



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel,
Regulatory Affairs
David M. DiMatteo, Attorney, Regulatory Affairs

SUBJECT: Draft Notice of Availability of Updated ASTM Standard under
Portable Fuel Container Safety Act

DATE: June 14, 2022

TIME CRITICAL BALLOT VOTE DUE: Friday, June 16, 2023

In January 2023, the Commission determined under the Portable Fuel Container Safety Act of 2020 (PFCSA) that ASTM F3429/F3429M-20 is a mandatory consumer product safety rule that impedes the propagation of flames into pre-filled fuel containers covered by the standard. Attached is a draft *Federal Register* notice announcing that, on June 12, 2023, the Commission received notification that ASTM F3429/F3429M-20, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers*, has been revised.

Pursuant to section (b)(5) of the PFCSA, if a relevant voluntary standard is revised, the organization that revised the standard shall notify the Commission. Any such revision to the voluntary standard shall be enforceable as a consumer product safety rule not later than 180 days after the Commission is notified (or such later date as the Commission determines appropriate), 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 described in section (b)(3) of the PFCSA. 15 U.S.C. § 2056d(b)(5). Consistent with section (b)(5) of the PFCSA, CPSC staff is assessing the revised voluntary standard for prefilled containers to determine whether the revisions in ASTM F3429/F3429M-23 meet the requirements of the PFCSA.

In the accompanying draft notice, CPSC seeks comment on whether the revision meets the requirements of PFCSA section (b)(3). To provide sufficient time for CPSC staff's assessment of any comments received and subsequent Commission consideration within the 90-day statutory time frame, the draft notice provides a relatively brief 14-day public comment period. Likewise, to expedite publication of the draft notice in the *Federal Register*, the General Counsel has designated this matter as time critical pursuant to section V of the Commission's Decision Making Procedures.



United States
Consumer Product Safety Commission

Ballot Vote Sheet

Please indicate your vote on the following options:

- I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached document in the *Federal Register*, with the specified changes.

(Signature)

(Date)

- III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

- IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register*: Notice of Availability of Updated ASTM Standard under Portable Fuel Container Safety Act

**U.S. Consumer Product
Safety Commission**
4330 East-West Highway
Bethesda, MD 20814

**National Product Testing
and Evaluation Center**
5 Research Place
Rockville, MD 20850

THIS DOCUMENT HAS NOT BEEN REVIEWED
OR ACCEPTED BY THE COMMISSION

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CLEARED FOR PUBLIC RELEASE
UNDER CPSA 6(b)(1)

Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2022-0017]

**Notice of Availability of Updated ASTM Standard under the Portable Fuel Container
Safety Act**

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: In January 2023, the U.S. Consumer Product Safety Commission determined under the Portable Fuel Container Safety Act of 2020 (PFCSA) that ASTM F3429/F3429M-20 is a mandatory consumer product safety rule that impedes the propagation of flames into pre-filled portable fuel containers covered by the standard. ASTM has since notified the Commission that it has revised this voluntary standard. CPSC seeks comment on whether the revision meets the requirements of the PFCSA.

DATES: Comments must be received by **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: 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: <https://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 electronic mail (e-mail), 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,

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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.

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 <https://www.regulations.gov>. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

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

FOR FURTHER INFORMATION CONTACT: Scott Ayers, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301-987-2030; email: sayers@cpsc.gov.

SUPPLEMENTARY INFORMATION:

The PFCSA¹ requires the Commission to promulgate a final rule to require flame mitigation devices 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 at any time that:

- there is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;

¹ Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. § 2056d, as stated in Pub. L. No. 116–260, div. FF, title IX, § 901, available at: <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>.

- 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). Any such Commission determinations regarding applicable voluntary standards must be published 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)(3)(B) and (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 will be treated as consumer product safety rules: ASTM F3429/F3429M-20 (prefilled containers), ASTM F3326-21 (containers sold empty), and section 18 of UL 30:2022 (safety cans). 88 FR 2206.

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 (F3429 designation) and metric (F3429M designation) units. ASTM F3429/F3429M was first published in 2020. ASTM published a revised version of ASTM F3429/F3429M-20 in May 2023, as ASTM F3429/F3429M-23. On June 12, 2023, ASTM notified the Commission that it had approved and published ASTM F3429/F3429M-23.

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. Any such revision to the voluntary standard

shall become enforceable as a consumer product safety rule not later than 180 days after the

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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), 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 described in section (b)(3) of the PFCSA. 15 U.S.C. 2056d(b)(5).

CPSC staff is assessing the revised voluntary standard to determine, consistent with section (b)(5) of the PFCSA, whether the revisions in ASTM F3429/F3429-23 meet the requirements of section (b)(3)(A) of the PFCSA listed above. The Commission invites public comment on that question, to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F3429/F3429M-23.²

ASTM F3429/F3429M-23 is available for review in several ways. ASTM has provided on its website (at <https://www.astm.org/CPSC.htm>), at no cost, a read-only copy of the 2023 revisions to ASTM F3429/F3429M, including a red-lined version that identifies the changes made to ASTM F3429/F3429M-20. Likewise, a read-only copy of the existing standard (ASTM F3429/F3429M-20) is available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; phone: 610-832-9585; <https://www.astm.org>. Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479.

Comments must be received by **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Because of the short statutory time frame

² The Commission voted TBD-TBD to publish this notification.
THIS DOCUMENT HAS NOT BEEN REVIEWED
OR ACCEPTED BY THE COMMISSION

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Congress established for the Commission to consider revised voluntary standards under section (b)(5) of the PFCSA, CPSC will not consider comments received after this date.

Dated:

Alberta E. Mills, Secretary
Consumer Product Safety Commission