



July 3, 2024

## **Extension of Enforcement Discretion for Pre-Filled Portable Fuel and Fuel Additive Containers Subject to the Portable Fuel Container Safety Act Regulation**

To Whom It May Concern:

I am writing to update my [letter of May 19, 2023](#), which announced that the Office of Compliance and Field Operations would exercise enforcement discretion for pre-filled fuel and fuel additive containers (PFCs) with respect to the flame mitigation device requirements under the Portable Fuel Container Safety Act Regulation, 16 C.F.R. part 1461. That enforcement discretion is currently scheduled to end on July 12, 2024. Due to showings of unanticipated supply chain and design challenges that have not been overcome despite concerted efforts, and to prevent unintended risks to consumers, the Office of Compliance and Field Operations is extending enforcement discretion for pre-filled PFCs containing fuel for an additional six months until January 12, 2025, and the enforcement discretion for pre-filled PFCs containing fuel additives for one year until July 12, 2025.

Stakeholders have demonstrated significant progress towards meeting the new flame mitigation requirements for pre-filled fuel containers. Indeed, they have informed us that they have developed and tested products that meet the new requirements. However, they have also provided evidence that due to supply chain issues, most notably the delayed delivery of specialized machinery necessary to manufacture the redesigned PFCs, many PFC companies are unable to manufacture compliant products by the current July 12, 2024, deadline. To provide sufficient time to resolve this supply chain problem, we are extending enforcement discretion for these products until January 12, 2025. This additional extension is intended to avoid shortages of new PFCs that may lead consumers to use substitutes for these products that may expose them to elevated fire and burn hazards.

Progress has not been as great for developing compliant PFCs containing fuel additives. In particular, many fuel additive containers are designed for specific uses and stakeholders inform us that new flame mitigation device designs have substantially decreased flow rate from such specialty containers. In some circumstances, reduced flow rates may expose consumers to unsafe conditions in harsh weather or cause consumers to bypass the product packaging altogether, creating fire and burn hazards. While reduced flow may be inevitable under the new requirements, industry seeks additional time to try to design and produce compliant product that better addresses this concern, and therefore reduces the likelihood that consumers will attempt to defeat the flame mitigation device. Further, because fuel additives are often used to prevent fuel degradation in situations where consumers rely on the integrity of their fuel to safely evacuate, turn on a gas-powered generator, or



otherwise respond to an emergency, consumers may be harmed if fuel additives are not used due to the absence or poor performance of specialty PFCs that meet the new requirements. For these reasons, we are exercising additional enforcement discretion for these fuel additive PFCs for one year, to July 12, 2025.

This enforcement discretion does not apply to containers sold empty, which are already subject to the regulation. Also note the Office of Compliance and Field Operations may amend or rescind this discretion at any time. Further, our expectation is that those manufacturers and other related stakeholders who sought this discretion will keep us informed of the progress of the development, manufacturing, and certification of new packaging no less frequently than in quarterly updates. Please direct these updates or any questions to [RegulatoryEnforcement@cpsc.gov](mailto:RegulatoryEnforcement@cpsc.gov).

Finally, as a reminder, Section 15(b) requires every manufacturer, importer, distributor, and retailer of a consumer product, or of any other product or substance over which the CPSC has jurisdiction under any other statute enforced by the CPSC, who obtains information which reasonably supports the conclusion that the product: (1) contains a defect which could create a substantial product hazard; (2) creates an unreasonable risk of serious injury or death; (3) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the CPSC has relied under section 9 of the CPSA, 15 U.S.C. § 2058; or (4) fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other statute enforced by the CPSC, to immediately inform the CPSC of the defect, risk, or failure to comply, unless the firm has actual knowledge that the CPSC has been adequately informed of the defect, risk, or failure to comply. See 15 U.S.C. § 2064(b) and 16 C.F.R. Part 1115. Failure to furnish information required by 15 U.S.C. § 2064(b) or to make reports as required under 15 U.S.C. § 2068(a)(3) are acts prohibited under the CPSA and could subject a firm to civil or criminal penalties.

Sincerely,

*Robert S. Kaye*

Robert S. Kaye  
Director  
Office of Compliance and Field Operations