

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: Final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Commission issues 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 final rule the Commission determines, 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. **DATES:** This rule is effective January 21, 2000.

ADDRESSES: Copies of documents relevant to this rulemaking can be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207-0001, Telephone (301)504-0800, fax (301) 504-504-0127, email cpsc-os@cpsc.gov.

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 Safety Standard for Multi-Purpose Lighters: Michael Bogumill, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477, ext. 1206; email mbogumill@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Commission determines 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 issues a rule under the CPSA that will impose child-resistance requirements on multi-purpose lighters. Information on the safety hazards associated with the use of multi-purpose lighters by young children, and on other aspects relating to the need for and provisions of the Safety Standard for Multi-Purpose Lighters can be found in the portion of this issue of the **Federal Register** that issues the standard.

As discussed below, 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.

In the rule issued elsewhere in this issue of the **Federal Register**, to be codified at 16 CFR 1212.2, multi-purpose lighters are defined as follows:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, *etc.*) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

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

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes,

whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

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

(iii) Matches.

B. Choice of Statute

Of the statutes administered by the CPSC, the CPSA, the FHSA, and the PPPA provide potential authority for a child-resistance requirement for multi-purpose lighters. The possible regulatory options include issuing a consumer product safety standard under the CPSA, a banning rule under 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 the PPPA.

The risks of injury associated with multi-purpose lighters that can be operated by children 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.

Part of the rule for multi-purpose lighters that is issued elsewhere in this issue of the **Federal Register** is a certification rule that requires the manufacturer or importer to conduct tests to ensure that the lighters comply with the safety requirements of the rule. This testing is necessary to ensure the effectiveness of the rule, because the complex and time-consuming child-panel tests in the standard make it impractical for the Commission to routinely test for compliance. 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 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 is or contains 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 is 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 fuel-containing portion of the multi-purpose lighter or "obtain a toxic or harmful amount" of the fuel are not the risks of injury associated with multi-purpose lighters that the Commission is now addressing. 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.

The Commission received one comment on the proposed rule to issue child-resistance requirements for multi-purpose lighters under the CPSA. BIC Corporation disagreed with the Commission's characterization of a multi-purpose lighter as a "package" for butane, as that term is used in the PPPA. BIC cited two court decisions that support its contention.

The Commission has not changed its view that a lighter can be a package for the fuel it is sold with, and at least one court has agreed with this view. See *Carlson v. BIC Corp.*, 840 F. Supp. 457, 467 (E.D. Mich. 1993). However, even if BIC were correct that multi-purpose lighters are not packages of butane under the PPPA, this simply would provide further support for the Commission's decision to regulate the risk arising from children's operation of these lighters under the CPSA. Thus, no change to the proposed rule is required in response to this comment.

Therefore, for the reasons given above, the Commission is issuing a rule to 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. This finding will be codified at 16 CFR 1145.17. The rule shall become effective immediately upon its publication in the **Federal Register**. 5 U.S.C. 553(d)(3). (There is a 1-year delayed effective date for the safety standard itself.)

C. Impact on Small Entities

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–612, 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 simply expresses the Commission's determination that any action taken to eliminate or reduce risks of injury associated with multi-purpose lighters due to the fact that they 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 followed all applicable provisions of the CPSA. The RFA also applies to the safety standard, and the Commission has certified that the Safety Standard for Multi-Purpose Lighters will not have a significant economic impact on a substantial number of small entities. Because this final rule under section 30(d) of the CPSA imposes no obligation on any person or firm, the Commission hereby certifies that this 30(d) rule will not

have a significant economic impact on a substantial number of small entities.

D. Environmental Considerations

The rule issued 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.

E. Conclusion

After consideration of the information discussed above, the Commission finds that for any regulatory action 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.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Fire prevention, Infants and children, Packaging and containers.

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 revised 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 that are 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: December 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99-32678 Filed 12-21-99; 8:45 am]

BILLING CODE 6355-01-P