



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: November 14, 2018

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Mary T. Boyle, Executive Director
Patricia M. Hanz, General Counsel

FROM: Patricia M. Pollitzer, Assistant General Counsel
David M. DiMatteo, Attorney, OGC

SUBJECT: Draft *Federal Register* Notice: "Safety Standard for Cigarette Lighters; Adjusted Customs Value for Cigarette Lighters"

BALLOT VOTE DUE: Tuesday, November 20, 2018

Attached are memoranda from CPSC staff recommending that the Commission publish a notice in the *Federal Register* stating an adjusted customs value for cigarette lighters subject to the Commission's Safety Standard for Cigarette Lighters, 16 C.F.R. part 1210. Under the standard, the customs value automatically changes every 5 years to reflect changes in the appropriate Producer Price Index. The draft *Federal Register* notice advises the public of the automatic adjustment in the customs value. The Office of the General Counsel is providing a draft *Federal Register* notice for the Commission's consideration.

Please indicate your vote on the following options:

- I. Approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached notice in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: “Safety Standard for Cigarette Lighters; Adjusted Customs Value for Cigarette Lighters”

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Safety Standard for Cigarette Lighters; Adjusted Customs Value for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission’s safety standard for disposable and novelty lighters includes specified requirements for child resistance. The standard defines “disposable lighters,” in part, as refillable lighters that use butane or similar fuels that have a Customs Value or ex-factory price below a threshold value (initially set at \$2.00 in 1993). The standard provides that the initial \$2.00 value adjusts every 5 years for inflation. This notice revises the cigarette lighter standard to adjust the import value to \$2.75.

DATES: The rule is effective [**insert date of publication in the FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Julio Alvarado, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-7418; e-mail: jalvarado@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In 1993, the Commission issued a standard requiring disposable and novelty lighters to meet certain requirements for child resistance. The standard, as originally written, defines “disposable lighters” as those that are either: (1) non-refillable, or (2) use

butane or similar fuels and have “a Customs Valuation or ex-factory price under \$2.00, as adjusted every 5 years, to the nearest \$0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.”¹ 58 FR 37584 (July 12, 1993).

The standard adjusts the \$2.00 threshold in accordance with inflation, with the adjustment to be rounded to the nearest 25 cents. Adjustment did not occur in 1998 because the change in the PPI since June 1993 was not sufficient to warrant an adjustment. Adjustment did occur in 2003 (to \$2.25). Accordingly, the Commission revised the cigarette standard to the adjusted amount. 69 FR 19763 (April 14, 2004). At that time, the reference to the Wholesale Price Index was also revised to refer instead to the Producer Price Index (PPI). No adjustment occurred in 2008. An adjustment occurred in 2013 (to \$2.50) and the Commission revised the cigarette standard to reflect the adjusted amount. 78 FR 52679 (August 26, 2013).

CPSC staff has calculated the PPI for Miscellaneous Fabricated Products to have increased by approximately 36 percent from June 1993 to June 2018. Under 16 CFR 1210.2(b)(2)(ii), this increase in the PPI merits an adjustment in the Customs Value or ex-factory price to \$2.75 as the threshold for determining whether refillable lighters are within the scope of the cigarette lighter standard. The increase in the PPI (from 124.7 in June 1993 to 169.5 in June 2018) of approximately 36 percent yielded an adjustment to \$2.72 per lighter, which rounds to \$2.75. Thus, refillable lighters with a Customs Value or ex-factory price under \$2.75 are now subject to the standard.

¹ The name of the Wholesale Price Index has changed to the Producer Price Index (PPI). The specific PPI that includes cigarette lighters is the PPI for “Miscellaneous Fabricated Products.”

As the cigarette lighter standard is written, the Customs Value or ex-factory price adjusts automatically based on the PPI, and no change in the language of the rule is required to implement this change. However, we are revising the standard so that the CFR will state the properly adjusted \$2.75 [c]ustoms [v]alue, and the public will have notice of the adjustment.

B. The Administrative Procedures Act

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with notice and comment procedures when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” This amendment informs the public of an adjustment to the cigarette lighter regulatory standard that has occurred automatically according to the terms of the cigarette lighter regulation. Because the adjustment occurs by terms of the regulation, the Commission could not alter the adjustment based on any public comments the Commission received. Accordingly, the Commission finds that notice and comment are unnecessary.

The APA also authorizes an agency, “for good cause found and published with the rule,” to dispense with the otherwise applicable requirement that a rule be published in the *Federal Register* at least 30 days before its effective date. 5 U.S.C. 553(d)(3). The Commission hereby finds that a 30-day delay of the effective date is unnecessary because this amendment informs the public of an adjustment that already has occurred in accordance with the existing regulatory requirements of the cigarette lighter standard.

List of Subjects in 16 CFR Part 1210

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

Accordingly, 16 CFR part 1210 is amended as follows:

PART 1210 – SAFETY STANDARD FOR CIGARETTE LIGHTERS

1. The authority for part 1210 continues to read as follows:

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

2. Revise § 1210.2(b)(2)(ii) to read as follows:

§ 1210.2 Definitions.

* * * * *

(b) * * *

(2) * * *

(ii) It has a Customs Valuation or ex-factory price under \$2.00, as adjusted every 5 years, to the nearest \$0.25, in accordance with the percentage changes in the appropriate monthly Producer Price Index (Producer Price Index for Miscellaneous Fabricated Products) from June 1993. The adjusted figure, based on the change in that Index since June 1993, is \$2.75.

Dated: _____

Alberta E Mills, Secretary
U.S. Consumer Product Safety Commission



**United States
Consumer Product Safety Commission
Bethesda, MD 20814**

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approved and signed.

Memorandum

Date: October 25, 2018

TO : The Commission

THROUGH: Alberta E. Mills, Secretary
Patricia M. Hanz, General Counsel
Mary T. Boyle, Executive Director
J. DeWane Ray, Deputy Executive Director for Safety Operations
Robert Kaye, Assistant Executive Director, EXC

FROM : Julio Alvarado, Compliance Officer, CRE

SUBJECT : Federal Register Notice Regarding Increased Customs Value for Refillable
Cigarette Lighters in Accordance with 16 CFR § 1210.2

The Safety Standard for Cigarette Lighters, 16 CFR § 1210 (the Standard), addresses injuries and deaths resulting from children younger than 5 years of age playing with disposable and novelty lighters.

In defining the products subject to the Standard, the Commission established a maximum monetary value for refillable lighters subject to the Standard. This monetary value is based on the Customs Valuation or ex-factory price¹ under \$2.00, adjusted every 5 years. The 5-year adjustment of the valuation is due. 16 CFR § 1210.2(b)(2)(ii).

Compliance recognizes that manufacturers, importers, and distributors need time to prepare for any adjustment in the Customs Valuation or ex-factory price. The adjusted amount will impact lighter manufacturers because some lighters that were previously exempt will now be subject to the Standard. Furthermore, manufacturers and/or importers must submit reports concerning covered lighters to Compliance before the firms can legally import the lighters. Therefore, if the Commission approves the change in valuation, Compliance would begin enforcement at the new valuation 3 months from the publication date in the *Federal Register* notice announcing the adjustment. Compliance will inform manufacturers, importers, and distributors of the adjustment through submission response letters.

¹ The price of a good as it leaves a factory; it does not reflect other charges, such as for transportation and insurance, which are borne by the buyer.



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Memorandum

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DATE: October 25, 2018

TO : The Commission

THROUGH : Alberta E. Mills, Secretary
Patricia M. Hanz, General Counsel
Mary T. Boyle, Executive Director
J. DeWane Ray, Deputy Executive Director for Safety Operations
George A. Borlase, Ph.D., P.E., Assistant Executive Director, EXHR
Gregory B. Rodgers, Ph.D., Associate Executive Director, EC

FROM : Charles L. Smith, Economist, EC

SUBJECT : Federal Register notice regarding increased Customs Value for refillable cigarette lighters under 16 CFR part 1210

The Safety Standard for Cigarette Lighters, 16 CFR part 1210 (the Standard), addresses injuries and deaths resulting from children under 5 years of age playing with lighters. The Standard mandates that disposable and novelty lighters meet specified requirements for child-resistance.

Section 1210.2(b)(2) defines “disposable lighters” as: (i) lighters that are not refillable or (ii) lighters that use butane or similar fuels and have a Customs Value or ex-factory price below a threshold value (initially set at \$2.00). Section 1210.2(b)(2)(ii) requires that the initial \$2.00 value be adjusted every 5 years for inflation. Inflation is measured by the percentage change since June 1993, in the appropriate Wholesale Price Index for cigarette lighters, as published by the Department of Labor’s Bureau of Labor Statistics (BLS) (now referred to as the Producer Price Index (PPI) for Miscellaneous Fabricated Products, Series Id: PCU339999339999L). The inflation-adjusted price is then rounded to the nearest \$0.25 increment. The most recent price adjustment occurred in July 2013, when changes in the PPI from June 1993 to June 2013 indicated a revised Customs Value or ex-factory price of \$2.50 per refillable lighter. The Commission announced this change in a *Federal Register* notice dated August 26, 2013. 78 Fed. Reg. 52679.

The Directorate for Economic Analysis has calculated that the PPI for Miscellaneous Fabricated Products increased by approximately 36 percent from June 1993 to June 2018. Under section 1210.2(b)(2)(ii) this increase in the PPI merits an adjustment in the Customs Value or ex-factory price to \$2.75 as the threshold for determining whether refillable lighters are within the scope of the Standard.¹ Thus, with this revision, refillable lighters with Customs Value or ex-factory price under \$2.75 would be considered subject to the Standard.

¹ The approximately 36 percent increase from 124.7 in June 1993 to 169.5 in June 2018 (December 1985=100) yielded an adjustment to \$2.72 per lighter, which rounds to \$2.75 under section 1210.2(b)(2)(ii) of the rule.