Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR 1015.

§ 1212.18 Refusal of Importation

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1212. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart, or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard or for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product either fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C -- Stockpiling

§ 1212.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, "base period" means the most recent calendar year prior to [insert date of publication of a final rule in the FEDERAL REGISTER].

(c) *Prohibited act.* Manufacturers and importers of multi-purpose lighters shall not manufacture or import such lighters that do not comply with the requirements of this part between the date of publication of the final rule in the FEDERAL REGISTER and the date that is 365 days after publication of the final rule in

the FEDERAL REGISTER, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

(d) *Reporting and recordkeeping requirements.* All firms and persons who make or import multi-purpose lighters, after the date of publication of this rule, that do not meet the requirements of this standard, shall supply the Commission's Office of Compliance with:

(1) Supporting information to establish the number of multi-purpose lighters made or imported during the base period. This information shall be submitted within 30 days of publication of any final rule.

(2) Supporting information to establish the number of lighters made or imported during the year following publication of the final rule. This information shall be submitted within 10 days after the lighters are shipped.

(3) Supporting information shall be sufficient to identify the manufacturer or importer, the party to which the lighters

were sold, the destination of the lighters, and shall include copies of relevant invoices and importation documents.

Dated: _____, 1998.

_____

Sadye E. Dunn, Secretary

Consumer Product Safety Commission

TAB H

DRAFT

Billing Code 6355-01P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated with Multi-Purpose Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Elsewhere in this issue of the **FEDERAL REGISTER**, the Commission proposes a safety standard for multi-purpose lighters to reduce risks of injury that are associated with the lighters because they can be operated by young children. In this notice, the Commission proposes to determine by rule, under section 30(d) of the Consumer Product Safety Act, that it is in the public interest to issue the safety standard, or to take any other regulatory action to address risks of injury that are associated with multi-purpose lighters due to the fact that they can be operated by children, under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act.

DATE: Comments on the proposed rule should be received by [insert date that is 30 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301)504-0800. Comments may also be filed by telefacsimile to (301) 504-0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Multi-Purpose Lighters: CPSA 30(d) Rule."

FOR FURTHER INFORMATION CONTACT: Concerning legal aspects: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504-0980, ext. 2217.

Concerning the proposed Safety Standard for Multi-Purpose Lighters: Barbara Jacobson, Project Manager for Multi-Purpose Lighters, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0477, ext. 1206; email bjacobson@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. INTRODUCTION

The Commission proposes to determine by rule that it will regulate those risks of death and injury that are associated with multi-purpose lighters, and that are due to the fact that the lighters can be operated by young children, under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084. Young children do not appreciate all of the consequences of using the product. Those consequences can include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the multi-purpose lighter, or other persons. These risks will be regulated under the CPSA, rather than under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, or the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471- 1476.

Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product that could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **FEDERAL REGISTER**, the Commission is proposing a rule under the CPSA that will impose child-resistance requirements on multi-purpose lighters.

The Commission recognizes that it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than are the authorities of the FHSA or the PPPA.

B. BACKGROUND

Multi-purpose lighters are defined as follows:

(b)(1) "Multi-purpose lighter," (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match) means: a hand-held, self-igniting, flame-producing product that operates on fuel and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices or pilot lights.

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

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

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

(iii) Matches.

In the FEDERAL REGISTER of January 16, 1997, the Commission published an advance notice of proposed rulemaking ("ANPR") to

begin a proceeding for development of requirements for multi-purpose lighters to address risks of injuries from fires started by children playing with multi-purpose lighters. 62 FR 2327.

The CPSC's staff has identified 178 fires occurring since January 1988 that were started by children under age 5 who were playing with multi-purpose lighters. These fires resulted in a total of 29 deaths and 71 injuries.

Of the statutes administered by the CPSC, the CPSA, the FHSA, and the PPPA provide authority for a child-resistance requirement for multi-purpose lighters. The possible regulatory options include issuing a consumer product safety standard under provisions of the CPSA, a banning rule under provisions of the FHSA, and a rule to establish requirements to make multi-purpose lighters "significantly difficult for children under five years of age" to operate under provisions of the PPPA.

C. STATUTORY AUTHORITY

1. *The Consumer Product Safety Act*. A multi-purpose lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article that is produced or distributed for sale to consumers for use in or around a household or school, in recreation, or otherwise. Sections 7 and 9 of the CPSA, 15 U.S.C. 2056, 2058, authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary

to prevent or reduce an unreasonable risk of injury associated with a consumer product."

Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA, 15 U.S.C. 2063(c), requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA, 15 U.S.C. 2063(b), also authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label. In that case, the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser.

Section 16(b) of the CPSA, 15 U.S.C. 2065(b), authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program. Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing

or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a specified base period ending before the promulgation of the consumer product safety rule.

2. *The Federal Hazardous Substances Act*. Under the FHSA, in order to be a hazardous substance, a product must be toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or capable of generating pressure.[1] Butane or petroleum distillate fuel contained within a multi-purpose lighter meets the definition of "hazardous substance" given in section 2(f)1(A) of the FHSA, 15 U.S.C. 1261(f)1(A), because it is "flammable," and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of customary or reasonably foreseeable use. Multi-purpose lighters that contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA, 15 U.S.C. 1261(p), because they contain a hazardous substance that is intended or packaged in a form suitable for use in the household.

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[1]Additional hazards can be addressed for children's products. Multi-purpose lighters, however, are not intended for use by children within the meaning of the FHSA.

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household, if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance.

Section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(1)(B), authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: that is, a rule banning all multi-purpose lighters that do not meet certain performance or design requirements specified in the rule.

3. *The Poison Prevention Packaging Act.* Sections 2, 3, and 5 of the PPPA, 15 U.S.C. 1471, 1472, and 1474, authorize the Commission to issue rules to require packaging that is "significantly difficult" for children younger than 5 years of age to open, or "obtain a toxic or harmful amount" from, any "hazardous substance" as that term is defined in the FHSA. To

issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance.

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. However, Section 4(a) of the PPPA, 15 U.S.C. 1473(a), provides that, for the purpose of making any substance that is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that (1) the substance is also supplied in child-resistant packaging; and (2) the conventional packaging is labeled with the statement "This package for households without young children."

D. CHOICE OF STATUTE

The Commission has preliminarily determined that the CPSA is the most appropriate statute to address risks of injury associated with multi-purpose lighters that can be operated by children. Those risks of injury arise because multi-purpose lighters are mechanical devices intended to produce flame and can be operated by children.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to multi-purpose lighters when such requirements are "reasonably

necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with multi-purpose lighters.

The CPSA also authorizes the Commission to issue certification rules for products subject to a consumer product safety standard. Such rules may contain a prescribed testing program upon which the certificate of the manufacturer or private labeler is based. The effectiveness of the rule for multi-purpose lighters that is proposed elsewhere in this issue of the **FEDERAL REGISTER** depends in large part on the testing conducted by the manufacturer under the certification rule. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is explicit in this regard and, thus, is preferable.

The Commission has preliminarily determined that a stockpiling rule is in the public interest because it will help ensure the effectiveness of any standard for multi-purpose lighters. Neither the FHSA or the PPPA explicitly authorizes such a rule.

The FHSA includes provisions that authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that contains or consists of a

"hazardous substance." The FHSA authorizes the Commission to regulate multi-purpose lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term in defined in the FHSA. However, no provision of the FHSA expressly authorizes the Commission to address a hazard that is associated with the mechanical operation of a multi-purpose lighter as a flame-producing device. The changes needed to reduce the risk of child-play fires also involve the mechanical characteristics of the lighter's operating mechanism. Thus, the CPSA is a more appropriate statute for regulating the mechanical risk of child resistance.

Under the PPPA, the Commission may issue a rule requiring the "package" -- that is, the multi-purpose lighter -- to be "significantly difficult" for children younger than 5 years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the multi-purpose lighter or "obtain a toxic or harmful amount" of the fuel in the multi-purpose lighter is not the risk of injury associated with multi-purpose lighters that is under consideration by the Commission. Rather, it is the risk of death and injury from fires started by children with multi-purpose lighters. This risk arises from the mechanical operation of the multi-purpose lighter, and from the ability of young children to manipulate the multi-purpose lighter to produce a flame.

Additionally, the PPPA allows the manufacturer of a substance subject to special-packaging requirements to use packaging that is not child-resistant if (1) the substance is also distributed in child-resistant packages and (2) the packages that are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant multi-purpose lighters of the types covered by the rule, could significantly impair the effectiveness of the rule to reduce the risk of injury.

Therefore, for the reasons given above, the Commission is proposing a rule that would determine that it is in the public interest to regulate under the CPSA any risks of injury associated with the fact that multi-purpose lighters can be operated by young children. If issued, this finding will be codified at 16 CFR 1145.17. The Commission proposes that any final rule shall become effective immediately upon its publication in the **FEDERAL REGISTER**. 5 U.S.C. 553(d)(3). (There is a proposed 1-year delayed effective date for the safety standard itself.)

Section 30(d) of the CPSA provides that the comment period cannot exceed 30 days for a rule finding that it is in the public interest to regulate under the CPSA rather than another act. 15 U.S.C. 2079(d). Accordingly, comments should be received by the Commission by [insert date that is 30 days after publication].

D. IMPACT ON SMALL ENTITIES

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. A final regulatory analysis is required when a final rule is issued. 5 U.S.C. 604. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The regulation issued below does not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce risks of injury associated with multi-purpose lighters that can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA. In issuing the safety standard for multi-purpose lighters, the Commission will follow all applicable provisions of the CPSA. The provisions of the RFA also apply to the safety standard, and the Commission has prepared an initial certification that the Safety Standard for Multi-Purpose Lighters, if issued, will not have a significant economic impact on a substantial number of small entities. However, because a final rule under section 30(d) of the CPSA would impose no obligation on any person or firm, the Commission

hereby certifies that the 30(d) rule, if issued, will not have a significant economic impact on a substantial number of small entities.

F. ENVIRONMENTAL CONSIDERATIONS

The rule proposed below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment, and the Commission has no information that would indicate otherwise. Therefore, neither an environmental assessment nor an environmental impact statement is required.

G. CONCLUSION

After consideration of the information discussed above, the Commission finds that if regulatory action is needed to address risks of injury associated with multi-purpose lighters due to the fact that they can be operated by children, it is in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This determination does not affect other hazards associated with multi-purpose lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel that is flammable or toxic or generates pressure. Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a multi-purpose lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA. However, a multi-purpose lighter is more than a container or a package of a

hazardous substance. It is a device that incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame. The Commission determines that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device due to the fact that it can be operated by children to produce flame. The Commission also determines that it is in the public interest to regulate this risk associated with multi-purpose lighters under the CPSA because the certification and stockpiling provisions in the proposed rule are necessary to help ensure the effectiveness of the rule. Such provisions are most appropriate, and only explicitly available, under the CPSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Fire protection, Infants and children, Packaging and containers, Multi-purpose lighters.

For the reasons given above, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as follows:

PART 1145--REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for Part 1145 is amended to read as follows: Authority: 15 U.S.C. 2079(d).

2. A new § 1145.17 is added to read as follows:

§ 1145.17 Multi-purpose lighters that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that multi-purpose lighters can be operated by young children, rather than to regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with multi-purpose lighters because the lighters can be operated by young children shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters, and that are based solely on the fact that the lighters

contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: _____, 1998.

_____

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission