

**BEFORE THE
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**SAFETY STANDARD FOR CIGARETTE LIGHTERS
ADVANCE NOTICE OF PROPOSED RULEMAKING
REQUEST FOR COMMENTS AND INFORMATION**

**COMMENTS OF
LIGHTER ASSOCIATION, INC.**

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Introduction

By Federal Register Notice dated April 11, 2004, the Commission announced the initiation of a rulemaking proceeding under the Consumer Product Safety Act (“CPSA”) to consider the issuance of a mandatory safety standard for cigarette lighters. 70 Fed. Reg. 18339 (2005). In the Advance Notice of Proposed Rulemaking (“ANPR”), the Commission requested written comments on:

1. The risk of injury from lighters.
2. Any existing 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.

Id. at 18341.

The Lighter Association submits its comments on these issues below, under Position of Commentor.

Identity of Commentor

The Lighter Association, Inc. is the national trade association of the U.S. cigarette and multi-purpose lighter industry. Its members account for about 50% of the manufacture and distribution of lighters in this country. The Lighter Association has regularly participated in proceedings before the Commission involving lighters since 1986. It is the Petitioner in this proceeding.

Position of Commentor

1. The risk of injury from lighters.

A review of the various databases, as set forth in the ANPR, reveals that there were at least fourteen confirmed deaths from malfunctioning lighters during the period 1994 to 2002. Id. at 18340 (NFIRS database – 10 deaths, Death Certificates file – 1 death, IPII and INDP files – 3 deaths). These are actual deaths, not a national estimate, or an extrapolated number. In the presentation made by the Commission staff on September 14, 2004, Mr. Rik Khanna estimated that there were 2.2 deaths per billion lighters. See Exhibit A, a page from Mr. Khanna's powerpoint presentation to the Commission. Coincidentally, about one billion lighters are sold per year in the U.S. Thus, there are, on average, about 2.2 deaths per year from malfunctioning lighters.

The large number of deaths from malfunctioning lighters is shocking to the lighter industry, given the relative ease of bringing these lighters into compliance. All a lighter manufacturer needs to do to avoid the vast majority of these incidents is to implement a simple quality control system to make sure that its lighters meet the basic safety standards in the ASTM F400-00 Standard. As noted in the ANPR, the most common violations of the ASTM standard relate to volumetric fill and pressure displacement. Id. at 18340. If the Commission were to adopt the ASTM F400-00 Standard, it is likely that many, if not all, of these deaths could be prevented in the future.

Again, according to Mr. Khanna's presentation, there are 1.1 injuries per million lighters sold each year. See Exhibit A. Stated differently, based upon one billion lighters sold per year, there are about 1100 injuries per year from malfunctioning lighters. While 1100 injuries per year may not seem like a large number, injuries involving lighters

typically involve burns to the face, the neck and the hands, given the normal usage of the product. Burn injuries can be disfiguring and painful, and often leave emotional scars on their victims. Again, most, if not all, of these injuries could be avoided if the ASTM F400 Standard was regularly enforced by the CPSC.

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

Throughout the world, the ASTM F400 Standard, or its ISO counterpart, is used as the mandatory regulation for the safety of lighters. The ATSM F400 Standard is law in Canada and Mexico. The ISO 9994 Standard was adopted by the EU by dint of publication in the Official Journal of the European Union. 2004/C 100/4. There are virtually no differences between the ASTM lighter standard and the ISO lighter standard. The ASTM standard was first issued in 1975 and has been reviewed annually since that time. The ISO standard, which is based on the ASTM standard, was first issued in 1989, and was last updated in 2002. The Lighter Association believes that ASTM F400-00 is the best model for any Commission mandatory regulation. However, the Association would have no objection to using ASTM F400-04, which was just released, or ISO 9994-2002, which was also recently released, as a model for mandatory regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice.

There does not appear to be any need to modify or develop a voluntary standard relating to lighter safety. The ASTM F400 Standard is a consensus standard which has been in existence for 30 years. It is the standard followed throughout much of the world. It would be a wasted effort to develop a new standard.

Deferral to Voluntary Standard

We would suggest to the Commission that an expedient way of dealing with the issue of deaths and injuries from malfunctioning lighters would be to defer to ASTM F400 under Section 9(b) of the Consumer Product Safety Act. While we recognize that this path is not often utilized by the Commission, the statutory basis is there and it has been an effective remedy for chain saws and gas fired heaters. See Appendix to 16 CFR Part 1115. As enunciated in 16 CFR Part 1115.5(a), *Reporting of Failure to Comply with a Voluntary Consumer Product Safety Standard Relied Upon by the Commission under Section 9 of the CPSA*:

Under the CPSA, the Commission may rely on voluntary standards in lieu of developing mandatory ones. In recognition of the role of voluntary standards under the CPSA, section 15(b)(1) requires reports if a product fails to comply with a voluntary standard “upon which the Commission has relied under Section 9 of the CPSA.” The Commission has relied upon a voluntary consumer product safety standard under section 9 of the CPSA if, since August 13, 1981, it has terminated a rulemaking proceeding or withdrawn an existing consumer product safety rule because it explicitly determined that an existing voluntary standard, or portion(s) thereof, is likely to result in an adequate reduction of the risk of injury and it is likely there will be substantial compliance with that voluntary standard.

16 CFR Part 1115.5 (a).

Based upon the industry’s thirty year experience with the ASTM F400 standard and the worldwide use of the standard, we submit that the standard clearly is likely to reduce the risk of injury from malfunctioning lighters, if properly enforced. Indeed, the Lighter Association believes, based upon anecdotal information from its members, that there are many more incidents of death and injury from malfunctioning lighters in the U.S. market, because the standard is not monitored or enforced by the CPSC. If the Commission were to defer to the ASTM F400 Standard, and regularly enforce the basic

safety standards set forth therein, we believe that compliance would increase very significantly.

Our best estimate is that between 50 and 60 per cent of the lighters sold in the U.S. currently meet or exceed the ASTM F400 standard. We believe that this percentage will increase significantly if the Commission defers to the voluntary standard.

Conclusion

The Lighter Association filed this Petition in November of 2001. It demonstrated in its Petition that there were many injuries from malfunctioning lighters. On April 6, 2005, the Commission unanimously voted out this ANPR. Based upon the databases reviewed by Commission staff, it would appear that 2.2 people die every year from malfunctioning lighters. In theory, 9 people have died from malfunctioning lighters since this Petition was filed and many more have been seriously injured since that date. In light of the lengthy rulemaking process mandated by Sections 7 and 9 of the Consumer Product Safety Act, we urge the Commission to defer to the ASTM F400 Standard as a mandatory standard pursuant to Section 9(b) of the Consumer Product Safety Act. This will provide a rapid remedy for this problem; it will relieve staff from many man hours of additional work; it will relieve the Commission from thousands of dollars in expense and it will protect consumers from unsafe lighters.

We would also note that deferral to voluntary standards is mandated by the Office of Management and Budget, through *OMB Circular A-119*, issued February 10, 1998, which states:

All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical.
OMB Circular A-119, at 6.

This is clearly a case where the Commission could utilize a well established voluntary consensus standard, and through the deferral process under Section 9(b), create an equivalent of a mandatory standard.

In closing, we urge the Commission to defer to the ASTM F400 Standard, to promptly provide increased safety protection to U.S. consumers. Thank you for the opportunity to submit these comments.

Respectfully submitted,

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Dated: June 8, 2005

168139