rescue the child, and also they took hose lines in for fire protection.

Q. Well those 2 (two) teams, tell me about those 2 (two) teams that you sent it. Two different approaches. Were they like dressed for fire or combating fire? Were they geared up?

A. Both teams were geared up with pants, coats, self contained breathing apparatus, helmets, gloves and hose lines.

Q. They had their own functioning hose lines, and so they're marching in with water for fire and still have this visibility and smoke problem?

A. Correct.

Q. And so that is continuing on? You still have a major smoke problem or visibility problem, correct?

A. When I got there, the fire was pretty much knocked down. That's when I sent the team, and they did, already did an initial search and rescue into the building and couldn't find anything at the time. I believe the fire did flash on some members in the kitchen area. So when I got there, they had already had it knocked down.

Q. Alright. On your arrival then, the raging fire is under control?

A. Yes.

Q. Is there still a visibility and smoke problem?

A. Still smoke problem, visibility problem.

Q. So the first pass through or search and rescue would have been total smoke, so that they might not see a person?

A. Correct.

Q. And then the second pass through, with the water back-up and all, still was visibility problem. You could miss something?

A. That's correct.

Q. Correct?

A. Yes.

Q. I mean in your experience over the years?

A. Right. They were doing ventilation and such that is typical with any fire that you would have. Trying to clear the smoke out so you could see. Trying to get the heat and smoke out of the way.

Q. Was it one of your teams that discovered, or one person on one your teams that discovered the deceased?

A. I don't know who discovered him, but they come out and told me that they had found the body. At that time, I talked to Deputy Coroner Eley, and I posted the other assistant chief and the captain

at the entrance at the entrance to the room until the Fire Marshal and Coroner's Office came in.

Q. So now, basically securing the scene, so as to hopefully make the further investigation more accurate? The fire is under control?

A. Yes.

Q. The fire is no longer a threat?

A. The fire was no longer a threat.

DR. REILLY: O.K. Questions of this witness by the Jurors, please?

JUROR: Did anybody else try to get in the room after the mother broke the window?

A. There was members that were trying to get in through the window. There was, the fire was coming out through that window, and you are always taught that you don't fight the fire in from where it is coming out at you. You come in from an area where it's not burning to protect.

Q. You couldn't do anything?

A. We couldn't do anything, correct.

DR. REILLY: And you're in agreement with our 2 (two) Fire Marshal's, that the breaking of the window was just a massive feed of fresh oxygen, and that sucked flame to the source? That's the flash-over that scorched everything in that room

evenly. They said everything in the room was uniformly torched or scorched or whatever.

A. That is correct.

Q. Because of this immense amount of fresh oxygen supply?

A. Yes.

Q. Flash-over or there is terms for it?

A. Yes.

JUROR: At that point, do you think anyone could survive that fire? At that point?

A. No. No.

Q. It was already too late?

A. Yes.

DR. REILLY: With the flash effect?

A. Yes.

JUROR: How long would a fire have to burn on that bed, before it would become...

A. I couldn't answer that, I'm not an expert. But, being the materials that they are today, it could go pretty quick.

Q. In your, just round about, maybe 5 (five) minutes? It would be lethal within 5 (five) minutes?

A. Yes I would say. In 5 (five) minutes it would be lethal.

DR. REILLY: Faster if it's pure cotton, and if we get into Dacron, Nylon it just gets worse and worse and worse. The more synthetics. And they also generate, as we found, cyanide.

Questions of the Counsel of the witness?

ATTY. BIGI: No.

DR. REILLY: O.K., thank you Chief.

Thomas O'Barto, Officer of the North Belle Vernon Police. You were off duty at the time, correct sir?

OFFICER O'BARTO: Yes, sir.

Q. And we already heard 3 (three) different attempts. One calling in to get in there. Is it true, as it has been portrayed, that, not to mention the massive heat, that you had a major visibility problem from your first attempt?

A. Major visibility problem. Yes, Sir.

Q. Did you get, say into 10 (ten) feet in or the kitchen, or were you able to get very far into the building?

A. My first attempt into the building was, I went in too high. I only got in about 2 (two) feet. Pushed back out, regained my composure, went back in again with Chief Lawson, I told him to keep calling my name and hold my feet until I got in so

far I did pull out of his feet, I started. I mean I made, I think, like 3 (three) pushes what I felt to be about almost a body length push. My estimation, I thought I traveled about 12 (twelve) to 20 (twenty) feet. From what I can gather, I was only, maybe only 10 (ten).

At that point the fire was throwing yellowish-green-yellowish smoke. Indicative that the fire was burning very hot. Heat was not as intense at that point to go in. You could get in pretty far, but you started to feel it. At that point, I thought I could hear what I thought was a child crying in the back. Feeling around on the floor, I had felt what I thought was the child's hand laying upward on the floor. It turned out to be a dogs foot. The dog, I don't know how heavy the dog was, but I did, at that point, turn around and yell to Jimmy, "I have the child", and I was trying to come back out. At that point, I pulled so far and he grabbed a hold of me and I lost the grip on the dog. And at this point, I reached back in and grabbed it, and I pulled the dog out, and said, "Jimmy, it's a damn dog". So at this point, I said I'm going back again. So I went at this time again on my stomach, because the smoke

at this point was about 6 (six) to 8 (eight) inches off the floor, pushing out very hard.

Q. You mean it worked all the way down to 6 (six) to 8 (eight) inches?

A. Yeah, my initial attempt it was about, it was about 14 (fourteen) to 18 (eighteen) inches off the floor. You could see that much of the floor, to go that far, but still billowing down that far. The last time, it was about 6 (six) maybe 8 (eight) inches, and it was already rolling at the floor. I had made it back to where I probably thought I was originally, and a tremendous amount of heat came down almost to the floor, and it got really hot and really bad. And, it was impossible for me to go any further. I started backing back out. At this point, Chief Lawson grabbed me and pulled me back out again. Miss Lisovich was on the street the entire time yelling that Connor was in that front room.

We left that area and went to the front, and observed the fire out of the upper half of the window. The lower half was still pretty much intact at that point. The window had been, it was opened, but the fire had not reached, the flame itself, not impinged that far down. We tried to

get up into that window, but it was like 6 (six) to 8 (eight) feet off the ground. So there was really no way to shimmy up in there.

At that point, the firemen came. There were 3 (three) firemen at the kitchen door. Excuse 2 (two) firemen at the kitchen door, both with turn-out gear on. They had a hose line that wasn't charged yet. Which means there was no water in it. At that point, we told them that the child we thought was right in that area through the kitchen, would be in that area, if we got together we could get like a human chain in there to do that. We started to do that, and then all of a sudden, the front guy started coming out real fast. He said it was starting to flash, and all of a sudden, the fire went out the door on top of us. And then everybody flew out the door.

Q. And that was the flash-over that hit everywhere when the oxygen passed?

A. Yeah. Immediate fire, half way down the door. And, at that point, nobody was going anywhere without any water.

Q. So the heat builds up to a certain point where everything in a sense, explodes into flames?

A. From my vantage point, there was a lot of heat

that came at one big time, it dropped completely to the floor. At one point, the heat was only 2 (two) foot high off the floor. You could handle the heat at the lower level, but at that point, it dropped clear to the floor and you knew there was a big problem.

Q. So, a solid ball of heat within, that unless you had had some kind of special thermal equipment..

A. You couldn't stay in there.

Q. You need an interval oxygen supply of your own, correct?

A. Yeah. Even with your equipment on, you couldn't survive that.

Q. They don't make equipment that will withstand that?

A. No, not that kind of heat. No.

DR. REILLY: Any questions of the Jurors?

JUROR: Did you hear the child? Did you call his name?

A. Yeah. When we were going in we tried, he didn't physically answer me, no. What I thought was the child crying, I believe, may have been the dog. It might even been the fire engine. Like I said, I can't honestly tell you if it was the dog

or not.

JUROR: The dog was dead?

A. No, the dog was alive when I pulled him out.

DR. REILLY: And you had to be treated?

A. Yes.

Q. Did you do alright? I mean, were you sick for a couple of days or had to go on oxygen for awhile?

A. Yeah, yeah. I had to go on oxygen for about 6 (six) hours.

JUROR: Is the dog still alive?

A. I have no idea ma'am.

DR. REILLY: Well you certainly sounds, over and above what you tried at considerable risk, because that cyanide could have gotten you very quickly with a couple breaths. So, I certain that everybody appreciates your efforts.

Counsel, do you have questions of this witness?

ATTY. BIGI: No, just to thank the officer for his courageous attempt. I am very impressed by this.

DR. REILLY: Yes, very impressive. So we thank you.

I have to circulate for you, just so you'll

see, this is the trip sheet that as completed by Mr. Eley. Custody of the body was under Roger Victor.

Here, this shows your carbon monoxide at, as I mentioned, there we'll send it this way, 32%, and the cyanide was certainly lethal.

The autopsy report, Final pathologic diagnosis: Acute carbon monoxide poisoning at 32%. Thermal injuries, second and third degree, 100%. Acute cerebral edema, acute pulmonary edema.

This autopsy illustrates an instance of death in a 4 (four) year old white male child due to acute carbon monoxide poisoning, extensive thermal injuries. And, these injuries occurred in a fire at a private home, which the child was visiting. No natural disease processes are noted. There is no evidence of recent blunt force trauma or penetrating or perforating injuries. That is to say, that some injuries were inflicted and he was placed there and then the fire took place.

The manner of death here, is deemed accidental. So I'll send this around.

I'll see if any of these pictures and slides have anything of value for you. I don't think

they're as good as our Fire Marshal's. (reviewing slides). Is this the correct, is the window where the fire surfaced at?

TROOPER LARGE: Yes.

DR. REILLY: And that's burnt all the way through the upper rafters of the upper floor?

TROOPER LARGE: Yes.

DR. REILLY: Just some evidence of the charred wood from the heat itself. Side view of that one window area. Again, to give you some idea of the extent. Through to the rafters, the vertical supports in the wall, completely charred. The window and the area of where the deceased was discovered. You can see the terrible damage.

The little child from the carbon monoxide and cyanide both, would have been rendered in moments, in moments with a couple of breaths, totally unconscious, and unappreciative of any sensation of pain. Would not had been suffered pain from the terrible heat thereafter. It doesn't happen. You can see his charred remains which are quite grim.

Is there anyone who wishes to address the Jurors for considerations that they might give due thought to?

ATTY. BIGI: Yes, Dr. Reilly, when we received this case in our office, and after speaking to Trooper Marshall and telling what had caused the fire, we investigated. The instrument that caused the fire is called a "Scripto Aim-N-Flame Multi-Purpose Lighter". It's about 8 (eight) inches long, it looks like a gun. It's red, has a little trigger, very attractive to children. It was purchased by the Bombera's who lived there, at WalMart in Rostraver Township, one month before this fire occurred.

Through the Freedom of Information Act, I wrote the United States Consumer Product Safety Commission in Washington, D.C.. They then furnished me with about a foot of information. This type of fatality is not particularly adjusted to here. It's throughout the United States. There are groups that are fire departments, medical health care providers, that have written to the commission to take this product off of the market. Connor Lisovich is not the only 4 (four) year old killed by such an instrument. And I would ask the Coroner, to follow up on this here, and I would, Mr. Moschetta and I would be most happy to provide any information we have to help

you. Because, this is a bad product. It is not child resistant. And in all these cases, there are 4 (four) year olds, 3 (three) year olds and 5 (five) years old. They don't appreciate the danger. That flame goes out about 2 (two) - 3 (three) inches. And that's what caused that fire, and that caused Connor's death.

Again, we would be more than happy to help. And let me give you the address. It's U.S. Consumer Product Safety Commission, Washington, D.C., 20207, and that's where you get, make your report to.

DR. REILLY: Yes. We have a standard form. And to avoid it getting just dumped into a computer generated, number add-on, number add-on type thing, what we'll do is give them the findings of the Jurors, medical cause of death, nature of the accident, since certainly not intending anyone, and the critical factor of both of no safety, child-proofing of this device, etc.. And a cover letter and their recommendations that they have a sworn responsibility to address this matter, because it's almost, we're doomed that it's going to happen again. As long as they remain. And they have recalls for some of the

strangest things, I'm sure if you put a raspberry in your strawberry preserves, they'd have be calling one raspberry in your whole jar of strawberries, they'd be all kind of a furrow over it. And they certainly put safety devices on some of those butane lighters that you have to double switch for children. And there worry is law. I mean, they have immense power. They can do it if we can get them to move. And, I think that maybe, a triple heading on this might, we'll do the best we can.

We should get our access to Troopers Large and Marshall a duplicate of this. If we have to get it at WalMart or wherever. And we'll do that. We know that brand, it's own tape. Michelle, will you write down those things, so we don't lose it on tape. That brand, and it's at WalMart. And all the WalMart's probably carry it, and we'll get him working on that, and take the photos of that. And hopefully, with their recommendation of the lay public and in addition to the Coroner's Office, because. And having been alert, and we shift the responsibility to them to do something, remove.

This has worked. PennDot has been more than

helpful on Jurors recommendations. Whether it be safety blinkers, widening the berm. They're now automatically, in any highway fatality, sending their own team out now, at the time of notification. So, they've been more than accommodating. So we'll do our best to move on this and not let it..

ATTY. MOSCHETTA: Doctor, if you'd like, we have a whole box full, I can have duplicated and have delivered to you tomorrow.

DR. REILLY: Certainly, yes.

ATTY. MOSCHETTA: Around what all Mr. Bigi saved, other reports of children that have been burnt to death.

DR. REILLY: Oh, yes. We'll use that as reinforcing documentation. And we rely on the media to help us out. Because, if we can't get it changed overnight, they can at least get the alerters out, that we have these devices, any number out there. Now, everyone will be getting them out of storage for the grill season. And if that flame would hit clothing, all the Dacron clothing is going to zoom up and we're going to have survivors with 50% total body burns in the burn clinics for a year. Trying to get rebuilt,

plastic surgery and all. So, there is just, we'll start moving on it. I can only pledge. I think the Jurors have heard enough that they can firm up their recommendations that this be investigated to the fullest, at the appropriate level. Safety of the consumer, widely available consumer product.

We appreciate your coming to, because there are aspects of this that we had not uncovered ourselves. We relied on the Fire Marshals who are very expert, and they did fair down, and they ruled out all the outlets, the wall outlets, all other possible sources, furnace, etc., etc.. So we feel that we're on accurate track on where we are placing the blame, and the bulk of this blame. Of course we also have the responsibility aspect on permitting access. We can't say this is all non-human intervention. There is a lack of intervention on having something of this magnitude of power, accessible to a child. Whether a child or another child or another family, or child in another family, it's almost by picking it up and looking at it and inspecting it and see that a pop of a trigger and out comes the flame. We have something hazardous that can't be permitted in

early school age and younger children who wouldn't have the judgement to know of the hazard involved.

With any other comments of any or family members wish to make for the consideration of the Jurors?

MRS. BERNARDO: By the time she come out and yelled for me, I came in just like he said, by the time I got to the doorway, she was standing there. She couldn't get to him. I did not see, I think he was already down, because I didn't see him anymore, and didn't hear anymore. So I think the little boy was already, if not gone, he was passed out.

DR. REILLY: These fumes would have only taken and his high metabolic rate of a little child, with a heart rate of 100, a couple breaths and the fumes would have first rendered paralyzed and then unconscious, but not susceptible to pain. Even though, as horrible as those burns were, he would not have suffered from that. That's not any, doesn't soften at all, really the loss. Only slightly in that we know that the pain was little or no pain. He was certainly frightened and he knew he was in trouble. But, our task now is to try to make sure this, we're not back here again

with a similar scenario, tragedy.

With that, we'll turn off the dictation system, and we'll go in the hall so the Jurors can deliberate and make their recommendations.

END OF TESTIMONY

V E R D I C T

BY DR. REILLY:

We'll return to the tragic death of Connor Lee Lisovich, aged 4 years of Belle Vernon, PA.

With that, having presented to the Jurors of the medical cause of death was asphyxiation due to carbon monoxide poisoning, in addition to cyanide poisoning. And an explanation of all the circumstances surround the tragedy, we'll turn this over to the Foreman as to their conclusions, the manner of death and any advisories that they may have or suggestions or recommendations will be taken into account and acted upon. With that.

FOREMAN: From the testimony presented, we find that the cause of death is as determined by the Coroner. The manner of death is accidental and avoidable because the lighter was not child-proof. The Jury has agreed that the Coroner's Office should pursue the manufacturer of the lighter.

DR. REILLY: O.K., and we thank you all for your patience and we'll move on that. We have the

name, and we'll try to get a duplicate to match up. We'll ask the Fire Marshal and we'll get duel photos, their recommendations. Do you want additional recommendations that this be taken to the level of the Consumer Product Safety Board. And that will be added to do whatever we can. We also, we have to rely on the media to help out in alerting that this is a true cause here, cause and effect. That this device with the mere pull of the trigger generates a live flame that is certainly not within the judgmental powers of a lower grade school. Anywhere from fifth grade down, that know the hazard involved. And certainly not a 4 (four) year old. Whatever is necessary on the part of alerting those who have them out there, now in this charcoal grilling season, that we would have to ask the media to alert the people that the hazard in going to continue until at a higher level is done. We will do what we can.

We are deeply appreciative at the Coroner's Office, and I'm sure the Jurors are, of the assistance that Counsel for the family in doing all the hard homework of ferreting out information on this and similar products. The fact that

similar products do in fact, have incorporated already as of this date, some type of safety catch. Not on, as we know, even some little cigarette lighters have now, child-proofing mechanisms built on them at no horrendous expense. So, the capability, we know, is there. Because other manufacturers have done that. So we appreciate your help. We'll track that down. If we need any documentation that you can share with us, will be appreciated. We will just add that to beef up our recommendations and additional support. And we'll do the very best we can. We will put that as a top priority to start moving on that.

ATTY. BIGI: Mr. Moschetta has agreed to have that delivered tomorrow. Twelve inches of material that we have got. It will be quite helpful to you.

DR. REILLY: Yes we will.

ATTY. BIGI: When you see how wide-spread this is throughout the United States, not just here.

DR. REILLY: And many of us may have assumed, that if they did it on a little itty bitty Bic cigarette lighters, they probably would have it at

a double switching or whatever device.

Additional fear is, they're out there now and we're in charcoal grilling season.

So I appreciate the patience of you all through this, but we needed to expose all the aspects that we could, and all the appropriate witnesses that we could have. We appreciate the patience of the Jurors and for their fine efforts through the day.

With that, those recommendations, we'll start moving on them. We won't report to you, but we will report to the next Jurors. Just like we do with the PennDot recommendations, what's accomplished and what isn't accomplished. So, with that, we'll stand adjourned.

INQUEST INTO THE DEATH OF)

) INQUEST NO. 4099

CONNOR LEE LISOVICH)

C E R T I F I C A T I O N

I hereby certify, that the foregoing is a true and accurate transcription of the tape of the Coroner's Inquest held on July 29, 1998, in the above captioned matter.

Michelle L. Chapman

Michelle L. Chapman,
Transcriptionist

- - - - - -

Ack 9/14/98

ZELCO

Zelco Industries, Inc
65 Haven Avenue
C.S. # 4445
Mt. Vernon, NY 10553-4445

(914) 699-6230
800-431-2486
Fax: 914 699-7082
E-Mail: zlco@aol.com
Internet: www.zelco.com

August 25, 1998

U. S. Consumer Product Safety Commission
Washington, DC 20207
Attn: Sadye E. Dunn, Secretary

Dear Ms. Dunn:

I agree that utility lighters should be child-resistant; however, the cost of testing, which you estimate at $25,000, is exorbitant. I don't feel that small manufacturers such as Zelco should be burdened by this type of expense. We don't understand the need to have test panels of 100 children. The testing requirements are a boondoggle that enables independent testing labs to charge outrageous fees. If the government wants tests of this extent, it should pay for them or at least subsidize the costs by the size and sales of the company selling utility lighters.

We have been selling our utility lighter for three years and have never had any complaints or accidents. We designed our product to be child-resistant, and it is. We don't need the type of testing you are suggesting to tell us that. Companies like Scripto and Bic can easily afford the suggested testing expense and most likely look forward to seeing the smaller companies being forced out of the business. Your suggestion that the result of your test will be higher sales and lead to increased competition is ridiculous. Bureaucratic overkill is what your testing and reporting requirements should be labeled. Reading 231 pages of the proposed rule is another example of government's waste of time and money. We are therefore against your proposed rules and regulations.

A copy of this letter is being sent to our congressional representatives.

Sincerely,

Noel E. Zeller

Noel E. Zeller
Chairman

NEZ:joc

cc: Nicole Zeller
Gabrielle Zeller
Elliot Engel
Nita Lowey

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

VOTE SHEET

DATE: JUL 15 1998

TO : The Commission
Sadye E. Dunn, Secretary

FROM : Jeffrey S. Bromme, General Counsel
Stephen Lemberg, Asst. General Counsel
Harleigh Ewell, Attorney, GCRA (Ext. 2217)

SUBJECT: Options for a Proposed Rule for Multi-Purpose (Utility) Lighters

This vote sheet concerns the staff's briefing package on a draft proposed rule for multi-purpose lighters (also known as utility lighters) to address the hazard of fires started by young children who operate such lighters. A draft notice of proposed rulemaking ("NPR") is at Tab A of the package for the Commission's consideration. Please indicate your vote on the following options.

I. ISSUE A NPR FOR MULTI-PURPOSE LIGHTERS. Please check the relevant option(s) below.

____ 1. APPROVE THE DRAFT FEDERAL REGISTER NOTICE (BRIEFING PACKAGE TAB A) WITHOUT CHANGE.

____ 2. PUBLISH THE DRAFT FEDERAL REGISTER NOTICE WITH CHANGES (please specify).

____ 3. OTHER (please specify).

_____ (Signature)

_____ (Date)

NOTE: This document has not been reviewed or accepted by the Commission.
Initial ____ **Date** 7/15/98

CPSA 6 (b)(1) Cleared
7/15/98
No Mfrs/PrvtLbrs or Products Identified
Excepted by
Notified

II. DO NOT ISSUE A NPR FOR MULTI-PURPOSE LIGHTERS.

Noel E Zeller
(Signature)

8/24/98
(Date)

III. TAKE OTHER ACTION (please specify).

(Signature)

(Date)

Comments/Instructions:

Zelco Industries, Inc.
60 Haven Avenue
O.S. # 4445
Mt. Vernon, NY 10553-4445

(914) 699-6230
800-431-2486
Fax: 914 699-7082
E-Mail: zelco@aol.com
Internet: www.zelco.com

October 16, 1998

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207-0001

Dear Secretary:

We are in receipt of the proposed "Safety Standard for Multi-Purpose Lighters."

Our Supermatch FLX includes 3 safety devices to make it as safe as practicable. We designed our product to be child-resistant, and it is. The burden of the regulations for us, therefore, is not in the development of a safer lighter, because we have already made that investment, but in the testing process, which you estimate at $25,000-$30,000.

It is interesting to note that when the Commission developed regulations for butane cigarette lighters, it exempted all lighters over $2.00 cost from safety requirements. Why are you not willing to do the same for utility lighters? The added cost for development and testing may not have much effect on a $1.99 lighter, but it has a damning effect on a $25.00 lighter like ours. In addition, the number of fires resulting from matches is surely higher than those from multi-purpose lighters, yet matches are also specifically excluded from these regulations.

The Commission has failed to make adequate allowances for small businesses. Will the commission subsidize the costs of the testing requirements? How do you expect small businesses to come up with these exorbitant testing fees? As you yourselves admit on page 54 of your report, "The staff is not aware of any method by which the reporting burden on small businesses could be reduced."

You seem to justify putting a lot of businesses out of the multi-purpose lighter market and further supporting a monopoly by repeatedly mentioning that one company controls 90% of the market. Companies like Scripto and Bic can easily afford the suggested testing expense and most likely look forward to seeing the smaller companies being forced out of the business. Your suggestion that the result of your test will be higher sales and increased competition is ridiculous! Bureaucratic overkill is what your testing and reporting requirements are, and the only result will be to force small businesses out of the marketplace by denying them the opportunity to compete because they would be unable to afford to comply with the requirements.

It is our belief that there is no need to regulate this area. Furthermore, these regulations are incomplete; they fail to provide sufficiently for small businesses. The regulations should be narrowed to exclude higher end lighters or to reduce the testing requirements for small businesses. We therefore strongly oppose your proposed rules and regulations.

Sincerely,

Noel E. Zeller
Chairman

NEZ:joc

cc: Nita Lowey
Elliot Engel

Spark N Clean
SNC Group, L.L.C.
1035 Godfrey SW
Grand Rapids, MI 49503
Phone: (616) 247-1775 Fax: (616)247-1770

64 46
11/17/98
JC99-1-3

11/11/98

Office of the Secretary
Consumer Products Safety Division
Washington, DC 20207-0001

RE: NPR for multi-purpose lighters

Dear Sir or Madam:

Enclosed please find SNC Group, L.L.C. comments with regards to the ("NPR") dated September 30, 1998 mandating performance standards for child-resistant multi-purpose lighters.

SNC Group, L.L.C. Background and Market position

In 1993, Thomas J. Moran IV created a multi-function ignitor and scraper (US Patent # 5,616,022) to take advantage of opportunities that exist within the barbecue lighter industry.

Between 1993 and 1996 a feasibility study & extensive market research was conducted on this product category. Factual information from Scripto and retail purchasing managers was compiled to determine the size of this market, who the major players are and what competitive advantages they have in order to maintain or increase market share.

In 1993 Scripto did in fact command a 85% market share, selling in excess of 17 million units per year. The remaining 15% of sales came from Cricket & 2 Asian manufactures (Asian manufactures offered 20 different styles of lighters).

By 1995 Scriptos market share declined to 75-80% and sales remained constant, due primarily to cheaper Asian imports. To maintain market share, Scripto re-tooled a new lighter design and started offering advertising dollars as incentive to retail purchasing managers.

Total 1996 sales approached 21 million units (a 5% increase in three year). Consumers were telling the market that price, features and benefits (refillable and disposable lighters of all types) are not enough to win them over in this category.

This information was used a basis to file US Patent protection in 1995 and proceed towards market entrance. Note: In 1997 & 1998 retail purchasing managers reported that the market for utility lighters has reached saturation, the average retail price has been declining over the past 5 years and the number of new manufactures/importers has declined substantially. Excluding Bic, there are basically two manufactures that command 98% of the market. Ningbo Feixiang and Scripto. 25% and 73% market share respectively. Lack of financial resources & distribution channels can be attributed to this.

In 1997, SNC Group, L.L.C. was formed by a group of private investors (venture capital). SNC Group, L.L.C. has one employee, approximately 10,000 SQ.FT. of office space and warehousing availability. Cognitive of the huge obstacles we face entering this market (current economic credit crunch resulting in higher cost of funds, lack of distribution channels and retailers/distributors who have agreements with manufactures to carry only their lighters), we chose to forge ahead.

This team of one is now prepared to take advantage of opportunities that exist within the barbecue lighter industry by offering the only lighter with greater utility.

Spark N Clean at present is in the Introduction Stage. In 1998 we completed proprietary tooling, secured initial orders and have production pieces. Lack of sufficient performance of other lighter models (they all just light) has caused customers to request that we introduce a new patented barbecue lighter.

The proposed rule will have a substantial net **safety benefit** to the consumer but ultimately have a direct, substantial and reasonably foreseeable effect on commerce by restricting competition even further, causing substantial hardship to remaining competitors and ultimately raising the cost to the consumer.

The CPSC gives substantial factual information to support its proposed mandate. However, the CPSC may have overlooked a critical business strategy that has been and is being deployed by at least one manufacture to restrict commerce, eliminate competition and secure market dominance with multi-purpose lighters.

A few things we have learned from the cigarette lighter standard:

1. It has had a substantial impact on consumers saving lives and money.
2. Consumers will only buy those child resistant lighters which are the least difficult to operate.

Bic Corporation had the following experience.

In 1988, Bic began the process of protecting it's intellectual property with the design of a lighter that it believed would be the best design and comply with eventual safety standards. (Horizontal child safety switches on lighter.)

Between 1991 – 1995 Bic's market share plummeted due to Asian imports that were easier to operate (safety wheel design), produced cheaper, met safety standards and protected by US Patents. Without similar ease of use, Bic's only competitive recourse was to file anti-trust allegations with a anti-dumping suit in 1994 while it developed a competing product. Bic has since lost this suit in 1997.

In 1993, Bic began developing a patented lighter with a "Loop Guard" that could compete against Asian imports, be accepted by consumers for ease of performance and comply with CPSC standards. Bic was awarded protection in 1996 and through continuations a final patent in June of 1998. In Bics experience, it took 10 years of legal wrangling and at least two sets of tooling to maintain their competitive position in the cigarette lighter market.
QUESTION: What was the real cost to Bic including legal maneuvering? What happened to Scripto and Crickets market share?

Based on CPSC cigarette lighter mandate experience, we know that:

1. Consumers buy lighters that are easy to operate.
2. Manufactures build and patent lighters that comply with safety mandates.

Therefore it is reasonable to conclude that a corporation or entity that has the best-patented safety application, is easy for the consumer to use and complies with safety standards, will command a substantial share of the market. The Asian lighter manufactures taught Bic and others this costly lesson.

So that history doesn't repeat it self twice, we may also conclude a viable business model for Bic Corporation and others is to:

1. Influence rigid CPSC performance standards around proprietary manufacture designs. This will restrict performance standards and a manufacture can file numerous design and utility patents around these standards to severely restrict competitive efforts. (Note: Bic already has 5 design patents issued in 1996 for utility lighters. Scripto has one and Cricket has none. How many utility patents has Bic filed?)

2. With patent pending utility design applications, a manufacture can effectively practice abandoned continuations and submarine tactics with the US Patent Office. Thus delaying or extending patent issuance to meet his needs based on competitive pressures. This was common practice with cigarette lighter safety designs involving at least one prominent lighter manufacture. Reference all US Patents issued or filed between 1988 – 1998 of or relating to cigarette lighter safety devices.

3. History with the CPSC cigarette lighter mandate shows that cost increase significantly due to intellectual patent rights positioning. To enter the market prior to full disclosure of all pending patents would be financial suicide to all but two firms. Bic & Scripto. Other manufactures or importers run the risk of patent infringement, boarder seizures and extensive costs in re-tooling two or three times to name a few. Additionally, all manufactures and importers with the exception of the aforementioned two don't come close to having the financial, legal or technical expertise to compete.

A similar case happened with Polaroid, through continuations and similar strategies, Polaroid's patents effectively monopolized the instant film market. It took a company the size of Kodak with huge capital budgets to challenge Polaroid. Kodak still lost! The only difference with multi-purpose lighters and instant film is that the CPSC did not mandate to use instant film only with CPSC performance standards designed around Polaroid patents.

The historic goal of the anti-trust laws is to protect economic freedom and opportunity by promoting competition in the market place. Competition provides businesses large and small the opportunity to compete on quality and price, in an open market and on a level playing field, unhampered by competitive restraints.

Furthermore, let us not loose sight of what truly motivates business. Shareholder returns! I maintain the respectful position that the CPSC is enabling, through no fault of its own, Bic Corporation and potentially others to practice unfair and deceptive acts that will lessen competition and have a substantial and reasonably foreseeable effect on the commerce of multi-purpose lighters. Bic can not compete in this market, solely on their merits, without proprietary & CPSC protectionism. If they could, wouldn't they have introduced a multi-purpose lighter 10 years ago? Are they really concerned about child safety or is it calculated shareholder return?

Possible solutions:

1. Subpoena manufactures/importers to supply the CPSC with all pending patents relating to the safety design features on multi-purpose lighters filed between 1988 - present. Analyze this data to determine the attempts, if any, of restraint of trade activity through intellectual property rights. Revise performance standards if needed to level the playing field for all manufactures/importers.
2. Analyze the history of cigarette lighter safety design patents and the real effect on market dominance and economic impact. Revise performance standards accordingly.
3. CPSC mandated design standards in which no manufacture or importer has intellectual property rights to.
4. Broaden the scope of CPSC performance standards while maintaining the original intent (Saving Lives). Specifically, 1212.2 B & C, 1212.3 #1 & 1212.4 (b) (d 5).
5. Offer free legal council & testing to small businesses with proprietary designs developed in or out of the US.
6. Make available funds, at current market rates, to small businesses with proprietary designs to lessen the financial hardship associated with legal advice & re-tooling.
7. Do nothing and as a US citizen, taxpayer and believer in the free market system, I loose a whopping $500,000 investment. By the year 2000 and beyond you will have three or less manufactures in the market place with higher prices and no added benefits to the consumer.

Thank you for your consideration.

Best Regards,

Thomas J. Moran IV
President
SNC Group, L.L.C.
(616) 247-1775

Encl.

[Search Summary]

Results of Search in ALL db for:
AN/Bic: 63 patents.
Hits 1 through 50 out of 63

Final 13 Hits Start At

Refine Search AN/"Bic"

	Pat. No.	Title
1.	**5,823,765**	Lighter having a non-rotating flint
2.	**5,784,785**	Folding longitudinal razor
3.	**5,769,931**	Ink composition
4.	**5,769,098**	Lighter with looped guard
5.	**D395,448**	Writing instrument
6.	**5,756,561**	Erasable ink composition containing a graft-polymerized dye
7.	**D393,876**	Writing instrument having light reflective surfaces
8.	**D393,396**	Utility lighter
9.	**5,735,294**	Lighter with guard
10.	**D392,154**	Utility lighter
11.	**D390,749**	Utility lighter
12.	**D386,045**	Utility lighter
13.	**D384,975**	Tray
14.	**D383,357**	Utility lighter
15.	**5,661,197**	Erasable ink composition containing a polymer-encapsulated colorant deriv from monomer containing dissolved colorant
16.	**D382,444**	Utility lighter
17.	**D382,443**	Utility lighter
18.	**D382,442**	Utility lighter
19.	**D382,441**	Foldable utility lighter
20.	**5,655,902**	Lighter with spark-wheel slip ring
21.	**D381,363**	Tray
22.	**5,642,993**	Selectively actuatable lighter
23.	**5,637,638**	Erasable ink composition containing a waterborne polyurethane-urea deriv from an aromatic amine dye monomer and marking instrument containing same

from an aromatic amine dye monomer and marking instrument containing same

24. **5,636,979** Selectively actuatable lighter
25. **5,628,627** Selectively actuatable lighter
26. **5,601,376** Retractable writing instrument having replaceable cartridge
27. **5,599,127** Cap for writing and marking instruments
28. **5,584,682** Selectively actuatable lighter with anti-defeat latch
29. **5,520,197** Lighter with guard
30. **5,487,657** Selectively actuatable lighter
31. **5,483,978** Lighter with guard
32. **5,456,598** Selectively actuatable lighter
33. **5,454,655** Retracting writing instrument having replaceable cartridge
34. **5,445,518** Selectively actuatable lighter
35. **5,435,719** Selectively actuatable lighter
36. **5,431,558** Selectively actuatable lighter
37. **5,427,522** Selectively actuatable lighter
38. **5,417,563** Child-resistant lighter with spring-biased, rotatable safety release
39. **5,415,487** Vented plug for ink cartridges
40. **5,399,041** Writing instrument barrel and method of forming a writing instrument
41. **D354,080** Writing instrument
42. **5,336,006** Retractable writing instrument having replaceable cartridge
43. **5,262,697** Piezoelectric mechanism for gas lighters
44. **5,230,578** Cap for writing and marking instruments
45. **5,215,458** Child-resistant lighter with spring-biased, rotatable safety release
46. **5,186,564** Vented removable cap
47. **5,148,761** Daggerfin adjustable sailboard skeg
48. **5,125,829** Bidirectional selectively actuatable lighter
49. **5,092,764** Selectively actuatable lighter with locking valve cap
50. **5,038,698** Daggerfin adjustable sailboard skeg

Final 13 Hits Start At

Refine Search AN/"Bic"

Search Summary

AN/Bic: 63 occurrences in 63 patents.

Help Home Boolean Advanced Number Order Copy PTDLs

[USPTO]

(132 of 5438)

United States Patent **5,769,098**
McDonough, et. al. **Jun. 23, 1998**

Lighter with looped guard

Abstract

The ***lighter*** of the present invention provides a resiliently deformable guard that covers a portion of the striking wheel assembly. To operate the ***lighter***, a user exerts sufficient pressure to displace the guard before rotating the striking wheel assembly. The configuration of the guard with respect to other elements of the ***lighter*** and/or one or more retention means of the guard increases the retention of the guard. Further, the ***lighter*** of the present invention may provide a brake member to prevent the rotation of the striking wheel assembly when the user attempts to release fuel or rotate the striking wheel assembly before or without displacement of the guard.

Inventors: **McDonough; James M.** (Guilford, CT); **Doiron; Gerald J.** (Athol, MA); **Adams; Paul H.** (Monroe, CT); **Fairbanks; Floyd B.** (Naugatuck, CT); **Hamilton, Jr.; Arthur R.** (Derby, CT); **LaForest; Guy** (Cascais, PT).

Assignee: **BIC Corporation** (Milford, CT).

Appl. No.: **486,855**

Filed: **Jun. 7, 1995**

Related U.S. Application Data

Continuation-in-part of Ser No. 97,685, Jul. 28, 1993, Pat. No. 5,483,978.

Intl. Cl. : **A24F 13/00**

Current U.S. Cl.: 131/**329**; 431/267

Field of Search: 131/329; 431/267, 129, 153

References Cited | [Referenced By]

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[USPTO]

United States Patent **5,483,978**
Doiron **Jan. 16, 1996**

Lighter with guard

Abstract

A disposable roll and press operated lighter including a shield shaped to the wheel and adapted to partly cover the wheel deterring a child from turning the wheel to an extent that ignites vapor from the lighter.

Inventors: **Doiron; Gerald J.** (Athol, MA).
Assignee: **Bic Corporation** (Milford, CT).

Appl. No.: **97,685**
Filed: **Jul. 28, 1993**
Intl. Cl. : **F23D 11/36**
Current U.S. Cl.: **131/329**; 431/153; 431/267; 431/273; 431/274
Field of Search: **131**/329; **431**/129, 153, 133, 134, 135, 137, 139, 144, 146, 149, 276, 267, 270, 273, 274

References Cited | [Referenced By]

U.S. Patent Documents

D205,465	Aug., 1966	Breman	**D48**/27
D211,822	Jul., 1968	Banninger	**D48**/27
D212,382	Oct., 1968	van Poppel	**D48**/27
D212,828	Nov., 1968	van Poppel	**D48**/27
D216,328	Dec., 1969	Gujer	**D48**/27
D217,017	Mar., 1970	Beijering	**D48**/27
D229,712	Dec., 1973	Vogel	**D48**/27.R
D240,303	Jun., 1976	Neyret	**D27**/42

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[USPTO]

United States Patent **5,002,482**
Fairbanks, et. al. **Mar. 26, 1991**

Selectively actuatable lighter

Abstract

A child resistant lighter device is disclosed which includes a body defining reservoir for containing a combustible gaseous medium such as butane, and having a valve arranged to be selectively actuated between a normally closed position and an open position which permits the exit of the gaseous medium. Such child resistant lighter can selectively produce sparks at a location proximate to the gaseous medium exit to ignite the gaseous medium, and a safety mechanism prevents actuation of the valve to the open position when sparks are produced. Such child resistant lighter device embodies a resiliently releasable safety latch which prevents the actuation of the valve actuator to the open position. The safety latch is selectively movable to a position out of interference with the valve actuator, so that the gaseous medium may be released and ignited by the sparks. The safety latch is resiliently structured and mounted such that once a flame is produced and the valve actuator is released, the safety latch returns to its closed or locked position to prevent actuation of the valve actuator to the open position by prevention of the pivotal motion. To "re-use" the lighter, the safety-latch must again be moved to the open or unlocked position so that the valve actuator can be opened for subsequent ignition of the gaseous medium. Such mechanism is difficult for a young child to light, but is capable of actuation by adults.

Inventors: **Fairbanks; Floyd B.** (Naugatuck, CT); **Snell; Thomas G.** (Madison, CT); **McDonough; James M.** (Guilford, CT).

Assignee: **BIC Corporation** (Milford, CT).

Appl. No.: **239,734**

Filed: **Sept. 2, 1988**

Searching ALL...
[Search Summary]
Results of Search in ALL db for:
AN/scripto: 15 patents.
Hits 1 through 15 out of 15

Refine Search AN/"scripto"

Pat. No.	Title
1. **D377,736**	Utility lighter
2. **4,738,725**	Initially erasable ball pen ink
3. **4,544,296**	Disposable propel-repel pencil
4. **4,505,606**	Mechanical pencil with self-tapping propelling nut and the method of producing same and propelling a lead contained therein
5. **4,410,643**	Method of making and the composition for an initially erasable ink for a ba point writing instrument
6. **4,407,985**	Method of making and improved compositions for an initially erasable ink a ball point writing instrument
7. **4,349,639**	Method of making and the composition for an initially erasable ink for a ba point writing instrument
8. **4,332,549**	Gas pressure regulator for lighters
9. **4,329,264**	Ballpoint writing instrument containing an initially erasable ink
10. **4,329,262**	Initially erasable ink composition for a ball point writing instrument
11. **4,221,493**	Pen nibs
12. **4,099,907**	Ignition mechanism for a pyrophoric lighter
13. **D243,963**	Operating assembly for a cigarette lighter
14. **3,966,392**	Cigarette lighter having improved valve means
15. **3,963,413**	Cigarette lighter having improved valve means

Refine Search AN/"scripto"

Search Summary

AN/scripto: 15 occurrences in 15 patents.

Search Time: 0.95 seconds.

Searching ALL...
[Search Summary]
Results of Search in ALL db for:
AN/cricket: 14 patents.
Hits 1 through 14 out of 14

Refine Search AN/"cricket"

	Pat. No.	Title
1.	**5,634,787**	Cigarette lighter including a safety ignition system
2.	**5,544,785**	Reservoir of gaseous fuel in liquid phase
3.	**5,334,011**	Gas-filled childproof lighter
4.	**5,228,849**	Childproof lighter
5.	**5,217,365**	Lighter with delayed gas release
6.	**5,217,364**	Lighter with delayed gas release
7.	**5,178,532**	Electrical igniter for gas lighter
8.	**5,165,886**	Childproof lighter
9.	**5,161,964**	Catalytic burner
10.	**5,097,867**	Reservoir for combustible liquid used as gas
11.	**5,090,893**	Childproof gas lighter
12.	**4,781,385**	Ball game
13.	**4,413,530**	Device for measuring and monitoring gas flowrates
14.	**4,110,931**	Insect bait dispensing device

Refine Search AN/"cricket"

Search Summary

AN/cricket: 14 occurrences in 14 patents.

Search Time: 0.89 seconds.

Ownership: Check the catalogs in your library.

NEWSABS NO: 02976940
TITLE: Trade petition filed by Bic
SOURCE: New York Times
SEC,PG:COL: D, 7:4
DATE: May 10, 1994
ABSTRACT: Bic Corp, the American unit of Societe Bic of France, filed an anti-dumping petition with the US Department of Commerce, asking the government to impose duties on disposable lighters made in China and Thailand, saying the lighters are being dumped on the US market at below value.
ARTICLE TYPE: News
ARTICLE LENG: Medium (6-18 col inches)
DESCRIPTORS: Antitrust; Tariffs
COMPANIES: BIC Corp
GEOG NAMES: China; Thailand
AVAILABILITY: UMIACH; 60001.01
JOURNAL CODE: NY
JOURNAL ISSN: 0362-4331

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REFERENCE NO:	97-73730
AUTHOR:	Dalpe, Peter
TITLE:	Bic loses court case over Asian lighters
SOURCE:	New Haven Register (New Haven, CT, US), pD3
PUB DATE:	970506
AVAILABILITY:	
SOURCE CODE:	XNHR
DATELINE:	Milford, CT, US
NAMED COMPANY1:	BIC Corp Milford CT, US D-U-N-S NUMBER: 00-116-6586
	STANDARD INDUSTRIAL CLASS: 3951;3999;3421
	TICKER SYMBOL: BIC
CLASS CODE:	8600 4330
CLASS DESCR:	Manufacturing industries Litigation
DESCRIPTOR:	Manufacturers Court decisions Imports Product quality
WORD COUNT:	00477
DOC TYPE:	Newspaper article
COPYRIGHT:	Copyright Ingersoll Publications Co. 1997

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Of Counsel
A. Daniel Woska

November 18, 1998

Ms. Barbara Jacobson
Project Manager
Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207-0001

RE: *NPR for Multi-purpose Lighters*
The Estate of Mary Anita Brock vs. Scripto
In The United States District Court for the Western District of Oklahoma
CIV-98-710L
Client Code: BROCM

Dear Ms. Jacobson:

Please be advised that the undersigned represents the Plaintiffs, James Brock, individually and as personal representative of the estate of Mary Sutton Brock, Judy Sutton, individually and as the guardian of Suzi Kaye Sutton, a minor child, Judy Sutton as the maternal grandmother of Christopher Ragsdale, a decreased child and Robert Sutton, individually, ("PLAINTIFFS") in the above captioned cause against Scripto-Tokai Corporation ("SCRIPTO").

Your Notice of Proposed Rulemaking regarding Multi-Purpose Lighters, published on September 30, 1998, requested that written comments and responses be made to the above address prior to November 30, 1998. Therefore, in compliance with that request, I wanted to make sure that you have the following information to consider when formulating a rule which mandates performance standards for the child resistance of multi-purpose lighters.

In Oklahoma City, Oklahoma, on January 16, 1998, a two-year boy, Christopher Ragsdale, came into possession of an all purpose Butane Lighter marketed by SCRIPTO as the "Aim n Flame" ("LIGHTER"). Christopher began playing with the LIGHTER whereupon he ignited combustible material in the home causing a fire. That as a result of that fire, Christopher Ragsdale was killed within a matter of a few minutes and Mary Sutton Brock, his mother, died approximately two (2) days later on the 18th day of January, 1998, as a result of smoke inhalation caused by the referenced fire. Suzi Kaye Sutton, age four, was severely injured in the fire and remained in a comatose state and hospitalized at Children's Hospital in Oklahoma City, Oklahoma, until her partial recovery and release on January 22, 1998.

The above litigation is pending before the United States District Court for the Western District of Oklahoma, Case No. CIV-98-710-L.

In the event that you should have any questions, do not hesitate to give me a call or if more

convenient, I may also be reached by E-mail at the above address.

Sincerely,

DON COOKE

DC/mp
25:Brocm.cl.cpsc.wpd

SWEDISH MATCH

CPSC/OFFICE OF THE SECRETARY

1998 DEC -7 P 12: 17

November 30, 1998

Sayde E. Dunn
Office of the Secretary
United States Consumer Product Safety Commission
Room J02
4330 East – West Highway
Bethesda, MD 20814

Notice of Proposed Rule (NPR) on
Multi Purpose (Utility) lighters

Dear Ms. Dunn:

Our company is the importer of Cricket® Lighters (and is affiliated with the manufacturer of the Cricket® brand of lighters) (hereafter "Cricket"). On behalf of Cricket®, we respectfully offer the following comments to the Consumer Products Safety Commission (CPSC) on the above referenced NPR.

As we have previously mentioned, Cricket® is one of the major manufacturers of lighters in the world and we have consistently urged the adoption of a child resistant lighter standard. Based on our company's commitment to product quality and safety, we support in general the Commission's proposed Rule to have multi purpose (utility) lighters made child resistant.

We wish, however, to make the following comments:

1. We believe that micro-torches should be removed from the rulemaking requirement. This group of lighters operate at a much higher flame temperature than what is usually considered to be a multi purpose lighter, which is used by the consumer to light candles, gas fired grills, camp fires etc. Micro-torches are used primarily by hobbyists for soldering and brazing. In many of these cases a "hands free" operation is required, however, this micro torch once lit and placed into a base for "hands free" operation can present a clear danger in unsupervised circumstances, for now we have a flame that will not extinguish in the event an unsupervised child should pick it up or even knock it over.

   We understand the volume of micro-torch lighters sold within the United States to be 1.5 million units, and are manufactured primarily by two companies. The Commission therefore should make direct contact with these manufacturers and request their input into the rulemaking. We suggest that after consulting directly with the manufacturers, that the Commission and the Micro Torch Manufacturer work with

Swedish Match North American Sales Region

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Atlanta, Georgia 30341

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(770) 454-6919

SWEDISH MATCH NORTH AMERICA INC.

the ASTM to develop a separate standard that is tailored and sufficient to address the unique qualities of the micro-torch lighter.

To date there has only been one reported incident involving a micro-torch lighter, and while we agree that even one may be too many, we question if this represents an "unreasonable risk of injury or death" associated with the product, as is required for Commission action under the Consumer Product Safety Act.

2. The CPSC has stated in this NPR that most of the provisions of the proposed standard are essentially the same as the child resistancy standard for cigarette lighters, i.e., a performance standard. Indeed the Federal Register dated July 23, 1993 supports this very point and we quote "The Commission can see no reason to limit the range of designs that could be utilized by imposing specific design requirements in the Rule." Again quoting from the Federal Register dated July 12, 1993 "Lastly, and dispositively, section 7 (a)(1) of the CPSA requires that, for other than labeling, warning, and instructions requirements, a "consumer product safety standard shall consist of (R)equirements expressed in terms of a performance requirements." While we understand the Commission is trying to address the concerns regarding a "flash back" problem by mandating that a multi purpose lighter must allow for multiple operations of the ignition system, this proposed standard mandates a design standard rather than a performance standard. To do this in the middle of a rule making procedure in not appropriate. We would suggest, therefore, the Commission change the wording from "must allow for multiple operation", "to may allow for multiple operations" and still be considered as meeting the requirements of the proposed standard.

3. The NPR also states that the child resistant mechanism cannot easily be disabled with a common household tool, such as a knife or pliers, and still remain operable. Again, this is a design requirement and it also introduces a requirement that is not built into the testing protocol. If this is the case a manufacturer could have their product tested and approved as being child resistant and then have this approval withdrawn because their product could be "easily disabled". If indeed this will be a requirement then it should be built into the testing protocol. Further such a protocol should be stated in terms of a measurable objective standard rather than a subjected description in order to ensure compliance with the proposed standard.

4. The Commission has provided no data at this time to support the statement that " The expected benefits of the proposed rule will be even higher if manufacturers achieve a child resistance level greater than 85%." Based on data available to the commission at this time, and the language of the proposed standard itself, if a product passes the prescribed tests, it is child resistant, period.

5. The Commission cites to certain relative risk rates between "lighters" and matches to support the statement in the NPR that matches are more child resistant than non child resistant multi purpose lighters. The statistics which the Commission relies upon, however, do not include multi purpose lighters and are factually incorrect according to the source cited in the NPR (the 1991 study of Linda and Charles Smith and Dale Ray). Further, the Commission has provided no data to show relative risk rates between matches and non child resistant multi purpose lighters.

6. Cricket® Lighters further believes that whatever action is taken by the Commission a strong education program must be instituted by the Commission, with appropriate budget funding, to address consumer behavior in leaving their lighters and their young children unattended.

Thank you for your consideration of these comments.

Respectfully submitted,

Matt McLoughlin
Customer Relation Manager

MM/rbk

P. O. Box 5555
Fontana, CA 92334-5555
Telephone: (909)360-2100

December 4, 1998

Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207-0001

Re: **NPR for Multi-purpose Lighters**

To Whom It May Concern:

Scripto-Tokai Corporation ("Scripto") has reviewed the United States Consumer Product Safety Commission's (CPSC) Notice of Proposed Rulemaking (NPR) for Multi-purpose lighters published in the September 30, 1998 *Federal Register* (63 FR 52397). Scripto shares the CPSC's concern with child play fires, from whatever the source. In response to the CPSC's Advance Notice of Proposed Rulemaking, published in the January 16, 1997 *Federal Register (62 FR 2327)*, Scripto submitted comments detailing a number of issues for consideration. Similarly, Scripto offered comments in response to the CPSC's request for comments on the February 1996 Petition filed by Judy L. Carr (CP 96-1), as published in the May 7, 1996 *Federal Register* (61 FR 20503). Scripto incorporates by this reference these previous comments, dated March 13, 1997 and July 3, 1996, respectively, into this letter. And, Scripto respectfully offers its further comments and observations, set forth herein, to assist the CPSC in its evaluation of the matter. Comments are organized by *Federal Register* page and NPR heading.

1. 63 FR 52401, Supplementary Information, F. Market Information: The commentary under *Substitutes for multi-purpose lighters* states that several products are reasonable substitutes for multi-purpose lighters, including matches and cigarette lighters. Scripto disagrees, and contends that there are no reasonable substitute products that do not create an elevated level of hazard. The principle utility of a multi-purpose lighter is that it offers the consumer a safer method of igniting hard-to-reach items, such as pilot lights, barbecues and fireplaces. The extended nozzle provides a margin of safety between the consumer and the point of combustion. Cigarette lighters do not offer this margin, nor do book or box matches. Long-stem matches may offer an even worse alternative, with their tendency to break in half when struck, and certainly rolled-up newspapers are a rather daunting choice. In sum, it cannot be stated that reasonable, safe substitutes for multi-purpose lighters are available.

2. 63 FR 52404, Supplementary Information, G. Preliminary Regulatory Analysis: The commentary under *Estimated net benefits of the proposed rule* states that the proposed rule is expected to reduce the costs associated with child-play fires involving multi-purpose lighters by 75 to 84 percent. Scripto considers this assertion to be flawed. The CPSC appears to assume that child-resistant devices will prevent most child-play fires. Based upon our experience in testing children with child-resistant lighters, this is not valid. Child-resistant mechanisms do not prevent children from starting fires; they merely slow down the process, providing an extra 5-10 minutes of delay, depending on the design. They are not a substitute for proper adult supervision, and will not prevent fires in and of themselves. In most instances of serious injury due to child play fires that Scripto has knowledge, the common denominator has been gross parental neglect, as was the case in the tragic situation giving rise to the Carr Petition. In conclusion, it cannot be assumed that child-resistant devices will achieve the benefits assumed above in the absence of heightened awareness on the part of parents of the critical need to keep flame sources out of the reach of children.

3. 63 FR 52407, Supplementary Information, H. Comments on the ANPR - Issue: Effectiveness of the Cigarette Lighter Standard: Commentors had pointed out in responding to the ANPR that the CPSC fire statistics did not support the conclusion that the cigarette lighter child-resistancy standard had been proven effective. It was noted that deaths due to child-play fires were 170 in 1993, 230 in 1994, 180 in 1995 and 130 in 1996. These figures do not speak for a significant change for the better, considering that the rule was placed in effect in July of 1994 and that reputable distributors were shipping child-resistant product by the beginning of 1993. In the face of this, the CPSC concludes that "despite the lack of specific information on the effectiveness of the cigarette lighter standard, the Commission concludes that it should proceed with the development of a standard for multi-purpose lighters. The Commission has no reason to conclude that the Safety Standard for Cigarette Lighters is not reasonably effective in reducing child-play fires started by children under age 5 with lighters." In other words, no reason is the reason to proceed. While such begging of the question may suffice in some circles, it has no resonance to those that must face reality. As stated recently by certain midwestern fire officials, "Child resistant lighters have not solved the problem." The dynamics of parental neglect, noted in (2.) above, must be factored into any evaluation of the effectiveness of the Cigarette Lighter Standard, and the need for concomitant education efforts must be considered. While Scripto, as a strong supporter in the development and implementation of the rule, is second to none in the hope that the rule will indeed prove effective, there is insufficient data to conclude that it is at this time.

4. 63 FR 52409, Supplementary Information, H. Comments on the ANPR - Issue: Consumer Resistance to Child-Resistant Features: In this section the CPSC states that "The proposed rule requires that multi-purpose lighters must not be capable of having its child-resistant mechanism easily deactivated. The Commission interprets this as requiring that the child-resistant mechanism *cannot easily be disabled with a common household*

tool, such as a knife or pliers, and still remain operable." (emphasis added) It is Scripto's position that this interpretation is neither practicable or enforceable. It could be construed to require child-resistant mechanisms to be absolutely "tamper-proof," since the determined use of a knife or pliers can deform most plastic or stamped metal constructions. Experience has shown that no standard can prevent a consumer's intentional destruction or alteration of a product's safety features, and, therefore, a "tamper-proof" requirement is unreasonable and impractical. Essentially, the problem arises from the use of the term, "easily." From an enforcement standpoint, it is vague and ambiguous. What is easy or natural for one person can be difficult or incomprehensible for another. Unfortunately, the proposed rule provides no means by which to measure "easily." Does "easily" pertain to the physical force necessary to override the child-resistant mechanism? Does "easily" relate to the complexity of the mechanism and whether or not a 51 month old child could determine how to deactivate it? As the CPSC surely appreciates, the safety features of virtually every consumer product can be altered or overriden by determined tinkering. Other CPSC mandated safety rules are also vulnerable to consumer alteration. Despite explicit standards for their placement and performance (16 CFR §1205.4), protective shields can be readily removed from walk behind rotary power mowers. The grasp bar control system designed to prevent a rotary power mower's blades from rotating (16 CFR §1205.5(a)(1)(i)) can be simply wired open, thereby disarming this required safety feature. While the CPSC has developed detailed safety standards for swimming pool slides (16 CFR 1207), there is nothing to prevent consumers from removing handrails or dangerously altering a slide's mandated geometry. In conclusion, practicable, enforceable, measureable bright-line performance criteria must be established, specifying what constitutes "easily deactivated."

5. <u>63 FR 52410, Supplementary Information, H. Comments on the ANPR - Issue: Requirements</u>: Scripto continues to be of the view that the cigarette lighter experience has seen the approval of some mechanisms which are so easy to operate that safety objectives are compromised. We continue to see models from China which appear to be identical to non-child-resistant product distributed prior to the effective date of the rule. Exemplars have been provided to the CPSC staff for testing. Without a well-funded compliance effort, the multi-purpose lighter experience could be regrettably similar.

6. <u>63 FR 52411, Supplementary Information, H. Comments on the ANPR - Issue: Need for Regulation of Matches</u>: The CPSC has identified 29 deaths during the 1988-1998 period due to child-play fires involving multi-purpose lighters. During a five-year period within this timeframe, 1991-1995, the CPSC has identified <u>680</u> deaths due to child-play fires with matches. In responding to Scripto's earlier comments on this matter, the CPSC stated it was "concerned about societal costs of fires attributable to children playing with matches. However, in taking action necessary to address a problem, it is necessary to take into account the feasibility of a solution and its costs, as well as its benefits." This is in the face of the CPSC's findings in 16 CFR §12.02(a), which state, in part, "The Commission finds that unreasonable risks of injury from accidents are associated with matchbooks." Given that the societal benefits in regulating matches would far exceed those in similarly regulating multi-purpose lighters, it is recommended that the CPSC vigorously pursue this course, particularly since, in this NPR, the CPSC has identified

matches as a reasonable substitute product for multi-purpose lighters. Surely, there is some cost-effective device, such as wax tipping or striker coating, which would make these products more resistant to use by small children.

7. 63 FR 52415, Part 1212 - Safety Standard for Multi-purpose Lighters, §1212.2(a)(2)(ii): The proposed rule would exclude devices that contain more than 10 ounces of fuel. It is not clear on what basis this exclusion has been added. Setting an arbitrary fuel ceiling only invites the introduction of products that will not have to meet the child resistant requirements of the rule. It is recommended that this exclusion be eliminated.

8. 63 FR 52416, Part 1212 - Safety Standard for Multi-purpose Lighters, §1212.3(b)(1): This section of the proposed rule states that "a multi-purpose lighter must...allow multiple operations of the ignition mechanism (with fuel flow) without further operation of the child resistant mechanism...." This is clearly a design requirement as opposed to a performance standard. It is difficult to understand why the CPSC would propose such a requirement, particularly since it had stated earlier in this NPR at 63 FR 52410 that "just like the cigarette lighter standard, the proposed standard for multi-purpose lighters is drafted as a performance standard rather than a design standard." It is understood that the CPSC has recognized the backflash hazard commented upon earlier by the lighter industry, and it is understood that allowing for multiple operations is one approach to dealing with this issue. However, it is certainly not the only way of addressing it. Ignition reliability comes comes to mind as another approach, and, indeed, there are probably numerous, yet uninvented, solutions to the backflash issue. Setting forth a uni-dimensional design requirement simply cuts off all future solutions; it places the innovation function in the hands of the regulator rather than in that of the design engineer. It removes the problem from the free market of ideas via fiat, and reduces competition by narrowing the scope of invention, resulting in inefficient and wasteful patent disputes over an increasingly restricted field of art. From a societal standpoint, design standards, as opposed to performance standards, reduce flexibility and lead to limited development and mediocre products. It is strongly recommended, therefore, that the requirement for multiple operations be amended to permit other solutions to be applied to the backflash concern. As a minimum, an ignition reliability requirement could be stated as an option to that for multiple operations. Please refer to the attached suggested test method for ignition reliability as a point of consideration.

9. 63 FR 52419, Part 1212 - Safety Standard for Multi-purpose Lighters, §1212.5(c): This section states that "the standard's requirements should ensure that most children under 52 months of age cannot operate the lighters." It is doubted that there is any empirical basis for this assertion. While prior experience in testing child-resistant cigarette lighters has suggested that these devices can slow determined children down for 5-10 minutes, we are not aware of any evidence that the margin provided is greater than that. Then, too, gross parental neglect, as pointed out in (2.) above, tends to override the best efforts of designers to make products child-resistant. It is recommended, therefore, that this finding be carefully scrutinized.

10. 63 FR 52424, Part 1212 - Safety Standard for Multi-purpose Lighters, §1212.18(b) Some importers will import shipments of non-child-resistant product into the U.S. in bond for export to other nations that either do not want or require child-resistant product. In the past, with cigarette lighters, this transit and export (T&E) process has sometimes been problematic, with seizures by customs and delays at foreign ports. It is recommended that the compliance aspects of this process be reviewed to reduce unnecessary delays and paperwork.

11. 63 FR 52424, Part 1212 - Safety Standard for Multi-purpose Lighters, §1212.20(d)(2): This section requires that importers report stockpiling shipments within ten days of shipment. It is suggested that these reports be filed at the end of each calendar month. This would appear to offer the advantages of fewer reports and better visibility, leading to better control.

In conclusion, Scripto continues to be extremely concerned about deaths, injuries and damages resulting from child-play fires, whatever the source. As a leading distributor of lighter products, Scripto has consistently demonstrated its commitment to consumer safety by only distributing products with the highest quality and reliability, backed by state of the art engineering, testing and craftsmanship. In addition, Scripto has worked cooperatively with the CPSC over the years in attempting to develop meaningful, effective safety standards for its products. Subject to the comments set forth above, Scripto fully supports the CPSC in its efforts develop a safety standard for multi-purpose lighters, and will offer whatever assistance is appropriate.

Sincerely,

SCRIPTO-TOKAI CORPORATION

Attachment - Suggested Test Method for Ignition Reliability of Multi-purpose Lighters

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TEST METHOD

MULTI-PURPOSE LIGHTER IGNITION RELIABILITY

1.1 *Purpose* - The purpose of this test is to determine multi-purpose lighter ignition reliability.

1.1.2 *Significance* - This test provides information on the degree to which a multi-purpose lighter actually produces a flame when the ignition mechanism is operated repeatedly. Ignition reliability, as tested herein, is a major factor in preventing backflash fires. Backflash accidents occur when excess flammable gas is allowed to build up prior to being ignited. This can occur when a multi-purpose lighter fails to light on the first, second, third or subsequent attempts.

1.2 *Apparatus* - An ignition testing machine or comparable device capable of securing a multi-purpose lighter in a vertical position and operating its ignition mechanism at specified speeds and intervals. A temperature and humidity controlled room or enclosure.

1.3 *Test Specimens* - The specimens shall consist of new, complete, normally-fueled multi-purpose lighters which initially are free of mechanical damage.

1.3.1 *Specimen 1* - The multi-purpose lighter shall be stabilized at 23°C±2°C at a relative humidity of 65±5% for at least 10 hours, and, if it incorporates a flame adjustment feature, the flame shall be adjusted to a height of 40±5mm, or at the maximum height the adjustment allows, if less than 40±5mm.

1.3.2 *Specimen 2* - The multi-purpose lighter shall be stabilized at 10°C±2°C at a relative humidity of 65±5% for at least 10 hours, and, if it incorporates a flame adjustment feature, the flame shall be adjusted to a height of 40±5mm, or at the maximum height the adjustment allows, if less than 40±5mm.

1.4 *Procedure* -

1.4.1 For Specimen 1, maintain room/enclosure temperature of 23°C±2°C at 65±5% relative humidity. For Specimen 2, maintain room/enclosure temperature of 10°C±2°C at 65±5% relative humidity.

1.4.2 Place the specimen in the ignition testing machine in the vertical position, so that the nozzle is pointing directly upward.

1.4.3 Set the ignition testing machine to ignite the specimen at a speed of 0.3 seconds with a burn time of 0.2-0.3 seconds, at 1 second intervals. Repeat for five ignitions.

1.4.4 Set the ignition testing machine to ignite the specimen at a speed of 0.1 seconds

with a burn time of 0.2-0.3 seconds, at 1 second intervals. Repeat for five ignitions.

1.4.5 Record the number of times specimen produces a flame during the ten ignition attempts.

1.4.6 Exercise special caution when removing the multi-purpose lighters from the ignition testing machine to avoid burn injury.

1.4.7 The number of samples of test specimens used will be governed by the size of the production lot as set forth in MIL-STD-105, Special Inspection Level S-4.

1.4.8 A test sample of Specimen 1 multi-purpose lighters which produces a flame in less than 70% of the ignition attempts, as recorded in 1.4.5 above, constitutes a failure.

1.4.9 A test sample of Specimen 2 multi-purpose lighters which produces a flame in less than 65% of the ignition attempts, as recorded in 1.4.5 above, constitutes a failure.

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CPSC/OFFICE OF
THE SECRETARY

1998 DEC 14 A 11: 04

BEFORE THE

U. S. CONSUMER PRODUCT SAFETY COMMISSION

PETITION CP 96-1

MULTI-PURPOSE LIGHTERS; NOTICE OF PROPOSED RULEMAKING;

REQUEST FOR COMMENTS

COMMENTS OF

ZIPPO MANUFACTURING COMPANY

Michael A. Schuler
President and CEO
Zippo Mfg. Co.
33 Barbour Street
Bradford, PA 16701
(814) 368-2700

December 11, 1998

BEFORE THE

U. S. CONSUMER PRODUCT SAFETY COMMISSION

PETITION CP 96-1

MULTI-PURPOSE LIGHTERS; NOTICE OF PROPOSED RULEMAKING;

REQUEST FOR COMMENTS

COMMENTS OF

ZIPPO MANUFACTURING COMPANY

INTRODUCTION

Pursuant to Federal Register Notice published September 30, 1998, the Consumer Product Safety Commission sought comments on a proposed rule mandating performance standards for the child resistance of multi-purpose lighters. 63 Fed. Reg. 52397 (1998). Zippo Manufacturing Company ("Zippo") has reviewed the Notice of Proposed Rulemaking ("NPR") and files these comments in response to the Notice.

IDENTITY OF COMMENTOR

Zippo Manufacturing Company, a U. S. Citizen owned, privately-held Pennsylvania corporation, has manufactured refillable liquid fueled lighters since 1933. In addition to the lighters, Zippo manufactures and markets a line of consumer products that includes writing instruments, knives, flint, fuel (naphtha based liquid), keyholders, rules, money clips, etc. Zippo products are distributed on a worldwide basis. Currently, Zippo lighters are shipped 35% domestically and 65% for export and are manufactured on a common assembly line. Zippo currently employs approximately 1,000 people at its Bradford, Pennsylvania facility.

Zippo is a charter member in the Lighter Association, Inc. and Michael A. Schuler, our president and C.E.O., also serves as a Director of the Lighter Association, Inc. In addition, Zippo has been a member of the ASTM Task Group F15.02 since its inception in 1972. A Zippo representative has attended the meetings that the ASTM task group has held over the past twenty-six years.

COMMENTS

1. General Support for the Proposed Rule

Zippo Manufacturing Company generally supports the rule as proposed at 16 CFR Part 1212; however, Zippo does have concerns with language in the area of section 1212.2 - Definitions. Zippo does not view itself as a manufacturer of a grill or utility lighter. The lighter that Zippo manufactures today is the same product that it has manufactured for the past 65 years. It is the same product that was considered and excluded from the Safety Standard for Cigarette Lighters in 1993 at 16 CFR Part 1210. To the best of our knowledge, there is not any data that would indicate a Zippo lighter should be considered under the proposed multi-purpose lighter rule, even if only through ambiguous and unclear language.

2. Definitional Difficulties of Section 1212.2

While Zippo generally supports the rule, we do have difficulty with the language used in Section 1212.2(a)(1). Our concern is that the definition of a multi-purpose lighter, as set forth in this section, is so broad that it could unintentionally include any portable source of open flame. A Zippo lighter, as any other lighter, provides such a portable source of open flame and could be used for many of the purposes as listed in the definition. However, the product as designed would be less than ideal for certain of the applications where the design of the product allows it to be more easily placed in restricted areas such as those used with lighting gas grills or pilot lights in gas fired appliances. Zippo embraces the Lighter Association's comments regarding the use of a dimensional definition that follows the design purposes of the lighters in this area. Alternatively, Zippo recommends that the staff consider changing the definition to delete the term "operates on fuel" to a more specific term "operates on gaseous fuel."

Zippo is not aware of any multi-purpose lighter that operates on liquid fuel. Obviously, the CPSC must attempt to regulate products that currently exist and are being used by consumers. There are specific design issues with liquid fuel lighters that relate to the need to transfer flammable vapors via a capillary action. This capillary action through a wick can only be maintained for a certain distance to maintain an adequate flame. Additionally, the amount of spark needed to ignite such vapors cannot be accomplished with a Piezo electric system. A flint wheel generated spark is generally considered as the only effective method to light a liquid fuel lighter. Obviously, without the benefit of a remote triggering device, as provided by the Piezo electric systems used on multi-purpose lighters, a liquid fuel lighter would be seriously deficient. If a spark wheel had to be affixed at the end of an extended nozzle of a lighter it would make it difficult to light and then insert the nozzle into the confined area where a pilot light would be

enclosed. Zippo strongly encourages the Staff to consider revising the definition of multi-purpose lighter to conform with that presented by the Lighter Association, as detailed below:

(i) A utility lighter (also known as grill lighter, fireplace lighter or gas match), i.e., a hand-held, manually-operated, flame-producing device, five inches or greater in length when in the fully extended position, that operates on gaseous fuel and is used by consumers primarily to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights.

Additionally, Zippo finds the exclusions as provided at Section 1212.2(2)(i) to be insufficient to exclude luxury liquid lighters. The language in the Safety Standard for Cigarette Lighters does not address luxury lighters as they were discussed during the child-resistancy rulemaking process. Specifically, Section 16 CFR 1210.2(c) restricts the definition of lighters to disposable and novelty lighters. Zippo would embrace the language contained in the Lighter Association, Inc.'s comments, specifically excluding luxury lighters as they were defined in the child resistancy rule. This exclusion would read as follows; "Devices intended primarily for igniting smoking materials that have a customs valuation or ex-factory price of $2.00 or over, as adjusted every five years, to the nearest $0.25, in accordance with the percentage changes in the monthly wholesale price index from June 1993, in accordance with 16 CFR 1210.2(b)(2)(ii), and are not novelty lighters in accordance with 16 CFR 1210.2(c)."

With the above exclusion it would be very clear that luxury lighters are not to be included in this Proposed Rule for Multi-Purpose Lighters.

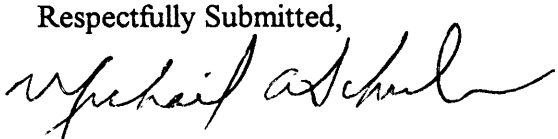
3. **Performance Standards vs. Design Standards**

While, as stated previously, Zippo does not manufacture a multi-purpose lighter, as considered under this rule, it does have concern that the Commission would consider mandating a design standard. Obviously, performance standards are more appropriate and allow for creativity in the field of design and safety. Manufacturers should not be stagnated, or any particular manufacturer be given a competitive advantage due to a patented design, due to the mandatory rulemaking process. Zippo would request that the CPSC give careful consideration to changing the design standard as set forth in the proposed rule at 16 CFR Part 1212.3(b)(2).

CONCLUSION

In conclusion, Zippo generally supports the proposed child resistancy rule for multi-purpose lighters as long as the definitional issues are resolved and other applicable comments made by the Lighter Association and other qualified commentors are given careful consideration by the Staff.

Respectfully Submitted,



Michael A. Schuler
President and CEO

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December 14, 1998

Office of the Secretary
U.S. Consumer Product Safety Commission
Room JO2
4330 East West Highway
Bethesda, MD 20814

Re: Notice of Proposed Rule Making (NPR) for Multi-purpose Lighters

To Whom It May Concern:

Milford Consulting Associates is a testing agency that has had a great deal of experience testing child-resistant packaging, cigarette lighters and multi-purpose lighters. We are pleased to respond to the request for comments regarding the proposed "Safety Standard for Multi-Purpose Lighters" as published on September 30, 1998 in the ***Federal Register***.

1. 1212.4a.7. Child Participation in Multiple Testing:

The commentary states that *"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."* We would endorse the testing of child-resistant packaging, cigarette lighters and multi-purpose lighters by the same child on different days. Child-resistant packaging, cigarette lighters and multi-purpose lighters are very distinct from each other in appearance and operation. The cross learning from participating in a test of one type of product to the test of another type of product would be negligible. The child's familiarity with the test setting, however, would be facilitated, thus being less intimidating to the child.

2. 1212.4b.3: Number of Testers:

The commentary states that *"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."* The commentary suggests that the remaining testers are required to test an approximately equal number of children. This may be difficult to achieve, depending on the stage of the testing at which the tester dropped out. When using central location testing we usually divide the test equally between two test sites, having each test site complete 50 tests using three testers. It often happens that one test site completes its

testing before the other. If a tester drops out after one site has completed its testing, it would be impossible to allocate any remaining tests to the testers at the first site since they would have completed their portion of the test. The ruling should require that when central location testing is used and a tester drops out, the remaining tests be allocated equally to the remaining testers at that test site.

The same rationale would apply to the surrogate lighters (1212.4c.2) when a surrogate is removed from testing because it is permanently damaged. Here also, the remaining tests should be allocated equally to the remaining surrogate lighters at that test site.

1212.4e.3. Child Participation:

The commentary states that *"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..."* Surrogate lighter testing is an attempt to replicate a real life situation in which two children happen across a lighter and attempt to operate it. We give them ten minutes to do so assuming that a parent would be checking on a child's activity within that period of time. Some children, in fact, may refuse to touch a lighter within that period of time while a companion is doing so. Such a circumstance may happen in real life, why not allow it to happen in the testing? If a child refuses to touch the lighter but is not disruptive, that child should be counted in the testing.

1212.4f.3. Demonstration of Surrogate Lighters:

The commentary states "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.)." Holding the surrogate in a vertical position would be awkward and would not be the way in which it would normally be used. The lighter, however, should be tilted down towards the children so they can view it better. The ruling should require a 45-degree tilt towards the children. Also, a child-resistant mechanism may be designed whereby a finger needs to be placed on it during activation in order for the lighter to operate. The current language of the ruling may be interpreted to eliminate such a mechanism, since by its nature it would be at least partially covered by a finger in order for the surrogate to operate. It is not the intent of the ruling to prevent the design of such mechanisms and should be addressed in the testing procedure with wording that allows the normal operation of the surrogate if a finger is placed on the child-resistant mechanism.

Thank you for your consideration of these comments. I trust they have been helpful.

Sincerely,

Gerald Cavallo

Gerald O. Cavallo, Ph.D.
Managing director

American Academy of Pediatrics

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12/16/98

CC99-1-9

December 14, 1998

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION

1998 DEC 16 P 2:11

Office of the Secretary
Room 502
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: NPR for multi-purpose lighters

To Whom It May Concern:

The American Academy of Pediatrics is an organization of 55,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents and young adults. On behalf of the Academy, I am writing to comment on the Notice of Proposed Rulemaking (NPR) regarding multi-purpose lighters (63 *Federal Register* 52397, September 30, 1998).

The Academy supported the 1993 Consumer Product Safety Commission (CPSC) rule requiring child-resistant mechanisms for disposable cigarette lighters. This rule has saved lives, prevented injuries, and saved many millions of dollars in property loss. Because multi-purpose lighters present the same danger, albeit on a somewhat smaller scale, this experience clearly demonstrates that adoption of the proposed rule will have a similar positive result.

Children under the age of five years can activate multi-purpose lighters during innocent child-play, resulting in death, injury and property loss due to fires. These fires are the result of direct ignition, just like fires due to matches. Analyses of disposable lighter data have shown that they present a greater risk than matches do when played with by children under five years of age; it is reasonable to expect that this is also true for these multi-purpose lighters. For these reasons, we believe it is necessary for the CPSC to adopt child-resistant standards for multi-purpose lighters similar to those applicable to disposable cigarette lighters.

We would like to take this opportunity to address several comments by parties responding to the Advanced Notice of Proposed Rulemaking (ANPR), as described in the preamble of the NPR.

First, the preamble notes that the National Association of Pediatric Nurse Associates & Practitioners, Inc. (NAPNAP) expressed concern that multi-purpose lighters are particularly attractive to children because some of them look and operate like guns. We agree with NAPNAP that there is a danger that children under age five will be particularly attracted to multi-purpose lighters as play objects, due to their gun-like qualities and the fact that they produce a relatively large flame. We agree with the agency's response that this is one of the reasons that it is appropriate to establish a child-resistant standard for these products.

Other issues raised by responders to the ANPR included concerns that parents will get a false sense of security from child-resistant multi-purpose lighters and, therefore, will be less careful in storing them; that the dangers from these products come from lack of adult supervision; and that product warning labels and consumer education are necessary (with the implication that regulatory action may not necessary or will not be helpful).

We agree with the Commission that there will be an overall benefit from the establishment of child-resistant standards, even if it makes some parents less careful in storing the lighters. We also agree that product labeling and consumer education are very important, but that these actions will not be as effective as making the lighters child-resistant. Adult supervision will never be (indeed, can never be) perfect; children will inevitably find and try to use or play with these products, even when parents are in the home and have taken reasonable care to store the products out of children's way. As the agency noted, beginning at age four or five, children can reach many of the hiding places that even careful parents would deem appropriate.

We agree with the agency that the benefits of establishing the proposed standard outweigh the costs of doing so -- not just quantitatively, as the agency has demonstrated -- but on a more personal level, in terms of deaths, injury, pain and heartache that will be avoided from fires started by children who are playing with multi-purpose lighters.

If you would like to discuss these comments, please contact Janis Guerney at 202-347-8600 (x3007).

Sincerely,

Joel J. Alpert, MD, FAAP
President

JJP/jeg/jeg

Sent via messenger and e-mail [cpsc-os@cpsc.gov]