



May 19, 2023

**Enforcement Discretion for Pre-Filled Portable Fuel Containers
Subject to ASTM F3429/F3429M-20 Under the Portable Fuel Container Safety Act of 2020**

To Whom It May Concern:

I am writing to inform you that the Office of Compliance and Field Operations will exercise enforcement discretion for pre-filled portable fuel containers (PFCs), with respect to the flame mitigation device requirements in ASTM F3429/F3429M-20 scheduled to go into effect on July 12, 2023, under the Portable Fuel Container Safety Act of 2020 (PFCSA). Stakeholders have informed us that an anticipated shortage of pre-filled PFCs stemming from container design, manufacturing, and testing challenges related to the new requirements would make critical fuels unavailable to consumers, including in emergencies. This shortage also could expose consumers to fire and burn hazards if they attempt to use fuel substitutes. Therefore, the Office of Compliance and Field Operations will exercise enforcement discretion for one year until July 12, 2024.

The U.S. Consumer Product Safety Commission determined that ASTM F3429/F3429M-20, which establishes flame mitigation device requirements for pre-filled PFCs, meets the PFCSA's requirements and was therefore adopted as a consumer product safety rule under the Consumer Product Safety Act. 88 FR 2206 (Jan. 13, 2023). Accordingly, pre-filled PFCs manufactured after July 12, 2023, are required to have flame mitigation devices as set out in the standard. PFCs are defined by the PFCSA as any container or vessel of a capacity of 5 gallons or less intended for flammable liquid fuels with a flash point less than 140 degrees Fahrenheit that the manufacturer knows or reasonably should know is used for transporting, storing, and/or dispensing flammable liquid. This covers products including, but not limited to, gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, biofuels, camp fuel, fire starters and accelerants, fuel additives, and engine cleaners. ASTM F3429 defines a "flame mitigation device" as a device or feature attached to, installed in, or otherwise integral to, a container that is expected to inhibit the propagation of an external flame into the container. ASTM F3429/F3429M-20 requires an endurance and flashback test to demonstrate that the flame mitigation device impedes the propagation of both a stationary and a moving flame.

Manufacturers and trade associations have requested enforcement discretion for pre-filled PFCs due to a need for additional time to develop and manufacture new packaging to meet the flame mitigation device requirements for PFCs. Furthermore, we are aware of third-party testing delays resulting from pending updates to the testing requirements of the voluntary standard as well as limited testing laboratory availability for certification. Stakeholders have advised us that fuels sold in pre-filled PFCs, including kerosene and camping fuels, are used as alternative heating and lighting fuel in emergency



situations such as hurricanes and blizzards. We have also been advised that denatured alcohol, also sold in pre-filled PFCs, is used in marine stoves. There is concern that if these pre-filled products are unavailable some consumers may resort to using alternative fuels for unintended purposes subjecting them to potential fire and burn hazards.

For these reasons, the Office of Compliance and Field Operations will exercise enforcement discretion for pre-filled PFCs subject to ASTM F3429/F3429M-20, solely with respect to the requirements of ASTM F3429/F3429M-20, to allow time for production and certification of these products to avoid a potential shortage of necessary fuels. This discretion does not apply to empty containers subject to PFCSA that are manufactured after the effective date. The discretion will remain in effect until July 12, 2024, and the Office of Compliance and Field Operations may amend or rescind this discretion at any time. Further, our expectation is that those manufacturers and other related stakeholders who sought this discretion will keep us informed of the progress of the development, manufacturing, and certification of new packaging no less frequently than in quarterly updates. Please direct these updates or any questions to RegulatoryEnforcement@cpsc.gov.

Finally, as a reminder, Section 15(b) requires every manufacturer, importer, distributor, and retailer of a consumer product, or of any other product or substance over which the CPSC has jurisdiction under any other statute enforced by the CPSC, who obtains information which reasonably supports the conclusion that the product: (1) contains a defect which could create a substantial product hazard; (2) creates an unreasonable risk of serious injury or death; (3) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the CPSC has relied under section 9 of the CPSA, 15 U.S.C. § 2058; or (4) fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other statute enforced by the CPSC, to immediately inform the CPSC of the defect, risk, or failure to comply, unless the firm has actual knowledge that the CPSC has been adequately informed of the defect, risk, or failure to comply. See 15 U.S.C. § 2064(b) and 16 C.F.R. Part 1115. Failure to furnish information required by 15 U.S.C. § 2064(b) or to make reports as required under 15 U.S.C. § 2068(a)(3) are Acts prohibited under the CPSA and could subject a firm to civil or criminal penalties.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Robert S. Kaye". The signature is written in a cursive, flowing style.

Robert S. Kaye
Director
Office of Compliance and Field Operations