UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

CPSC/OFFICE OF THE SECRETARY

1999 JUL 19 A 11

Ballot Vote Sheet

Date: July 16, 1999

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 : Reproposal of Part of Multi-Purpose Lighter Rule

BALLOT VOTE DUE JUL 26 1999

Attached is a staff memorandum recommending that the Commission seek public comment on a change to the proposed rule for multi-purpose lighters to require that lighters be tested in the "on," or unlocked, position. A draft Federal Register notice to seek such comment is attached at Tab C of the staff's memorandum. Please indicate your vote on the following options:

I. PUBLISH THE ATTACHED FEDERAL REGISTER NOTICE AS DRAFTED.

(Signature) (Date)

II. PUBLISH THE ATTACHED FEDERAL REGISTER NOTICE WITH CHANGES (please specify).

(Signature) (Date)

NOTE: This document has not been reviewed or accepted by the Commission.
Initial Date 7/16/99

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: http://www.cpsc.gov

CPSA 6 (b)(1) Cleared
No Mfrs/PrvtLblrs
Products Identified
Excepted

III. DO NOT PUBLISH THE NOTICE.

_____ _____

(Signature) (Date)

Attachment

Instructions/Comments:

MULTI-PURPOSE LIGHTERS

Request for Additional Comment on the Proposed Test Protocol

Barbara Jacobson,
Project Manager
for Multi-Purpose Lighters
Directorate for Health Sciences
(301) 504-0477 ext. 1206
bjacobson@cpsc.gov

NOTE: This document has not been reviewed or accepted by the Commission.
Initial [illegible] Date 7/16/99

CPSA 6 (b)(1) Cleared
7/16/99
No Mfrs/PrvtLblrs or Products Identified
Excepted by [illegible]
Firms Notified.

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

JUL 16 1999

MEMORANDUM

TO : The Commission
Sadye E. Dunn, Secretary

THROUGH : Jeffrey S. Bromme, General Counsel
Pamela Gilbert, Executive Director

FROM : Ronald L. Medford, Assistant Executive Director
for Hazard Identification and Reduction
Barbara J. Jacobson, Project Manager
Directorate for Health Sciences (301) 504-0477 ext. 1206

SUBJECT : Multi-Purpose Lighters – Recommendation to Publish a Request for Additional Comment on the Proposed Test Protocol

The U.S. Consumer Product Safety Commission (CPSC) staff recommends that the Commission publish a change in Section 1212.4 of the test protocol that was published in the September 30, 1998, Notice of Proposed Rulemaking (NPR). The change was suggested by the BIC Corporation (BIC) in their comments on the NPR. Publication in the Federal Register would provide interested parties an opportunity to comment before the Commission votes on the requirements of the final rule.

The test to determine if a multi-purpose lighter is child-resistant uses a panel of children to test a surrogate lighter representing the production lighter. At the beginning of the ten-minute test each child is given a lighter and asked to try to operate it. As published in the NPR, the lighter is given to the children with any on/off switch in the "off," or locked, position. With the switch in the locked position, the children must first turn the switch on and then operate the lighter.

BIC comments that multi-purpose lighters with on/off switches should be tested with the switch in the "on," or unlocked, position because consumers can be expected to often leave the switch unlocked. BIC states that a manufacturer could

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Excepted
Firms Notified.

design a lighter with a switch that is very difficult for a child to unlock, and a very simple child-resistant mechanism, which, alone, would not meet the requirements for child-resistance.

The staff concurs with BIC's recommendation. Testing lighters with the switch in the locked position treats the switch as part of the child-resistant mechanism. On/off switches are not adequate to serve this purpose. First, as demonstrated by the Commission's baseline testing, most children in the test panel (42 to 51 months old) can operate the switches. The child-resistance of the four lighters tested with the switch in the locked position ranged from 24 to 41 percent. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable. To provide this protection, intended users must return the switch to the locked position every time the lighter is used. Even the most careful adults may forget the switch; intend to turn if off, but be distracted and fail to follow through; or perceive that they have turned it off when in fact they have not. Therefore, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers.

Attached is a memorandum from the Division of Human Factors that provides the basis for the staff recommendation (TAB A). The memorandum from the Directorate of Economic Analysis at TAB B says that making this change to the protocol will have no significant effect on the findings reported in the preliminary regulatory analysis as published in the NPR. TAB C provides a draft Federal Register notice, prepared by the Office of the General Counsel, for Commission consideration. The draft Federal Register notice includes a provision for extending the time for issuing a final rule.

TAB A

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: 4 June, 1999

TO: Barbara Jacobson, EH
Project Manager, Multi-Purpose Lighters

Through: Jacqueline Elder, Deputy Assistant Executive Director
Office of Hazard Identification and Reduction

Robert B. Ochsman, Ph.D., Director, Division of Human Factors

FROM: Catherine A. Sedney, ESHF (x1282) CAS

SUBJECT: Response to Comments on Notice of Proposed Rulemaking (NPR) for Multi-Purpose Lighters

This memorandum presents the response of the Division of Human Factors (ESHF) to comments received from the BIC Corporation regarding the test protocol specified in Section 1212.4 of the September 30, 1998 NPR.

Background

The proposed protocol provides that during testing for child-resistance, multi-purpose lighters with an on/off switch will be tested with the switch in the off, or locked, position. On/off switches block the operating mechanism of the lighter when in the off, or locked, position. The mechanism is released when the switch is in the on, or unlocked, position. In currently marketed lighters, the switch does not automatically reset to the locked position when the lighter is operated. During testing to determine the baseline child-resistance (CR) of currently marketed multi-purpose lighters, four lighters with on/off switches were tested with the switch in the locked position. Children who were able to operate the lighters moved the switch to the unlocked position and pulled the trigger. The child-resistance of the lighters so tested ranged from 24 to 41 percent, well below the proposed requirement of 85 percent. The lighter with a CR level of 41 percent was retested with the switch unlocked, and its CR level dropped to 12 percent.

Comment

In December 1998 comments on the protocol, BIC cites the following statement in the NPR: "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."

The firm agrees that it should be expected that many consumers will leave the lighter in the unlocked position. Further, it points out that a manufacturer could design a lighter with an on/off switch that is very difficult for a child to unlock, and a very simple child-resistance mechanism which, in itself, would not meet the 85 percent child-resistance requirement. BIC therefore contends that multi-purpose lighters with on/off switches should be tested with the switch in the unlocked position.

Response

ESHF concurs with BIC's recommended modification to the test protocol. Testing lighters with the switches in the locked position treats the switch as part of the child-resistance mechanism. On/off switches are not adequate to serve this purpose. First, as demonstrated by the Commission's baseline testing, most children in the panel age group (42 to 51 months old) can operate the switches, which are similar to those used on many types of toys. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable, as intended users must return the switch to the off position every time the lighter is used. Even the most careful adults may forget the switch; intend to turn it off, but be distracted and fail to follow through; or perceive that they have turned it off when in fact they have not. Thus, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers. On this basis, ESHF concurs that the test protocol should require that lighters with on/off switches that do not automatically reset to the off position be tested with the switch in the unlocked position.

TAB B

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: June 22, 1999

TO : Barbara Jacobson
Project Manager, Multi-Purpose Lighters

THROUGH: Warren Prunella
AED, Directorate for Economic Analysis

FROM : Robert Franklin, Economist

SUBJECT : Effect of Protocol Change on Regulatory Analysis

The staff is recommending a change in the protocol for testing multi-purpose lighters that was published on 30 September 1998. The protocol would be changed to require that, if a multi-purpose lighter has an ON/OFF switch that does not automatically reset after use, the surrogate be given to the children in the test panels with the switch in the ON (or unlocked) position. This change has no significant effect on findings reported in the preliminary regulatory analysis. There may be a small increase in the expected benefits as a result of this change.

The preliminary regulatory analysis was based on the costs of developing cigarette lighters with child-resistant mechanisms. Generally, cigarette lighters do not have ON/OFF switches. Consequently, the estimates used in the regulatory analysis for the costs of developing child-resistant mechanisms for multi-purpose lighters did not presume that multi-purpose lighters would have ON/OFF switches that were not integral to the child-resistant mechanisms.

CPSC baseline testing shows that more children are unable to operate a multi-purpose lighter if the ON/OFF switch is in the locked position when it is given to them than were unable to operate the lighter when the switch was in the unlocked position. Thus, it is possible that some models of multi-purpose lighters, that would otherwise fail the certification tests, could pass the certification tests if the surrogates were tested with the ON/OFF switch initially in the locked position. Changing the protocol may, therefore, have an adverse impact on manufacturers whose initial child-resistant designs were only marginally effective. However, the regulatory analysis assumes that some manufacturers may need to revise their designs if their initial attempts to certify their multi-purpose lighters fail. Thus, this situation has already been allowed for in the regulatory analysis.

TAB C

DRAFT Billing Code 6355-01P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Multi-Purpose Lighters; Request for Additional Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission ("CPSC" or "Commission") previously proposed a rule that would require multi-purpose lighters to resist operation by children under age 5. 63 FR 52397 (September 30, 1998); *see also* 63 FR at 52394; 63 FR 69030 (December 15, 1998). In that proposal, the degree of child resistance is measured by a test with a panel of children to see how many can operate a multi-purpose lighter that has its on/off switch in the off, or locked, position. In this notice, the Commission proposes that the child-panel tests instead be conducted with the on/off switch in the on, or unlocked, position. This will provide additional protection when the users of the lighters do not return the switch to the off position after use. The Commission solicits written and oral comments on this change. Comments must be limited to issues raised by the changed requirement in this notice.

DATES: The Commission must receive any written comments in response to this proposal by [insert date that is 75 days after publication]. If the Commission receives a request for oral presentation of comments, the presentation will begin at 10 a.m., _____, 1999, in Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

The Commission must receive requests to present oral comments by _____, 1999. Persons requesting an oral presentation must file a written text of their presentations no later than _____, 1999.

ADDRESSES: Written comments, and requests to make oral presentations of comments, should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301)504-0127 or by email to cpsc-os@cpsc.gov. Written comments should be captioned "NPR for Multi-Purpose Lighters." Requests to make oral presentations and texts of presentations should be captioned "Oral Comment; NPR for Multi-Purpose Lighters."

FOR FURTHER INFORMATION CONTACT:

Concerning the substance of the proposed rule: Barbara Jacobson, Project Manager, Directorate for Health Sciences,

Consumer Product Safety Commission, Washington, D.C. 20207-0001; telephone (301) 504-0477, ext. 1206; email bjacobson@cpsc.gov.

Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0800 ext. 1232. Information about this rulemaking proceeding may also be found on the Commission's web site: www.cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Discussion

The Commission previously proposed a rule under the Consumer Product Safety Act ("CPSA") that would require multi-purpose lighters to resist operation by children under age 5. 63 FR 52397 (September 30, 1998); *see also* 63 FR at 52394; 63 FR 69030 (December 15, 1998). As proposed, multi-purpose lighters, which are also known as grill lighters, fireplace lighters, utility lighters, micro-torches, or gas matches, are defined as: hand-held, self-igniting, flame-producing products that operate on fuel and are used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. See

proposed 16 CFR 1212.2(a)(1). The term does not include cigarette lighters (which are subject to the Safety Standard for Cigarette Lighters, 16 CFR 1210.2(c)), devices that contain more than 10 oz. of fuel, and matches. Id. The proposal also would require that the child-resistant mechanism automatically return to the child-resistant condition either (1) when or before the user lets go of the lighter or (2), for multi-purpose lighters that remain lit after the users have let go, when or before the user lets go of the lighter after turning off the flame. Id. at § 1212.3(b)(3).

In the previous proposal, the degree of child resistance of a multi-purpose lighter is measured by a test with a panel of children to see how many can operate the lighter. That test provides that during testing for child-resistance, multi-purpose lighters with an on/off switch will be tested with the switch in the off, or locked, position. Id. at § 1212.4(f)(1).

On/off switches block the operating mechanism of the lighter when in the off, or locked, position. The mechanism is released when the switch is in the on, or unlocked, position. In currently marketed lighters, the switch does not automatically reset to the locked position when the lighter is operated. During testing to determine the baseline child-resistance of currently marketed (non-child-resistant) multi-purpose lighters, the CPSC staff tested

four lighters, having on/off switches, with the switch in the locked position. Children who were able to operate the lighters moved the switch to the unlocked position and pulled the trigger. The child-resistance of the lighters so tested ranged from 24 to 41 percent, well below the proposed requirement of 85 percent. The lighter with a child-resistance level of 41 percent was retested with the switch unlocked, and its child-resistance level dropped to 12 percent.

In its December 1998 comments on the proposal, BIC states that many consumers will leave the lighter in the unlocked position. Further, BIC points out that a manufacturer could design a lighter with an on/off switch that is very difficult for a child to unlock, and with a very simple child-resistance mechanism which, in itself, would not meet the 85 percent child-resistance requirement. BIC therefore contends that multi-purpose lighters with on/off switches should be tested with the switch in the unlocked position.

The Commission concurs with BIC's recommended modification to the test protocol. Testing lighters with the switches in the locked position treats the switch as part of the child-resistance mechanism. On/off switches are not adequate to serve this purpose. First, as the Commission's baseline testing demonstrated, most children in the panel age group (42 to 51 months old) can operate the switches,

which are similar to those used on many types of toys. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable. To provide this protection, intended users must return the switch to the off position every time the lighter is used. For a variety of reasons, even the most careful adults may fail to return the switch to the off position. Thus, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers. Therefore, the Commission now proposes that the test protocol should require that lighters with on/off switches that do not automatically reset to the off position be tested with the switch in the on, or unlocked, position.

This change is consistent with the requirement in the original proposal that the child-resistant mechanism automatically reset to its protective condition after the lighter is used.

B. Preliminary Regulatory Analysis

The CPSA requires the Commission to publish a preliminary regulatory analysis of the proposed rule. This includes a discussion of the likely benefits and costs of

the proposed rule and its reasonable alternatives. The Commission's preliminary regulatory analysis was published in the September 30, 1998, proposal. The changed requirement proposed in this notice does not significantly affect the results of that analysis. To the extent that lighters accessible to children are stored in the unlocked position, and thereby reduce the lighters' child resistance, there would be an increase in the expected benefits as a result of this change.

The preliminary regulatory analysis was based on the costs of developing cigarette lighters with child-resistant mechanisms. Generally, cigarette lighters do not have on/off switches separate from the child-resistance mechanism (and thus, under the cigarette lighter standard, are required to reset automatically after each actuation of the lighting mechanism). Accordingly, the Commission's cost estimates in the regulatory analysis did not assume that multi-purpose lighters would have on/off switches separate from the resetting child-resistance feature. Therefore, the change proposed in this notice is in line with the cost estimates the staff already has made.

CPSC baseline testing shows that more children are unable to operate a non-child-resistant multi-purpose lighter if the on/off switch is in the off position than if the switch is in the on position. Thus, it is possible that some models of multi-purpose lighters would fail the

certification tests unless the tests were conducted with the on/off switch initially in the off position. Changing the protocol may, therefore, adversely impact manufacturers whose initial child-resistant designs were only marginally effective. However, the preliminary regulatory analysis already considered that some manufacturers may need to revise their designs if their initial attempts to certify their multi-purpose lighters fail. Thus, these costs have already been accounted for in the preliminary regulatory analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the Commission to address and give particular attention to the economic effects of the proposed rule on small entities. The original proposal's preliminary regulatory flexibility analysis examined the potential effects of the proposed rule on small entities. As explained above, the change proposed in this notice is likely to have only small changes in the costs and benefits of the final rule. Accordingly, this new requirement does not significantly change the preliminary regulatory flexibility analysis.

D. Preliminary Environmental Assessment

The proposed rule is not expected to have a significant effect on the materials used in the production and packaging of multi-purpose lighters, or in the number of units discarded after the rule becomes effective. Therefore, no significant environmental effects would result from the proposed mandatory rule for multi-purpose lighters.

E. Opportunities for Comment

Written comments limited to the issues raised by the additional requirement proposed in this notice may be submitted until [insert date that is 75 days after publication]. There also will be an opportunity for interested parties to present oral comments on these issues on _____, 1999. See the information under the headings "DATES" and "ADDRESSES" at the beginning of this notice. Any oral comments will be part of the rulemaking record.

Persons presenting oral comments should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. The Commission reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

F. Extension of Time To Issue Final Rule

Section 9(d)(1) of the CPSA, 15 U.S.C. 2058(d)(1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the FEDERAL REGISTER. The Commission previously extended the time for issuing a final rule until June 30, 1999. 63 FR 52415.

This reproposal requires another extension of the time to issue a final rule. After the comment period ends on [insert date that is 75 days after publication], the CPSC's staff will need to address the comments and complete a briefing package for the Commission. The Commission is likely to then be briefed, and will later vote on whether to issue a final rule. The Commission expects that this additional work will take about 5 months. Accordingly, the Commission extends the time by which it must either issue a final rule or withdraw the NPR until December 31, 1999. If necessary, this date may be further extended.

List of Subjects in 16 CFR Part 1212.

Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Multi-purpose lighters.

Effective date. This reproposal does not require any change in the originally proposed effective date of 1 year after the date a final rule is issued.

In the **Federal Register** of September 30, 1998, the Commission proposed to amend Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations. For the reasons set out in the preamble, the Commission proposes the following change to that proposal, as set forth below.

1. The authority citation for § 1212 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058, 2079(d).

2. The note is § 1212.3(f)(1) is revised to read as follows:

Note: For multi-purpose lighters with an "on/off" switch, the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

Dated: _____, 1999.

_____

Sayde E. Dunn, Secretary

Consumer Product Safety Commission

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: July 19, 1999

TO : The Commission
Sadye E. Dunn, Secretary

FROM : Stephen Lemberg, Asst. General Counsel SL
Harleigh Ewell, Attorney, GCRA (ext. 2217) HE

SUBJECT : Revised pages to Federal Register Notice Reproposing Part of Multi-Purpose Lighter Rule

On July 16, 1999, a briefing package was forwarded to the Commission containing a draft Federal Register notice that would seek comment on a change to the proposed rule for multi-purpose lighters. The change would require that lighters be tested in the on, or unlocked, position, rather than in the off position as previously proposed.

Attached are two pages to be substituted for the last two pages of that briefing package (pages 20 and 21 of the package; pages 11 and 12 of the notice). The changes in the substitute pages point out that only those lighters whose on/off switches do not automatically reset to the off position must be tested in the on position (see page 15 of the previous package; page 6 of the notice).

NOTE: This document has not been reviewed or accepted by the Commission.
Initial ___ Date 7/20/99

CPSA § 6 (b)(1) Cleared
7-20-99
X No Mfrs/PrvtLblrs or Products Identified

Effective date. This reproposal does not require any change in the originally proposed effective date of 1 year after the date a final rule is issued.

In the **Federal Register** of September 30, 1998, the Commission proposed to amend Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations. For the reasons set out in the preamble, the Commission proposes the following change to that proposal, as set forth below.

1. The authority citation for § 1212 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058, 2079(d).

2. The note in § 1212.4(f)(1) is revised to read as follows:

Note: For multi-purpose lighters with an "on/off" switch that does not automatically reset to the "off"

position in accordance with § 1212.3(b)(3), the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

Dated: _____, 1999.

_____

Sayde E. Dunn, Secretary

Consumer Product Safety Commission