

September 29, 2023

Robert S. Kaye
Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Submitted via RegulatoryEnforcement@cpsc.gov

Subject: Update on Industry Activity Regarding Pre-Filled Portable Fuel Containers Subject to ASTM F3429/F3429-20 Under the Portable fuel Container safety Act of 2020

Dear Mr. Kaye,

On June 25, 2020, you signed an Enforcement Discretion¹ with for pre-filled portable fuel containers (PFCs), respect to the flame mitigation device requirements in ASTM F3429/F3429M-20, under the Portable Fuel Container Safety Act of 2020 (PFCSA). As part of that Enforcement Discretion, there is an expectation that industry will keep the Consumer Product Safety Commission (CPSC) Office of Compliance and Field Operations informed of the progress of the development, manufacturing, and certification of new packaging. On behalf of the Household & Commercial Products Association (HCPA) member companies, HCPA wishes to provide this aggregate update on our members' progress.

HCPA member companies are working on their products which are subject to this requirement as they meet the definition of a portable fuel container in that the container:

- 1) Is intended for flammable liquid fuels with a flash point less than 140 degrees Fahrenheit, including gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or biofuels;
- 2) That is a consumer product with a capacity of five gallons or less; and
- 3) That the manufacturer knows or reasonably should know is used by consumers for transporting, storing, and dispensing flammable liquid fuels.

In addition to working on flammable liquid fuels, HCPA member companies are also working on solutions for flammable fuel additives in accordance with the *Federal Register* notice published² on January 13, 2023, entitled "Determinations Regarding Portable Fuel Container Voluntary Standards Under the Portable Fuel Container Safety Act." However, HCPA would like to raise concerns over our viewpoint that before this publication, industry had not considered fuel additives as fuel. This

¹ <https://www.cpsc.gov/s3fs-public/Enforcement-Discretion-Related-to-Portable-Fuel-Containers.pdf>

² <https://www.federalregister.gov/documents/2023/01/13/2022-28325/determinations-regarding-portable-fuel-container-voluntary-standards-under-the-portable-fuel>

is in large part due to the requirement³ of registering and reporting fuel additives to the Environmental Protection Agency (EPA) separate from fuels.

HCPA member companies are working on coming into compliance primarily in two ways: 1) reformulating the product such that the flash point is above 140 degrees Fahrenheit and 2) inclusion of a flame mitigation device that is compatible with their portable fuel containers.

For companies that are working to reformulate their products and increase the flash point, we have received information to indicate that they are in different stages of this process. Several companies report having developed replacement formulations and are either in the stages of efficacy testing or stability testing to ensure that the new formulation is a suitable alternative. If these tests go well and the alternative formulation passes, companies believe that they'll be ready in time for the July 12, 2024 date; however, any failures mean having to restart the reformulation process. Further, it should be noted that some products, such as fuel additives, are required to be registered with the Environmental Protection Agency (EPA), so meeting the July 12, 2024 date will be more challenging for those products, even if the testing on the reformulations go well. HCPA would also like to note that some member companies have reported difficulty with maintaining the performance of their products with respect to their efforts and are now looking at potential flame mitigation devices.

For the products in which companies are looking for and testing potential solutions with the use of flame mitigation devices, HCPA has received a wide array of input. Some companies have been successful in identifying potential flame mitigation devices for their existing containers and are in the process of testing them. These companies are also exploring capital investments in new manufacturing equipment so that they would be able to produce the new products with the flame mitigation devices should those solutions be successful. The potential capital expenditures require significant financial investment, and it is unknown how long it will take to bring them online, nor is it known how long it will be until the potential flame mitigation device could be commercialized if successful. Other companies have reported having difficulty in finding potential flame mitigation devices for their existing portable fuel containers, particularly containers that either have larger volumes (one gallon or greater) and/or larger openings. These companies are in the process of contacting potential vendors that are outside their 'typical' supply chain in hopes of finding a potential solution.

HCPA greatly appreciates the opportunity to share this update on behalf of our members. If you or your staff have any questions contained within this letter, or would like additional information, please contact me at ngeorges@thehcpa.org.

Respectfully submitted,



Nicholas B. Georges
Senior Vice President, Scientific & International Affairs

³ 40 CFR Part 79