Lighter Association Inc.

CC98-1-10

CPSC/OFFICE OF THE SECRETARY

1998 DEC 15 P 1:25

December 14, 1998

Ms. Sadye E. Dunn
Office of the Secretary
Room 502D
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814-4408

Re: Multi-Purpose Lighter Rulemaking

Dear Sadye:

Enclosed please find the original and five (5) copies of the Comments of the Lighter Association, Inc. in regard to the proposed rule in the above-captioned rulemaking. If you need any additional copies, please let me know at (202) 973-2709.

When your office has compiled a set of all the Comments on the proposed rule, we would greatly appreciate hearing from you so that we could pick up a copy.

With all best wishes to you and your staff for the holidays.

Very truly yours,

David H. Baker
General Counsel

DHB:jkp
Enclosures

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1920 N Street, N.W., Suite 800 ■ Washington, D.C. 20036 ■ Tel (202) 973-2709 ■ Fax (202) 331-8330

CPSC/OFFICE OF
THE SECRETARY
1998 DEC 15 P 1:25

BEFORE THE

U.S. CONSUMER PRODUCT SAFETY COMMISSION

PETITION CP 96-1

MULTI-PURPOSE LIGHTERS; NOTICE OF PROPOSED RULEMAKING;

REQUEST FOR COMMENTS

COMMENTS OF

LIGHTER ASSOCIATION, INC.

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General Counsel
Lighter Association, Inc.

December 14, 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

LIGHTER ASSOCIATION, INC.

I. 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). The Lighter Association's Board of Directors has reviewed the Notice of Proposed Rulemaking ("NPR") and files these comments in response to the Notice.

II. IDENTITY OF COMMENTOR

The Lighter Association, Inc. ("Association") is the national trade association of the lighter industry. Its members represent more than 90% of the manufacture and distribution of lighters in the United States. At least four of the Association's members distribute multi-purpose lighters in the United States. The Association has regularly participated in proceedings before the CPSC since 1986, including strongly supporting the prior lighter child resistancy rule.

III. POSITION OF COMMENTOR

A. General Support for Proposed Rule

The position of the Lighter Association has changed significantly since it last filed comments with the Commission in this proceeding. At the April 16, 1998 ASTM F15.02 Subcommittee meeting in New Orleans, the Subcommittee, which includes virtually all manufacturing and distributing members of the Association, voted unanimously to support a child resistancy rule for utility lighters.[1] The Association then reviewed the proposed rule as set forth in the July 1998 Briefing Package and generally supported that version of the proposed rule.

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[1] The industry term for the lighters involved in this rulemaking is grill lighter or utility lighter. The term multi-purpose lighter was developed by the Commission and has no real meaning in the industry, or with retailers.

The September Briefing Package and revised proposed rule, however, raised three new concerns. While the Lighter Association continues to support a child resistancy rule for utility lighters, the Association wants to spell out its concerns and, where appropriate, propose alternative language which may be acceptable to all parties involved in this rulemaking. The three concerns are discussed in Sections B, C and D below.

B. Scope of Rule

1. Separate Utility and Micro-torch Lighters

The Association believes that the revised definition of multi-purpose lighter is vague and confusing. The Association believes that this confusion results from the Commission's last minute decision to include micro-torch lighters in the rulemaking. The Association would prefer that utility lighters be more accurately defined so as to eliminate any possible confusion with other lighter products.

The Association takes no position on micro-torch lighters. Members of the Lighter Association do not manufacture or distribute such lighters. The Association does not consider micro-torch lighters to be in any way competitive with grill or utility lighters. Simply looking at the product, it is obvious that micro-torch lighters have a different purpose than grill lighters. Until this issue arose, Association members were not even familiar with these products. If the Commission wishes to deal with micro-

torch lighters, it should develop an adequate record and propose a separate standard for micro-torch lighters.

In an effort to resolve any ambiguity and to go forward on the existing record, the Association proposes the following revised definition of multi-purpose lighter, which separates utility and micro-torch lighters.

§ 1212.2 Definitions.

As used in this part 1212

(a)(1) *Multi-purpose lighter* means:

(i) a utility lighter (also known as grill lighter, fireplace lighter or gas match), i.e., a hand-held, flame producing device, with a manually-operated ignition mechanism, four inches or greater in length when in the fully extended position, its fuel of butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees F (24 degrees C) exceeds a gage pressure of 15 psi (103kPa) 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, or

(ii) a micro-torch lighter, i.e., a hand-held or hands-free, manually-operated, pre-mixing burner, flame-producing device that operates on fuel and is used by consumers primarily for hobby or maintenance applications, e.g., to solder or braze materials.

(a)(2) The following devices are not multi-purpose lighters:

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

(ii) Devices intended primarily for igniting smoking materials that have a Customs valuation or ex-factory price of $2.00 or over, as adjusted every 5 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).

(iii) Matches. . .

The purpose of this alternative language is to define the utility lighter by highlighting the one key aspect of the lighter --- its unusual length. The Commission's proposed definition has no description of the physical characteristics of the product. Rather, the Commission's proposed definition goes to usage. However, as a practical matter, almost any lighter can be used to light a fireplace or a grill. The obvious distinguishing characteristic of a grill or utility lighter is the length of the product. The reason consumers buy grill lighters is to have a longer product which reaches over possible flames or fire, or into generally inaccessible areas. Length is the key definitional issue for these products.

The Association has received some feedback from staff that utilizing length as a distinguishing characteristic is a potential problem because someone will inevitably seek to avoid child resistancy by making a shorter product. However, a shorter product will not be competitive with a grill lighter. For example, the Association proposes a minimum length requirement of four inches. Most grill lighters are much longer than four inches — typically they range from nine to twelve inches. If someone marketed a three and three quarter inch grill lighter, it would not meet the intended need because it would not reach over fire or into inaccessible places. Moreover, such a lighter would probably fall under the existing child resistancy rule. 16 C.F.R. Part 1210. Other than grill lighters, there are very few lighters that are

regularly marketed in the U.S. that are taller or longer than four inches. None of the Association's members market or distribute lighters that are longer than four inches (other than grill lighters). Thus, the Association believes some length component must be included in the final definition of utility lighter.

The Association has also proposed that the word "primarily" be added to the reference to consumer usage. See text above. If the Commission is going to rely upon usage as a component of the utility lighter definition, then the definition should clearly state that the consumer's primary usage is for lighting fireplaces, grills, etc. Otherwise the rule would apply to all lighters. A consumer can obviously use a regular lighter for most of the enumerated purposes. Thus, the Commission's proposed language is vague.

The Association also suggests that the definition of utility lighter be limited to gas fuel based lighters, i.e., lighters whose fuel is butane, isobutane, propane or other liquified hydrocarbon as found in the Commission's definition in the original child resistancy rule. See 16 C.F.R. Part 1210.2(b)(2)(i). To the best of the industry's knowledge, there is no liquid fuel type utility lighter. Moreover, it is our understanding that it is not technologically or commercially feasible to create a liquid fuel type utility lighter. Therefore, we believe that fuel would be another good feature to distinguish utility lighters from other types of lighters.

The Association also suggests that the Commission change the reference from "self-igniting" to "a manually operated ignition mechanism". No lighter self-ignites. Some action is required to start a lighter. Thus, the language "manually operated" is more accurate.

In conclusion, if the Commission intends to regulate micro-torch lighters then the Association strongly urges the Commission to separate the two types of lighters. It is obvious that usage based upon length, i.e., reaching over fire or into inaccessible places, is radically different than usage for soldering or brazing metals. Again, so far as the Association is concerned, there is no apparent reason to even include micro-torch lighters in the definition. However, if the Commission chooses to do so, it should separate the two types of products.

2. Clear Exclusion of "Luxury" Lighters

The proposed definition excludes all products covered under the existing safety standard for cigarette lighters, i.e., disposable lighters and novelty lighters, citing 16 C.F.R. Part 1210.2(c). However, the proposed definition does not clearly indicate that products not covered by the existing safety standard, i.e., so-called luxury lighters, are excluded as well. While the Association understands that it was staff's intention to exclude such products, the language in the proposed definition could be clearer and less ambiguous. Accordingly, the Association has simply proposed that an additional section be added to the rule that specifies that products that are not novelty lighters and that

have an ex-factory price or Customs value greater than $2.00 are not covered by the new rule. This proposal is totally consistent with the existing safety standard and the staff's intention in drafting the new rule. It simply spells the exclusion out more clearly.

It should be again highlighted that the safety risk from luxury lighters continues to be de minimis. There have been few, if any, incidents involving these more expensive lighters. These lighters are designed differently and operate differently than disposable lighters. Moreover, the quantity of luxury lighters sold in the U.S. continues to be relatively small.

3. Eliminate Exception for Lighters With More than 10 Ounces of Fuel

The proposed rule contains an exception for multi-purpose lighters containing more than 10 ounces of fuel. Certainly, this seems reasonable in that most utility lighters contain less than 2 ounces of fuel. However, it seems unnecessary to the Association that there be any limit on the amount of fuel. We understand that staff is trying to distinguish multi-purpose lighters from propane torches. However, the Association is aware of certain commercially available "lighter" attachments that work with any quantity of fuel. Accordingly, the Association recommends that the 10 ounce limitation be eliminated.

C. Opposition to Design Requirement

Another new issue which arose in the September Briefing Package is the imposition of a design requirement to address the

issue of flashback. See proposed 16 C.R.R. Part 1212.3(b)(1). While the Association continues to believe that child resistancy features may increase the likelihood of flashback from grills or other sources of flame, the entire industry is nonetheless opposed to any type of design requirement whatsoever. As a general proposition, the Commission normally prefers to avoid any limitation on design in product standards. Indeed, the entire focus of this rulemaking has been on issuing performance standards. Accordingly, the industry was quite surprised that the Commission decided to add a design requirement at the last minute.

The proposed design requirement essentially mandates a design which is currently marketed by a single company. Even this company has filed comments in opposition to the design limitation.

As an alternative, the Lighter Association offers a general performance standard that utility lighters function in such a manner as to reduce the possibility of flashback. The Association urges adoption of the proposed alternative language below:

1212.3 Requirements for Utility Lighters....

(b)(1) A utility lighter must:

(i) function in a manner so as to reduce the possibility of flashback fire, when used in a normal and convenient manner,

(ii) return automatically to the child-resistant condition either when or before the user lets go of the utility lighter,

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

(iv) comply with section 1212.3 for the reasonably expected life of the lighter and,

(v) not be capable of having its child-resistant mechanism easily overridden or easily deactivated, or prevented from complying with section 1212.3.

(b)(2) A micro-torch lighter must:...

D. Opposition to New Definition of "Easily Overridden"

Another new issue which arose in this version of the proposed rule is language in the text accompanying the proposed rule which purports to define easily overridden "...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." 63 Fed. Reg. 52409 (1998) This statement is wholly inappropriate in that the term "easily overridden" is a part of the existing safety standard for cigarette lighters. That standard went through the normal Sections 7 and 9 rulemaking process. In the case of this standard, the rulemaking took over five years. Never was the term "easily overridden", defined. Certainly, it was never, ever defined as being easily disabled with a common household tool. If the Commission wants to define or redefine the term "easily overridden", this is a material change and, therefore, it must follow normal rulemaking procedures. See 15 U.S.C. § 2058(h).

This is a very significant issue because no lighter is designed to this standard. The current child resistancy standard for disposable and novelty lighters requires that a lighter be child-resistant pursuant to an approved test protocol. Nothing in

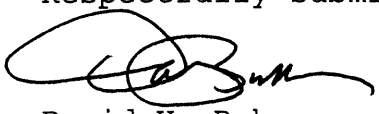
the protocol states or permits the user to try and defeat the mechanism with a knife!

Essentially this new language would require that a lighter be tamper-proof. If that is the Commission's intention, it must make its case in accordance with Sections 7 and 9 of the CSPA.

IV. CONCLUSION

In conclusion, the Association supports the concept of child resistancy for utility lighters, subject to the limitations set forth in Section III above.

Respectfully submitted,



David H. Baker
General Counsel

December 14, 1998

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VIA FACSIMILE AND REGULAR MAIL

December 17, 1998

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

Re: Multi-Purpose Lighters
Notice of Proposed Rulemaking

Dear Sir or Madam:

Enclosed herewith please find five (5) copies of BIC Corporation's comments in response to the above-referenced Notice of Proposed Rulemaking.

Very truly yours,

BIC CORPORATION

Thomas M. Kelleher

Thomas M. Kelleher
Senior Vice President-Administration,
General Counsel & Secretary

TMK/ljo
Enclosures
cc: Barbara Jacobson, CPSC, Via Facsimile

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BEFORE THE
U.S. CONSUMER PRODUCT SAFETY COMMISSION

MULTI-PURPOSE LIGHTERS; NOTICE OF PROPOSED RULEMAKING

COMMENTS OF BIC CORPORATION

Thomas M. Kelleher
Senior Vice President-Administration,
General Counsel & Secretary
BIC Corporation
500 BIC Drive
Milford, CT 06460
(203) 783-2000

December 14, 1998

BEFORE THE
U.S. CONSUMER PRODUCT SAFETY COMMISSION

MULTI-PURPOSE LIGHTERS; NOTICE OF
PROPOSED RULEMAKING

COMMENTS OF BIC CORPORATION

INTRODUCTION

By Federal Register Notice published September 30, 1998, the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") sought comments on a proposed rule mandating performance standards for the child resistance of multi-purpose lighters. See 63 Fed. Reg. 52397 (September 30, 1998). By this filing, BIC Corporation submits its formal comments generally in support of the proposed rule.

IDENTIFICATION OF COMMENTOR

BIC Corporation ("BIC"), a New York corporation, is a diversified corporation primarily engaged in the manufacture and sale of high quality, low cost consumer products. These products include writing instruments, lighters, shavers, correction fluids, and the BIC® SureStart™ Child-Resistant Utility Lighter (the "SureStart Utility Lighter"). While most of BIC Corporation's operations are conducted in the United States (the SureStart Utility Lighter is manufactured in South Carolina), operations are also conducted at other locations in North and Central America. Societé BIC S.A. is the corporation's majority shareholder.

POSITION OF COMMENTOR

A. General Support of Proposed Rule

As a leading manufacturer and distributor of disposable lighters, and now the manufacturer and distributor of the BIC SureStart Utility Lighter, BIC is a member of and active participant in every major national and international organization dealing with lighter performance and safety. These organizations include the American Society for Testing and Materials (ASTM) Subcommittee F15.02 (Safety Standards for Lighters), the U.S. Lighter Association, Inc., the American National Standards Institute (ANSI), the European Federation of Lighter Manufacturers, the British Standards Institution (BSI) Technical Committee CCM/32 (Matches and Lighters), the Association Francaise de Normalisation (AFNOR), and the International Standards Organization (ISO) Technical Committee 61/Working Group 1 (Lighters - Safety Specification).

BIC has regularly interacted with and participated in proceedings before the CPSC, including strongly supporting and actively assisting in the promulgation of the Safety Standard for Cigarette Lighters (16 CFR 1210).

BIC supports a child resistancy rule for utility lighters, subject to the concerns set forth below. In addition, BIC, as a founding and active member, supports both the comments and concerns submitted by the Lighter Association, Inc. to the CPSC, on December 14, 1998, in response to the Notice of Proposed Rulemaking ("NPR").

B. Opposition to Design Requirement

The NPR states the following:

- The Commission "proposes a rule mandating performance standards for the child resistance of multi-purpose lighters" (emphasis added). 63 Fed. Reg. 52397 (1998).

- "[T]he Commission points out that, just like the cigarette lighter standard, the proposed standard for multi-purpose lighters is drafted as a performance standard rather than a design standard" (emphasis added). 63 Fed. Reg. 52410 (1998).

- "[T]he rule contains performance requirements, rather than requiring a specific technology, it allows flexibility to firms in designing child-resistant mechanisms" (emphasis added). 63 Fed. Reg. 52413 (1998).

Yet, in spite of these unequivocal statements that the Commission is proposing a "performance standard," the NPR states:

> A multi-purpose lighter must: (1) allow multiple operations of the ignition mechanism (with fuel flow) without further operation of the child-resistant mechanism, unless the lighter requires only one motion to both: (i) overcome the child-resistant mechanism and (ii) ignite the fuel. 63 Fed. Reg. 52416 (1998).

The BIC SureStart Child-Resistant Utility Lighter meets this requirement, nevertheless, BIC is adamantly opposed to any form of design requirement whatsoever.

When formulating a rule or standard regarding a particular product, it is always preferable to establish performance criteria, as opposed to design criteria. Once there is an agreement regarding how a given product should perform (e.g., resistant to successful operation by children younger than 5 years of age), it should be left to the ingenuity of the individual designers and manufacturers to devise the best means to meet the performance criteria. To do otherwise would stifle creativity, preclude someone from developing a better way to meet the performance criteria, and possibly create unnecessary patent issues.

Had the Commission taken a similar approach (i.e., requiring design features) when drafting the Safety Standard for Cigarette Lighters (16 CFR 1210), consumers would still be dealing with cumbersome over-and-up latches, etc., and the industry would have been precluded from designing and introducing more user-friendly, yet still child-resistant, lighter models.

BIC strongly urges the Commission to adopt the language proposed by the Lighter Association as a means to address the Commission's concerns regarding a perceived "flashback" problem.

C. Opposition to New Definition of "Easily Overridden"

At 63 Fed. Reg. 52409 (1998) the Commission states:

> 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).

The Safety Standard for Cigarette Lighters (16 CFR 1210), which went into effect on July 12, 1993, simply states that the child-resistant mechanism or system must "not be easily overridden or deactivated."

It is this writer's understanding that, in the five and a half years that the Safety Standard for Cigarette Lighters has been in effect, the Commission has, on numerous occasions, discussed and addressed the issue of whether a given mechanism or system was/could be easily overridden or deactivated. Not once during that period, to this writer's knowledge, has the Commission opined, formally or informally, that this requires that the child-resistant mechanism cannot easily be disabled with a common household tool.

This new interpretation, which appears nowhere else in the documentation underlying this NPR or the existing Safety Standard for Cigarette Lighters, is totally inappropriate for a number of reasons.

As noted above, the phrase "easily overridden" is a part of the existing Safety Standard for Cigarette Lighters. That Standard went through the required (and lengthy, i.e., five plus years) rulemaking process. The term "easily overridden" was never defined nor, to this writer's knowledge, was it ever challenged as written. And, as noted above, terms such as "common household tool," "knife," and "pliers," do not appear anywhere in the underlying documentation.

If the Commission wants to define or redefine the term "easily overridden" (thereby creating what, in essence, would be an unreasonable and unworkable "tamper-proof" requirement), this amounts to a material change and, therefore, it must follow normal rulemaking procedures. See 15 U.S.C. § 2058(h).

D. Test Protocol

The NPR, at 63 Fed. Reg. 52408 (1998), states: "The baseline results indicate that when the on/off switch is left unlocked, as is expected to be the case in many households, most of the children in the test panel could operate the lighters" (emphasis added).

The proposed test protocol provides that, "For multi-purpose lighters with an 'off/on' switch, the surrogate lighter shall be given to the child with the switch in the 'off,' or locked, position" (16 CFR § 1212.4(f)).

These two statements are incongruous. BIC agrees that it should be expected (or, at least for purposes of the test protocol, assumed) that the on/off switch will be left in the unlocked position in many households. Therefore, the surrogate lighter should be given to the child in the unlocked position.

This proposed change to the test protocol becomes all the more important when one realizes that a manufacturer could design a multi-purpose lighter with an "on/off" switch which may be very difficult for a child to unlock and a simple child-resistant mechanism which, in and of itself, would not meet the 85 percent child resistancy requirement. The acknowledged propensity of many adults to leave multi-purpose lighters in the unlocked position, especially if the "on/off" switch were difficult to unlock, would seem to dictate that the test protocol require that the surrogate multi-purpose lighter be given to the child in the unlocked position, in order to ensure accurate test results as to the true child resistance of the product.

On a related note, the terms "on/off" and "unlocked/locked" should be clarified throughout the standard to eliminate any confusion.

Another concern regarding the test protocol has to do with the test procedure itself, specifically that portion which reads that the adult tester shall:

> Hold the surrogate multi-purpose lighter in a vertical position in one hand with the child-resistant feature exposed (not covered by fingers, thumb, etc.). Orient the child-resistant mechanism on the multi-purpose lighter toward the children. 16 CFR 1212.4(f)(3).

This provision should be clarified, e.g., to provide that the adult tester should hold the surrogate multi-purpose lighter as a consumer typically uses the product (in a horizontal position with the wand pointed downward at a 45° angle), making sure that the children can clearly see the area (the feature itself may be hidden) that contains the child-resistant feature and any motions required to activate the multi-purpose lighter.

E. Findings

BIC takes exception to the finding that, "The standard's requirements should ensure that most children under 52 months of age cannot operate the lighter" (16 CFR § 1212.5(c)).

One must question if there is any data or empirical evidence to support such a statement. The collective wisdom derived from the experience with child-resistant cigarette lighters is that a child-resistant feature may slow down a determined young child from ultimately operating the product, but no one can say anything is "child-proof." Everyone must recognize that nothing is "child-proof" and that there is absolutely no substitute for proper adult supervision.

F. Definitions

The proposed definition of multi-purpose lighter excludes "devices containing more than 10 oz. of fuel" (16 CFR 1212.2(a)(2)(ii)).

There should be no limit on the amount of fuel, especially in light of the fact that there is currently available in the marketplace "lighter" attachments, sold without any fuel or fuel reservoir, that work with any quantity of fuel. Therefore, the 10 ounce exception should be eliminated.

G. Statutory Authority

By Federal Register Notice published September 30, 1998, the CPSC sought comments on its proposal to determine by rule that it is in the public interest to issue a safety standard for multi-purpose lighters, under the Consumer Product Safety Act ("CPSA"), rather than under the Federal Hazardous Substances Act ("FHSA") or the Poison Prevention Packaging Act ("PPPA"). See 63 Fed. Reg. 52394 (September 30, 1998).

While comments on this aspect of the proposed rule (16 CFR 1145) were to have been received by October 30, 1998, and while BIC fully supports the Commission's decision to proceed under the CPSA, BIC is compelled to comment on and strongly object to the following aspect to the Notice:

Under that portion of the proposed rule entitled "Supplementary Information" (more specifically, Section C.3. thereof, 63 Fed. Reg. 52395 (September 30, 1998)), the Commission states:

> A multi-purpose lighter meets the definition of the term 'package' set forth in section 2(3) of the PPPA, 15 U.S.C. 1471(3), because it is the 'immediate container' of a hazardous substance.

After careful study, as more fully set forth below, BIC strongly disagrees with the CPSC's characterization of multi-purpose lighters as "packages" for butane as being contrary to both the plain meaning and legislative history of the PPPA and the decisions of at least two United States District Courts.

Under the PPPA, the CPSC has authority to establish standards for packages of hazardous substances that are used within the household. 15 U.S.C. § 1261(f), 15 U.S.C. § 1472(a). "Package" is defined under the PPPA as:

> . . . the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household . . . .

15 U.S.C. § 1471(3). Neither the legislative history of the PPPA nor the case law interpreting the statute support the CPSC's assertion that a multi-purpose lighter is a "package" as defined by the PPPA "because it is the 'immediate container' in which a hazardous substance is contained for use by individuals in a household."

The PPPA was enacted to provide "additional measures to curb accidental poisonings which largely involve small children." H. Rep. No. 1642, 91st Cong. 1st Sess. 1, reprinted in 1970 U.S. Code Cong. & Ad. News 5326 (emphasis added). The House Report's list of substances to be regulated under the PPPA are all products that are dispensed from conventional bottles or cans which are incidental to the function of the product – cleaning and polishing agents, cosmetics, pesticides, turpentine and related paint products. Id.

What was then the Department of Health, Education and Welfare ("HEW") (responsible for implementing the PPPA until the CPSC was created) also recognized the plain meaning of the legislation. In its report on the legislation HEW noted: "We believe that many child poisoning incidents could be averted . . . by relatively simple modifications in product containers or closures." Report of the Department of Health, Education and Welfare on H.R. 6179, reprinted in 1970 U.C. Code Cong. & Ad. News 5336, 5339.

A multi-purpose lighter, by contrast, is a mechanical device carefully designed to produce a flame by igniting the butane which is an integral part of the product. The multi-purpose

lighter's value to consumers comes from its ability to convert the butane into energy at the time of use, not from the fact that it holds butane. The operation of the ignition mechanism, which instantly converts the gas to flame, shows that the multi-purpose lighter is not a dispenser for butane. In other words, a butane reservoir is an integral part of the multi-purpose lighter as a flame-producing device, but an ignition mechanism would not be part of a container for butane.

Overall, the legislative history evidences Congress's intent to give the PPPA a focused application. Congress clearly did not intend that the term "package" be expanded beyond ordinary usage to encompass a mechanical device such as a multi-purpose lighter.

At least two courts have specifically considered and rejected the assertion that lighters are "packages" within the meaning of the PPPA. Bondie v. BIC Corporation, 739 F. Supp. 346 (E.D. Mich. 1990); Curtis v. Universal Match Corp., 778 F. Supp. 1421 (E.D. Tenn. 1991), aff'd without op., 966 F. 2d 1451 (6th Cir. 1992). In Bondie, the court rejected the plaintiffs' contention that a butane lighter was subject to PPPA regulations, holding that "a lighter is not a package for butane, and thus [the] PPPA does not apply." Bondie, 739 F. Supp. 346, 353. In reaching this conclusion, the Bondie court specifically noted the CPSC General Counsel's own equivocal assessment in a 1985 memorandum that "the lighter itself, as immediate container of the butane probably would be a 'package' under the PPPA." Memorandum from Daniel R. Levinson, et al., to Dr. Leonard DeFiore, et al., at 2 (May 29, 1985) (emphasis added).

In Curtis v. Universal Match Corp., the court also rejected the characterization of lighters as "packages" as defined by the PPPA, noting that the plaintiffs did not complain "that the lighter is defective because a child can open the lighter or the alleged 'package' and

be injuriously exposed to butane." 777 F. Supp. 1421, 1431. The court described a lighter as "an integrated product which ignites butane to produce a flame," and held:

> The plaintiff's interpretation of the PPPA strains the statutes and the regulations too far beyond their proper limits, and finds support in neither the plain language of the PPPA nor its legislative history. The Court holds that the disposable cigarette lighter in question is not a 'package' for butane and the PPPA does not apply.

Id. Thus, at least two courts have specifically considered and rejected the notion that lighters are "packages" within the meaning of the PPPA.

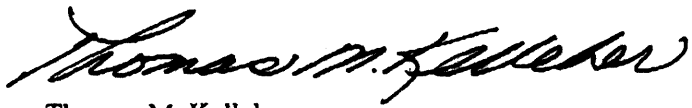
Given the Congress's clear intent and the decisions cited above, the Commission's assertion that a multi-purpose lighter is a "package" subject to the PPPA is unsupported by fact and law, and should be corrected in any final regulation.

CONCLUSION

BIC fully supports the concept of child resistancy for utility lighters and the proposed Safety Standard for Multi-Purpose Lighters, subject to both the comments set forth above and those submitted by the Lighter Association.

Respectfully submitted,

BIC CORPORATION



Thomas M. Kelleher
Senior Vice President-Administration,
General Counsel & Secretary

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