



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1461

[Docket No. CPSC-2022-0017]

Portable Fuel Container Safety Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In August 2023, the Consumer Product Safety Commission (CPSC or Commission) accepted ASTM F3429/F3429M-23 for prefilled portable fuel containers as the mandatory standard under the Portable Fuel Container Safety Act of 2020 (PFCSA). In January 2024, ASTM notified the Commission that ASTM F3429/F3429M-23 had been revised. The Commission has evaluated revised ASTM F3429/F3429M-24 and finds that the revisions to the standard carry out the purposes of the PFCSA. Accordingly, ASTM F3429/F3429M-24 will be incorporated into the mandatory standard for portable fuel containers.

DATES: The rule is effective on July 27, 2024, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a notice in the *Federal Register* withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 27, 2024.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2022-0017, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other

sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want available to the public, you may submit such comments by mail, hand delivery, courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. Do not submit to this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2022-0017, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7945 or (888) 531-9070; email: sbo@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The PFCSA¹ requires the Commission to promulgate a final rule to require flame mitigation devices (FMDs) in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1)-(2). However, the Commission is not required to promulgate a final rule for a class of portable fuel containers within the scope of the PFCSA if the Commission determines that:

- there is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- the voluntary standard is or will be in effect not later than 18 months after the date of enactment of the PFCSA; and
- the voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A).

If the Commission determines that any voluntary standard meets these requirements, it must publish the determination in the *Federal Register*, and the requirements of such a voluntary standard “shall be treated as a consumer product safety rule.” 15 U.S.C. 2056d(b)(4). Under this authority, on January 13, 2023, the Commission published a notice determining that three voluntary standards for portable fuel containers meet the requirements of the PFCSA and would be treated as consumer product safety rules: ASTM F3429/F3429M-20 (pre-filled containers); ASTM F3326-21 (containers sold empty); and section 18 of UL 30:2022 (safety cans). 88 FR 2206.

¹ Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. 2056d, as stated Public Law 116–260, div. FF, title IX, section 901, available at: www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf.

Portable fuel containers sold pre-filled are within the scope of ASTM F3429/F3429M, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers*. ASTM lists the standard as a dual standard in inch-pound units (F3429 designation) and metric units (F3429M designation). ASTM F3429/F3429M was first published in 2020. ASTM published a revised version of ASTM F3429/F3429M-23 in May 2023, as ASTM F3429/F3429M-23. On August 22, 2023, the Commission determined that the 2023 revisions met the requirements of section 2056d(b)(3)(A) of the PFCSA.² Accordingly, ASTM F3429/F3429M-23 is the current mandatory consumer product safety rule for pre-filled-portable fuel containers. On October 31, 2023, the Commission published a direct final rule creating 16 CFR part 1461 for portable fuel containers to incorporate by reference the revised ASTM F3429/F3429M-23, as well as ASTM F3326-21 and section 18 of UL 30:2022. 88 FR 74342.

Under section (b)(5) of the PFCSA, if the requirements of a voluntary standard that meet the requirements of section (b)(3) are subsequently revised, the organization that revised the standard shall notify the Commission after the final approval of the revision. 15 U.S.C. 2056d(b)(5)(A). Any such revision to the voluntary standard shall become enforceable as the new consumer product safety rule not later than 180 days after the Commission is notified of a revised voluntary standard that meets the conditions of section (b)(3) (or such later date as the Commission determines appropriate), unless the Commission determines, within 90 days after receiving the notification, that the revised voluntary standard does not meet the requirements described in section (b)(3) of the PFCSA. 15 U.S.C. 2056d(b)(5)(B).

On January 29, 2024, ASTM notified the Commission that it has revised ASTM F3429/F3429M-23 with the publication of ASTM F3429/F3429M-24. On February 9, 2024, the Commission published a notice of availability and request for comment regarding ASTM

² The Record of Commission Action is available here: www.cpsc.gov/s3fs-public/RCAASTMsRevisedStandardforPrefilledContainersandDirectFinalRuleUnderthePortableFuelContainerSafetyActof2020.pdf?VersionId=2bvaQho_RlirJo.xyAFUZXYFS2.7Qw7R.

F3429/F3429M-24. 89 FR 9078. The Prefilled Fuel Container Industry Association and the Household & Commercial Products Association submitted comments in support of the revisions in ASTM F3429/F3429M-24. Both commenters noted that the various revisions to the standard are important revisions that will improve consumer safety, and thus they support the Commission adopting ASTM F3429/F3429M-24 as the mandatory standard for prefilled portable fuel containers.

As discussed in section II of this preamble, the Commission determines that the revisions in ASTM F3429/F3429M-24 meet the requirements of section 2056d(b)(3)(A) of the PFCSA. 15 U.S.C. 2056d(b)(3)(A). Accordingly, ASTM F3429/F3429M-24 shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (CPSA) effective July 27, 2024, which is 180 days after ASTM's notification. This direct final rule³ updates the incorporation by reference in the Commission's rule under the PFCSA to reflect ASTM F3429/F3429M-24 as the mandatory standard for prefilled portable fuel containers.

II. Revisions to ASTM F3429/F3429M

ASTM F3429/F3429M-23 is the current mandatory standard for prefilled portable fuel containers under the PFCSA and has been revised twice since the original publication in 2020. The ASTM F15.72 subcommittee for Pre-Filled Containers of Flammable and Combustible Liquids developed the standard. The standard requires two performance tests of the container's FMD. The first is an endurance test, in which the container is subjected to an external and stationary 2.5-inch flame at the mouth of the container for 30 seconds. The second test is a flashback test, in which the container is subjected to an external flash fire near the container's mouth. The container passes each test if the contents of the container do not catch fire or otherwise ignite in each of five consecutive trials. The two tests determine whether the FMD impedes the propagation of two different types of ignition sources, a stationary flame and a moving flame.

³ The Commission voted 5-0 to publish this notification.

Substantive revisions in ASTM F3429/F3429M-24 are described below and include an FMD retention test, a new option for some rigid containers to test using a different test gas, clarification of the requirements for certifying a “family of containers,” and clarification of existing testing procedures. There are also non-substantive revisions. As discussed below, the Commission concludes that the revisions in ASTM F3429/F3429M-24 meet the requirements of section 2056d(b)(3)(A) of the PFCSA. Thus, the Commission is allowing ASTM F3429/F3429M-24 to become the mandatory consumer product safety rule for pre-filled portable fuel containers pursuant to section 2056d(b)(5) of the PFCSA.

A. Substantive Revisions to ASTM F3429/F3429M

1. New retention test

ASTM F3429/F3429M-24 adds a new retention requirement to section 5.6 and a new retention test method as section 11. The new retention requirement and test ensures that an FMD installed in a prefilled portable fuel container is not easily removed by the consumer. The new retention test requires the FMD to resist a 15-lb push force, a 15-lb pull force, and a 25 in-lb torque in each direction. This revision improves safety because it reduces the likelihood that consumers will remove FMDs installed in prefilled portable fuel containers. The Commission therefore concludes that these revisions to the voluntary standard satisfy the requirements of section 2056d(b)(3)(A) of the PFCSA.

2. Change to permissible test gas

ASTM F3429/F3429M-24 revises requirements in section 5.2 for adjusting the gas flow calculation procedures in sections 7.3 and 7.5.2, and it adds a new squeeze test method as section 12 to the standard to permit some rigid containers to be tested with propane or ethane as acceptable test gases in addition to ethylene. Sections 5.2 and 7 detail how the gas flow is calculated; sections 5.2, 7.3, and 7.5.2 add calculation values for propane and ethylene; and section 7.5.2 also corrects a mathematical error with the ethylene value given.

For a container to be tested with propane or ethane, it must: (1) be determined to be rigid or not squeezable by the new squeezing test method (section 12); and (2) the liquid fuel within the container must have a Maximum Experimental Safe Gap (MESG)⁴ above a prescribed value respective of the test gas MESG. This revision allows use of a larger mesh-size FMD for such rigid containers which still provides sufficient protection for these rigid containers while also preventing splashing problems and reducing the likelihood of consumers removing the FMD to achieve better fuel flow. Manufacturers reported that focus-group testing indicated that consumers were likely to try to remove or alter the FMD if the flow of liquid contents was not smooth. In non-rigid containers, consumers can squeeze the container to help dispense the liquid contents, but consumers cannot do this with rigid containers. Testing with propane or ethane results in slightly larger hole sizes in the FMD that allows the liquid contents to better pour from a container that cannot be squeezed, and therefore, reduces the likelihood of consumers trying to remove the FMD. This revision improves safety by reducing the likelihood of consumers removing safety features, while ensuring that the safety features still provide the necessary protection. The Commission therefore concludes that these revisions to the voluntary standard satisfy the requirements of section 2056d(b)(3)(A) of the PFCSA.

3. Family of container clarification

ASTM F3429/F3429M-24 clarifies the requirements of section 5.8 for certifying a container with the same FMD as another compliant container. ASTM F3429/F3429M-23 does not provide any requirements, guidance, or information regarding the construction of the two containers. In ASTM F3429/F3429M-24, a statement was added to section 5.8 explaining that the different containers must be “made from similar material with a similar wall thickness.” This revision ensures that a container using the same FMD as another but not made from the same material and similar wall thickness requires its own certification test. The change in section 5.8

⁴ MESG is a standardized measurement of how easily a gas flame will pass through a narrow gap bordered by heat-absorbing metal. MESG is used to classify gaseous in a variety of applications where explosion protection is required.

allows a manufacturer to certify a family of containers with similar designs and wall thicknesses and only variations in sizes with a single certification test but does not allow a manufacturer to certify any container that shares the same FMD with another container certified to F3429-24. This change improves safety by ensuring that FMDs are not accepted when tested on dissimilar containers. The Commission therefore concludes that these changes to the voluntary standard satisfy the requirements of section 2056d(b)(3)(A) of the PFCSA.

4. Revisions to testing procedures

ASTM F3429/F3429M-24 revises three test procedures from the 2023 edition of the standard. The first revision applies to the procedures for sample preparation in section 6.1.1.5, clarifying that if the bottom portion of the container is removed for testing, then the FMD and the portion of the container or closure the FMD attaches to shall remain intact.

The second revision to the test procedure is found in a new section 7.5.5 for gas flow calculations under section 7 which clarifies the procedure for flowing gaseous fuel and air into the container. ASTM F3429/F3429M-23 allowed for an increased flow rate of gaseous fuel and air to establish the correct gaseous fuel and air ratio in the container before the test but did not specify when to reduce the flow. The revised standard requires the flow to be reduced 30 seconds before the test starts. This revision ensures the pilot flame outside the container mouth is not affected by an increased outflow used to prepare the container before testing and thus improves consistency in testing from one testing laboratory to another.

The third test procedure revisions are in the endurance test method in section 8 and the flashback test method in section 9, which makes the test procedures in the two test methods consistent with each other. ASTM F3429/F3429M-23 allows the flow rate to be increased in the flashback test but did not include that provision for the endurance test. This change in section 9.4.5.1 of ASTM F3429/F3429M-24 allows the flow rate of gaseous fuel and air to be increased in the endurance test too. As with the endurance test, section 9.4.7 specifies that the flow must be reduced 30 seconds prior to the start of the test. This revision improves the efficiency of the

testing laboratory by removing the possibility of testing laboratories confusing inconsistent procedures for the two test methods.

The Commission concludes that these revisions improve safety by facilitating reliable compliance testing.

B. Non-Mandatory Changes to the Standard

The revised standard also made several changes to the non-mandatory sections of the standard, such as adding a reference to new appendix information in the scope, adding a discussion to the definition of FMD, indicating that a FMD may be an assembly comprised of several components, removing the term “reserved” from the functional test, and adding information that a functional test is not required, but best practices are included in the appendix. ASTM F3429-23 did not include a functional test but left a “reserved” section as a future possible requirement with non-mandatory practices in the appendix. This “reserved” section confused users of the standard, and this change removes the possibility for such confusion. The Commission concludes that with these non-substantive changes, the standard still satisfies the requirements of section 2056d(b)(3)(A) of the PFCSA.

Sections 1461.3(a) and 1461.4(a)(2) have been amended to incorporate by reference ASTM F3429/F3429M-24 as the new mandatory standard for prefilled portable fuel containers to reflect the Commission’s acceptance of revised ASTM F3429/F3429M-24 under the PFCSA.

III. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

The purpose of this direct final rule is to codify in the Code of Federal Regulations (CFR) revised ASTM F3429/F3429M-24 as a mandatory consumer product safety rule. Because the

Commission has determined that this revision meets the requirements of the PFCSA, it becomes effective by operation of law under the PFCSA 180 days after the Commission was notified of the revision. 15 U.S.C. 2056d(b)(5). Public comments would not alter whether ASTM F3429/F3429M-24 is considered a mandatory consumer product safety rule under the PFCSA. The Commission concludes that when it merely updates the codification of the incorporation by reference for a voluntary standard that is already a mandatory consumer product safety rule by statute under the PFCSA, notice and comment are unnecessary.

In its Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(3)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule will become effective on July 27, 2024—the end of the 180-day period specified in the PFCSA. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where 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 a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely codifies ASTM F3429/F3429M-24 in the CFR as the mandatory consumer product safety rule under the PFCSA; thus, public comments would not change that circumstance.

If the Commission does receive a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment 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 1461.4(a)(2) of the direct final rule incorporates by reference ASTM F3429/F3429M-24. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section II of this preamble summarizes the major provisions of ASTM F3429/F3429M-24 that the Commission incorporates by reference into 16 CFR part 1461. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F3429/F3429M-24 is available for viewing, at no cost, on ASTM's website at: www.astm.org/CPSC.htm. Once the rule takes effect, a read-only copy of ASTM F3429/F3429M-24 will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Interested parties can purchase a copy of ASTM F3429/F3429M-24 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9500; www.astm.org.

Interested parties can also schedule an appointment to inspect a copy of ASTM F3429/F3429M-24 at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; email: cpsc-os@cpsc.gov.

V. Effective Date

Section 2056d(b)(5)(B) of the PFCSA provides that not later than 180 days after the Commission is notified of a revised voluntary standard (or such later date as the Commission

determines appropriate), such revised voluntary standard shall become enforceable as a consumer product safety rule promulgated under 15 U.S.C. 2058, in place of the prior version, unless within 90 days after receiving the notice the Commission determines that the revised voluntary standard does not meet the requirements in section 2056d(b)(3)(A) of the PFCSA. 15 U.S.C. 2056d(b)(5)(B). Unless the Commission receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the rule will become effective on July 27, 2024. This direct final rule's effective date of July 27, 2024, which is the effective date of the ASTM F3429/F3429M-24 revision as a mandatory safety standard, does not alter the previously established effective date of July 12, 2023, for ASTM F3326-21 and section 18 of UL 30:2022 under the PFCSA. Products subject to the requirements of those standards are already required to meet those standards.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section III of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference for ASTM F3429/F3429M in the CFR to reflect ASTM F3429/F3429M-24 as the mandatory standard for prefilled containers under the PFCSA.

VII. 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 where they "have little or no potential for affecting the human environment." 16 CFR

1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

VIII. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard 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. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. 15 U.S.C. 2075(c). The PFCSA deems rules issued under that statute to be a “consumer product safety rule.” Therefore, once a rule issued under the PFCSA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

IX. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule can take effect, the agency issuing the rule must submit the rule and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that the rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1461

Consumer protection, Incorporation by reference, Portable Fuel Containers, Safety.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1461 – PORTABLE FUEL CONTAINER SAFETY ACT REGULATION

1. The authority citation for part 1461 continues to read as follows:

Authority: 15 U.S.C. 2056d.

2. Amend § 1461.3 by revising paragraph (a) to read as follows:

§ 1461.3 Requirements for flame mitigation devices on portable fuel containers.

* * * * *

(a) * * *

Containers sold pre-filled. Portable fuel containers sold pre-filled with a flammable liquid to the consumer must comply with the requirements of ASTM F3429/F3429M-24 (incorporated by reference, see § 1461.4).

* * * * *

3. Amend § 1461.4 by revising paragraph (a)(2) to read as follows:

§ 1461.4 Incorporation by reference.

* * * * *

(a) * * *

(2) ASTM F3429/F3429M-24, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers*, approved on January 15, 2024.

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Alberta E. Mills,
Secretary,
Consumer Product Safety Commission.
[FR Doc. 2024-09299 Filed: 4/29/2024 8:45 am; Publication Date: 4/30/2024]