



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

This document has been electronically  
approved and signed.

**DATE:** November 29, 2017

## BALLOT VOTE SHEET

**TO:** The Commission  
Alberta E. Mills, Acting Secretary

**THROUGH:** Patricia M. Hanz, General Counsel  
Patricia H. Adkins, Executive Director

**FROM:** Patricia M. Pollitzer, Assistant General Counsel  
Mary A. House, Attorney, OGC

**SUBJECT:** Direct Final Rule: Revision to the Children's Gasoline Burn Prevention Act  
Regulation

BALLOT VOTE DUE Tuesday, December 5, 2017

Staff is forwarding to the Commission a briefing memorandum concerning recent revisions to the ASTM standard cited in the Commission's regulation, Children's Gasoline Burn Prevention Act Regulation, 16 C.F.R. part 1460. Under the Children's Gasoline Burn Prevention Act (the Act), portable gasoline containers manufactured on or after January 17, 2009 offered for sale in the United States must conform to ASTM F2517-05, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*. The Act provides a revision process, stating that ASTM must notify the Commission of proposed revisions to the standard. Once the Commission is notified, "unless within 60 days of such notice, the Commission notifies ASTM that the Commission has determined that such revision does not carry out the purposes of [the Act's provision regarding child-resistance requirements]," ASTM's proposed revision "shall be incorporated" as a consumer product safety rule.

On November 13, 2017, ASTM notified the Commission that it had revised child-resistance requirements into an updated standard, ASTM F2517-17. The Commission's regulation at 16 C.F.R. part 1460, currently references ASTM F2517-15. In accordance with staff's recommendation, the Office of the General Counsel has prepared a draft direct final rule revising the reference in CPSC's safety standard for portable gasoline containers to refer to ASTM F2517-17.

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

Please indicate your vote on the following options:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes.  
(Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action. (Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: Draft *Federal Register* Notice: Direct Final Rule for Revision to Children's Gasoline Burn Prevention Act Regulation

**DRAFT**

[Billing Code 6355-01-P]

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1460**

**Docket No. CPSC-2015-0006**

**Revision to 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) adopted as a consumer product safety rule, the child-resistance requirements for closures on portable gasoline containers published in the ASTM voluntary standard, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, ASTM F2517-05. ASTM F2517 was revised in 2015. These revisions became law under the Act, which the Commission codified through a direct final rule in 2015. On November 13, 2017, the Commission received notice from ASTM that a revision to ASTM F2517 was published in November 2017. In this direct final rule the Commission reviews and evaluates the revised ASTM F2517, finding that the revisions carry out the purposes of the CGBPA’s requirements. Accordingly, the 2017 revisions to the child-resistance requirements will be automatically incorporated and apply as the statutorily mandated 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 F2517-17.

**DATES:** This rule will be effective on January 12, 2018, unless the Commission receives significant adverse comment by **[INSERT DATE TWO WEEKS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive timely significant adverse

**DRAFT**

comments, we will publish notification in the **Federal Register** withdrawing this direct final rule. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 12, 2018.

**ADDRESSES:** You may 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: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through [www.regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written comments (paper, disk, or CD-ROM submissions) by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

**FOR FURTHER INFORMATION CONTACT:** John Boja, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7300; [jboja@cpsc.gov](mailto:jboja@cpsc.gov).

## DRAFT

### SUPPLEMENTARY INFORMATION:

#### I. Background

**The Children's Gasoline Burn Prevention Act.** The CGBPA was enacted on July 17, 2008. The Act established as a consumer product safety rule ASTM International's (ASTM) F2517-05's child-resistance requirements for closures on portable gasoline containers. All portable gasoline containers manufactured on or after January 17, 2009 for sale to consumers in the United States must conform to ASTM F2517's child-resistance requirements. By mandating closures that resist access by children up to 51 months of age (4 years and 3 months), the Act seeks to reduce hazards to children, including children ingesting gasoline and inhaling gasoline fumes, and the risk of burns from fires and explosions that may occur when children access gasoline stored in portable gasoline containers. The Act did not require the Commission to undertake any action for the Act's provisions to take effect; rather, ASTM 2715-05's child-resistance requirements were made mandatory through operation of law. The Children's Gasoline Burn Prevention Act, Public Law 110-278; 122 Stat. 2602, Sec. 2(b) (July 17, 2008), codified as a note to 15 U.S.C. § 2056.

**CGBPA Provisions Regarding Updates to ASTM F2517.** Under the Act, ASTM must notify the Commission of any revision to the child-resistance requirements for closures contained in ASTM F2517. Once ASTM notifies the CPSC of ASTM's revisions to this voluntary standard, the revisions will be incorporated by operation of law and will become the consumer product safety standard within 60 days after such notice. However, the Commission can prevent such incorporation if the Commission determines that revisions to the voluntary standard do not carry out the purposes of the child-resistance requirements for closures on portable gasoline containers as specified in ASTM F2517, and so notifies ASTM.

## **DRAFT**

On February 11, 2015, ASTM gave notice to CPSC of revisions to ASTM F2517-05. The revised standard was designated as ASTM F2517-15. The Commission determined that the revisions to the voluntary standard stated in ASTM F2517-15 carried out the purposes of the child-resistance requirements for closures on portable gasoline containers. Accordingly, by operation of law, the revisions became effective 60 days after February 11, 2015, on April 13, 2015. So that the Code of Federal Regulations would include the standard, the Commission published a direct final rule, 80 FR 16961 (March 31, 2015), codifying the Commission's incorporation by reference of ASTM F2517-15 at 16 C.F.R. part 1460.

**2017 Revisions to ASTM F2517.** On November 13, 2017, ASTM notified the Commission that it has again revised ASTM F2517. On October 1, 2017, ASTM approved publication of ASTM F2517-17, and published the standard in November 2017. Unless the Commission determines that the revisions to ASTM F2517-17 fail to carry out the purposes of the child-resistance requirements for closures on portable gasoline containers specified in ASTM F2517, and notifies ASTM of this determination, the revisions to ASTM F2517 become a mandatory consumer product safety standard by operation of law, effective January 12, 2018.

As set forth in this preamble, the Commission has determined that the revisions made to ASTM F2517 carry out the purposes of the child-resistance requirements for closures on portable gasoline containers. Accordingly, by operation of law, the requirements for closures on portable gasoline containers, as specified in ASTM F2517-17, are mandatory for all such containers sold or imported into the United States that were manufactured on or after January 12, 2018. To provide clarity to the regulated industry, the Commission will revise our regulation at 16 C.F.R. part 1460 to reflect the incorporation by reference of this revised voluntary standard.

## DRAFT

### II. Description of the Rule

The rule codifies the child-resistance requirements for closures on portable gasoline containers as stated in ASTM F2517-17. These requirements are mandatory effective January 12, 2018. The Commission is publishing this direct final rule incorporating by reference ASTM F2517-17 so that the Code of Federal Regulations will reflect the current version of this mandatory standard.

Revisions to ASTM F2517 in the 2017 update increase the stringency of the testing requirements or refine the testing environment to aid in test reliability. These changes are described in more detail in the Staff's Briefing Memorandum, available at [\[insert link\]](#). Changes to the voluntary standard include:

- Reducing the amount of water required in a tested container from a half-filled container to a quarter-filled container. Decreasing the amount of liquid required for the test makes the container weigh less, increasing the likelihood that children are able to manipulate a container to access the liquid.
- For containers with multiple closures, removing the requirement to seal off closures not being tested. Manufacturers report that children are distracted by sealing mechanisms on closures not being tested. Accordingly, this revision removes the distraction and focuses the children's attention on attempting to open, or "get the liquid out" of the closure being tested. Although children are instructed to try and open one closure at a time on the container, the test is strengthened by failing a container if a child is able to access liquid from any closure during testing.

## DRAFT

- Adding requirements to measure and document the torque needed to secure a closure. Currently, the standard requires testing on new portable gasoline containers that have not been exposed to fuel or residue. ASTM members are concerned that degradation of a portable gasoline container could occur after exposure to fuel, which may affect the torque value of the child-resistant closures. This requirement is intended to aid in consideration of a future provision that would limit the change in torque value after exposure to fuel.
- Clarifying test instructions and requirements to remove possible ambiguities in the test procedure. ASTM F2517-17 adds information and instructions regarding how manufacturers should seek consent for testing children at daycare facilities. The revised standard also updates instructions given to the children during testing to reflect newer child resistant closure technology that does not necessarily “open” in the traditional sense. Children are now instructed: “Please try to open this for me or get the liquid out.”
- Allowing the option to use central location testing. Previously, testing was primarily conducted at daycare facilities. Manufacturers expressed frustration with the decreasing number of daycare facilities willing to participate in testing portable gasoline containers. ASTM F2517-17 allows the option to conduct testing at a central location, providing a more feasible testing venue and allowing the industry to continue to develop newer child-safe products. Additionally, a new Appendix to ASTM F2517-17 provides non-mandatory recommendations for laboratory testing procedures that are intended to prevent fraud in testing.

## DRAFT

After reviewing the changes to the child-resistance requirements in F2517-17, as outlined above, the Commission determines that the revised standard carries out the purposes of the Act for closures on portable gasoline containers. Each revision increases the stringency of the testing requirements or refines the testing environment to aid in test reliability. Accordingly, the 2017 revisions to the child-resistance requirements of ASTM F2517 will be incorporated into the CPSC mandatory rule, as provided in the Act. However, because the scope of the consumer product safety rule is established by the CGBPA, this rule does not incorporate by reference the scope section of ASTM F2517-17 or Appendix X2 that relates to the scope section of ASTM F2517-17.

### III. Direct Final Rule

The Commission is issuing this rule as a direct final rule. The Administrative Procedure Act (APA) generally requires notice and comment rulemaking except when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” The Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. ACUS also recommended using direct final rulemaking when an agency concludes that notice and comment is “unnecessary” under the APA’s good cause exemption. *See* ACUS, Recommendation, 95-4, 60 FR 43108, 43110 (August 18, 1995).

This rule will revise the reference at 16 CFR part 1460 to refer to ASTM F2517-17, which will be in full force and effect by operation of law on January 12, 2018. In these circumstances, where the substantive requirements are mandated by statute and become effective under the statute, public comment on updating the reference to the ASTM standard serves little

## **DRAFT**

purpose. Moreover, we do not expect that updating the reference would be controversial or result in significant adverse comment. As a result, the Commission believes that a direct final rule codifying the revised standard in these circumstances is appropriate.

Unless we receive a significant adverse comment by **[INSERT DATE TWO WEEKS AFTER PUBLICATION DATE]**, the rule will become effective on January 12, 2018. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one in which 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 change. Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments 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.

#### **IV. Incorporation by Reference**

Section 1460.3 of the final rule provides that closures on portable gasoline containers must comply with the child-resistance requirements of ASTM F2517-17. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR's regulation requires that, for a final rule, agencies must discuss in the rule's preamble ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section II of this preamble summarizes the provisions of ASTM F2517-17. Interested persons may purchase a copy of ASTM F2517-17

## DRAFT

from ASTM, either through ASTM's website or by mail at the address provided in the rule. One may also inspect a copy of the standard at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission.

### V. **Effective Date**

As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment by **[INSERT DATE TWO WEEKS AFTER PUBLICATION DATE]**, the rule will become effective on January 12, 2018. Portable gasoline containers manufactured or imported on or after January 12, 2018 must comply with the child-resistance requirements for closures on portable gasoline containers in ASTM F2517-17.

### VI. **Other Relevant Statutory Provisions**

#### A. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. This rule updates the reference in part 1460 to reflect requirements in the revised voluntary standard, ASTM F2517-17, that will take effect through operation of law, as specified in the CGBPA. Because the rule does not impose any requirements beyond those put in place by the CGBPA, the rule does not create new substantive obligations for any entity, including any small entity. Accordingly, the Commission certifies that the rule will not have a significant impact on a substantial number of small entities.

## **DRAFT**

### *B. 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 because 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.

### *C. Paperwork Reduction Act*

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) is not required.

## **VII. Preemption**

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" 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. As discussed above, under the CGBPA, the child-resistance requirements of ASTM F2517 are a consumer product safety standard under the CPSA. Children's Gasoline Burn Prevention Act, Pub. L. 110-278, Sec. 2(a) (July 17, 2008). The child-resistance requirements of ASTM F2517-17, which will be codified under this rule, will invoke the preemptive effect of section 26(a) of the CPSA.

## **VIII. 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

## DRAFT

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 F2517-17 is a consumer product safety rule under the CPSA, portable gasoline containers manufactured or imported on or after January 12, 2018, are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517-17.

### 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. The authority citation for part 1460 continues to read as follows:

**Authority:** Sec. 2, Pub. L. 110-278, 122 Stat. 2602.

2. 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 January 12, 2018 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 6 of ASTM F2517-17 (including Appendices X1, X3, and X4), *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, approved on October 1, 2017. The Director of the Federal

**DRAFT**

Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; telephone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: \_\_\_\_\_

---

Alberta E. Mills,  
Acting Secretary,  
U.S. Consumer Product Safety Commission.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

This document has been electronically  
approved and signed.

## Memorandum

November 29, 2017

TO : The Commission  
Alberta E. Mills, Acting Secretary

THROUGH : Patricia M. Hanz, General Counsel  
Patricia H. Adkins, Executive Director

FROM : George A. Borlase, Ph.D., P.E., Assistant Executive Director  
Office of Hazard Identification and Reduction

Scott Ayers, Fire Protection Engineer  
Directorate for Engineering Sciences

SUBJECT : Staff Recommendation to the Commission on Revisions to ASTM F2517,  
*Standard Specification for Determination of Child Resistance of Portable  
Fuel Containers for Consumer Use*

### I. Introduction

The Children's Gasoline Burn Prevention Act (the Act), enacted on July 17, 2008,<sup>1</sup> requires that portable gasoline containers manufactured for sale to consumers in the United States on or after January 17, 2009 (6 months after enactment), must conform to ASTM International's (ASTM) F2517-05's child-resistance requirements for closures on portable gasoline containers. The Act provides that this requirement shall be considered a consumer product safety rule under section 9 of the Consumer Product Safety Act (CPSA).

Under the Act, if ASTM proposes to revise the child-resistance requirements of ASTM F2517-05, ASTM shall notify the U.S. Consumer Product Safety Commission (CPSC or Commission) of "the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule unless, within 60 days of such notice, the Commission notifies ASTM that the Commission has determined that such revision does not carry out the purposes of" the child-resistance requirements for closures on portable gasoline containers specified in ASTM F2517-05. ASTM revised F2517-05 in 2015 and the Commission incorporated this revision into the mandatory consumer product safety rule pursuant to the Act. The Commission published a rule incorporating by reference the revised standard, ASTM F2517-15, 80 Fed. Reg. 16961 (March 31, 2015). 16 C.F.R. part 1460.

---

<sup>1</sup> Children's Gasoline Burn Prevention Act, Pub. L. No. 110-278, § 2(b) (July 17, 2008).

On November 13, 2017, ASTM officially notified the Commission that ASTM had revised ASTM F2517 again and published a new standard in November 2017. According to the Act, the Commission has until January 12, 2018, to notify ASTM if the Commission determines that this revision does not carry out the purposes of the Act. If the Commission does not notify ASTM, the revised child-resistance requirements will be incorporated into the consumer product safety rule by operation of law. The Commission would need to revise the rule at 16 C.F.R part 1460 to reference the revised ASTM standard, ASTM F2517-17. The Office of the General Counsel (OGC) is providing a draft direct final rule to make this change.

This memorandum summarizes the child-resistance requirements of the 2015 version of ASTM F2517 (made mandatory by direct final rule in 2015), summarizes ASTM's 2017 revisions to the voluntary standard, and provides staff's assessment of these changes.

## **II. ASTM F2517**

### *A. Description of the Standard*

Under ASTM F2517-15, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, closures on affected containers must prove adequately resistant to children up to 51 months of age (4 years and 3 months). ASTM F2517 also requires that testing demonstrate a satisfactory level of accessibility by adults 50 to 70 years of age. By mandating closures that resist access by children, the Act seeks to reduce hazards to children, including ingestions, fume inhalation, and the risk of burns from fires and/or explosions resulting from children interacting with, and accessing, or inadvertently releasing, the gasoline stored in gas cans.

### *B. Revisions in ASTM F2517-17*

The changes to ASTM F2517 in the new 2017 revision can be separated into five areas:

- Reducing the amount of water in a tested container,
- For containers with multiple closures, removing the requirement to seal off closures not being tested,
- Adding requirements to measure and document the torque needed to secure a closure,
- Clarifying test instructions and requirements, and
- Allowing the option to use central location testing.

Table 1 (below) is taken from the 2017 ballot to revise ASTM F2517. Table 1 lists each paragraph (or part of a paragraph) and the balloted revision, along with the rationale for each revision. Below we describe and evaluate each revision to the standard.

## **1. The Amount of Water in a Tested Container**

ASTM F2517-17 reduces the amount of water required to be tested in a container from a half-filled container to a quarter-filled container. This revision makes the containers weigh less when tested. Because containers that weigh less are more easily lifted and manipulated by children, children are more likely to access the liquid inside the container. Staff concludes that this revision is consistent with the purposes of the Act, because decreasing the amount of liquid in a tested portable gasoline container, increases the likelihood that children are able to access the liquid in the container. Accordingly, the change increases the stringency of the test, making it more difficult for a container to pass.

## **2. Removing the Requirement to Seal Off Closures not Under Test**

ASTM F2517-15 required that manufacturers test containers with multiple closures by testing each closure point on the container one at a time, and sealing off the closures that are not being tested. However, manufacturers have found that during testing, children tend to focus on the devices used to seal off the closures not being tested, instead of focusing on the closure being evaluated. The devices used to seal off other openings during the test are not part of the test. Manufacturers have found that the time children spend focusing on these sealing devices takes time away from the time children are supposed to spend trying to open the closure under test.

To prevent distracting children during the test with sealed-off openings, ASTM F2517-17 revises the standard to remove the requirement that additional openings in the container be sealed off during testing. Openings are still tested one at a time. Children are directed to the opening being tested before each test. If any of the closures are opened during the test, regardless of which closure is being tested, the container fails the test. Removing devices to seal off closures not under test on products with more than one child-resistant closure allows the children to focus only on the child-resistant closures being tested. Staff concludes that this revision is consistent with the purposes of the Act because it makes the test more difficult to pass. Although each closure will be tested, if a child focuses on a closure not under test, and is able to open that closure, the product fails. Additionally, F2517-17 specifies that if a container is stored in a different configuration than when it is being used, it is tested for each configuration in which it may be encountered.

## **3. Requirements to Measure and Document the Torque Needed to Secure a Closure**

ASTM F2517-17 adds a new requirement that manufacturers measure and document the torque required to secure a closure on the container. This provision was added because members of the ASTM subcommittee for portable gasoline containers are interested in whether degradation of a portable gasoline container occurs after exposure to fuel. Currently, the ASTM standard requires that children test new portable gasoline containers and not containers that have been exposed to fuel or residue. The new requirement to measure and document torque has been added to aid in consideration of a possible future provision that would limit the change in the torque required to open a closure after the closure has been exposed to fuel. Members of the subcommittee believe that exposure to fuel may affect the torque value of the child-resistant closures, and therefore,

requirements may be needed in the future to ensure torque values stay reasonably constant. ASTM does not anticipate that including this requirement will add significant time to the testing process or make the test overly complicated.

Staff concludes that this revision is consistent with the purposes of the Act because it enhances methods to determine whether child-resistant enclosures stay effective after exposure to fuel, which would strengthen the testing.

#### **4. Clarifying Test Instructions and Requirements**

ASTM F2517-17 adds information and instructions regarding how manufacturers should seek consent for testing children at daycare facilities. Additionally, instructions given to the children during testing requesting that they “open” the container, were revised to reflect newer child-resistant closure technology that does not necessarily “open” in the traditional sense, but instead, allows gasoline to pour out of container. Children are now instructed to “open or get the liquid out” of the container. Testing instructors are also required to demonstrate all child-resistant closures to the participants after the first 5 minutes of testing. All of these clarifications and revisions were added to remove possible ambiguities in the test procedure. Staff concludes that strengthening the test procedures furthers the purposes of the Act by improving the reliability of the test.

#### **5. The Option of Central Location Testing**

Previously, testing was primarily conducted at daycare facilities. Some members of industry expressed frustration with the decreasing number of daycare facilities willing to participate in testing portable gasoline containers. These members reported that there were increasingly fewer daycare facilities willing to conduct testing, which has made testing new portable gasoline containers more difficult. Accordingly, the revised 2017 version of ASTM F2517 allows the option to conduct testing at a central location. CPSC staff worked with members of the ASTM subcommittee interested in adding the option to test centrally. Staff worked to incorporate socio-economic balance into central location testing. Staff concludes that allowing centralized testing is more feasible than testing at daycare facilities and allows the industry to continue to develop newer child-resistant products.

Additionally staff worked with the subcommittee to integrate non-mandatory recommendations for laboratory testing procedures into an Appendix. These procedures are recommended best practices aimed at preventing fraudulent test results. Staff concludes that adding these recommendations furthers the purposes of the Act by reducing the possibilities of fraudulent testing.

### **III. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603

and 605. Staff of the Directorate for Economics concludes that this rule codifies requirements that will take effect through operation of law, as specified in the Act. Accordingly, the rule does not impose any requirements beyond those put in place by the Act. Because the rule does not create new substantive obligations for any entity, including any small entity, staff recommends that the Commission certify that the rule will not have a significant impact on a substantial number of small entities.

#### **IV. Conclusion**

After reviewing the changes to the child-resistance requirements in F2517-17, as outlined above, staff concludes that the revised standard carries out the purposes of the Act for closures on portable gasoline containers specified in ASTM F2517. Each revision increases the stringency of the testing requirements or further refines the testing environment to aid in test reliability and feasibility. Consequently, staff recommends that the Commission allow the 2017 revisions to the child-resistance requirements of ASTM F2517 to be incorporated into the CPSC mandatory rule, as provided in the Act.

Staff also recommends that if the Commission determines that ASTM's revision carries out the purposes of the Act mandating child-resistance requirements for closures on portable gasoline containers, the Commission should publish a direct final rule to revise 16 C.F.R. part 1460 to reference ASTM F2517-17. Referencing the applicable mandatory standard would reduce regulatory confusion by correctly stating the current requirements in the Code of Federal Regulations. OGC is providing a draft direct final rule for the Commission's consideration.

**Table 1. Summary of changes from ASTM F2517-15 to ASTM F2517-17 with rationale (“A” preceding the paragraph number indicates only part of the paragraph was included)**

Paragraph	F2517-15	Revised	Rationale
3.1.2	Containers, components, and closures shall be new with container half full of water for testing in accordance with Sections 4 and 5.	Containers, components, and closures shall be new with container one-quarter full of water for testing in accordance with Sections 4 and 5.	A gallon of water is about 8.3 pounds. Most cans tested are 2.5 gallons to 5 gallons (requiring about 10 pounds or more water). The average weight of the child is 34 to 45 lbs. The children are not able to move the heavier cans. A smaller amount of water is a better test of the “worst-case” scenario.
4.1.1	For testing in accordance with Section 4, containers with multiple closures shall have each closure tested separately. Closure(s) not being tested shall be sealed off so they will not function but will appear as they would normally.	<p>For testing in accordance with Section 4, containers with multiple closures shall have each closure accessible at the same time as would be the likely scenario that a child would encounter the closure.</p> <p>4.1.1.1 However, for each closure, test using a panel of at least 50 children, and up to 200 children, using a demonstration for that closure.</p> <p>4.1.1.2 If the container is stored in a different configuration than when it is being used, test with a child panel for each configuration in which it is possible the package will be encountered. (For example, if the spout is stored in the container and then the spout is attached for use, test it once with the spout out and once with the spout in, with the demonstration appropriate for that configuration.)</p> <p>4.1.1.3 A failure shall be accessing the liquid using any of the openings,</p>	It is not feasible to close off the different openings. The child focuses on the materials used to close off the other openings and not the CR openings. With these changes, the child would only focus on CR openings. The goal of the test is to give parents a 10-minute buffer before the child comes in contact with the harmful substance.

		regardless of which opening was demonstrated.	
4.1.2	Torque-dependent closures shall be secured at the same torque as applied normally by adult consumers.	Torque-dependent closures shall be secured at the same torque as applied normally by adult consumers. The torque value shall be recorded. Document the method to arrive at the torque value.	Added to obtain a torque method and value. The Subcommittee wishes to explore torque values in the future on the products.
4.2.1	Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in Table 1. A consent form (Appendix X3) must be completed for each child participating in the testing.	Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in Table 1. Consent shall be documented for each child participating in the testing, at the child or site level. If the testing is conducted at a central location, a consent form (Appendix X3) shall be completed for each child participating in the testing.	Changed to more accurately reflect how consent is obtained at day care facilities. Also changed to include central location tested.
4.2.2	No more than 20% of the children in each group shall be tested at or obtained from any given site.	No more than 20% of the children tested for each closure shall be tested at one site. To assure geographical diversity if testing is completed at a central location, no more than 20% of the children shall be drawn from a single ZIP code, city, or town.	Changed to allow central location testing, but still capturing socio-economic diversity.
A 4.5	The testing shall be done in a location that is familiar to the children, for example, their customary nursery school or regular kindergarten.	The testing shall be done in a location that is familiar to the children, for example, their customary nursery school. 4.5.1 Alternatively, testing at a central location after the children are made comfortable in that location shall be allowed.	Partial paragraph change. Kindergarten aged children are generally too old for CR testing. Alternative central location requirement added.
4.6.2	The testing shall take place in a well-lit location that is familiar to the children and is isolated from all distractions.	The testing shall take place in a well-lit location that is or becomes familiar to the children and is isolated from all distractions.	Change to allow central location testing
A 4.6.8	<i>“Please try to open this for</i>	<i>“Please try to open this for</i>	Partial paragraph change.

	<i>me.”</i>	<i>me or to get the liquid out.”</i>	Instruction changed to add clarity
A 4.6.10	<i>“Please try to open the container.”</i>	<i>“Please keep trying to open this for me or to get the liquid out.”</i>	Partial paragraph change. Instruction changed to add clarity
4.6.15	If a child opens his/her container, the tester shall say, “thank you,” take the container from the child and put it out of the child's reach. The child shall not be asked to open the container a second time.	If a child opens, unlocks any child resistant mechanisms, or otherwise accesses the liquid in the container, the tester shall say, “thank you,” take the container from the child and put it out of the child's reach. The child shall not be asked to open the container a second time or open any other closure on the container.	Change made that reflects technology changes in CR openings.
4.6.16	At the end of the 5-min period, the tester shall demonstrate how to open the container if either child has not opened his or her container. A separate “demo” package shall be used for the demonstration.	At the end of the 5-minute period, the tester shall demonstrate how to open the container using the designated closure if either child has not opened his or her container using the designated closure. The demonstration will include opening and closing only the designated closure. A separate “demo” package shall be used for the demonstration.	All access points should be demonstrated.
4.6.19	Once the tester gets the children's full attention, the tester shall hold the demo container approximately 2 ft (0.6 m) from the children and open the container at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.	Once the tester gets the children's full attention, the tester shall hold the demo container approximately 2 ft (0.6 m) from the children and open or unlock the designated closure at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.	Change made that reflects technology changes in CR openings.
4.6.21	To begin the second 5-min period, the tester shall say, <i>“Now you try to open your container.”</i>	To begin the second 5-min period, the tester shall say, <i>“Now you try to open your container or get the liquid out.”</i>	Instruction changed to add clarity
A 4.6.23	<i>This kind of container</i>	<i>This kind of container will</i>	Partial paragraph change.

	<i>might have something in it that would make you sick.”</i>	<i>have something in it that will make you sick.”</i>	Instruction changed to add clarity
A 5.1	Use a group of 100 senior adults. Not more than 24 % of the senior adults tested shall be obtained from or tested at any one site.	Use a group of 100 senior adults. Recruit a mix of adults that represent the socio-economic profile of the test community. To assure geographical diversity if testing is completed at a central location, no more than 20% of the adults shall be drawn from a single ZIP code, city, or town.	Changed to allow central location testing, but still capturing socio-economic diversity.
A 5.5.7	After the participant opens the container, the tester says, “Please close all the caps on the container properly, according to the instructions on the caps.” (Specify other instruction locations if appropriate.)	[Removed]	This first container should be used for the removal torque analysis.
Appendix	NEW	X1 Suggested steps to take to ensure testing is not fraudulent X1.1 At the Testing Locations: X1.1.1 Identify the owner and location of the testing centers. X1.1.2 Require the administrator of the testing center to sign a declaration, that they understand the purpose of the testing, the rules governing the testing, ages, genders, etc., number of children who can be tested at each center, and the importance of the information being accurate. X1.1.3 Require administrator to certify that he/she has checked data and consent forms before testers leave testing facility to make sure that birth dates and genders are accurate. X1.1.4 Require testing centers to keep records of	Recommendations that a testing laboratory can follow to help prevent fraudulent determinations if ever audited.

		<p>payments received and incentives.</p> <p>X1.1.5 Require testing centers to keep records of number of times they have participated in testing and which children have previously been tested.</p> <p>X1.2 At the Testing Company Level:</p> <p>X1.2.1 Keep documents for 7 years.</p> <p>X1.2.2 Have testers and testing company sign declarations that affirm data integrity:</p> <p>X1.2.2.1 Ensure testers agree that they have been instructed on rules, have checked to ensure that children have not been tested twice, and that they have checked birthdates to ensure proper age.</p> <p>X1.2.3 Affirm no criminal convictions of testers.</p> <p>X1.2.4 Include the first and last name of each tester on each test form, not numbers or other identifiers.</p> <p>X1.2.5 Document the amount of time it took to do the testing.</p> <p>X1.2.6 Ensure socio-economic diversity of children and adults tested.</p> <p>X1.2.7 Identify where companies drew panels from (for example, child care centers, malls, mailing lists, etc.).</p>	
--	--	---	--