

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.12.2006  
SEC(2006) 1630

**COMMISSION STAFF WORKING DOCUMENT**

**GUIDELINES**

**for the application of**

**COMMISSION DECISION of 11 May 2006  
(2006/502/EC)**

**requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters**

**(addressed to the Member States)**

## TABLE OF CONTENTS

1.	Introduction.....	3
2.	The scope of the Decision.....	4
2.1.	Basic requirements of the Decision.....	4
2.2.	Scope of the child-resistance requirements.....	5
2.3.	Scope of the novelty lighter prohibition.....	6
2.4.	Placing on the market.....	8
3.	Ensuring compliance with the general safety requirements.....	9
3.1.	Requirements for producers.....	9
3.2.	Laboratories for testing against ISO 9994.....	9
4.	Verifying compliance with the general safety requirements.....	10
4.1.	Documentary checks.....	10
4.2.	Physical checks.....	10
4.3.	Testing against the key requirements of ISO 9994.....	11
4.4.	Testing against all requirements of ISO 9994.....	11
5.	Ensuring compliance with the child resistance requirements.....	13
5.1.	Conformity with the child-resistance requirements.....	13
5.2.	Requirements for producers.....	13
5.3.	Laboratories for child-resistance testing.....	15
5.4.	Child-resistant mechanisms for lighters.....	15
6.	Verifying compliance with the child resistance requirements.....	16
6.1.	Documentary checks.....	16
6.2.	Physical checks.....	16
6.3.	Testing against the technical parameters provided by producers.....	17
6.4.	Testing against the requirements of EN 13869.....	17
7.	Market Surveillance and Customs Controls.....	18
7.1.	Market Surveillance Strategy.....	18
7.2.	Co-operation between Customs and Market Surveillance authorities.....	19

## 1. INTRODUCTION

The Commission adopted on 11 May 2006 a Decision, based on Article 13 of Directive 2001/95/EC (General Product Safety), requiring Member states to take measures to ensure that only child-resistant lighters are placed on the market and to prohibit the placing on the market of novelty lighters<sup>1</sup>. The Decision was notified to the Member States on the same day and must be transposed within 4 months of the notification date. Therefore, the Member States are required to take the necessary measures to comply with the Decision by 11 September 2006.

Article 6(4) of the Decision states that “within the framework of activities referred to in Article 10 of Directive 2001/95/EC on general product safety the Commission will, in advance of the deadline for the implementation of this decision by the Member States, establish guidelines with the aim of facilitating the practical application of the Decision”.

These Guidelines are therefore intended to support the application of the Decision by providing the necessary operational indications to the Member States’ authorities, including both market surveillance and customs authorities, and the relevant economic operators, namely manufacturers, importers, distributors and retailers.

Please note that these Guidelines provide guidance only and cannot be constituted as a legal interpretation of the Decision, as this is the sole competence of the European Court of Justice. These Guidelines are subject to revision based on the experiences gained with the market surveillance activities and the possible prolongation and/or amendment of the Decision.

The Guidelines consist of the following parts:

- General guidance for identifying those lighters falling under the various provisions of the Decision (chapter 2);
- Guidance for ensuring and verifying compliance with the general safety requirements for lighters (chapters 3 and 4);
- Guidance for ensuring and verifying compliance with the child-resistance requirements for lighters (chapters 5 and 6); and
- Guidance for market surveillance and customs controls (chapter 7).

The various annexes provide further information and elaboration on the different chapters. Next to this, there are a number of additional documents (such as example reporting templates, testing requirements and inventories) which are considered useful in the context of these Guidelines and which can be found on the following internet address: [http://ec.europa.eu/consumers/cons\\_safe/prod\\_safe/gpsd/lighters](http://ec.europa.eu/consumers/cons_safe/prod_safe/gpsd/lighters). Please note that these additional documents have been elaborated by different stakeholders and do not necessarily represent the Commission's views or carry its formal endorsement.

---

<sup>1</sup> Commission Decision 2006/502/EC; OJ L198 20.7.2006 p.41-45

## 2. THE SCOPE OF THE DECISION

### 2.1. Basic requirements of the Decision

The Decision establishes two basic requirements, which shall apply within the stated deadlines and according to the provisions of the Decision:

- (1) Only child-resistant lighters may be placed on the market: this applies to all lighters with the exception of refillable lighters which meet the criteria in Article 1.1, paragraph 2;
- (2) Placing on the market of “novelty” lighters as defined in Article 1(2) is prohibited.

A ‘lighter’ in the context of this Decision shall mean a manually operated flame-producing device employing a fuel, normally used for deliberately igniting in particular cigarettes, cigars and pipes, and which may foreseeably be used to ignite materials such as paper, wicks, candles and lanterns, manufactured with an integral supply of fuel, whether intended to be refuelled or not.

This means that lighters specifically intended for another purpose (so-called utility or multi-purpose lighters such as barbeque lighters, fireplace lighters, lighting rods or gas matches) are not covered by this Decision<sup>2</sup>. Care has to be taken that such lighters are not confused with certain novelty lighters.

Two important considerations must be noted:

- (1) The exclusion of lighters meeting the criteria of Article 1.1, paragraph 2, from the child resistance requirements is based on proportionality considerations, meaning that these lighters must in any case comply with the general safety requirements for lighters which are specified in standard EN ISO 9994:2005 “Lighters – Safety Specifications”;
- (2) Standard EN 13869:2002 “Lighters – Child-resistance for lighters – Safety requirements and test methods” states in its specification 4.1 that lighters shall comply with EN ISO 9994. Therefore, a pre-condition for fulfilling the specific requirements on child-resistance for those lighters to which such requirements are applicable, is compliance with the general safety requirements for lighters as specified in standard EN ISO 9994.

Therefore, the relevant parts of these guidelines provide guidance on how to ensure and verify compliance with the general safety requirements for lighters as specified in standard EN ISO 9994 for all categories of lighters.

---

<sup>2</sup> ISO/FDIS 22702:2003 Utility lighters - General consumer-safety requirements defines utility lighters as hand-held, flame-producing device with a manually-operated ignition system, 100 mm or greater in length when in the fully extended position, (...), used primarily to ignite items such as candles, fuel for fireplaces, charcoal- or gas-fired grills, camp stoves, lanterns, fuel-fired appliances or devices and/or pilot lights.

Annex I provides an example of a procedure that can be followed for checking which lighters need to comply with specific parts of the Commission Decision and with the general safety requirements.

Please note that the Decision refers to the General Product Safety Directive<sup>3</sup> (GPSD) for the definition of producer. This definition states that the producer can be the manufacturer, the manufacturer's representative or the importer. Wherever in these Guidelines the word 'producer' is used, it is intended to mean the manufacturer, the manufacturer's representative or the importer, unless otherwise specified.

## **2.2. Scope of the child-resistance requirements**

Excluded from the scope of the child-resistance requirements are only those lighters which meet all of the following criteria:

- (1) The lighters must be refillable;
- (2) The lighters must be designed, manufactured and placed on the market such as to ensure a continual expected safe use over a lifetime of at least five years, subject to repair;
- (3) The producer must provide a written guarantee of at least two years for each lighter, in accordance with Directive 1999/44/EC;
- (4) The lighters must have the practical possibility to be repaired and safely refilled over their entire lifetime of at least 5 years, including in particular a repairable ignition mechanism; and
- (5) Parts of the lighters that are not consumable, but are likely to wear out or fail in continual use after the guarantee period, must be accessible for replacement or repair by an authorised or specialised after-sales service centre based in the European Union.

The following indications have to be taken into account when ensuring and verifying that a lighter qualifies for the exclusion:

- (1) Refillable means that is intended and can be safely refilled in practice by consumers taking account of:
  - (a) The technical characteristics of the lighter;
  - (b) The commercial availability of refills;

Producers must show by means of technical documentation (which could for example include an explosion chart and a bill of materials) that their lighters are indeed refillable, including refill instructions. Moreover, they must show that refills are available throughout the EU.

---

<sup>3</sup> OJ L 11, 15.1.2002, p. 4

- (2) Producers must provide proof that their lighters have a continual expected safe use of at least 5 years. As a minimum, producers have to show that their lighters are repairable and that spare parts are available for at least 5 years after placing the lighters on the EU market. In addition to these minimum requirements, producers may provide the results of a fatigue test or other means to show that the lighters have an expected safe use of at least 5 years.
- (3) Producers must provide proof that the lighters they are placing on the market are subject to a written guarantee of at least two years, in accordance with Article 6 of Directive 1999/44/EC. Please note that this Directive makes the seller of a consumer good liable under article 3 where the lack of conformity becomes apparent within two years as from the delivery of the goods. The lighter Decision requires the producer (which is often not the seller) to provide a written guarantee of at least two years, applicable from the date of retail sale.
- (4) Producers must indicate how their lighters can be repaired and safely refilled over their entire lifetime, including in particular for the ignition mechanism. This can be done by providing a technical description of the repair options, addressing specifically the ignition mechanism, and an extract of the user manual regarding refilling (see also point 1).
- (5) Producers must show how the non-consumable parts of their lighters, specifically those that are likely to wear out or fail after the guarantee period, can be repaired or replaced. Moreover, they must provide a list of the available after sales service centres in the EU.

Full documentary evidence must be provided on request to the authorities covering all the aspects of the criteria mentioned above. The burden of proof regarding compliance with the exclusion criteria lies with the producer. The information should be provided in the official language of the country in which the lighters are placed on the market, although the authorities may decide to accept some of this information in a different language.

In the absence of adequate documentary evidence provided within a reasonable period of time as determined by the Member States' authorities, the lighters considered will be assumed to be subject to the child resistance requirements and the appropriate verification and enforcement actions should be taken. In effect, lighters for which such documentation is not available cannot be placed on the market without a child resistance mechanism. It should be noted that estimates indicate that at least 98% of the lighters placed on the EU market would fall within the scope of the Decision.

Once established, a non-exhaustive inventory of lighters excluded from the scope of the CR requirements of the Decision will be made available to the Member States and other stakeholders.

### **2.3. Scope of the novelty lighter prohibition**

Novelty lighters can no longer be placed on the EU market as of the applicable deadlines. The Decision refers to the specification of EN 13869:2002, which defines

a novelty lighter as a “*flame-producing product commonly used by consumers to ignite cigarettes, cigars and pipes, including any holder which can be incorporated later or any attachment which can be fixed later, that resembles by any means to another object commonly recognised as appealing to or intended for use by children younger than 51 months, or has entertaining audio effects or animated effects. A novelty lighter can operate on any fuel, including butane or liquid fuel. This includes, but is not limited to, lighters or holders that are clearly intended to hold lighters, the shape of which resembles cartoon characters, toys, guns, watches, telephones, musical instruments, vehicles, human body or parts of the human body, animals, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features. This excludes lighters that are printed or decorated with logos, labels, decals, artwork or heat shrinkable sleeves.*”

This definition states that a novelty lighter is a lighter that:

- Is commonly used by consumers to ignite cigarettes, cigars and pipes; and that
- Resembles by any means another object commonly recognised as appealing to, or intended for use by, children younger than 51 months; or
- Has entertaining audio effects; or
- Has animated effects.

There are a number of categories of lighters that clearly fall under this definition including those that look like:

- Toys (including cars, airplanes, bicycles, boats, dolls, cartoon characters, guns, swords, balls, animals, human body parts, tools, mobile phones, etc.);
- Child-care products (including soothers, feeding bottles, teats, etc.);
- Child-use products (including certain furniture, bicycles, sports & playground equipment, food articles, etc.).

Next to this, lighters which play musical notes, have flashing lights or moving objects, or other entertaining features (e.g. other noises) would typically be considered novelty lighters as well.

However, there are also lighters that are not commonly used by consumers to ignite cigarettes, cigars and pipes, and lighters that do not resemble an object that is commonly recognised as appealing to or intended for use by children younger than 51 months. Such lighters should be considered outside of the scope of the novelty lighter definition. Elements that could be taken into account when determining whether a lighter is a novelty lighter or not, are amongst others:

- The shape of the lighter;
- The size of the lighter;
- The weight of the lighter;

- The colour(s) of the lighter; and
- The presentation of the lighter.

Once established, a non-exhaustive inventory of novelty lighters will be made available to the Member States and other stakeholders. This inventory also intends to give examples of lighters that are not considered novelty lighters. Please note that this inventory will be updated with new examples throughout the course of the market surveillance efforts.

#### **2.4. Placing on the market**

Placing on the market is commonly understood within the context of Community legislation as the first making available of a product on the Community market (for distribution, consumption or use), whether for payment or free of charge.

The Decision determines that non-CR lighters and novelty lighters falling under its scope can no longer be placed on the EU market as of 11 March 2007.

Non-CR lighters and novelty lighters can be produced in the EU, or physically arrive into the EU (e.g. for transit), but may not be placed on the EU market, unless they are brought in conformity with the Community legislation, where this is possible. However, such lighters could be given a customs-approved treatment or use other than their release for free circulation on the EU market (e.g. transit, warehousing, or entry in a free zone or a free warehouse). This means for example that they could be exported or sent to countries where similar requirements do not exist. For further detailed rules to be observed, see point 7.2.

Manufacturers and importers have to be able to demonstrate to the appropriate authorities that their non-compliant lighters have been placed on the market before the above-mentioned deadline. As a result, the effective deadline for placing on the market of compliant lighters is the same for EU manufacturers and importers, i.e. 11 March 2007.

In accordance with recital 19, the aim is to establish the deadline for supplying only CR lighters to consumers when revising the Decision. This deadline was indicated to be one year after the coming into force of the current Decision (i.e. on the 11<sup>th</sup> of March 2008), but may be revised in view of the market situation.

### **3. ENSURING COMPLIANCE WITH THE GENERAL SAFETY REQUIREMENTS**

All lighters that are placed on the EU market have to comply with the requirements of ISO 9994 regarding general safety. The following guidelines have to be taken into account when ensuring compliance with these requirements.

#### **3.1. Requirements for producers**

Producers of lighters need to ensure that their lighters comply with the requirements regarding general safety as laid down in ISO 9994. To allow the surveillance authorities to check that these requirements have been met, producers and importers should provide, on request and within the given deadline set by the authorities, the necessary documentation showing such compliance. If such documentary evidence is not forthcoming within the requested deadline, placing on the market may be prohibited.

Any tests showing compliance with ISO 9994 need to be undertaken by an accredited or recognised testing facility. Producers and importers are free to decide how information about the results of such tests is provided to the authorities, as long as all relevant elements are included. An example template for providing such information can be found in the separate document entitled "ISO9994 - Example Summary Report full testing".

This information must be provided in the official language of the requesting country, unless the authorities decide to accept documentation in a different language. It is considered best practice for producers to have this information available at the moment lighters are being placed on the EU market, so that any requests from the authorities can be fulfilled without delay.

#### **3.2. Laboratories for testing against ISO 9994**

Several accredited laboratories within the EU have experience with the testing of lighters. Next to this, accredited laboratories in third countries can also be used to test lighters against the requirements of ISO 9994.

## 4. VERIFYING COMPLIANCE WITH THE GENERAL SAFETY REQUIREMENTS

Member States' authorities should undertake efforts to verify that lighters being placed on the EU market are in compliance with the general safety requirements as laid down in the ISO 9994 standard. A procedure for verifying compliance with ISO 9994 can be found in Annex II and compliance can be checked according to the following guidelines.

### 4.1. Documentary checks

As a first step in the surveillance efforts, authorities can undertake a documentary check. Such a check would involve the monitoring of the relevant documents required and verifying the accuracy of the information provided in those documents.

For lighters, the following elements could be verified:

- Whether a report documenting the results of testing against ISO 9994 is available. If not, such a report should be requested from the manufacturer or importer within a reasonable deadline.
- Whether this test report is complete. A check should be made as to whether the results of all ISO 9994 tests are reported.
- Whether the testing has been undertaken by an accredited or recognised laboratory.
- Whether the lighter models within the consignment correspond to the lighter models referred to in the test report.

Authorities can decide to suspend the release of a shipment of lighters in the absence of proper documentation and subject the lighters to further checks.

### 4.2. Physical checks

Next to verifying the documentation provided to them, surveillance authorities can also conduct physical checks. Such checks imply the visual monitoring of the product to verify whether relevant compulsory labelling and/or other obligatory information are correctly affixed on or with the product.

In the context of ISO 9994 the marking and information requirements are as follows:

#### 4.2.1. *Instructions and warnings*

All lighters shall be accompanied by appropriate safety information (instructions or warnings, or both) communicating to the user the proper method of usage. This information shall be either on the lighter itself, or in a separate brochure or pamphlet packed with the lighter, or on the consumer product packaging provided for the point of sale. Further, more detailed information as to the content of this information, including refilling instructions, can be found in ISO 9994.

Producers shall provide the necessary information to the authorities to show that these requirements are met. If the instructions and warnings are not present in the required form, the authorities can decide that the lighters may not be placed on the market according to their normal enforcement procedures.

#### 4.2.2. *Product labelling*

All lighters shall bear a permanent logo or name that identifies the manufacturer or distributor. This can be checked by looking at the lighter to see whether such a logo or name is present.

If a logo or a name identifying the manufacturer or distributor is not present, the authorities can decide that the lighters may not be placed on the market. In such cases Member States should follow their normal enforcement procedures.

#### 4.3. **Testing against the key requirements of ISO 9994**

Should the results of the documentary and physical checks warrant the need for further testing of certain lighters against the requirements of ISO 9994, there are a number of key tests that can be performed without the need for testing against all parameters. This allows the authorities to focus on the key requirements, thereby limiting the time and cost involved in the surveillance activities. These tests include:

- Flame height measurement
- Spitting, sputtering and flaring tests
- Flame extinction test
- Volumetric fuel-displacement test
- Drop test
- Elevated temperature test
- Continuous-burning-time test

Should the lighters fail any one of these tests, the Member States should take the appropriate measures following their normal enforcement procedures.

#### 4.4. **Testing against all requirements of ISO 9994**

Finally, a full testing procedure according to ISO 9994 can be followed, which includes the following tests:

- Flame generation
- Flame height
- Flame height adjustment
- Resistance to spitting, sputtering and flaring

- Flame extinction
- Volumetric displacement
- External finish
- Compatibility with fuel
- Resistance to fuel loss
- Resistance to dropping
- Resistance to elevated temperature
- Resistance to internal pressure
- Burning behaviour
- Resistance to cyclic burning
- Resistance to continuous burning
- Instructions and warnings
- Product marking

Please note that in practice it will rarely be necessary to conduct full scale testing of lighters against all requirements.

## **5. ENSURING COMPLIANCE WITH THE CHILD RESISTANCE REQUIREMENTS**

Next to compliance with ISO 9994, all lighters subject to the Decision have to comply with the requirements of EN 13869 regarding child-resistance. As indicated in chapter 2, novelty lighters, which are no longer allowed onto the EU market, and lighters fulfilling the criteria of Article 1.1, paragraph 2, are excluded from these requirements.

### **5.1. Conformity with the child-resistance requirements**

The Decision, in Article 2, requires Member States to ensure that only child-resistant lighters are placed on the market. Article 1.3 defines a child-resistant lighter as "a lighter designed and manufactured in such a way that it cannot, under normal or reasonably foreseeable conditions of use, be operated by children younger than 51 months of age because of, for instance, the force needed to operate it or because of its design or the protection of its ignition mechanism, or the complexity or sequence of operations needed for the ignition".

Subsequently, presumption of conformity shall be given to:

- (a) lighters which conform to national standards transposing European Standard EN 13869:2002, as far as the specifications other than those in paragraphs 3.1, 3.4 and 5.2.3 of the Standard are concerned;
- (b) lighters which conform to the relevant rules of the non-EU countries where child-resistance requirements equivalent to those established by this Decision are in force.

Next to these two options indicated in the Decision, producers could theoretically provide other evidence to the Member States' authorities to prove that the lighters they place on the market are child-resistant. As in such cases the lighters would of course not benefit from the presumption of conformity, authorities would have to, as a condition for placing lighters on the market, obtain sufficient evidence from the producer that all batches of lighters comply with the child-resistance requirements of the Decision. It is recommended that the Member States co-ordinate their position in such cases.

### **5.2. Requirements for producers**

The Decision requires producers, as a condition for placing lighters on the market, to fulfil the following requirements:

- (a) Producers shall keep and provide on request without delay to the competent authorities established under Article 6 of the Directive 2001/95/EC, a report of a child-resistance test for each model of lighters with samples of the lighters of the tested model, certifying the child-resistance of the model of lighters placed on the market. Such a report shall in particular include:
  - The name, address and principal place of business of the manufacturer wherever he is located, and of the importer if the lighters are imported;

- A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistance devices, design, technical solutions and other features that make the lighter child-resistant in accordance with the definitions and requirements of this Decision. In particular this will include a detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such feature. This should also include a picture of the lighter;
  - A detailed description of the tests and of the results obtained, the dates of the tests, the location where the tests have been performed, the identity of the organisation that conducted the tests and details of the qualification and competence of such organisation to conduct the tests concerned;
  - The identification of the place where the lighters are or have been manufactured;
  - The location where the documentation required by this Decision is kept;
  - References of the accreditation or recognition of the testing body.
  - In those cases where producers have decided to show in a different way that their lighters are child-resistant, conclusive evidence has to be provided to the Member States' authorities as a condition for placing the lighters on the market.
- (b) Producers shall attest on request to the competent authorities that all lighters in each of the batches placed on the market conform to the model tested and provide on request to the authorities the documentation on the testing and control programme supporting such an attestation.
- (c) Producers shall continuously monitor conformity of the lighters produced with the technical solutions adopted to ensure child-resistance, using appropriate testing methods and to maintain at the disposal of the competent authorities the production records necessary to show that all lighters produced conform to the model tested.
- (d) Producers shall keep and provide on request without delay to the competent authorities a new report of a child-resistance test if any changes are made to a model of lighter that may adversely affect the ability of the model to meet the requirements of this Decision.

It is considered best practice for producers to have this information available at the moment lighters are being placed on the EU market, so that any requests from the authorities can be fulfilled without delay.

At the same time, distributors will have to keep and provide without delay to the competent authorities on request the documentation necessary to identify any person from whom they have been supplied with the lighters they place on the market, in order to ensure traceability of the producer of the lighters throughout the supply

chain. This can be done via the use of normal business procedures such as invoicing records.

### **5.3. Laboratories for child-resistance testing**

Reports of a child-resistance test referred to in section 5.2 shall be established by either one of the following bodies:

- (a) Testing bodies accredited as fulfilling the requirements established by EN ISO/IEC 17025:2000 “General requirements for the competence of testing and calibration laboratories”, by a member of the International Laboratory Accreditation Cooperation (ILAC) for executing child-resistance tests on lighters or otherwise recognised to that end by the competent authority of a Member State. A non-exhaustive overview of such bodies is available in Annex III of these Guidelines.
- (b) Testing bodies whose reports of a child-resistance test are accepted by one of the countries where child-resistance requirements equivalent to those established by this Decision are applied. A non-exhaustive overview of such bodies is available in Annex IV of these Guidelines.

Since child resistance requirements have not been in place in the EU thus far, there are no testing bodies in the EU yet that are accredited, or otherwise recognised, to undertake child panel testing of lighters. However, it is expected that in the near future such bodies will be accredited or recognised in response to market demand.

Moreover, it is considered that many CR mechanisms for lighters already exist, the application of which would not need new child panel testing. Indeed, for the last ten years such lighters have been placed on the US and other third country markets, and the test reports accepted in those countries can also be used in the EU.

### **5.4. Child-resistant mechanisms for lighters**

As indicated above, lighter manufacturers have adopted a number of mechanisms that can be used to make lighters child resistant. Annex V provides an overview of the most commonly used mechanisms. Obviously, manufacturers are not obliged to apply any of the listed mechanisms, as other solutions complying with the CR requirements may be used. Please note that simply adopting one of the CR mechanisms is not sufficient to ensure child resistance. The lighter will have to comply with the requirements of the Decision as indicated in section 5.1.

## 6. VERIFYING COMPLIANCE WITH THE CHILD RESISTANCE REQUIREMENTS

Member States' authorities should undertake efforts to verify that lighters being placed on the EU market are in compliance with the CR requirements as laid down in the Decision and the EN 13869 standard. A procedure for verifying compliance can be found in Annex VI and verification can be undertaken according to the following guidelines.

### 6.1. Documentary checks

As a first step in the surveillance efforts, authorities can undertake a documentary check. Such a check would involve the monitoring of the relevant documents required and verifying the accuracy of the information provided in those documents.

For lighters, the following elements could be verified:

- Whether a report documenting the results of CR testing is available? If not, such a report should be requested from the manufacturer or importer within a reasonable deadline.
- Whether this test report is complete? A check should be made as to whether all the relevant data are reported (see chapter 5.1 for more details).
- Whether the testing has been undertaken by an accredited or recognised laboratory?
- Whether the lighter models within the consignment correspond to the lighter models referred to in the test report.

Authorities can decide to suspend the release of a shipment of lighters in the absence of proper documentation and subject the lighters to further checks.

### 6.2. Physical checks

Next to verifying the documentation provided to them, surveillance authorities can also conduct physical checks. Such checks imply the visual monitoring of the product to verify whether relevant compulsory labelling and/or other obligatory information are correctly affixed on or with the product.

According to EN 13869 the labelling and information requirements are as follows:

#### 6.2.1. Declaration of compliance

A declaration of compliance (e.g. a certificate) shall accompany each shipping unit of the product (e.g. a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the producer (i.e. the manufacturer or importer). The declaration shall state:

- (a) That the product complies with EN 13869
- (b) The name and address of the producer

- (c) The period(s) of time, not to exceed 31 days, during which the lighters were manufactured; and
- (d) The address of the place of manufacture, if different from the address in b).

If a declaration is not present, the authorities can decide that the lighters may not be placed on the market.

#### 6.2.2. *Product marking*

For traceability purposes, the producer shall label each lighter with the following information, which may be in code:

- (a) An identification of the period of time, not to exceed 31 days, during which the lighter was manufactured; and
- (b) An identification of the producer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer upon request.

If an identification of the manufacturing period and the producer is not present, the authorities can decide that the lighters may not be placed on the market, in accordance with normal enforcement procedures.

### 6.3. **Testing against the technical parameters provided by producers**

Producers of lighters that are placed on the EU market have to provide details about the technical parameters that make the lighters child-resistant. These technical parameters can be tested to see whether the declared values correspond to the values present in a specific lighter or batch of lighters. How to test for this depends on the CR mechanism used.

For example, in case of a hard-piezo mechanism, the force needed to operate the lighter can be easily measured and compared with the value declared by the producer.

If the test results show non-compliance of the lighters with the declared values, the Member States' authorities should take the appropriate measures, following their normal enforcement procedures.

### 6.4. **Testing against the requirements of EN 13869**

Should the results of the documentary, physical and technical parameter checks warrant the need for further testing against the requirements of EN 13869, a child-panel test according to the standard would have to be undertaken. Please note that in practice it will be rarely necessary to conduct child panel testing of lighters as testing against the technical parameters should in most cases be sufficient to establish whether a lighter can be considered child resistant or not.

## 7. MARKET SURVEILLANCE AND CUSTOMS CONTROLS

### 7.1. Market Surveillance Strategy

To ensure an effective implementation and enforcement of the Decision, an appropriate market surveillance strategy needs to be put in place. The development of such a strategy and the organisation of the practical aspects of the surveillance efforts, for which the GPSD provides a clear framework, is largely the responsibility of the Member States. In the context of the lighter Decision, amongst others the following issues would have to be addressed;

- **The communication between the surveillance authorities, and between these authorities and producers in the EU and in third countries (see also section 7.3).** Communication and information exchange between the Member States' authorities can take place via a specifically established CIRCA group (see internet address: (<http://forum.europa.eu.int/Members/irc/sanco/lighters/home>)). Next to this, the RAPEX system should be used to inform the Commission, other Member States and the general public (via the SANCO website) about lighters presenting a serious danger to consumer safety and for which enforcement actions have been undertaken or ordered. Member States typically have national rules for the interaction with economic operators but some procedures for this may also need to be established at EU level.
- **The instruments that need to be in place to facilitate the surveillance efforts (such as guidelines, protocols, checklists, reporting formats, etc.).** These Guidelines already make reference to a number of documents that can be used by producers to show compliance with the various requirements of the Decision. However, Member States may decide to develop additional tools to facilitate their market surveillance efforts and the exchange of information so as to ensure a harmonised approach. This is especially relevant with respect to lighters that have already been allowed on the markets of those countries where CR requirements have been in place for some time. Such lighters should in principle be allowed onto the EU market without the need for further testing but details on how their CR 'credentials' could be established when they are placed on the EU market still need to be decided upon. Similarly, the evidence that producers may present to the Member States with respect to their lighters being child-resistant, and that would not make use of the presumption of conformity provided by the EN 13869 standard or equivalent tests, would have to be evaluated in a co-ordinated way so as to ensure a harmonised approach and a level playing field.
- **The organisation of the practical surveillance effort (e.g. selection of shipments, sample taking, measures taken, use of inventories, etc.).** As in practice it is not possible to check every shipment of lighters being placed on the EU market, Member States will have to determine a control strategy, including, amongst others, a risk evaluation and criteria for selecting consignments. For example, this may be based on the volume, port of entry, time of entry, or value of a consignment. In this context, it should be noted that the definition established in the Decision of the scope of the child resistance requirements is based on technical elements. This is different from the definition used in the non-EU countries where child resistance requirements are in force (i.e. the US, Canada,

Australia and New Zealand). In these countries the scope of the child resistance requirements is defined by a monetary threshold, currently an ex-factory price or customs valuation of 2.25 USD (equivalent to about 1.75 EUR). The technical definition of the Decision is intended to ensure equivalence with the scope of child resistance requirements applied in the above mentioned countries, where they have been perceived to be effective, practicable and proportionate<sup>4</sup>. Any EU Member State authority choosing to pay special attention to lighter models claiming to meet the exclusion criteria, but having an ex-factory price or customs valuation below, for instance, the above mentioned monetary indicator, must be aware that any decision to block the placing on the market of a certain lighter would have to be taken on the basis of the technical definition of the Decision, and not on the basis of such a *prima facie* indicator. Furthermore, decisions would have to be taken regarding the use and regular updating of the lighter inventories.

The first stage of the market surveillance efforts will start with the verification of compliance with the requirements of ISO 9994 (approximately October 2006). The aim of this pilot stage is to gain experience with the surveillance strategy amongst a core group of Member States.

The second stage will start once the child resistance requirements and the ban on novelty lighters will come into force (approximately March 2007). This stage is aimed at establishing the practical enforcement of the Decision and should include most Member States.

Further details on how the market surveillance strategy will be organised in practice can be found in a separate document entitled "*Strategy for Market Surveillance Action on Child-Resistant Disposable Lighters and Novelty Lighters: Joint Action under the PROSAFE Best Practice Market Surveillance Project*", which will be made available to the Member States and other stakeholders.

## **7.2. Co-operation between Customs and Market Surveillance authorities**

Communication and co-operation between customs and market surveillance authorities is based on Regulation 339/93/EEC<sup>5</sup>. In some Member States specific, additional rules have been established to facilitate this co-operation and to give customs authorities a broader role in market surveillance. As this situation differs per Member State, national authorities will have to develop their own approach to the market surveillance strategy within the context of these Guidelines.

The traditional task of customs is the surveillance of the flow of goods across the external borders of the Community. Customs controls are carried out on the basis of the results of risk analysis.

In cases where customs checks (e.g. documentary and physical checks; see sections 4.1, 4.2, 6.1 and 6.2) find that a lighter or a batch of lighters displays certain

---

<sup>4</sup> In fact, at least 98% of the lighters sold within the EU have a Retail Selling Price between 0,40 and 8 Euro which often corresponds to an ex-factory price or customs valuation between 0,10 and 1,75 Euro. The ex-factory price is normally available from the invoice of the manufacturer to the first buyer in the supply chain. Customs valuation information can be obtained from import documentation.

<sup>5</sup> OJ L 40, 17.2.1993, p. 1.

characteristics which would give rise to a serious doubt as to the existence of a serious and immediate risk to health or safety in the event of that product being used under normal and foreseeable conditions, customs has to suspend the release of the lighters concerned and immediately notify the market surveillance authority responsible.

This is also the case if customs authorities find that a product or a batch of products is not accompanied by a document or not marketed in accordance with the Community or national rules on product safety in the Member State in which release for free circulation is sought (Article 2 of Regulation 339/93).

The market surveillance authority has to advise customs on the follow up action to be taken within **three working days**. Otherwise customs would have to release the lighters in question.

Where the examinations by the market surveillance authorities result in the conclusion that the lighters concerned present a serious and immediate risk or do not comply with national rules in force on product safety customs may not release these lighters for free circulation (Article 6 of Council Regulation no. 339/93, Articles 58 (2), 73, 78 of the Community Customs Code (Council Regulation 2913/92)).

On request of the market surveillance authorities, customs includes one of appropriate endorsements set out in Article 6 of Council Regulation 339/93 on the commercial invoice and any other relevant document:

- "Dangerous product - Release for free circulation not authorized - Regulation (EEC) No 339/93"

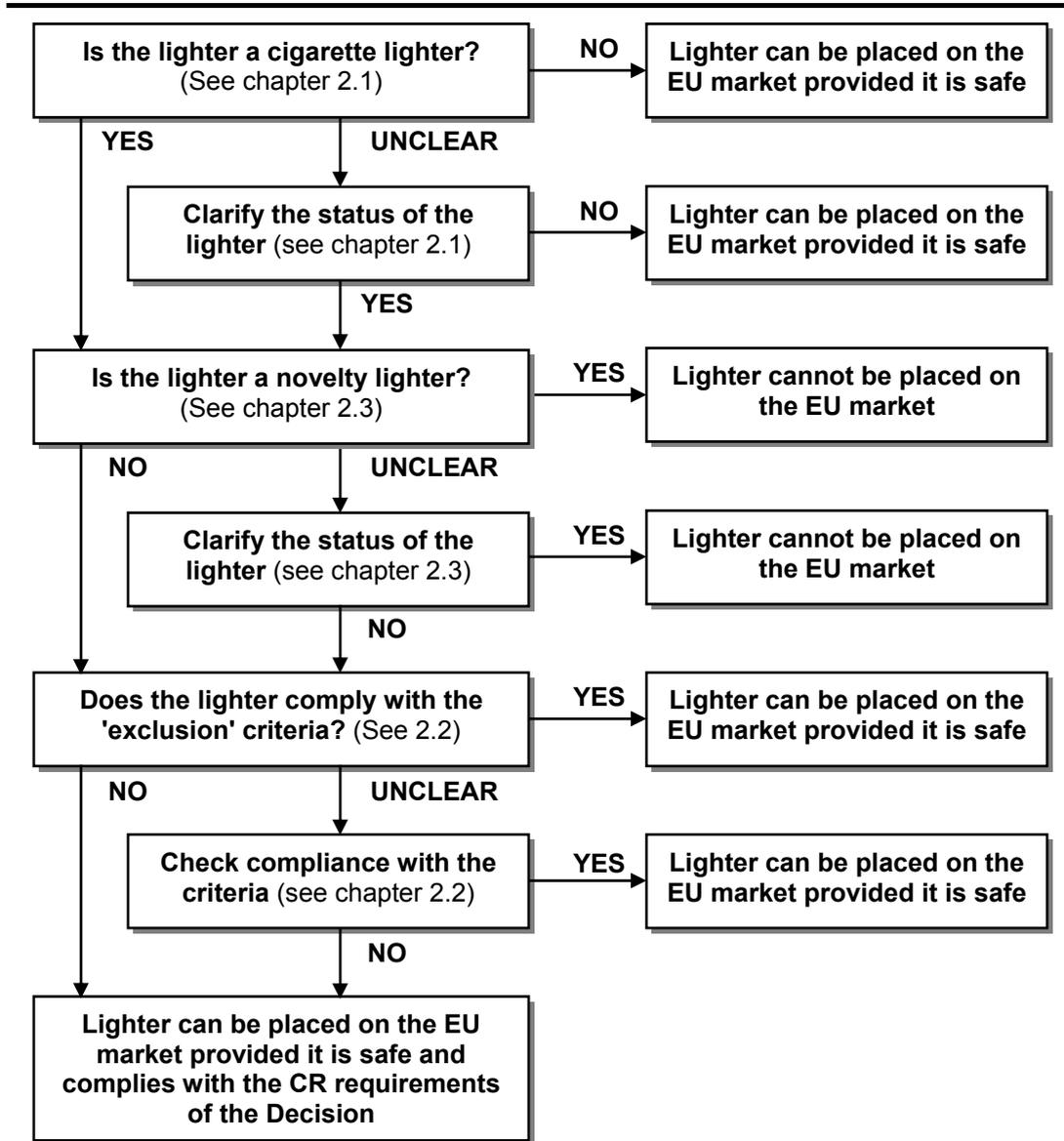
or

- "Product not in conformity - Release for free circulation not authorized - Regulation (EEC) No 339/93".

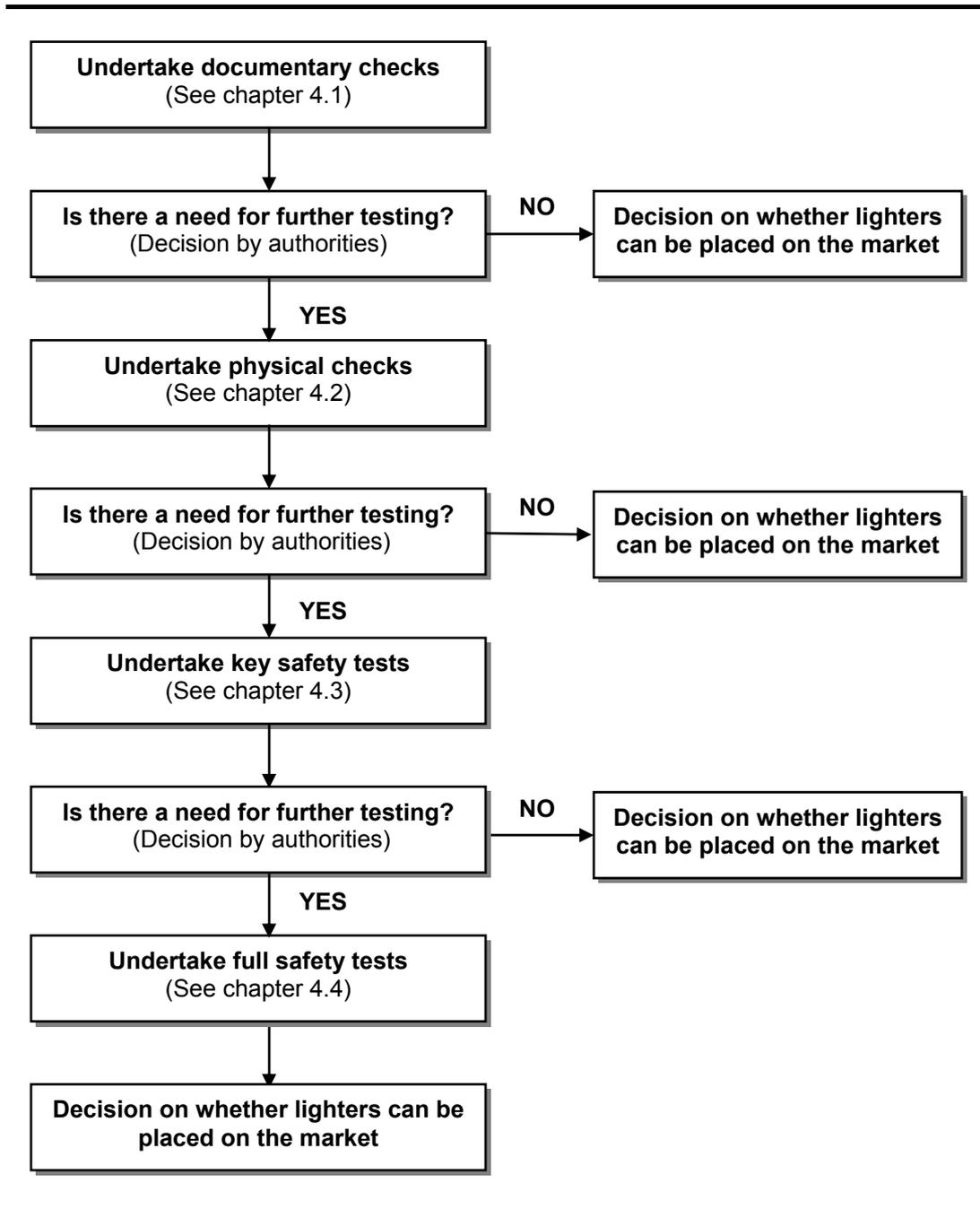
As already indicated above, the procedural rules regarding the mutual assistance and co-operation between different governmental agencies depend largely on the situation in each Member State. Whatever solution is applied, care has to be taken that the resulting enforcement activities are sufficient to ensure a high level of consumer protection across the EU.

**Annex I**

**Example procedure for checking which lighters need to comply with specific parts of the Commission Decision and with the general safety requirements**



**Annex II**  
**Example procedure for verifying compliance with the general safety requirements for lighters**



**Annex III**  
**Non-exhaustive inventory of testing bodies for child resistance**

**Testing bodies accredited for executing child-resistance tests on lighters according to EN ISO/IEC 17025:2000**

None (October 2006)

**Testing bodies recognised by the competent authority of a Member State to execute child-resistance tests on lighters**

None (October 2006)

#### Annex IV

### Non-exhaustive inventory of testing bodies whose reports of a child-resistance test are accepted by one of the countries where child-resistance requirements equivalent to those established by this Decision are applied

#### Child-Resistant Lighter Testing Laboratories in the US<sup>67</sup>

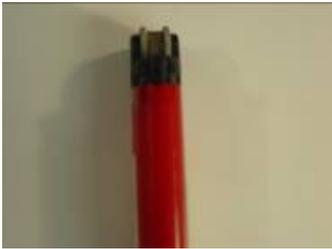
- **Applied Consumer & Clinical Evaluations Corp.**  
Mr. Raymond L. Berta  
Director  
5501 Main Street Suite 4  
Williamsville, New York 14221  
(716) 631-3335  
FAX (716) 631-3399
- **ETC Laboratories**  
297 Buell Road  
Rochester, NY 14624  
(716) 328-7668  
FAX: (716) 328-7777
- **Bird Dog Marketing Group LLC**  
Mr. Mark D. Perkins  
Mr. David S. Hipple  
3125 Nolt Road  
Lancaster, PA 17601  
717-615-9022  
Fax: 717-581-1762
- **Great Lakes Marketing Associates, Inc.**  
Dr. Lori Dixon  
The Executive Building  
3103 Executive Parkway  
Toledo, Ohio 43606-1311  
(419) 534-4700  
FAX (419) 531-8950
- **Child Related Research, Inc.**  
Mr. Michael S. Buie  
Vice President  
2605 East 3300 South  
Salt Lake City, Utah 84109  
(801) 467-9440  
FAX (801) 467-9443
- **Milford Consulting**  
Dr. Gerald Cavallo  
Managing Director  
80 Ocean Avenue  
Milford, Connecticut 06460  
(203) 876-0948  
FAX (203) 876-7530

---

<sup>6</sup> Source: <http://www.cpsc.gov.businfo/testligh.html>

<sup>7</sup> The U.S. CPSC is aware of the following firms that have stated they can test child-resistant cigarette lighters and multi-purpose lighters according to 16 CFR 1210.4 and 1212.4. By providing this listing, the Commission is not implying that it has approved, certified, or endorsed these firms

**Annex V**  
**Non-exhaustive overview of applied child resistance mechanisms**

<p align="center"><b>Push Button</b></p> 	<p align="center"><b>Slide Latch</b></p> 	<p align="center"><b>Swing Latch</b></p> 
<p align="center"><b>Over and Up Latch Horizontal</b></p> 	<p align="center"><b>Shielded Spark Wheel</b></p> 	<p align="center"><b>Push in Lever</b></p> 
<p align="center"><b>Force Only</b></p> 	<p align="center"><b>Over and Up - Vertical</b></p> 	<p align="center"><b>Torque Based</b></p> 
<p align="center"><b>Free Wheel</b></p> 	<p align="center"><b>Reverse Latch</b></p> 	<p align="center"><b>Spark Wheel Shield</b></p> 
<p align="center"><b>Spark Wheel Shield</b></p> 	<p align="center"><b>Smooth Spark Wheel</b></p> 	

**Annex VI**

**Example procedure for verifying compliance with the child-resistance requirements**

