

program, the Commission is now announcing the continuation of the program for fiscal year 2005.

B. The Regulations Undergoing Review

A summary of each of the regulations being reviewed in fiscal year 2005 is provided below. The full text of the regulations may be accessed at: http://www.access.gpo.gov/nara/cfr/waisidx_03/16cfrv2_03.html.

1. Safety Standards for Cigarette Lighters and Multi-Purpose Lighters

The safety standards for cigarette lighters and multi-purpose lighters appear at 16 CFR parts 1210 and 1212. These rules were promulgated, respectively, in 1993 (cigarette lighters, 58 FR 37584) and 1999 (multi-purpose lighters, 64 FR 71872). Both safety standards set child-resistance requirements for lighters, designed to impede their successful operation by children under age five. Both regulations were issued under the authority of the CPSA.

For the purposes of this regulatory review, both safety standards have two pertinent parts. Subpart A establishes the basic requirements for child resistance, including detailed child-test protocols. Subpart B outlines various certification, labeling, and recordkeeping requirements.

2. Requirements for Bicycles

The requirements for bicycles appear at 16 CFR part 1512. 43 FR 60034 (December 22, 1978). The regulation includes a number of mechanical and other requirements intended to reduce the risk of injury from bicycles. Part 1512 was promulgated under authority of the FHSA.

3. Standards for Surface Flammability of Carpets and Rugs

The standards for surface flammability of carpets and rugs appear at 16 FR parts 1630 and 1631. They were codified at those locations in 1975. 40 FR 59931 and 59935 (December 30, 1975). The standards were originally issued in 1970 by the Department of Commerce. The standards establish minimum standards for the surface flammability of carpets and rugs when exposed to a standard small source of ignition, a burning methenamine tablet, under prescribed conditions. Cleaning methods are also prescribed in the standards for various carpet and rug types to help assure permanence of any flame retardant treatments. The standards were issued under authority of the FFA.

4. Controlled Substances

The Commission is reviewing the regulation at 16 CFR 1700.14(a)(4) that requires child-resistant packaging for oral drugs subject to the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 801, *et seq.* (controlled drugs). The regulation was promulgated under authority of the PPPA in 1972, 37 FR 8433 (April 27, 1972).

C. Solicitation of Comments and Information

The Commission invites interested persons to submit comments on each of the regulations being reviewed in the fiscal year 2005 program. In particular, commenters are asked to address:

1. Whether the regulation is consistent with CPSC program goals.
2. Whether the regulation is consistent with other CPSC regulations.
3. Whether the regulation is current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards.
4. Whether the regulation can be streamlined to minimize regulatory burdens, particularly any such burdens on small entities.

For each regulation being reviewed, please provide any specific recommendations for change(s), if viewed as necessary, a justification for the recommended change(s), and, with respect to each suggested change, a statement of the way in which the change can be accomplished within the statutory framework of the CPSA, FHSA, FFA, or PPPA, as applicable.

Comments and other submissions should be captioned "Fiscal Year 2005 Regulatory Review Project" and e-mailed to cpsc-os@cpsc.gov or faxed to (301) 504-0127. Comments or other submissions may also be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. All comments and other submissions must be received by June 10, 2005.

Dated: April 4, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1214

Safety Standard for Cigarette Lighters; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Cigarette lighters may present an unreasonable risk of injury due to mechanical malfunction of some lighters. In November 2001, the Commission received a petition from the Lighter Association, Inc. asking the Commission to adopt the voluntary "Standard Consumer Safety Specification for Lighters" (ASTM F-400) as a mandatory standard under the Consumer Product Safety Act ("CPSA"). On November 30, 2004 the Commission voted to grant the petition. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the CPSA. One result of the proceeding could be issuance of a rule requiring that cigarette lighters meet certain safety requirements. The Commission solicits written comments concerning the risks of injury associated with the mechanical malfunction of cigarette lighters, the regulatory alternatives discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.

DATES: Written comments and submissions in response to this notice must be received by June 10, 2005.

ADDRESSES: Comments should be e-mailed to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Cigarette Lighters." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 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.

FOR FURTHER INFORMATION CONTACT: Rohit Khanna, Directorate for Engineering Sciences, Consumer Product Safety Commission,

Washington, DC 20207; telephone (301) 504-7546 or e-mail: rkhan@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In November 2001, the Commission received a petition from the Lighter Association, Inc., Petition CP 02-1, asking that the Commission issue a rule to make the voluntary standard "Standard Consumer Product Safety Specification for Lighters" (ASTM F-400) a mandatory consumer product safety standard under the Consumer Product Safety Act ("CPSA"). The petitioner is a trade association representing the major U.S. manufacturers and distributors of cigarette lighters. The petitioner asserted that unreasonable risks of injury are being created because imported lighters are not complying with the voluntary standard.

The Commission published a notice in the **Federal Register** on January 17, 2002, requesting comments on the petition. 67 FR 2420. The Commission received a total of 16 comments on the petition. The Commission staff reviewed the petition, the comments, and available information and prepared a briefing package for the Commission (available at <http://www.cpsc.gov>). On September 14, 2004, the Commission held a public meeting at which the staff briefed the Commission, and the Commission invited the public to present comments on the petition. David H. Baker presented testimony on behalf of the petitioner, and Robert Polk presented testimony on behalf of the National Association of State Fire Marshals. Both presenters supported granting the petition. On November 30, 2004, the Commission voted 2-0 to grant the petition.¹

B. The Product

Cigarette lighters are flame producing products commonly used to light cigarettes, cigars and pipes. The Commission's Directorate for Economic Analysis estimates that total annual sales of lighters are about 900 million units. According to U.S. Census Bureau data, in 2003, up to 776 million lighters were imported into the U.S. China accounted for 55 percent of the lighter imports to the U.S. (420 million units) in 2003.

C. The Risk of Injury

The staff reviewed available incident data involving malfunctions of cigarette

lighters. The staff searched the following five databases for data: the National Fire Incident Reporting System ("NFIRS"), the National Electronic Injury Surveillance System ("NEISS"), the Death Certificates file ("DTHS"), the Injury or Potential Injury Incident file ("IPII") and the In-Depth Investigation file ("INDP").

NFIRS Data

U.S. fire departments attended an estimated 330 residential structure fires caused by cigarette lighter malfunctions from 1994 to 1999. These fires resulted in an estimated 90 injuries, 10 deaths, and \$2.8 million in property damage.

NEISS Data

NEISS is a statistical sampling of U.S. hospital emergency rooms that is designed to capture injuries associated with consumer products, while NFIRS is a voluntary fire department system that tracks fire incidents in the U.S. Because injuries related to cigarette lighter mechanical malfunctions are often not associated with a fire reportable to NFIRS, the NEISS provides a better estimate of these injuries than does NFIRS.

The most recent available NEISS data, 1997-2002, shows that during that six year period, an estimated 3,015 individuals were treated in hospital emergency departments for injuries resulting from malfunctioning cigarette lighters. Ninety-six percent of these individuals were treated and released. The majority (about 82 percent) of the injuries were thermal burns. The face, hand, or fingers accounted for 80 percent of the injured body parts.

Death Certificates File

For the period January 1, 1997 through December 31, 2002, one death was identified from the DTHS file that may have involved a cigarette lighter malfunction. On March 10, 2001, a 76 year-old woman died from 3rd degree burns over 90% of her body. The report from the county sheriff's office concluded that the victim either accidentally ignited her clothing with the lighter while smoking or the lighter sprayed fuel on her while she was lighting her cigarette.

IPII and INDP Files

A total of 256 incidents related to cigarette lighter malfunctions were identified from January 1, 1997 through December 31, 2002 from sources including newspaper clippings, consumer complaints, medical examiners' reports, and CPSC in-depth investigations. Although not a statistical sample of all incidents that occurred

during this time period, these reports provide useful details about the incidents.

In 153 of these 256 incidents, there were no injuries. The remaining 103 incidents resulted in injuries to 107 individuals. Three of these individuals died, six were hospitalized with serious injuries, and the majority (88) were treated and released. The condition of the remaining individuals was not reported. The deaths reported here were in addition to the deaths estimated through the NFIRS system. Where age was reported, almost 66 percent of the individuals were 15 through 64 years of age. There were no injuries to children under 5 years old reported.

The most frequent type of malfunction identified in the incidents was explosion due to pressure or volumetric displacement. Malfunctions due to pressure or volumetric displacement led to all three deaths reported in the IPII and INDP incidents. Some other failures that resulted in serious injury included fuel leakage resulting in ignition and flaring of the lighter.

D. Relevant Statutory Provisions

The petition was docketed under the CPSA, 15 U.S.C. 2051 *et seq.* Section 7 of the CPSA authorizes the Commission to issue consumer product safety standards that consist of performance requirements and/or requirements for warnings or instructions. Id. 2056(a). The CPSA also states that any requirement of a consumer product safety standard must be "reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product." Id.

Section 9 of the CPSA specifies the procedure the Commission follows to issue a consumer product safety standard. The Commission commences the rulemaking by issuing an ANPR which must identify the product and the risk of injury, summarize regulatory alternatives, and invite comments or suggested standards from the public. Id. 2058(a). After considering any comments submitted in response to the ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 9(c) of the CPSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 2058(f).

To issue a final rule, the Commission must find that the rule is "reasonably necessary to eliminate or reduce an unreasonable risk of injury associated

¹ Commissioner Thomas H. Moore filed a statement, which is available from the Commission's Office of the Secretary or on the Commission's Web site at <http://www.cpsc.gov>.

with such product” and that issuing the rule is in the public interest. Id. 2058(f)(3)(A)&(B). In addition, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that (1) the voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or that (2) substantial compliance with the voluntary standard is unlikely. Id. 2058(f)(3)(D). The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. Id. 2058(f)(3)(E)&(F).

E. Regulatory Alternatives

One or more of the following alternatives could be used to reduce the identified risks associated with mechanical malfunctions of cigarette lighters.

1. *Mandatory standard.* The Commission could issue a rule specifying certain performance requirements that cigarette lighters must meet. These requirements could be based on the requirements in ASTM F-400.

2. *Mandatory labeling rule.* The Commission could issue a rule requiring specified warnings or instructions for cigarette lighters.

3. *Voluntary standard.* If the Commission determined that ASTM F-400 is adequate to address the risk of injury associated with the product and that substantial compliance with it is likely, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

4. *Reliance on recalls.* Another alternative is for the Commission to take no regulatory action, but to pursue corrective actions of cigarette lighters on a case-by-case basis using its authority under section 15 of the CPSA, 15 U.S.C. 2064.

F. Existing Standards

The Commission currently has a mandatory standard that applies to disposable and novelty cigarette lighters. 16 CFR part 1210. The standard prescribes requirements to make these lighters resistant to children younger than 5 years old.

The Standard Consumer Safety Specification for Lighters (ASTM F-400) was published in 1975. This is a voluntary standard. The standard establishes general safety requirements for all lighters. ASTM F-400 includes requirements for a maximum flame height, proper flame extinction, maintaining structural integrity when

the lighter is exposed to hot or cold temperatures, maintaining structural integrity after a “drop” test, and requirements for internal pressure and fuel levels. ASTM F-400 also includes safety labeling requirements and instructions for proper use. Hazards associated with explosions are addressed by requirements for pressure/volumetric displacement, flame control, and fuel leakage.

There are international standards for lighters with requirements similar to those in ASTM F-400. The International Organization for Standardization (“ISO”) has published ISO 9994 Lighters, Safety Specifications, which has been adopted in many European countries. Compliance with ISO 9994 is also mandatory in Australia and New Zealand. Canada has requirements that are substantially the same as ASTM F-400 (Hazardous Products Regulations, SOR/89-514, P.C. 1989-2151, amended by SOR/91-251, P.C. 1995-827). Mexico does as well (NOM-090-SCFI-1994). A mandatory safety standard with requirements based on ASTM F-400 could further the goal of harmonizing U.S. and international rules.

The petitioner asserted that, due to the voluntary nature of ASTM F-400, many imported cigarette lighters do not conform to its requirements. The Commission has received some information from the petitioner and others in the industry concerning the level of compliance with the voluntary standard. Based on these submissions alone, the CPSC staff estimated in its briefing package that at least 75 percent (665 million units) of lighters in the U.S. market are purported to conform to the requirements of ASTM F-400. At the September 14, 2004 public meeting, the petitioner asserted that the compliance level may be substantially less than that level. The Commission staff has not yet conducted its own study of the level of compliance with the ASTM standard. The staff intends to conduct such a study in order to obtain an accurate estimate of the level of compliance.

G. Public Comments on the Petition

The Commission published a **Federal Register** notice asking for comments on the petition on January 17, 2002. 67 FR 2420. The Commission received a total of 16 comments on the petition. These are available from the Commission’s Office of the Secretary.

Fourteen comments supported the petition, one comment was neutral, and one comment opposed the petition. Many commenters reiterated the petitioner’s statements that the ASTM standard has the force and effect of law in Canada and Mexico, and that failure

to enforce the ASTM standard in the U.S. is creating an unreasonable risk of injury. Letters supporting the petition came from companies that distribute, import, and/or export cigarette lighters. One comment from several importers of Chinese lighters opposed the petition, stating that a mandatory safety standard is unnecessary.

H. Request for Information and Comments

This ANPR is the first step of a proceeding that could result in a mandatory rule for cigarette lighters to address mechanical malfunction of lighters. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving information or test data concerning cigarette lighters’ conformance to the requirements of ASTM F-400 (or similar safety standards).

Comments should be e-mailed to cpssc-os@cpssc.gov and should be captioned “ANPR for cigarette lighters.” Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127. All comments and submissions should be received no later than June 10, 2005.

Dated: April 4, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Elder, CPSC, Assistant Executive Director, Office of Hazard Identification and Reduction and Rohit Khanna, Project Manager, Directorate for

Engineering Sciences, to the Commission, May 27, 2004.

2. Petition CP 02-1 from the Lighter Association, Inc. to Adopt ASTM F-400 as a Consumer Product Safety Standard, November 27, 2001.

3. Memorandum from Charles L. Smith, CPSC, Directorate for Economic Analysis, "Lighter Petition (Petition CP 02-1): Economic Considerations," March 10, 2004.

4. Memorandum from Joe Vogel, CPSC, Office of Compliance, "Petition to Adopt ASTM F-400 for Cigarette Lighters as a Consumer Product Safety Standard under the Consumer Product Safety Act," February 26, 2004.

5. Memorandum from Risana Chowdhury, CPSC, Division of Hazard Analysis, "Hazards Associated with Cigarette Lighter Malfunctions," January 13, 2004.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA-2001-9182]

RIN 2125-AE75

Highway Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking action developed to revise the regulations governing the highway bridge replacement and rehabilitation program (HBRRP). The FHWA proposed to clarify ambiguous language, incorporate long-standing FHWA policies, and provide flexibility by including an alternate program applicable to all bridges, both on and off the Federal-aid system. However, during the comment period, we received comments questioning the legal authority for the alternative program as well as the quantitative benefits and impacts of the program. To evaluate these questions and issues, the FHWA is withdrawing the proposed rulemaking and intends to consider establishment of a special experimental program to quantitatively evaluate the benefits of the approach proposed in the alternative program.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Everett, Federal Highway

Administration, Office of Bridge Technology, HIBT-30, 400 Seventh Street, SW., Washington, DC 20590-0001 or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's database at <http://www.gpoaccess.gov/nara/>.

Background

Section 204 of the Federal-aid Highway Act of 1970 (Pub. L. 91-605, 84 Stat. 1713, Dec. 31, 1970) established the Special Bridge Replacement Program (SBRP) codified in 23 U.S.C. 144. Through subsequent legislation, the SBRP was expanded to create the Highway Bridge Replacement and Rehabilitation Program (HBRRP) applicable for both on and off-system structures. The FHWA has recognized that the current regulation is in need of revision to incorporate and clarify past policies as well as accommodate the flexibility allowed by law to enable State and local governments to manage their bridge assets in the most effective manner. Accordingly, the FHWA published an advanced notice of proposed rulemaking (ANPRM) on September 26, 2001 (66 FR 49152), requesting public comments on the current regulation. A team of Federal Highway Administration engineers addressed the comments received and a notice of proposed rulemaking (NPRM) was published on June 21, 2004 (69 FR 34314).

The NPRM proposed to change the name of the program from the Highway Bridge Replacement and Rehabilitation Program (HBRRP) to the Highway Bridge Program (HBP) reflecting program flexibility provided through highway legislation and increasing emphasis on preventative maintenance. Definitions were added to the legislation to address past ambiguities. Eligible and ineligible activities were specified in the proposed regulation and guidance was provided on the types of bridges to which the eligible and ineligible activities could be applied. To take advantage of project selection flexibility,

the proposed rule included an alternate program. Through this program, States would have the flexibility to select projects involving eligible activities on any bridge, irrespective of the eligibility criteria under the traditional program, given that an approved bridge management system (BMS) and/or systematic process was employed. Guidance for the approval of bridge management systems and for the development of a systematic process was provided as supplemental documents on the docket for public review. Development and implementation of a bridge performance plan was proposed as a prerequisite for use of the alternate program.

Comments Received in Response to the ANPRM and NPRM

The FHWA received 41 sets of comments in response to the ANPRM from 31 State Departments of Transportation, 1 Federal Agency, 3 Counties, 1 Private Citizen, 2 Trade Associations and 1 Public Interest Group. The majority of these commenters believed that the HBRRP regulation should be revised. The comments received were summarized and discussed in detail in the NPRM.

In response to the NPRM, the FHWA received 25 sets of comments from 15 State Departments of Transportation, 4 Counties, 1 City, 3 Trade Associations, 1 Public Interest Group and 1 Private Citizen.

Four commenters suggested that the name be changed to something other than the Highway Bridge Program (HBP) or the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The National Association of County Engineers (NACE), the Illinois Association of County Engineers (IACE) and the Illinois DOT suggested changes to avoid confusion between the HBP and other Federal programs. Alcona County, Michigan, expressed concern that the name change would diminish the priority of replacement and rehabilitation.

Commenters from DOTs, NACE, IACE, and several County Highway Departments suggested changes to the definitions. Suggestions were made to modify or enhance the definitions for: Bridge, Cost Effective, Rehabilitation, Eligible Highway Bridge, Bridge Management System, Construction Unit Cost, Bridge Performance Goals, Bridge Performance Plan, and Systematic Process.

Commenters from several State DOT's, the American Association of State Highway and Transportation Officials (AASHTO), NACE, and several County Highway Agencies suggested