

Q&A Concerning the Children's Gasoline Burn Prevention Act

Several questions have been raised about the applicability and scope of the recently enacted Children's Gasoline Burn Prevention Act ("the Act"). Children's Gasoline Burn Prevention Act, Pub. L. 110-278 (July 17, 2008). Following are questions that have been brought to our attention and the responses from the Office of the General Counsel. *These responses are those of the CPSC staff and have not been reviewed or approved by the Commission. They may be superseded at any time by the Office of the General Counsel, by the Commission, or by operation of law.*

1. *Are fuel containers for camping stoves, portable grills, lanterns, etc. included in the Children's Gasoline Burn Prevention Act?*

The Act applies to any portable fuel containers intended to hold gasoline. The Act requires that six months after enactment "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." Children's Gasoline Burn Prevention Act, Pub. L. 110-278, § 2(b) (July 17, 2008). The Act defines "portable gasoline container" as "any portable gasoline container intended for use by consumers." *Id.* § 2(c). Neither the Act nor ASTM F2517-05 specifies the use for which the gasoline is intended. Thus, if a gasoline container were intended for use with a generator, for example, rather than with automobiles, the container would still be subject to the Act's requirements.

2. *Are fuel containers that are sold already filled with fuels such as butane, ethanol fuels, or kerosene subject to the Act?*

No, the Act applies only to gasoline containers. The Act states that it applies to each portable gasoline container that is intended for use by consumers and is manufactured on or after the effective date. Thus, the only containers to which the Act applies are those that are intended to contain gasoline (and meet the other aspects of the stated requirements in section 2(b)). All gasoline containers, whether empty or full, must have child-resistant closures. It should be noted, however, that portable containers holding prepackaged fuel other than gasoline (such as cigarette lighter fuel, charcoal lighter fuel, camping equipment fuel, torch fuel, and fuel for lanterns) may be subject to the special packaging requirements for kindling and/or illuminating preparations at 16 C.F.R. § 1700.14(a)(7), the solvent rule mentioned above at § 1700.14(a)(15) or the regulation for hydrocarbons at § 1700.14(a)(31).

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3. *The Act title and wording imply that "burns" are the only hazard mitigated by the use of CRCs, but was it also intended to reduce poisoning and related injuries from accessing the container contents, such as eye damage?*

Yes, the Act was intended to address all injuries that can occur when a child gains access to the contents of a portable gasoline container. The word "burn" is in the title of the Act, and the House report states that the purpose of the Act "is to enhance the protection of children from death or serious injury from burn hazards." H.R. Rep. No. 367, 110th Cong., 1st Sess. 2 (2008). However, in discussing the need for the legislation, the House report refers to CPSC's data estimates of "injuries related to gasoline, either through fire, ingestion, or inhalation of fumes." *Id.* at 2-3. The focus of child resistance closure requirements is to reduce the likelihood of children gaining access to the contained substance and thereby prevent injuries that could follow from such access. Whatever hazard Congress had in mind, the bottom line is that on the effective date (January 17, 2009) portable gasoline containers intended for consumer use must have child-resistant closures that meet the requirements of ASTM F 2517-05.

4. *Does the definition of "portable (gasoline fuel) containers" include other can types (such as safety cans) that are not "intended for use by the consumer," but are available for purchase by consumers?*

Yes, the Act states that it covers "any portable gasoline container intended for use by consumers." The manufacturer's stated intent is one factor that the Commission considers in determining whether a product is intended for use by consumers. The availability of the product for consumers to purchase or use the product is also relevant to this determination.

5. *Are plastic portable marine fuel tanks manufactured to UL1185, ABYC 25 and other standards covered by the Act?*

No, "portable marine fuel tanks," i.e., containers that are used to supply fuel to a boat's engine, do not fall under the Act. These tanks are specifically made to attach to the fuel line on the engine. The Commission has jurisdiction over consumer products as defined in the Consumer Product Safety Act ("CPSA"). The definition of "consumer product" in the CPSA excludes boats and associated equipment to the extent that a risk of injury presented by the equipment could be reduced or eliminated under the Federal Boat Safety Act. 15 U.S.C. § 2052(a)(1)(G). In the view of the Coast Guard, boat fuel systems are "associated equipment" under the Federal Boat Safety Act and thus come under the Coast Guard's jurisdiction. In the view of the Coast Guard, portable marine fuel tanks are part of the boat's fuel system and thus the Coast Guard rather than the CPSC has authority to regulate them. Therefore, the Children's Gasoline Burn Prevention Act does not apply to portable marine fuel tanks. There is no indication from the Act or its legislative history that Congress was specifically concerned about marine fuel tanks.

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6. Is a portable gasoline container that is labeled as intended for one-time emergency use subject to the Act? The container is sold without gasoline in it.

The Act does not mention one-time use containers. ASTM F2517-05 excludes from its scope "single-trip prepackaged containers." This exclusion, however, covers only such containers that are sold with gasoline in them. The Act requires child-resistant closures in accordance with ASTM F2517-05 for "each portable gasoline container" manufactured on or after the effective date. There is no exception for containers intended for one-time use. Thus, we believe that if a container is portable, is intended to hold gasoline and is intended for consumer use, it is covered by the Act. In theory, a container that is intended for one-time use might minimize the likelihood that children would gain access to gasoline because the container would be discarded after use and would not be stored. However, in spite of its labeling, it is quite foreseeable that consumers may reuse the container (and/or that a child could come into contact with it while it is being stored for even a short period of time). Thus, all portable gasoline containers, even if intended for single use and labeled to that effect, are subject to the Act.

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