

PORTABLE FUEL CONTAINER SAFETY ACT OF 2019

SEPTEMBER 13, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 806]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 806) to require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Portable Fuel Container Safety Act of 2019”.

SEC. 2. PERFORMANCE STANDARDS TO PROTECT AGAINST PORTABLE FUEL CONTAINER EXPLOSIONS NEAR OPEN FLAMES OR OTHER IGNITION SOURCES.

(a) **RULE ON SAFETY PERFORMANCE STANDARDS REQUIRED.**—Not later than 30 months after the date of enactment of this section, the Consumer Product Safety Commission (referred to in this Act as the “Commission”) shall promulgate a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container, except as provided in subsection (c).

(b) **RULEMAKING; CONSUMER PRODUCT SAFETY STANDARD.**—A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5, United States Code; and

(2) shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(c) **EXCEPTION.**—

(1) **VOLUNTARY STANDARD.**—Subsection (a) shall not apply if the Commission determines that—

(A) there is a voluntary standard for flame mitigation devices in portable fuel containers that impedes the propagation of flame into the container, or a combination of more than one voluntary standard which taken together serve such purpose for the full scope of this Act;

(B) the voluntary standard or combination of voluntary standards described in subparagraph (A) is or will be in effect not later than 18 months after the date of enactment of this Act; and

(C) the voluntary standard or combination of voluntary standards described in subparagraph (A) is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of this Act.

(2) **DETERMINATION REQUIRED TO BE PUBLISHED IN THE FEDERAL REGISTER.**—Any determination made by the Commission under this subsection shall be published in the Federal Register.

(d) **TREATMENT OF VOLUNTARY STANDARD FOR PURPOSE OF ENFORCEMENT.**—If the Commission determines that a voluntary standard meets the conditions described in subsection (c), the requirements of such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058) beginning on the date which is the later of—

(1) 180 days after publication of the Commission’s determination under subsection (c); or

(2) the effective date contained in the voluntary standard.

(e) **REVISION OF VOLUNTARY STANDARD.**—

(1) **NOTICE TO COMMISSION.**—If the requirements of a voluntary standard that meet the conditions of subsection (c) are subsequently revised, the organization that revised the standard shall notify the Commission after the final approval of the revision.

(2) **EFFECTIVE DATE OF REVISION.**—Not later than 180 days after the Commission is notified of a revised voluntary standard described in paragraph (1) (or such later date as the Commission determines appropriate), such revised voluntary standard shall become enforceable as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (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 described in subsection (c).

(f) **FUTURE RULEMAKING.**—The Commission, at any time after publication of the consumer product safety rule required by subsection (a), a voluntary standard is treated as a consumer product safety rule under subsection (d), or a revision is enforceable as a consumer product safety rule under subsection (e) may initiate a rulemaking in accordance with section 553 of title 5, United States Code, to modify the requirements or to include any additional provision that the Commission determines is reasonably necessary to protect the public against flame jetting from a portable fuel container. Any rule promulgated under this subsection shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(g) **ACTION REQUIRED.**—

(1) **EDUCATION CAMPAIGN.**—Not later than 1 year after the date of enactment of this Act, the Commission shall undertake a campaign to educate consumers about the dangers associated with using or storing portable fuel containers for flammable liquids near an open flame or any other source of ignition.

(2) **SUMMARY OF ACTIONS.**—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to Congress a summary of actions taken by the Commission in such campaign.

(h) **PORTABLE FUEL CONTAINER DEFINED.**—In this section, the term “portable fuel container” means any container or vessel (including any spout, cap, and other closure mechanism or component of such container or vessel or any retrofit or aftermarket spout or component intended or reasonably anticipated to be for use with such container)—

(1) 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 5 gallons or less; and

(3) that the manufacturer knows or reasonably should know is used by consumers for receiving, transporting, storing, and dispensing flammable liquid fuels.

(i) **RULE OF CONSTRUCTION.**—This section may not be interpreted to conflict with the Children’s Gasoline Burn Prevention Act (Public Law 110–278; 122 Stat. 2602).

SEC. 3. CHILDREN’S GASOLINE BURN PREVENTION ACT.

(a) **AMENDMENT.**—Section 2(c) of the Children’s Gasoline Burn Prevention Act (15 U.S.C. 2056 note; Public Law 110–278) is amended by inserting after “for use by consumers” the following: “and any receptacle for gasoline, kerosene, or diesel fuel, including any spout, cap, and other closure mechanism and component of such receptacle or any retrofit or aftermarket spout or component intended or reasonably anticipated to be for use with such receptacle, produced or distributed for sale to or use by consumers for transport of, or refueling of internal combustion engines with, gasoline, kerosene, or diesel fuel”.

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall take effect 6 months after the date of enactment of this section.

I. PURPOSE AND SUMMARY

H.R. 806, the “Portable Fuel Container Safety Act of 2019”, was introduced in the House on January 28, 2019, by Reps. Mike Thompson (D–CA) and David P. Joyce (R–OH) and referred to the Committee on Energy and Commerce. H.R. 806 directs the Consumer Product Safety Commission (CPSC) to issue a mandatory standard that requires flame mitigation devices in portable fuel containers to prevent death or injuries from flame-jetting. It further directs the CPSC to conduct an education campaign to alert consumers to the dangers of using or storing portable fuel containers near ignition sources. The legislation also amends the Children’s Gasoline Burn Prevention Act to expand existing child-resistance requirements for closures for portable gasoline containers to include portable kerosene and diesel fuel containers and component parts.

II. BACKGROUND AND NEED FOR LEGISLATION

Portable fuel containers can explode when fuel vapor mixtures inside the container ignite with explosive force.¹ This kind of explosion can occur inside a portable fuel container when the gas vapor escaping the container contacts a source of ignition, such as a flame or a spark.² If the flame from the ignited vapor propagates back into the container through the spout and the gas and air vapor mixture inside the can is at a certain flammable concentration, that mixture inside can also ignite and cause an explosion.³ An investigation conducted by NBC News in 2013 found that a very low volume of gasoline inside the fuel container, low tempera-

¹NBC News, *Warning: Scientists Say Gas Cans Carry Risk of Explosion* (Dec. 4, 2013) (www.cnbc.com/2013/12/04/warning-scientists-say-gas-cans-carry-risk-of-explosion.html).

²*Id.*

³*Id.*

tures, “aged” gasoline that has been in storage, and holding the container at an angle increase the likelihood of an explosion.

According to the National Fire Protection Association, municipal fire departments in the United States respond to an average of 160,910 fires per year involving the ignition of a flammable or combustible liquid.⁴ These fires cause approximately 454 civilian deaths, nearly 3,910 civilian injuries, and an estimated \$1.5 billion in direct property damage annually.⁵ The CPSC has counted at least 11 deaths and 1,200 emergency room visits specifically involving gas can explosions during the pouring of gasoline between 1998 and 2013.⁶

Flame mitigation devices allow fuel to pass through but prevent flames from entering the container, preventing flashback explosions. Flame mitigation devices designed for portable fuel containers are usually small pieces of mesh or disks with holes designed to prevent flame from passing through by absorbing and dispersing heat.⁷ Flame arrestors are commonly required by various commercial and industrial equipment subject to regulations by the Occupational Safety and Health Administration.⁸ In 2013, the CPSC called on the portable fuel container industry to add flame arrestors to its products. In February 2019, a new voluntary consensus standard on portable fuel containers was adopted that requires the addition of a flame mitigation device, ASTM F3326–19a.⁹

H.R. 806 is needed to make sure there is a mandatory standard for portable fuel containers that requires effective flame mitigation devices.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 806:

The Subcommittee on Consumer Protection and Commerce held an oversight hearing on June 9, 2019. The hearing was entitled, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?” The Subcommittee received testimony from members of the CPSC and other consumer organizations:

- The Honorable Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission;
- The Honorable Elliot F. Kaye, Commissioner, Consumer Product Safety Commission;
- The Honorable Robert S. Adler, Commissioner, Consumer Product Safety Commission;

⁴National Fire Protection Association, *Fires Starting with Flammable or Combustible Liquids Fact Sheet* (Feb. 2014) (www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Fact-sheets/FiresStartingGasFactSheet.pdf).

⁵*Id.*

⁶See note 1.

⁷NBC News, Consumer panel calls for flame arresters on gas cans after NBC report (Dec. 5, 2013) (www.nbcnews.com/news/world/consumer-panel-calls-flame-arresters-gas-cans-after-nbc-report-fna2D11701318).

⁸29 C.F.R. § 1926.152 (2010); 29 C.F.R. § 1910.106 (2013).

⁹ASTM International, New ASTM International Standard Will Help Make Portable Fuel Containers Safer (Feb. 21, 2019) (www.prnewswire.com/news-releases/new-astm-international-standard-will-help-make-portable-fuel-containers-safer-300800033.html).

- The Honorable Dana Baiocco, Commissioner, Consumer Product Safety Commission;
- The Honorable Peter A. Feldman, Commissioner, Consumer Product Safety Commission;
- Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America;
- Nancy Cowles, Executive Director, Kids in Danger; and
- Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Public Citizen.

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on June 13, 2019, on H.R. 806, the “Portable Fuel Container Safety Act of 2019” and six other bills. The hearing was entitled, “Keeping Kids and Consumers Safe from Dangerous Products.” The Subcommittee received testimony from:

- Will Wallace, Manager, Home & Products Policy, Consumer Reports;
- Crystal Ellis, Founding Member, Parents Against Tip-Overs;
- Chris Parsons, President, Minnesota Professional Fire Fighters; and
- Charles A. Samuels, Member, Mintz.

IV. COMMITTEE CONSIDERATION

H.R. 806, the “Portable Fuel Container Safety Act of 2019”, was introduced in the House on January 28, 2019, by Reps. Thompson (D-CA) and Joyce (R-OH) and referred to the Committee on Energy and Commerce. The bill was subsequently referred to the Subcommittee on Consumer Protection and Commerce on January 29, 2019. Following hearings, the Subcommittee met in open markup session to consider the bill H.R. 806 on July 10, 2019. An amendment in the nature of a substitute offered by Mr. Latta (R-OH), # 1, was agreed to by a voice vote. Subsequently, the Subcommittee agreed to a motion by Ms. Schakowsky, Chairwoman of the Subcommittee, to forward favorably to the full Committee on Energy and Commerce, amended, by a voice vote.

On July 17, 2019, the full Committee on Energy and Commerce met in open markup session, pursuant to notice, to consider the bill H.R. 806, as amended by the Subcommittee on Consumer Protection and Commerce on July 10, 2019 (Committee Print of H.R. 806). No amendments were offered during consideration. Whereupon, the full Committee agreed to a motion by Mr. Pallone, Chairman of the Committee, to order H.R. 806 reported favorably to the House, as amended, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on ordering H.R. 806 reported or any amendments to the bill.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight find-

ings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to prevent require the Consumer Product Safety Commission to prevent explosions in portable fuel containers and improve child-resistance controls on kerosene and diesel fuel containers.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 806 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 806 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Portable Fuel Container Safety Act of 2019”.

Sec. 2. Performance standards to protect against portable fuel container explosions near open flames or other ignition sources

Subsection (a) of this section directs the CPSC, not later than 30 months after the date of enactment of this section, to promulgate a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container.

Subsection (b) specifies that the CPSC shall promulgate this rule in accordance with the Administrative Procedure Act. This subsection also specifies that the promulgated rule will be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act. Accordingly, it shall be unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States portable fuel containers that are not in conformity with the promulgated standard. Any violations shall be subject to civil or criminal penalties.

Subsection (c) of this section creates an exception to subsection (a) if the CPSC determines that (A) there is a voluntary standard for flame mitigation devices in portable fuel containers that impedes the propagation of flame into the container, or there exists a combination of more than one voluntary standards that together serve the purpose of impeding the propagation of flame into portable fuel containers; (B) the voluntary standard or combination of voluntary standards is or will be in effect not later than 18 months after the date of enactment of this Act; and (C) the voluntary standard or combination of voluntary standards is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of this Act. This subsection requires the CPSC to publish its determination in the Federal Register.

Subsection (d) of this section further specifies that if a voluntary standard meets the conditions described in subsection (c), the requirements of such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act, beginning on the latter of 180 days after publication of the Commission’s determination in the Federal Register or the effective date contained in the voluntary standard.

Subsection (e) of this section outlines the procedure for handling revisions of a voluntary standard that meets the conditions in subsection (c). This subsection requires the organization that revised the standard to notify the CPSC after the final approval of the revision. Not later than 180 days after the Commission is notified of a revised voluntary standard, the revised voluntary standard shall become enforceable as a product safety rule promulgated under sec-

tion 9 of the Consumer Product Safety Act, in place of the prior version, unless within 90 days after receiving the notice the CPSC determines that the revised voluntary standard does not meet the requirements described in subsection (c).

Subsection (f) of this section clarifies that the CPSC may, at any time, initiate a rulemaking in accordance with the Administrative Procedure Act to modify the requirements of the consumer product safety rule or include any additional provisions that the Commission determines is reasonably necessary to protect the public against explosions from a portable fuel container.

Subsection (g) of this section requires the CPSC to launch a campaign to educate consumers about the dangers associated with using or storing portable fuel containers for flammable liquids near an open flame or any other source of ignition not later than one year after the date of enactment. This subsection further specifies that the CPSC shall submit to Congress a report on this education campaign within two years of enactment.

Finally, subsection (h) of this section defines the term “portable fuel container” as any container intended for flammable liquid fuels, as well as component parts such as caps and spouts.

Sec. 3. Children’s Gasoline Burn Prevention Act

This section amends the Children’s Gasoline Burn Prevention Act, six months after the date of enactment, to expand existing child-resistance requirements for closures for portable gasoline containers to include portable kerosene and diesel fuel containers and component parts.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CHILDREN’S GASOLINE BURN PREVENTION ACT

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SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

(a) CONSUMER PRODUCT SAFETY RULE.—The provision of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(b) REQUIREMENTS.—Effective 6 months after the date of enactment of this Act, each portable gasoline container manufactured on or after that date for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2517-05, issued by ASTM International.

(c) DEFINITION.—As used in this Act, the term “portable gasoline container” means any portable gasoline container intended for use by consumers *and any receptacle for gasoline, kerosene, or diesel fuel, including any spout, cap, and other closure mechanism and component of such receptacle or any retrofit or aftermarket spout or*

component intended or reasonably anticipated to be for use with such receptacle, produced or distributed for sale to or use by consumers for transport of, or refueling of internal combustion engines with, gasoline, kerosene, or diesel fuel.

(d) REVISION OF RULE.—If, after the enactment of this Act, ASTM International proposes to revise the child resistance requirements of ASTM F2517-05, ASTM International shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ASTM International that the Commission has determined that such revision does not carry out the purposes of subsection (b).

(e) IMPLEMENTING REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act shall not apply to such issuance.

(f) REPORT.—Not later than 2 years after the date of enactment of this Act, the Consumer Product Safety Commission shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

- (1) the degree of industry compliance with the standard promulgated under subsection (a);
- (2) any enforcement actions brought by the Commission to enforce such standard; and
- (3) incidents involving children interacting with portable gasoline containers (including both those that are and are not in compliance with the standard promulgated under subsection (a)).

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