

Calendar No. 482

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-235

PORTABLE FUEL CONTAINER SAFETY ACT
OF 2019

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1640



JUNE 23, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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Mr. WICKER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1640]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1640) 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 (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1640 is to direct the U.S. Consumer Product Safety Commission (CPSC) to issue a final rule to require flame mitigation devices on portable fuel containers that impede the propagation of flame into the containers.

BACKGROUND AND NEEDS

Portable fuel containers are receptacles specifically designed to hold small amounts of gasoline.¹ Portable fuel containers can range in size and hold up to 10 gallons of gasoline or more.² The U.S. Environmental Protection Agency (EPA) estimates that there are approximately 80 million portable fuel containers in use in the United

¹Kelly Burke, “Understanding New Regulations for Portable Fuel Containers,” *The Spruce*, Aug. 10, 2019 (<https://www.thespruce.com/regulations-for-portable-fuel-containers-2153054>) (accessed May 21, 2020).

²*Id.*

States.³ These containers are commonly used by U.S. consumers to store fuel for lawnmowers, snow blowers, and other small-engine equipment.⁴

Portable fuel containers can pose serious safety risks to consumers if not properly handled. Under certain conditions, gasoline vapors escaping the portable fuel container can ignite with unpredictable force if the vapors come into contact with a spark or flame.⁵ An explosion can occur when ignited gasoline vapors travel back into the container through the spout, which can cause serious harm to individuals and damage surrounding property.⁶ According to the National Association of State Fire Marshalls, flammable or combustible liquids cause over 160,000 fires and almost 4,000 injuries per year, and cost an estimated \$1.5 billion in direct property damage annually.⁷

In 2007, the American Society for Testing and Materials (ASTM), an international standards-setting organization, formed the Subcommittee on Portable Fuel Containers to address the issue of burn injuries resulting from gas cans.⁸ Following ASTM's release of test results showing the ability of flame arrestors to limit gas can-related fires, the CPSC issued a statement in 2013 that called for the inclusion of flame arrestors in gasoline containers.⁹ A flame arrestor is a small piece of mesh or perforated disk designed to disrupt the flame.¹⁰ Flame arrestors can prevent flames from passing into the containers and causing the vapors inside to explode.¹¹

In addition to calling for the use of flame arrestors, the CPSC asked voluntary standards organizations to incorporate flame arrestor systems into applicable safety standards for gas cans.¹² Currently, the Occupational Safety and Health Administration sets standards for fuel tanks, charcoal lighter fluid metal tanks, and other types of gas cans used in the workplace, but no equivalent, mandatory standard exists for household or consumer portable fuel container products.¹³

SUMMARY OF PROVISIONS

S. 1640 would direct the CPSC to issue a final rule requiring flame mitigation devices to be used in consumer fuel containers,

³ Id.

⁴ Id.

⁵ Lisa Myers and Richard Gardella, "Is My Gas Can Safe?," *NBC News*, Dec. 4, 2013 (<https://www.nbcnews.com/news/world/my-gas-can-safe-flna2D11693927>) (accessed May 21, 2020).

⁶ Id.

⁷ National Association of State Fire Marshalls, letter of support (on file with the Committee), Jan. 25, 2019. See also Steven Tramel, "Portable Fuel Container Safety Act Introduced in House," Congressional Fire Services Institute, Jan. 31, 2019 (<https://www.cfsi.org/portable-fuel-container-safety-act-introduced-in-house/>) (accessed May 21, 2020).

⁸ National Leadership Conference, "Prevent Serious Burn Injuries," American Burn Association, 2019 (http://ameriburn.org/wp-content/uploads/2019/02/aba110_hr19_020419.pdf) (accessed May 21, 2020).

⁹ Lisa Myers and Richard Gardella, "Warning: Scientists Say Gas Cans Carry Risk of Explosion," *NBC News*, Dec. 4, 2013 (<https://www.cnbc.com/2013/12/04/warning-scientists-say-gas-cans-carry-risk-of-explosion.html>) (accessed May 21, 2020).

¹⁰ Id.

¹¹ Rich Gardella, "New Tests Show Flame Arresters Can Stop Gas Can Explosions," *NBC News*, Feb. 20, 2014 (<https://www.nbcnews.com/news/investigations/new-tests-show-flame-arresters-can-stop-gas-can-explosions-n33981>) (accessed May 21, 2020).

¹² Lisa Myers and Richard Gardella, "Warning: Scientists Say Gas Cans Carry Risk of Explosion," *NBC News*, Dec. 4, 2013 (<https://www.cnbc.com/2013/12/04/warning-scientists-say-gas-cans-carry-risk-of-explosion.html>) (accessed May 21, 2020).

¹³ National Leadership Conference, "Prevent Serious Burn Injuries," American Burn Association, 2019 (http://ameriburn.org/wp-content/uploads/2019/02/aba110_hr19_020419.pdf) (accessed May 21, 2020).

unless the CPSC determines that a voluntary standard for flame mitigation devices in portable fuel containers meets certain conditions outlined in the Act.

The CPSC also would be required to undertake a campaign to educate consumers about the dangers associated with portable fuel containers for flammable liquids and to submit a report to the Congress summarizing its education campaign activities.

LEGISLATIVE HISTORY

S. 1640, the Portable Fuel Container Safety Act of 2019, was introduced on May 23, 2019, by Senator Klobuchar (for herself and Senator Moran) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On November 13, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 1640 reported favorably with an amendment (in the nature of a substitute).

A companion bill, H.R. 806, was introduced on January 28, 2019, by Representative Mike Thompson (for himself and 21 original cosponsors) and was referred to the Committee on Energy and Commerce of the House of Representatives. There are 31 additional cosponsors. That bill, as amended, was passed by voice vote in the House of Representatives on September 17, 2019.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

| S. 1640, Portable Fuel Container Safety Act of 2019 | | | |
|---|------|-------------------------------------|----------------------|
| As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 13, 2019 | | | |
| By Fiscal Year, Millions of Dollars | 2020 | 2020-2024 | 2020-2029 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | 3 | not estimated |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | Yes, Under Threshold |

S. 1640 would require the Consumer Product Safety Commission (CPSC) to issue a final rule to require portable fuel containers to include a device that would stop flames from entering the container (called flame mitigation devices). The CPSC also would be required to undertake a campaign to educate consumers about the dangers associated with portable fuel containers for flammable liquids and to submit a report to the Congress summarizing its education campaign activities.

On the basis of information from the CPSC, CBO estimates that implementing S. 1640 would cost about \$3 million over the 2020–2024 period; that spending would be subject to appropriation of the necessary amounts. On average, the equivalent of about four full-time employees would be required over that period to complete the final rule and education campaign, CBO estimates.

The requirement that portable fuel containers include flame mitigation devices would be a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). The act would permit CPSC to adopt a voluntary industry standard as its rule to meet this requirement. Based on industry information about the widespread use of flame mitigation devices in portable fuel containers, CBO estimates that the cost of the mandate would fall below the annual threshold for private-sector mandates established in UMRA (\$164 million in 2019, adjusted annually for inflation).

S. 1640 contains no intergovernmental mandates as defined in UMRA.

On September 18, 2019, CBO transmitted a cost estimate for H.R. 806, the Portable Fuel Container Safety Act of 2019, as passed by the House of Representatives on September 17, 2019. Similar to S. 1640, H.R. 806 would require the CPSC to issue a final rule, education campaign, and a report to the Congress. Unlike H.R. 806, S. 1640 does not allow the CPSC to combine voluntary standards when evaluating whether a current voluntary standard could become the federal standard issued in the final rule. Based on information from the CPSC, CBO does not expect this difference to have a significant effect on the act's estimated cost.

The CBO staff contacts for this estimate are Philippa Haven (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

In general, S. 1640 would direct the CPSC to establish a mandatory requirement for portable fuel container manufacturers to include flame mitigation devices in their products. However, such devices are currently broadly in use by the portable fuel container manufacturing industry in compliance with existing voluntary standards. Therefore, the Committee believes that the number of persons that will be subject to a new requirement will be minimal.

ECONOMIC IMPACT

S. 1640 would not have an adverse economic impact on the Nation. Preventing injuries caused by fires due to portable fuel containers without flame arrestors will reduce the estimated \$1.5 billion in flammable liquid injuries that occur each year.

PRIVACY

S. 1640 would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 1640 would not increase paperwork requirements for private individuals or businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title.

This section would provide that the bill 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) would require the CPSC to promulgate a final rule requiring flame mitigation devices in portable fuel containers that impede the propagation of flame into the container.

Subsection (b) provides that the rule be promulgated pursuant to section 553 of the Administrative Procedure Act¹⁴ and that the rule would be treated as a consumer product safety rule under section 9 of the Consumer Product Safety Act.¹⁵

Subsection (c) would also allow for an exception to the requirement that the CPSC promulgate this rule if it determines: (a) there is a voluntary standard for flame mitigation devices in portable fuel containers that impedes the propagation of flame into the container; (b) the voluntary standard will be in effect no later than 18 months after the date of enactment; and (c) the voluntary standard is developed by ASTM International or another such development organization that the CPSC determines has met the intent of the Act. Subsection (d) provides that this CPSC determination would be published in the Federal Register and would be treated as a consumer product safety rule under section 9 of the Consumer Product Safety Act¹⁶ beginning either 180 days after publication of the CPSC’s determination or on the effective date contained in the voluntary standard.

Subsection (e) would require that the CPSC be notified if an organization subsequently revised the voluntary standard. The revision would take effect no later than 180 days after the CPSC is notified, unless the CPSC determines that the revised voluntary standard does not meet the requirements necessary to be an exception to the rule promulgated by this Act.

¹⁴Public Law 79–404; 60 Stat. 237.

¹⁵15 U.S.C. 2058.

¹⁶Id.

Subsection (f) would allow the CPSC to modify the requirements of this Act to include any additional provisions that it deems reasonably necessary to protect public health or safety.

Subsection (g) would also require the CPSC to 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 source of ignition. The CPSC must submit a summary of actions taken to further this campaign.

Subsection (h) would define the term “portable fuel container”.

Subsection (i) would limit this Act’s rule of construction to preclude conflict with the Children’s Gasoline Burn Prevention Act.¹⁷

Sec. 3. Children’s Gasoline Burn Prevention Act.

This section would amend section 2(c) of the Children’s Gasoline Burn Prevention Act to insert 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.” This amendment would take effect 6 months after enactment of this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

**CHILDREN’S GASOLINE BURN
PREVENTION ACT**

[15 U.S.C. 2056 note; Pub. L. 110–278]

* * * * *

SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

(a) * * *

(b) * * *

(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.*

¹⁷Public Law 110–278.

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(d) * * *

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