



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1460

Docket No. CPSC-2015-0006

Revision to Children's Gasoline Burn Prevention Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Children's Gasoline Burn Prevention Act (CGBPA or the Act) adopted as a consumer product safety rule, the child-resistance requirements for closures on portable gasoline containers published in the ASTM voluntary standard, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, ASTM F2517-05. ASTM F2517 was revised in 2015. These revisions became law under the Act, which the Commission codified through a direct final rule in 2015. On November 13, 2017, the Commission received notice from ASTM that a revision to ASTM F2517 was published in November 2017. In this direct final rule the Commission reviews and evaluates the revised ASTM F2517, finding that the revisions carry out the purposes of the CGBPA's requirements. Accordingly, the 2017 revisions to the child-resistance requirements will be automatically incorporated and apply as the statutorily mandated standard for closures on portable gasoline containers. This direct final rule updates the Commission's regulation to reflect that the requirements for closures on portable gasoline containers must meet the requirements in ASTM F2517-17.

DATES: This rule will be effective on January 12, 2018, unless the Commission receives significant adverse comment by December 28, 2017. If we receive timely significant adverse comments, we will publish notification in the **Federal Register** withdrawing this direct final

rule. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 12, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0006, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments (paper, disk, or CD-ROM submissions) by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: John Boja, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7300; jboja@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Children's Gasoline Burn Prevention Act. The CGBPA was enacted on July 17, 2008. The Act established as a consumer product safety rule ASTM International's (ASTM) F2517-05's child-resistance requirements for closures on portable gasoline containers. All portable gasoline containers manufactured on or after January 17, 2009 for sale to consumers in the United States must conform to ASTM F2517's child-resistance requirements. By mandating closures that resist access by children up to 51 months of age (4 years and 3 months), the Act seeks to reduce hazards to children, including children ingesting gasoline and inhaling gasoline fumes, and the risk of burns from fires and explosions that may occur when children access gasoline stored in portable gasoline containers. The Act did not require the Commission to undertake any action for the Act's provisions to take effect; rather, ASTM 2715-05's child-resistance requirements were made mandatory through operation of law. The Children's Gasoline Burn Prevention Act, Public Law 110-278; 122 Stat. 2602, Sec. 2(b) (July 17, 2008), codified as a note to 15 U.S.C. § 2056.

CGBPA Provisions Regarding Updates to ASTM F2517. Under the Act, ASTM must notify the Commission of any revision to the child-resistance requirements for closures contained in ASTM F2517. Once ASTM notifies the CPSC of ASTM's revisions to this voluntary standard, the revisions will be incorporated by operation of law and will become the consumer product safety standard within 60 days after such notice. However, the Commission can prevent such incorporation if the Commission determines that revisions to the voluntary standard do not carry out the purposes of the child-resistance requirements for closures on portable gasoline containers as specified in ASTM F2517, and so notifies ASTM.

On February 11, 2015, ASTM gave notice to CPSC of revisions to ASTM F2517-05. The revised standard was designated as ASTM F2517-15. The Commission determined that the revisions to the voluntary standard stated in ASTM F2517-15 carried out the purposes of the child-resistance requirements for closures on portable gasoline containers. Accordingly, by operation of law, the revisions became effective 60 days after February 11, 2015, on April 13, 2015. So that the Code of Federal Regulations would include the standard, the Commission published a direct final rule, 80 FR 16961 (March 31, 2015), codifying the Commission's incorporation by reference of ASTM F2517-15 at 16 CFR part 1460.

2017 Revisions to ASTM F2517. On November 13, 2017, ASTM notified the Commission that it has again revised ASTM F2517. On October 1, 2017, ASTM approved publication of ASTM F2517-17, and published the standard in November 2017. Unless the Commission determines that the revisions to ASTM F2517-17 fail to carry out the purposes of the child-resistance requirements for closures on portable gasoline containers specified in ASTM F2517, and notifies ASTM of this determination, the revisions to ASTM F2517 become a mandatory consumer product safety standard by operation of law, effective January 12, 2018.

As set forth in this preamble, the Commission has determined that the revisions made to ASTM F2517 carry out the purposes of the child-resistance requirements for closures on portable gasoline containers. Accordingly, by operation of law, the requirements for closures on portable gasoline containers, as specified in ASTM F2517-17, are mandatory for all such containers sold or imported into the United States that were manufactured on or after January 12, 2018. To provide clarity to the regulated industry, the Commission will revise our regulation at 16 CFR part 1460 to reflect the incorporation by reference of this revised voluntary standard.

II. Description of the Rule

The rule codifies the child-resistance requirements for closures on portable gasoline containers as stated in ASTM F2517-17. These requirements are mandatory effective January 12, 2018. The Commission is publishing this direct final rule incorporating by reference ASTM F2517-17 so that the Code of Federal Regulations will reflect the current version of this mandatory standard.

Revisions to ASTM F2517 in the 2017 update increase the stringency of the testing requirements or refine the testing environment to aid in test reliability. These changes are described in more detail in the Staff's Briefing Memorandum.¹ Changes to the voluntary standard include:

- Reducing the amount of water required in a tested container from a half-filled container to a quarter-filled container. Decreasing the amount of liquid required for the test makes the container weigh less, increasing the likelihood that children are able to manipulate a container to access the liquid.
- For containers with multiple closures, removing the requirement to seal off closures not being tested. Manufacturers report that children are distracted by sealing mechanisms on closures not being tested. Accordingly, this revision removes the distraction and focuses the children's attention on attempting to open, or "get the liquid out" of the closure being tested. Although children are instructed to try and open one closure at a time on the container, the test is strengthened by failing a container if a child is able to access liquid from any closure during testing.

¹ Staff Briefing Memorandum available at https://www.cpsc.gov/s3fs-public/ChildrensGasolineBurnPreventionActRegulation.pdf?OrMoO3W9UP6IAQT1mSA5JLORRPgJA_n9.

- Adding requirements to measure and document the torque needed to secure a closure. Currently, the standard requires testing on new portable gasoline containers that have not been exposed to fuel or residue. ASTM members are concerned that degradation of a portable gasoline container could occur after exposure to fuel, which may affect the torque value of the child-resistant closures. This requirement is intended to aid in consideration of a future provision that would limit the change in torque value after exposure to fuel.
- Clarifying test instructions and requirements to remove possible ambiguities in the test procedure. ASTM F2517-17 adds information and instructions regarding how manufacturers should seek consent for testing children at daycare facilities. The revised standard also updates instructions given to the children during testing to reflect newer child resistant closure technology that does not necessarily “open” in the traditional sense. Children are now instructed: “Please try to open this for me or get the liquid out.”
- Allowing the option to use central location testing. Previously, testing was primarily conducted at daycare facilities. Manufacturers expressed frustration with the decreasing number of daycare facilities willing to participate in testing portable gasoline containers. ASTM F2517-17 allows the option to conduct testing at a central location, providing a more feasible testing venue and allowing the industry to continue to develop newer child-safe products. Additionally, a new Appendix to ASTM F2517-17 provides non-mandatory recommendations for laboratory testing procedures that are intended to prevent fraud in testing.

After reviewing the changes to the child-resistance requirements in F2517-17, as outlined above, the Commission determines that the revised standard carries out the purposes of the Act for closures on portable gasoline containers. Each revision increases the stringency of the testing requirements or refines the testing environment to aid in test reliability. Accordingly, the 2017 revisions to the child-resistance requirements of ASTM F2517 will be incorporated into the CPSC mandatory rule, as provided in the Act. However, because the scope of the consumer product safety rule is established by the CGBPA, this rule does not incorporate by reference the scope section of ASTM F2517-17 or Appendix X2 that relates to the scope section of ASTM F2517-17.

III. Direct Final Rule

The Commission is issuing this rule as a direct final rule. The Administrative Procedure Act (APA) generally requires notice and comment rulemaking except when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” The Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. ACUS also recommended using direct final rulemaking when an agency concludes that notice and comment is “unnecessary” under the APA’s good cause exemption. *See* ACUS, Recommendation, 95-4, 60 FR 43108, 43110 (August 18, 1995).

This rule will revise the reference at 16 CFR part 1460 to refer to ASTM F2517-17, which will be in full force and effect by operation of law on January 12, 2018. In these circumstances, where the substantive requirements are mandated by statute and become effective under the statute, public comment on updating the reference to the ASTM standard serves little

purpose. Moreover, we do not expect that updating the reference would be controversial or result in significant adverse comment. As a result, the Commission believes that a direct final rule codifying the revised standard in these circumstances is appropriate.

Unless we receive a significant adverse comment by December 28, 2017, the rule will become effective on January 12, 2018. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one in which the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

IV. Incorporation by Reference

Section 1460.3 of the final rule provides that closures on portable gasoline containers must comply with the child-resistance requirements of ASTM F2517-17. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR's regulation requires that, for a final rule, agencies must discuss in the rule's preamble ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section II of this preamble summarizes the provisions of ASTM F2517-17. Interested persons may purchase a copy of ASTM F2517-17 from ASTM, either through ASTM's website or by mail at the address provided in the rule. One

may also inspect a copy of the standard at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission.

V. Effective Date

As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment by December 28, 2017, the rule will become effective on January 12, 2018. Portable gasoline containers manufactured or imported on or after January 12, 2018 must comply with the child-resistance requirements for closures on portable gasoline containers in ASTM F2517-17.

VI. Other Relevant Statutory Provisions

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. This rule updates the reference in part 1460 to reflect requirements in the revised voluntary standard, ASTM F2517-17, that will take effect through operation of law, as specified in the CGBPA. Because the rule does not impose any requirements beyond those put in place by the CGBPA, the rule does not create new substantive obligations for any entity, including any small entity. Accordingly, the Commission certifies that the rule will not have a significant impact on a substantial number of small entities.

B. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact

statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

C. Paperwork Reduction Act

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) is not required.

VII. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the CPSA]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. As discussed above, under the CGBPA, the child-resistance requirements of ASTM F2517 are a consumer product safety standard under the CPSA. Children’s Gasoline Burn Prevention Act, Pub. L. 110-278, Sec. 2(a) (July 17, 2008). The child-resistance requirements of ASTM F2517-17, which will be codified under this rule, will invoke the preemptive effect of section 26(a) of the CPSA.

VIII. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. Because ASTM F2517-17 is a consumer product safety rule under the CPSA,

portable gasoline containers manufactured or imported on or after January 12, 2018, are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517-17.

List of Subjects in 16 CFR Part 1460

Consumer protection, Gasoline, Incorporation by reference, Safety.

For the reasons stated above, the Commission amends 16 CFR part 1460 as follows:

PART 1460 – CHILDREN’S GASOLINE BURN PREVENTION ACT REGULATION

1. The authority citation for part 1460 continues to read as follows:

Authority: Sec. 2, Pub. L. 110-278, 122 Stat. 2602.

2. Revise § 1460.3 to read as follows:

§ 1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Each portable gasoline container manufactured on or after January 12, 2018 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 6 of ASTM F2517-17 (including Appendices X1, X3, and X4), *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, approved on October 1, 2017. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA;

telephone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

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

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