Good Cause for "No Notice"

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find good cause exists to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest.'' The FAA finds that notice and public comment on this change to the compliance date are both impracticable and contrary to the public interest. Notice and comment are impracticable in this instance because they would defeat the need for the rule change. Air carriers using certain equipment are unable to comply with the regulation because of a parts availability problem beyond their control. The FAA would not be able to accomplish notice and comment rulemaking until after the compliance date in the current regulation. Further, the FAA finds that the carriage of AEDs on commercial aircraft represent a significant benefit to the flying public, and delaying implementation of the rule for availability of an approved battery is contrary to that interest when little safety risk is involved for a short time.

Good Cause for Immediate Adoption

Section 553(d) of the APA requires that rules become effective no less than 30 days after their issuance. Paragraph (d)(1) allows an agency to make a rule effective immediately if it is relieving in nature. This final rule extends a compliance date, relieving the requirement to have equipment installed that may not be available. Accordingly, this rule is effective on issuance.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations (14 CFR Part 121) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. Amend Appendix A, Automated External Defibrillators, paragraph 2, to read as follows:

Appendix A to Part 121—First Aid Kits and Emergency Medical Kits

* * * * *

Automated External Defibrillators

* * * * *

2. On and after April 30, 2005, meet FAA Technical Standard Order requirements for power sources for electronic devices used in aviation as approved by the Administrator.

* * * * *

Issued in Washington, DC, on April 8, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–8512 Filed 4–12–04; 10:16 am]

BILLING CODE 4910–13–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 has a safety standard requiring that disposable and novelty lighters meet specified requirements for child-resistance. The rule defines disposable lighters, in part, as refillable 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). The standard provides that the initial $2.00 value adjusts every 5 years for inflation as measured by the percentage change since June 1993 in the appropriate Wholesale Price Index for which cigarette lighters are a part, as published by the Department of Labor's Bureau of Labor Statistics ("BLS'') (now referred to as the Producer Price Index for Miscellaneous Fabricated Products). The adjustment is rounded to the nearest $0.25 increment. With this notice, the Commission adds to the rule a statement that the import value adjusted to $2.25 when the June 2003 Index was finalized by BLS in November 2003. This information was also conveyed to the public by a Commission press release issued January 5, 2004.

This notice also makes a technical correction to change the term "Wholesale Price Index'' to "Producer Price Index for Miscellaneous Fabricated Products.''

DATES: This rule is effective April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Vogel, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7599; e-mail *jvogel@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In 1993, the Commission issued a standard that required disposable and novelty lighters to meet certain requirements for child-resistance. The standard defines disposable lighters as those that either are (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.'' 16 CFR 1210.2(b)(2)(ii).

Thus, the rule provides for the $2.00 threshold to adjust in accordance with inflation. The rule provides for adjustment to be rounded to the nearest twenty-five cents. Adjustment did not occur in 1998 because change in the Index since June 1993 was not sufficient to warrant an adjustment.

The name of the Wholesale Price Index has changed to the Producer Price Index. The Index that includes cigarette lighters is the Producer Price Index for Miscellaneous Fabricated Products (hereafter "the Index''). The Bureau of Labor Statistics generally releases the Index figures for the month of June in July, and the figures are subject to revision for four months.

Adjustment to $2.25 occurred as of November 2003. This figure is based on an 8% increase since June 1993 in the Index rounded to the nearest twenty-five cents.

The staff was concerned that there could be confusion about the exact amount and timing of the increase without specific notice from the Commission. So, on January 5, 2004, the Commission issued a press release notifying the public of the change in the price of lighters included in the cigarette lighter standard due to the adjustment and indicating that the adjustment would be enforced prospectively from March 1, 2004 (available on CPSC's Web site at *http://www.cpsc.gov/cpscpub/prerel/prhtm104/04060.html*). To provide enhanced notice to those subject to the standard of this and any future

adjustments, the Commission is adding a statement to the standard that states the adjusted $2.25 value.

This notice also makes a technical correction to change the term ''Wholesale Price Index'' to ''Producer Price Index'' and notes that the specific Producer Price Index currently applicable to cigarette lighters is the Producer Price Index for Miscellaneous Fabricated Products.

The Administrative Procedure 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 adds a statement to inform the public of an adjustment that has occurred automatically according to the terms of the cigarette lighter regulation. Accordingly, the Commission finds that notice and comment is 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 has occurred automatically in accordance with the requirements of the cigarette lighter standard.

List of Subjects in 16 CFR Part 1500

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 as finalized in November 2003, is $2.25.

Dated: April 6, 2004.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–8400 Filed 4–13–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 30 days the comment period for FDA's prior notice interim final rule (IFR) that published in the **Federal Register** of October 10, 2003 (68 FR 58974). The prior notice interim final rule requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States. FDA is taking this action consistent with its statement in the preamble of the prior notice IFR (68 FR 58974 at 59023) that it would reopen the comment period for an additional 30 days in March 2004, to ensure that those who comment on this interim final rule would have had the benefit of our outreach and education efforts and would have had some experience with the systems, timeframes, and data elements of the prior notice system.

DATES: Submit written or electronic comments by May 14, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: May D. Nelson, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1722.

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 2003, FDA issued an IFR to implement new section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act), which required prior notification of imported food to begin on December 12, 2003. The prior notice IFR requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States (68 FR 58974). The interim final rule requires that the prior notice be submitted to FDA electronically via either the Customs and Border Protection (CBP) Automated Broker Interface (ABI) of the Automated Commercial System (ACS) or the FDA Prior Notice System Interface (FDA PN System Interface) (21 CFR 1.280). Food imported or offered for import without adequate prior notice is subject to refusal and, if refused, must be held (21 CFR 1.283).

Under section 801(m)(2)(A) of the FD&C Act, FDA is to choose timeframes that ''shall be no less than the minimum amount of time necessary for the Secretary [of Health and Human Services] to receive, review, and appropriately respond to such notification* * *'' Using this standard, the prior notice IFR requires that the information must be submitted and confirmed electronically as facially complete by FDA for review no more than 5 days and no less than 8 hours (for food arriving by water), 4 hours (for food arriving by air or land/rail), and 2 hours (for food arriving by land/road) before the food arrives at the port of arrival (21 CFR 1.279). However, when we issued the interim final rule, FDA committed to exploring ways to increase integration of advance electronic notification processes with CBP and to reduce prior notice timeframes. Indeed, we stated in the preamble to the interim final rule (68 FR 58974 at 58995) that, by March 12, 2004, FDA and CBP would publish a plan, including an implementation schedule, to achieve the goal of a uniform, integrated system and to coordinate timeframes for import prior notice information while fulfilling the Bioterrorism Act mandates for air and truck modes of transportation with timeframes finalized by CBP when they finalize their rule entitled ''Required