

amended, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this final rule.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138-0041; ADMINISTRATION: Research and Special Programs Administration; TITLE: Airline Service Quality Performance Reports; NEED FOR INFORMATION: Consumer Information and Flight Data for Air Traffic Control; PROPOSED USE OF INFORMATION: Consumer Publications; FREQUENCY: Monthly; BURDEN ESTIMATE: 1,920; AVERAGE BURDEN HOURS PER RESPONDENT 192. For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001, (202) 366-4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137-AC67 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Proposed Rule

Accordingly, it is proposed to amend 14 CFR Part 234, Airline Service Quality Performance Reports, as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 40101, 40114, 41702, 41708, 41712; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2, Definitions, is amended by revising the definition of "reportable flight" and by adding the definitions for "mechanical delay" and "mechanical cancellation" in

alphabetical order as set forth below, and the introductory text is republished as follows:

§ 234.2 Definitions.

For the purpose of this part:

\* \* \* \* \*

Mechanical delay and mechanical cancellation mean respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

\* \* \* \* \*

Reportable flight means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Airline Statistics. Flights delayed or cancelled because of qualifying mechanical problems are excluded from the carriers reports.

3. Section 234.4 is amended by redesignating paragraphs (b), (c), (d), (e), and (f) as (c), (d), (e), (f), and (g), respectively, and adding a new paragraph (b) to read as follows:

§ 234.4 Reporting of on-time performance.

\* \* \* \* \*

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

\* \* \* \* \*

4. Section 234.8 is amended by revising paragraph (b)(1) as set forth below, and the introductory text of paragraph (b) is republished as follows:

§ 234.8 Calculation of on-time performance codes.

\* \* \* \* \*

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall

not include discontinued, extra-section flights, nor flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

\* \* \* \* \*

Issued in Washington, D.C. on May 26, 1995.

Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95-13630 Filed 6-1-95; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Plastic Buckets; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has voted to terminate a proceeding to develop a rule addressing risks of injury and death associated with certain 5 gallon plastic buckets. The Commission initiated the proceeding when it published an advance notice of proposed rulemaking ("ANPR") on July 8, 1994. 59 FR 35058. On February 8, 1995, the Commission voted to terminate the proceeding and withdraw the ANPR. As explained below, the Commission determined that based on information available at this time, rulemaking is not warranted.

FOR FURTHER INFORMATION CONTACT: Celestine Trainor, Directorate for Epidemiology, Division of Human Factors, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0468.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1989, the Commission first learned of a drowning hazard associated with certain large buckets or bucket-like containers. These drownings occurred when a child leaned over the bucket and fell in head first. Children have drowned in a very small amount of liquid. Because of their shape, size, and sturdiness, the buckets do not tip over,

1 The Commission voted to issue this termination notice with Chairman Ann Brown and Commissioner Mary Gall voting in favor of issuing the notice. Commissioner Thomas Moore abstained from voting on this implementing notice because he did not participate in the previous decision to withdraw the ANPR.

nor can toddlers who have fallen into the buckets extricate themselves.

Upon learning of such incidents, the Commission issued a Safety Alert in July 1989 warning consumers of the potential drowning hazard associated with this product. The Commission also contacted the major trade associations representing manufacturers and fillers of buckets. These trade associations formed the Coalition for Container Safety and developed an information and education program that included distribution to consumers of free self-adhesive warning labels and production of a video news release.

The Commission staff also worked with ASTM subcommittee F15.31 on voluntary standards for 5-gallon buckets. In 1993, ASTM approved an emergency standard for labeling of buckets to address the drowning hazard, and a final ASTM standard for labeling is in process. In addition, an ASTM subcommittee task group pursued the possibility of developing a draft performance standard. After considering various options, subcommittee members stated at a March 17, 1994 meeting that they did not believe a performance standard was feasible and that they would continue to vote against it. Subsequent subcommittee and task force meetings did not progress any further toward a voluntary performance standard.

On July 8, 1994, the Commission published an ANPR explaining that it was beginning a proceeding to address the hazard of drowning associated with 5-gallon plastic buckets and that a range of options were open to the Commission to address this hazard. 59 FR 35058, 35062.

## B. Statutory Authority

The Commission initiated the rulemaking proceeding under the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2051–2084. Sections 7, 8 and 9 of the CPSA set forth the requirements that the Commission must follow to issue safety regulations. 15 U.S.C. 2056, 2057 and 2058.

The July 8, 1994 ANPR was the first step required in the rulemaking process. In accordance with section 9(a) of the CPSA, the ANPR described the product, explained the nature of the risk of injury, summarized the possible regulatory alternatives, and discussed existing relevant standards. The ANPR also invited interested persons to submit (i) comments concerning the risk of injury; (ii) an existing standard or portion of a standard to be developed as a proposed rule; and (iii) a statement of intention to modify or develop a voluntary standard that would address

the risk of injury associated with plastic buckets. 15 U.S.C. 2058(a). The Commission received 84 comments in response to the ANPR.(2)<sup>2</sup>

## C. The Product

As explained in the ANPR, this proceeding covers certain buckets, referred to as "5-gallon plastic buckets." They are open-head buckets with a rated capacity of 4½ to 5½ gallons and are generally 14 inches high and 10.25 to 11.25 inches in diameter. They have practically straight sides and are manufactured of high density polyethylene. These buckets are used to package and transport such industrial, commercial and consumer products as chemicals, cleaning substances, foods, paints and construction materials. Consumers obtain the buckets when they purchase consumer goods, like paint or detergent, packaged in the buckets, when they carry the buckets away from job sites, or when they purchase them empty. The ANPR described the bucket industry based on a study conducted by the Freedomia Group, Inc. That study estimated that by 1997, 175 million open-head plastic buckets will be produced annually.(1)

## D. Risks of Injury and Death

Incident scenarios usually involved an unwitnessed event when a child leaned over the bucket and fell in head first.

Of the 112 fatal incidents which CPSC staff investigated, the location of the caregiver could be determined in 93 of the cases. In 91 of these incidents, the caregiver was not in the same room with the victim.(12)

Of the 19 investigations of "near-miss" situations where the victims survived, the location of the caregiver was known in 16 of these cases. In 13 of these incidents, the caregiver was not in the same room with the victim.(12)

Between January 1984 and January 1995, the Commission has received reports of 247 deaths and 32 non-fatal incidents associated with 5-gallon buckets. The estimated annual average number of deaths for the years 1990, 1991, and 1992, is about 36, a slight reduction from the annual average estimate of about 40 for the years 1990 and 1991. The ages of the victims ranged from 7 to 24 months, with a median age of 11 months. Sixty percent of the victims were male. Height and weight of the victims, when reported, averaged about 28 inches and 22 pounds, respectively. Where race/ethnicity was reported, minority groups

accounted for about 70% of those incidents.(4)

All but one of the incidents in which the bucket material was reported involved plastic buckets—the other was metal. In 35 incidents, the bucket material was not known. In cases where the buckets' measurements were known, over 90% were 5-gallon buckets, usually 14 to 15 inches high, with diameters of about 12 inches. The average height of the liquid in the buckets was about 6 inches.(4)

## E. Existing Standards

As discussed above, ASTM formed subcommittee F15.31 to address hazards associated with buckets. In July 1993, ASTM approved ES 26–93, an emergency labeling standard for 5-gallon plastic buckets. The standard requires that 5-gallon open-head buckets have a specified label at the time they are sold or delivered to the end user or, if the bucket is intended to be sold empty, when shipped to a retailer for sale. The label must be difficult to remove and must not be covered, obstructed or removed by distributors or retailers. The placement, size, layout, and wording of the label are specified. The label contains a pictorial along with the words: "Children can fall into bucket and drown" followed by the words "Keep children away from bucket with even a small amount of liquid." The label may be modified to include additional languages.(8) ASTM is in the process of making this a final standard. The ASTM subcommittee also examined the possibility of a performance standard, but as of this time, has not developed one.(1)

In addition, as discussed in the ANPR, California has a law, in effect since September 1993, that requires a warning label on 5-gallon buckets intended for use, sale, or distribution within the state. Also, as discussed in the ANPR, there are several standards that establish criteria for handling and shipping of buckets, but these standards do not address the child-drowning hazard.(1)

## F. Industry's Labeling, Information and Education Campaign

Following publication of the ANPR, industry substantially increased its efforts with respect to labeling and information and education. A substantial number of 5-gallon plastic buckets are now being labeled in conformance to the ASTM labeling standard described above. According to a letter dated January 17, 1995 from counsel for five major bucket manufacturers, 80% of the buckets manufactured by those companies were

<sup>2</sup>Numbers in parentheses refer to documents listed at the end of this notice.

being labeled in accordance with the ASTM standard, and that compliance would increase in the coming months. The letter stated that these five companies comprise approximately 90% of the U.S. bucket market.(9)

These five manufacturers also initiated an education and information program warning of the drowning hazard associated with plastic buckets. In late fall of 1994, they issued an audio news release and an audio public service announcement. They are in the process of producing a large color poster to be widely distributed through key safety, health and other organizations. As of February 8, 1995, these firms had committed or spent approximately \$250,000 on the campaign, and their counsel represented that the firms are committed to continuing the campaign over the next 2½ years, spending approximately an additional \$250,000.(9)

### G. Action by the Commission

On February 8, 1995, the Commission held an oral briefing to have the staff provide an update on this proceeding. After considering the issues and information discussed above, the Commission determined that rulemaking is not warranted. Accordingly, the Commission voted to terminate the proceeding and withdraw the ANPR issued on July 8, 1994. In withdrawing the ANPR, the Commission is not relying on a voluntary standard under section 9 of the CPSA. See 15 U.S.C. 2064 and 16 CFR 1115.5. As discussed below, the two Commissioners differed in the reasoning behind their common conclusion that rulemaking is unwarranted.

Chairman Ann Brown stated: "In view of the progress made by the bucket industry in placing English and Spanish warning labels on five-gallon buckets, its commitment to an ongoing information and education campaign, the significant cost to the Commission and industry that could result in attempting to redesign buckets to meet a performance standard with no assurance that such a standard would be practicable and reasonable for all buckets, or even a majority of buckets, it makes sense to terminate the proceeding."(10)

In her statement, the Chairman reviewed the initiation of the proceeding and the industry's efforts involving labeling and developing an information and education campaign. She noted the apparent success of labeling legislation in California where, as far as the Commission is aware, no labeled bucket-related deaths have

occurred since the law took effect. The Chairman noted that her decision was based in part on the significant resources that would be required to address the drowning hazard through a performance standard, noting that "it is best to concentrate those resources on problems that are more clearly solvable within a reasonable period of time." Finally, the Chairman encouraged industry to continue exploring alternatives to labeling that could potentially eliminate the bucket drowning hazard.(10)

Commissioner Mary Sheila Gall observed in her statement that "it is clear that development of a voluntary performance standard and prototype solutions were unworkable, despite the best efforts of industry and our staff." Commissioner Gall explained that, although industry's efforts toward labeling and an information and education campaign were laudable, they did not form the basis of her vote to terminate the rulemaking. Rather, Commissioner Gall found that the drowning incidents occurred due to the absence of adult supervision. She stated: "It is those charged with the responsibility of caring for young children who are creating the hazard. It is not the product." Commissioner Gall concluded that her vote to terminate the rulemaking reaffirmed her position "that the Federal government cannot mandate changes in products as a substitute for responsible adult supervision. The deaths of these children are inexcusable. The fact that they were preventable is tragic."(11)

In accordance with the Commission's decision that a rulemaking proceeding is no longer warranted to address the drowning hazard associated with 5-gallon plastic buckets, the Commission hereby withdraws the ANPR published on July 8, 1994 (59 FR 35058).

Dated: May 30, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).

2. Comments received in response to **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).

3. Memorandum from Ronald L. Medford, Assistant Executive Director, HIR, to the Commission, "Commission Meeting on 5-Gallon Buckets," February 7, 1995.

4. Memorandum from Suzanne P. Cassidy, EPA to Celestine Trainor, EPHF, "Data Update of Investigated Cases Associated with 5-Gallon Buckets," January 20, 1995.

5. Memorandum from George Sushinsky, LSEL, to Celestine Trainor, EPHF, "LSEL Status Report on Performance Test Development," January 19, 1995.

6. Log of Meeting of ASTM F15.31 Performance Task Group, July 20, 1994.

7. Log of Meeting of ASTM F15.31, January 25, 1995.

8. ASTM ES 26-93: Standard for Specification of Cautionary Labeling for Five Gallon Open-Head Plastic Containers (Buckets).

9. Letter from David H. Baker, Holland and Knight to Eric Rubel, CPSC, concerning industry program, January 17, 1995.

10. Statement of Chairman Ann Brown, "Five-gallon Buckets," February 8, 1995.

11. Statement of Commissioner Mary Sheila Gall, "The Termination of Rulemaking Proceedings Regarding Five Gallon Buckets," February 8, 1995.

12. Memorandum from Suzanne P. Cassidy, EPA to Ronald Medford, HAR, "Location of Caregivers (Bucket Investigations)," April 20, 1995.

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 10, 12, 102, 134, and 177

RIN 1515-AB19; 1515-AB34

#### Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable To Imported Merchandise

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On May 5, 1995, Customs published in the **Federal Register** a notice of proposed rulemaking that set forth proposed amendments to the interim Customs Regulations establishing rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and republished, with some modifications, proposed amendments to the Customs Regulations to provide uniform rules governing the determination of the country of origin of imported merchandise. This document extends for an additional 30 days the period of time within which interested