

## § 1212.5

children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered to be resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate multi-purpose lighter, the test results are inconclusive, and the surrogate multi-purpose lighter shall be tested with a second 100-child test panel in accordance with this §1212.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. (2)(i) If additional testing of the surrogate multi-purpose lighter is required by paragraph (h)(1) of this section, conduct the test specified by this §1212.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered resistant to successful operation by at least 85% of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered not resistant to successful operation by 85% of the child test panel, and no further testing is conducted.

(ii) Thus, for the first panel of 100 children, the surrogate passes if there are 0-10 successful operations by the children; the surrogate fails if there are 19 or greater successful operations; and testing is continued if there are 11-18 successes. If testing is continued with a second panel of children, the

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surrogate passes if the combined total of the successful operations of the two panels is 30 or less, and it fails if there are 31 or more.

### § 1212.5 Findings.

(a) Before issuing a final rule, the Consumer Product Safety Act (CPSA), 15 U.S.C. 2058(f)(1), requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(4) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety

(b) The CPSA, 15 U.S.C. 2058(f)(3), also requires the Commission to make the following findings before it promulgates a rule, and to include such findings in the rule:

(1) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(2) That the promulgation of the rule is in the public interest;

(3) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(4) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(c) The required findings are included as appendix A to this part 1212.

### Subpart B—Certification Requirements

AUTHORITY: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

## Consumer Product Safety Commission

## § 1212.12

### § 1212.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1212 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Multi-purpose lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

### § 1212.12 Certificate of compliance.

(a) *General requirements.* (1) *Manufacturers (including importers).* Manufacturers of any multi-purpose lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1212.13, 1212.14, and 1212.16. Manufacturers must also label each multi-purpose lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1212.15 and 1212.17. For purposes of this requirement, an importer of multi-purpose lighters shall be considered the “manufacturer.”

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the multi-purpose lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of multi-purpose lighters in accordance with paragraph (b) of this section is supplied to any dis-

tributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* (i) If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that:

(A) The importer is a resident of the United States or has a resident agent in the United States and

(B) The records are in English and the records and the surrogate multi-purpose lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1212.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1212.17(a)(3).

(ii) The importer is responsible for ensuring that:

(A) The foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1212.14–1212.16),

(B) The records provide a reasonable assurance that all multi-purpose lighters imported comply with the standard (§ 1212.13(b)(1)),

(C) The records exist in English (§ 1212.17(a)),

(D) The importer knows where the required records and multi-purpose lighters are located and that records required to be located in the United States are located there,

(E) Arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1212.17(a)), and

(F) The information required by § 1212.17(b) to be provided to the Commission's Office of Compliance has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state: