as with child-resistant cigarette lighters, the increased difficulty of operating child-resistant multi-purpose lighters is expected to be slight. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters (one possible substitute) must already meet the same child-resistant standard as those

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applicable to multi-purpose lighters. Although consumers that switch to matches may increase the risk of child-play fires somewhat, matches seem to be inherently more child resistant than are non-child-resistant multi-purpose lighters. Previously, the CPSC determined that non-child-resistant cigarette lighters were 1.4 times as likely as matches to be involved in child-play fires and 3.9 times as likely to be involved in a child-play death. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

As previously stated, the total societal costs of fires known to have been started during 1995 through 1997 by children under age 5 playing with multi-purpose lighters was approximately \$103 million, or \$34.4 million per year. This is probably an underestimate, since it only includes the cases of which CPSC is aware. During the same period, an estimated 19.4 million multi-purpose lighters were available for use each year. The societal costs of the fires started by young children attempting to operate multi-purpose lighters is, therefore, about \$1.77 per lighter ( $\$34.4 \text{ million} \div 19.4 \text{ million lighters}$ ). The rule is expected to reduce this cost by 75 to 84 percent. Therefore, the expected societal benefit of the rule in terms of reduced fires, deaths, injuries, and property damage is expected to be \$1.33 to \$1.49 per complying lighter sold.

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As discussed above, the rule may increase the cost of manufacturing multi-purpose lighters by \$0.40 and may increase the retail prices by as much as \$0.80. Therefore, assuming that sales of multi-purpose lighters remain the same, the net benefit (benefits minus costs) of the rule to consumers is expected to be at least \$0.53 per unit ( $\$1.33 - \$0.80$ ). Based on 1998 sales of approximately 20 million units per year, the rule would result in an annual net benefit to consumers as high as \$10.6 million (20 million x \$0.53) annually. If sales of multi-purpose lighters continue to increase at current rates (5 to 10 percent annually), the annual net benefit will also increase by a similar percentage.

Some multi-purpose lighters, especially the micro-torch type, have useful lives of greater than one year. Therefore, the gross benefit of the proposed rule per lighter of this type is computed by summing the expected annual net benefit (estimated above as \$1.33 per unit) over the expected life of the lighter. For example, if a multi-purpose lighter, such as a micro-torch, had an expected useful life of 10 years the gross benefit would be \$11.14 per lighter, assuming a discount rate of 4 percent. As stated earlier, the costs/unit for manufacturing these micro-torch type multi-purpose lighters is likely to be higher. Assuming a markup at retail of 100 percent over manufacturing costs and a 10-year product life, if the cost per unit to manufacture child-resistant micro-torches is less than

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\$5.57/unit, net social benefits would result. However, if the expected useful life of a micro-torch was only 5 years, the gross benefit would be \$6.14/unit. This would suggest positive net benefits if the per unit manufacturing costs are less than \$3.12 per unit.

The actual level of benefits observed could be higher if some multi-purpose lighters are stored with the on/off switch in the "on" position. If a significant number of consumers commonly store multi-purpose lighters with the switch on, the effective level of child resistance of multi-purpose lighters currently in use may be lower than indicated by CPSC's baseline testing. This would increase the effectiveness of the rule and the value of the net benefits.

*(d) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The performance requirements of this Part 1212 are based on the Commission's Safety Standard for Cigarette Lighters, 16 CFR Part 1210. In developing that standard, the Commission considered the potential effects on competition and business practices of various aspects of the standard, and incorporated some burden-reducing elements into the standard.

One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to the

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requirements of the standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however. Although some of the largest firms may market some child-resistant multi-purpose lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the provisions of this Part 1212 would not adequately reduce the unreasonable risk associated with multi-purpose lighters.

(e) *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk.* The Commission's hazard data and regulatory analysis demonstrate that multi-purpose lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective (one year after publication of the final rule) will provide manufacturers and importers of most products adequate time to design, produce, and market safer multi-purpose lighters. Thus, the Commission finds that the standard and its effective date are

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reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with multi-purpose lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with multi-purpose lighters. The cost of these accidents, which is estimated to be greater than \$35 million annually, will also be greatly reduced. The rule is expected to reduce this societal cost by 75-84 percent, or by greater than \$26 million. The estimated annual costs to the public are expected to be less than this amount. Therefore, substantial net benefits will accrue to consumers. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* The Commission incorporated a number of features from the cigarette lighter standard, 16 CFR Part 1210, in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered alternatives involving different performance and test requirements and different definitions determining the scope of coverage among products. The other alternatives considered generally would be more burdensome to industry and would have

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higher costs to consumers. Some less burdensome alternatives would have lowered the risk-reduction benefits to consumers; none has been identified that would result in a higher level of safety.

A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. This higher performance level may not be commercially or technically feasible for many firms, however. The Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying multi-purpose lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

The standard will become effective 12 months from its date of publication in the FEDERAL REGISTER. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most multi-purpose lighters

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sold in the U.S. could probably be made child-resistant within 6 months, the supply of some imported multi-purpose lighters would be disrupted. The 12-month period in the standard would minimize this potential effect, and would allow more time for firms to design, produce, and import complying multi-purpose lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of multi-purpose lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. While certain alternatives to the final rule are estimated to have net benefits to consumers, they would decrease the level of safety. Thus, the Commission finds that the standard is in the public interest.

### Subpart B--Certification Requirements

#### § 1212.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard

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and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1212 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Multi-purpose lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1212.12 Certificate of compliance.

(a) *General requirements.* (1) *Manufacturers (including importers).* Manufacturers of any multi-purpose lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1212.13, 1212.14, and 1212.16. Manufacturers must also label each multi-purpose lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1212.15 and 1212.17. For purposes of this requirement, an importer of multi-purpose lighters shall be considered the "manufacturer."

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is

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already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the multi-purpose lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of multi-purpose lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that (i) the importer is a resident of the United States or has a resident agent in the United States and (ii) the records are in English and the records and the surrogate multi-purpose lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1212.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with

§ 1212.17(a)(3). The importer is responsible for ensuring that

(i) the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1212.14-1212.16),

(ii) the records provide a reasonable assurance that all multi-purpose lighters imported comply with the standard (§ 1212.13(b)(1)),

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(iii) the records exist in English (§ 1212.17(a)),  
(iv) the importer knows where the required records and multi-purpose lighters are located and that records required to be located in the United States are located there,

(v) arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1212.17(a)), and

(vi) the information required by § 1212.17(b) to be provided to the Commission's Office of Compliance has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Multi-purpose lighters (16 CFR 1212)",

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (b)(2) of this section, the address of the place of manufacture.

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(c) *Labeling.* The manufacturer or importer must label each multi-purpose lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the multi-purpose lighter was manufactured.

(2) An identification of the manufacturer of the multi-purpose lighter, unless the multi-purpose lighter bears a private label. If the multi-purpose lighter bears a private label, it shall bear a code mark or other label that will permit the seller of the multi-purpose lighter to identify the manufacturer to the purchaser upon request.

### § 1212.13 Certification tests.

(a) *General.* As explained in § 1212.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for multi-purpose lighters is one that demonstrates with a high degree of assurance that all multi-purpose lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1212.3.

Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A

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reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any multi-purpose lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include (1) qualification tests, which must be performed on surrogates of each model of multi-purpose lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1212.14) and (2) production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1212.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all multi-purpose lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each multi-purpose lighter or multi-purpose lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1212.17 of this subpart.

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### § 1212.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of multi-purpose lighters distributes multi-purpose lighters in commerce in the United States, surrogate multi-purpose lighters of each model shall be tested in accordance with § 1212.4, above, to ensure that all such multi-purpose lighters comply with the standard. However, if a manufacturer has tested one model of multi-purpose lighter, and then wishes to distribute another model of multi-purpose lighter that differs from the first model only by differences that would not have an adverse effect on child resistance, the second model need not be tested in accordance with § 1212.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed multi-purpose lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a multi-purpose lighter design after it has been in production, this may be done by following the testing procedures at § 1212.4.

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### § 1212.15 Specifications.

(a) *Requirement.* Before any multi-purpose lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate multi-purpose lighters used for qualification testing under § 1212.14 are described in a written product specification. (Section 1212.4(c) requires that six surrogate multi-purpose lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the multi-purpose lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the multi-purpose lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the multi-purpose lighters and any child-resistant features.

### § 1212.16 Production testing.

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(a) *General.* Manufacturers and importers shall test samples of multi-purpose lighters subject to the standard as they are manufactured, to demonstrate that the multi-purpose lighters meet the specifications, required under § 1212.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other multi-purpose lighters produced during the interval will meet the standard.

(c) *Test failure.* (1) *Sale of multi-purpose lighters.* If any test yields results which indicate that any multi-purpose lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of multi-purpose lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the multi-purpose lighters or perform additional tests to ensure that only complying multi-purpose lighters are distributed in commerce. Multi-purpose lighters from other production intervals having test results showing that multi-purpose lighters from that interval comply with the standard could be produced and

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distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all multi-purpose lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all multi-purpose lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child-resistance, the multi-purpose lighter must undergo new qualification tests in accordance with § 1212.14, above.

§ 1212.17 Recordkeeping and reporting.

(a) Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of

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receipt of a request from any employee of the Commission, except as provided in subsection (3) below. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1212.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1212.14(c) above, the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be

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kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1212.15 shall be kept for 3 years after production of each lighter model has ceased.

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(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Office of Compliance, Consumer Product Safety Commission, 4330 East-West Highway, Room 610, Bethesda, Maryland 20814-4408. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) a detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) a description of the qualification testing, including a description of the surrogate lighters tested (including a description of the point in the operation at which the surrogate will signal operation—e.g., the distance by which a trigger must be moved), the specification of the surrogate lighter required by § 1212.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) an identification of the place or places that the lighters were or will be manufactured,

(5) the location(s) where the records required to be maintained by paragraph (a) above are kept, and

(6) a prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the