

Executive Order 13132: It has been determined that this rule does not contain policies with federalism implications as that term is defined in E.O. 13132.

Administrative Procedure Act: The provisions of the Administrative Procedure Act (APA) requiring prior notice and opportunity for public comment are inapplicable under 5 U.S.C. 553(b)(B) because prior notice and opportunity for public comment is impracticable, unnecessary, and contrary to the public interest, given the agency's desire and ability to restart this program after an extended period of suspension to accommodate the decennial census and COVID-19-related delays. The Population Estimates Challenge Program is routinely suspended during decennial census operations in order to ensure that resources within the Population Division are allocated toward reviewing and evaluating the decennial census results. This rule only resumes the suspended program. This rule does not implement revisions to the program or its requirements. Furthermore, there is good cause to waive the thirty-day delay in effective date pursuant to 5 U.S.C. 553(d)(3), as this rule does not burden any regulated entity, including state and local governments such as county, city, town, or village. Moreover, allowing an additional thirty days before challenges is not practicable since entities have expected the return of the Population Estimates Challenge Program.

Regulatory Flexibility Act:

Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

Robert L. Santos, Director, Census Bureau, approved the publication of this rule in the **Federal Register**.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure, Census data, State and local governments.

PART 90—PROCEDURE FOR CHALLENGING POPULATION ESTIMATES

■ For the reason stated in the preamble, and under the authority of 13 U.S.C. 4 and 181, the stay of 15 CFR part 90 is lifted effective November 22, 2022.

Dated: November 17, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022-25413 Filed 11-21-22; 8:45 am]

BILLING CODE 3510-07-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1460

[Docket No. CPSC-2015-0006]

Children's Gasoline Burn Prevention Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Children's Gasoline Burn Prevention Act (CGBPA or the Act) mandated, as a consumer product safety rule, the child-resistance requirements for closures on portable gasoline containers published in the voluntary standard, ASTM F2517-05. ASTM F2517 was revised in 2015 and 2017, and the U.S. Consumer Product Safety Commission (CPSC) allowed those revisions to become mandatory pursuant to the Act. On September 1, 2022, the Commission received notice that ASTM F2517 has been revised again. In this direct final rule, the Commission evaluates the revised ASTM F2517-22e1 standard and finds that the revisions carry out the purposes of the CGBPA. Accordingly, pursuant to the Act, the 2022 revisions to the child-resistance requirements of ASTM F2517 will be incorporated into the mandatory standard for closures on portable gasoline containers. This direct final rule updates the Commission's regulation to reflect that the requirements for closures on portable gasoline containers must meet the requirements in ASTM F2517-22e1.

DATES: The rule is effective on December 22, 2022, unless CPSC receives a significant adverse comment by December 7, 2022. If CPSC receives such a comment, it will publish a notice in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of December 22, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2015-0006, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the

instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/hand delivery/courier/confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2015-0006, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Julio A. Alvarado, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7418; jalvarado@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The CGBPA was enacted on July 17, 2008. Section 2(b) of the Act requires that each portable gasoline container manufactured on or after January 17, 2009, for sale in the United States, "shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2715-05," *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*. CGBPA, Public Law 110-278; 122 Stat. 2602, Sec. 2(b) (July 17, 2008), codified as a note to 15 U.S.C. 2056. ASTM F2715-05 established requirements for determining the child

resistance of gasoline containers and other types of portable fuel containers, to mitigate hazards associated with children under age 5 accessing gasoline. Section 2(a) of the Act states that the provision of section 2(b) shall be considered to be a consumer product safety rule issued by the CPSC under section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058.

Under section 2(d) of the Act, ASTM must notify the Commission of any revision to the child-resistance requirements of ASTM F2517–05. Once ASTM notifies the CPSC, the revisions will be incorporated by operation of law into the consumer product safety rule unless, within 60 days of such notice, the Commission determines that the revisions do not carry out the purposes of section 2(b) of the CGBPA, and so notifies ASTM.

In February 2015, ASTM notified CPSC that it had revised ASTM F2517–05 with the publication of ASTM F2517–15. The Commission determined that the revisions in ASTM F2517–15 carried out the purposes of section 2(b) of the CGBPA, and those revisions were incorporated into the mandatory standard in April 2015. The Commission published a direct final rule (DFR) codifying the incorporation by reference of ASTM F2517–15 at 16 CFR part 1460. 80 FR 16961 (Mar. 31, 2015). In November 2017, ASTM again notified the Commission that it had revised ASTM F2517. The Commission allowed ASTM F2517–17 to be incorporated into the mandatory standard and published a DFR updating the incorporation by reference in the CFR. 82 FR 58728 (Dec. 14, 2017).

On September 1, 2022, ASTM notified CPSC of another revision, ASTM F2517–22e1. Unless the Commission determines that the revised standard does not carry out the purposes of section 2(b) of the CGBPA and notifies ASTM of such a determination by October 31, 2022, the revision will be incorporated into the mandatory consumer product safety standard by operation of law.

As set forth in section B. Description of the Rule in this preamble, the Commission has determined that the revisions made to ASTM F2517 carry out the purposes of section 2(b) of the CGBPA. Accordingly, by operation of law, ASTM F2517–22e1 will be incorporated into mandatory standard, and this direct final rule updates 16 CFR part 1460 to incorporate by reference ASTM F2517–22e1.¹

B. Description of the Rule

ASTM F2517–22e1, which was published in August 2022, is an editorially corrected version of ASTM F2517–22, which was published in July 2022. Compared to ASTM F2517–17, ASTM F2517–22e1 contains substantive revisions as well as editorial, non-substantive revisions. After reviewing the changes to the child-resistance requirements in sections 2 through 7 of F2517–22e1, the Commission concludes that these revisions carry out the purposes of section 2(b) of the Act.

The revisions in ASTM F2517–22e1 update the standard to reflect current gasoline container designs, remove ambiguities in the child test requirements, creates an adult test that reflects usage patterns and applies requirements to aftermarket products such as pour spouts which make it more likely that containers will not be left unsecured and accessible to children. The Commission concludes that these changes carry out the purposes of section 2(b) of the Act by improving the portable gasoline container standard, compared to the requirements of ASTM F2517–05. Below is a discussion of ASTM F2517–05, subsequent revisions to the standard, and the substantive and non-substantive changes made to ASTM F2517–22e1. These changes, and the background of the voluntary standard, are described in more detail in the CPSC staff's briefing memorandum.²

1. Requirements in ASTM F2517–05

The Act made the child-resistance requirements in ASTM F2517–05 for closures on portable gasoline containers a mandatory consumer product safety standard. Section 2(d) of the Act makes this 2005 version of the standard a benchmark for assessing revisions to the standard. ASTM F2517–05 required that container closures have adequate resistance to opening by children between 42 months (3 years and 6 months) and 51 months of age (4 years and 3 months). ASTM 2517–05 also required performance testing to demonstrate that containers could be opened by older adults.

The child and older adult testing requirements in ASTM F2517–05 were based on the Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–77. In 2005, gasoline containers had one opening to fill and pour from the container. To store the container, a consumer would screw on a threaded

cap, typically using a ratchet mechanism similar to child-resistant medicine bottles. To fill the gasoline container, or attach a nozzle to pour from the container, one would use force and squeeze to defeat the ratchet. The nozzles used in 2005 generally did not contain any closures or child-resistance features. Containers also had a second small opening to vent the container. ASTM F2517–05 did not require a child-resistant closure for the vent opening. Gasoline vapors would escape the gasoline container through the vent opening.

ASTM F2517–05 included a requirement for a child test program using a panel of children. The child test required the container to pass a two-part test. First, the tester would ask a pair of children to open the container and give them 5 minutes to open it. If a child opened a container, the test result for that child was marked a failure. The second part of the test was for children who did not open their containers in the first part of the test. The tester would visually demonstrate opening the container, ask the children to open it, and then give the children 5 minutes to open the container. If a child opened a container, the test result was marked a failure. If a child did not open a container, the result was marked a pass.

The older adult test program used 100 adults between 50 and 70 years old, consisting of at least 70 percent women. The older adult test had two parts. First, the tester would ask an older adult to open all the caps on the container according to the instructions on the caps and gave the older adult 5 minutes to familiarize themselves with the container and open the caps. If the older adult was unable to open the container in 5 minutes, the tester gave the older adult two “screener packages” to open. A screener package is a gasoline container with the child-resistance mechanism defeated. If the older adult was able to open both screener packages, then the test result was marked a failure, because the test showed that the child-resistance feature made the cap too difficult for the older adult to open. If the older adult could not open either screener package, then the older adult was not counted, because the older adult could not open the gas can, even with the child-resistance mechanism already defeated.

The second part of the older adult test was for older adults who opened a container in the first 5 minutes. The tester replaced the older adult's first container with an identical container. The tester then asked the older adult to open the caps according to the instructions on them. After the older

¹ The Commission voted 4–0 to approve publication of this notice as drafted.

² Staff Briefing Memorandum available at: https://www.cpsc.gov/s3fs-public/Revision-to-Childrens-Gasoline-Burn-Prevention-Act-Regulation-16-C-F-R-part-1460.pdf?VersionId=NHFcZYVlgZy5pT_SKHnGLcWfkeY8p4_O.

adult completed that step, the tester asked the older adult to close the caps on the container according to the instructions. A test where the older adult completed both tasks within 1 minute total was marked a pass, because the test showed that an older adult could open and close two child-resistant containers. Otherwise, the test was marked a failure. For the container to pass the older adult test, at least 90 percent of the older adults must have passed.

2. Requirements Introduced in ASTM F2517–15 and ASTM F2517–17

The 2015 and 2017 revisions are described in detail in the staff package. Significant elements of the 2015 revision included a new requirement that the tester tell the child to “use your teeth if you want to” during a child test. This instruction was based on testing provisions in the CPSC regulations related to the PPPA, 16 CFR 1700.20. ASTM F2517–15 also expanded the scope of the standard to include diesel and kerosene containers, as well as aftermarket components.

In 2017, to account for changes to gasoline container closures, ASTM revised the requirements to prepare containers for testing as well as the instructions given to children. ASTM F2517–17 also allowed the use of centralized testing as long as socioeconomic diversity was maintained. Testing laboratories were finding it difficult to test in daycare facilities, and centralized testing permitted increased testing options.

3. Ambiguities in Applying ASTM F2517–17

Gasoline container designs have changed considerably since 2005, primarily in response to U.S. Environmental Protection Agency (EPA) vapor emission requirements. Gasoline containers made before 2009 generally contained only one closure to refill and dispense gasoline. Typically, gasoline containers now contain two closures, one to secure the container after refilling (refilling closure) and a second within the spout to prevent vapors from escaping (dispensing closure). Gasoline containers also no longer contain a separate vent; instead, they use a venting mechanism incorporated in the dispensing closure.

When a dispensing closure on current gasoline containers is not activated, the opening automatically closes and seals in the fuel and vapors. This self-sealing closure is typically achieved using a spring-loaded mechanism. Opening the dispensing closure on EPA-compliant gasoline containers also generally

requires a more complex series of actions (e.g., insert the nozzle into receptacle, then push, then turn), compared to older gasoline containers (e.g., squeeze then turn).

The ASTM subcommittee working on the 2022 standard revision identified three ambiguities that had arisen in applying ASTM F2517–17. The first involved a failure provision relating to children “accessing liquid” in the container. This requirement was added in 2017, to account for self-sealing mechanisms on EPA-compliant gasoline containers. Laboratories, however, were uncertain whether a child passes the test who was able to open momentarily a self-sealing closure without keeping it open long enough to get liquid.

The second ambiguity involved screener packages used to determine if an older adult was an acceptable participant for testing. Prior to EPA emission limits, the screener package was typically made by replacing the child-resistant screw cap with a non-child-resistant screw cap (e.g., a screw cap with the ratchet removed) on the only closure. EPA-compliant gasoline containers, however, now also have a second closure with integrated child-resistance features, so a new approach was needed to screen older adult participants. ASTM F2517–17 did not clearly indicate a solution.

The final ambiguity involved the resealing portion of the older adult test. Older adults were given 1 minute to open and then reseal the container. EPA-compliant gasoline containers, however, now include separate dispensing closures and filling closures, and the standard did not indicate whether the dispensing closure, filling closure, or both closures, should be tested.

4. Substantive Changes to ASTM F2517

a. Accessing Liquid Failure Criteria in Child Testing

To address the ambiguity of the term “accessing liquid,” the revised standard changed the test to evaluate whether children are able to “dispense liquid” from a self-sealing closure. This new requirement maintains the understanding that a child should not gain access to the liquid, but does not necessarily fail a container with a spring-loaded closure simply because a child pressed the trigger momentarily but could not keep it open long enough to dispense liquid from the container. This revision represents an improvement over ASTM F2517–05 because it enables self-sealing solutions such as spring-loaded closures, and the momentary exposure of children to

gasoline fumes and vapors from a self-sealing closure exposes children to less fumes and vapors than a gasoline container from prior to 2009, which, by design, allowed gasoline fumes and vapors to escape.

b. Instructions to Children To Use Their Teeth

Testing laboratories indicated during the development process of ASTM F2517–22e1 that they seldom witnessed children trying to use their teeth when testing gasoline containers. Furthermore, because gasoline container closures are larger and shaped more irregularly than products like medicine bottle caps, and they rely on a sequence of actions rather than just exceeding a certain torque threshold, children are unlikely to gain a meaningful advantage by using their teeth when attempting to open a gasoline container closure. Additionally, stakeholders raised concerns that children using their teeth could sustain injuries to their mouth or swallow pieces of plastic.

Therefore, ASTM F2517–22e1 removes the instruction to encourage children to use their teeth. The standard does not prohibit children from using their teeth, so that children can interact with the closures as they choose to, including using their teeth. However, the risk of harming the children during the test is reduced, without adversely affecting the ability to ascertain the child-resistance of the container. Removing this instruction aligns with international standards.³

c. New Adult Test Replacing Previous Older Adult Test

The revised standard includes a new adult test. Adults are still given 5 minutes to read the instruction, familiarize themselves with the container, and demonstrate that it can be opened and resealed. Then the adults are given two, 1-minute periods to open and resecure each closure. However, the demographics, mixture of genders of adults, and suitability of participants have been changed to reflect more accurately those who actually use gasoline containers.

Many of the ASTM F2517–17 older adult test requirements were based on requirements for products subject to 16 CFR 1700.15(b)(2)(i) and the PPPA. However, the usage and demographics of users of gasoline containers differ from those for products subject to the PPPA, such as medicine bottles. Gasoline containers are generally used to fuel products for yard work (e.g.,

³ CSA Z76.1, ISO 8317–15, ISO 14375:2018, EN 862:2006–02.

lawn mowers, leaf blowers), and other activities (e.g., ATVs); so gasoline container users are expected to have a baseline physical ability that allows them to complete these tasks. In addition, gasoline containers are designed to be used repeatedly, so gasoline container users are expected to have some experience in their operation.

- The new adult test requirements broaden the age range of adults, rather than all participants being between 50 and 70, as in the previous older adult test. Adults between the ages of 50 and 70 are still included; the new age distribution is:

- 22%–28% are 18 to 29 years of age;
- 45%–55% are 30 to 49 years of age;

and

- 22%–28% are 50 to 70 years of age.

- The new adult test includes more men, but it still requires at least 30 percent women, rather than 70 percent women, as in the previous older adult test.

The adult test also replaces the screener package with a self-certifying question, asking adult participants if they have used a gasoline container in the last 2 years. Adults who report unfamiliarity with gasoline containers are not used for the test.

Additionally, the revised standard permits adult test participants to view videos and other informative materials that might be found on the internet to reflect better the modern methods that manufacturers use to provide information to consumers, if those test subjects attempt to find the videos. Adult participants who try to access additional information that a manufacturer has on the internet during the familiarization period of the test would be given that information by the tester. Finally, the adult test sequence specifically instructs the adult to open and reseal both the refilling and dispensing closures within 1 minute for each closure.

d. Approving a Family of Containers

In addition to addressing implementation issues that had arisen with ASTM F2517–17, ASTM F2517–22e1 allows a “family” of gasoline containers to be acceptable if the smallest container (which is very likely the easiest for children to manipulate) is tested by children and the largest container (which is very likely the hardest for children to manipulate) is tested by adults. A “family” of gasoline containers consists of containers that share the same design features, including the same child-resistance features, but in varying sizes and colors. The child-resistance features still need

to be tested, but the same features do not need to be tested repeatedly when shown to be acceptable on other containers. This revision maintains child-resistance because the child-resistance features are the same within the “family” of containers. Accordingly, if children cannot access the smallest container in the family, then it is likely they will not be able to access the larger containers in the same family.

5. Non-Substantive Revisions in ASTM F2517

In addition to clarifying ambiguities in the prior standard, as discussed above, the ASTM subcommittee made several non-substantive changes to the standard that are relevant to CPSC’s implementation of the Act. First, ASTM F2517–22e1 newly includes the terms “dispensing system,” “closure,” “filling opening,” and “portable fuel container” in the terminology section. ASTM F2517–22e1 also includes a new “requirements” section, Section 4. Requirements that are applicable to both child and adult testing were moved into this section.

Two unnecessary requirements were removed from ASTM F2517. The ASTM subcommittee removed repetitive testing steps for containers where dispensing systems may be stowed in the container. Some modern gasoline containers include a dispensing system that is stowed for sale, but is not intended or practical for the consumer to re-stow in regular use. Un-stowing a dispensing system was an unnecessary component to testing. Additionally, a requirement to seal containers 72 hours before testing was removed because statistical data indicated that the torque required to open the container did not change over time.

The readability of ASTM F2517–22e1 was improved. The protocol steps are now written in the imperative. For instance, the language stating that “the testing shall take place in a well-lit location that is or becomes familiar to the children and is isolated from all distractions” was revised to state in the imperative “conduct the testing in a test area that is well-lit and where the children are isolated from all distractions.” The test protocols also were reorganized into a consistent structure of “Test Parameters,” “Test Environment,” and “Test Panel.”

These non-substantive changes do not impact the purposes of the Act regarding the child resistance requirements, because the technical requirements that affect the determination of child resistance were not changed.

6. Change to Statutory Definition of “Portable Gasoline Container”

When Congress enacted the CGBPA in 2008, section 2(c) of the Act defined “portable gasoline container” as “any portable gasoline container intended for use by consumers.” In 2020, Congress amended the definition of “portable gasoline container,” 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.”⁴ The current mandatory standard incorporated the previous statutory definition at 16 CFR 1460.2. This definition is being updated to reflect the revised statutory definition. Therefore, in addition to updating the incorporation by reference to ASTM F2517–22e1, the draft final rule also updates the definition of “portable gasoline container” stated in 16 CFR 1460.2 to reflect the current statutory definition.

C. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to ASTM F2517 that is incorporated by reference under section 2(d) of the CGBPA, notice and comment are not necessary.

Specifically, under section 2(d) of the CGBPA, when ASTM revises ASTM F2517, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not carry out the purposes of section 2(b) of the Act. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s mandatory standard by

⁴ The amendment to this definition was contained in the Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. § 2056d, as stated Public Law 116–260, div. FF, title IX, § 901(c), available at: <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>.

operation of law. The Commission is allowing ASTM F2517–22e1 to become CPSC’s new standard. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CGBPA, ASTM F2517–22e1 takes effect as the new CPSC mandatory standard for portable fuel containers, even if the Commission does not issue this rule. Additionally, the revision of the definition of portable gasoline container in the regulation is merely to ensure the definition comports with the revised statutory definition. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 2(b) of the CGBPA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. See 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment by December 7, 2022, the rule will become effective on December 22, 2022. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute and a change to the statutory definition of “portable fuel container,” and public comments should address these specific actions.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent

direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

D. Incorporation by Reference

Section 1460.3 of the direct final rule incorporates by reference ASTM F2517–22e1. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section B. Description of the Rule of this preamble summarizes the major provisions of ASTM F2517–22e1 that the Commission incorporates by reference into 16 CFR part 1460. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2517–22e1 is available for viewing, at no cost, on ASTM’s website at: www.astm.org/CPSC.htm. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC’s Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: cpsc-os@cpsc.gov. Interested parties can purchase a copy of ASTM F2517–22e1 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; www.astm.org.

E. Effective Date

The CGBPA provides that “the proposed revision shall be incorporated in the consumer product safety rule . . . 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 section 2(b) of the Act. Unless the Commission receives a significant adverse comment by December 7, 2022, the rule will become effective on December 22, 2022. Portable gasoline containers manufactured or imported on or after the effective date must comply with the child-resistance requirements for closures on portable gasoline containers in ASTM F2517–22e1.

F. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. Because ASTM F2517–22e1 is considered a consumer product safety rule under the CPSA, portable gasoline containers manufactured or imported on or after December 22, 2022, are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517–22e1.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section C. Direct Final Rule Process of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the standard that becomes mandatory under the CGBPA and to conform the definition of “portable gasoline containers” in the regulation with the revised statutory definition.

H. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

I. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a

requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. The CGBPA deems rules issued under that statute a “consumer product safety rule.” Therefore, once a rule issued under the CGBPA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

J. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule can take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1460

Consumer protection, Gasoline, Incorporation by reference, Safety.

For the reasons stated above, the Commission amends 16 CFR part 1460 as follows:

PART 1460—CHILDREN’S GASOLINE BURN PREVENTION ACT REGULATION

- 1. Revise the authority citation for part 1460 to read as follows:

Authority: Sec. 2, Pub. L. 110–278, 122 Stat. 2602; and Pub. L. 116–260, div. FF, title IX, § 901(c).

- 2. Revise § 1460.2 to read as follows:

§ 1460.2 Definition.

Portable fuel 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.

- 3. Revise § 1460.3 to read as follows:

§ 1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Each portable gasoline container manufactured on or after December 22, 2022 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 7 of ASTM F2517–22e1. ASTM F2517–22e1, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, approved June 1, 2022 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Office of the Secretary, U.S. Consumer Product Safety Commission at: Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. A read-only copy of the standard is available for viewing on the ASTM website at www.astm.org/READINGLIBRARY/. This material may be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; www.astm.org.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–397]

Schedules of Controlled Substances: Placement of Mesocarb in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places mesocarb (chemical name: *N*-phenyl-*N'*-(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamide), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances

Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle mesocarb.

DATES: Effective date: December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),¹ after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance.² Based on those determinations, as appropriate, the Secretary of HHS (Secretary) shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to 21 U.S.C. 811(a) and (b).³ The CSA also

¹ As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary’s scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

² 21 U.S.C. 811(d)(3).

³ Id.