



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

This document has been electronically approved and signed.

BALLOT VOTE SHEET

DATE: October 5, 2011

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director

FROM: Philip L. Chao, Assistant General Counsel

SUBJECT: Petition Requesting Non-See-Through Packaging for Torch Fuel and Lamp Oil;
Reopening of the Comment Period

Ballot Vote Due: October 11, 2011

In the *Federal Register* of July 26, 2011 (76 FR 44506), the U.S. Consumer Product Safety Commission (“Commission”) published a notice, stating that the Commission had received a submission from John L. Branum, Attorney at Law, on behalf of Bettsey Bumpas (“petitioner”). The submission, dated May 9, 2011, asked the Commission to initiate rulemaking to require torch fuel and lamp oil to be packaged in containers that are not see through. The notice explained that we were docketing the request as a petition under the Poison Prevention Packaging Act (15 U.S.C. 1471–1477) and provided a public comment period until September 26, 2011.

On September 15, 2011, counsel for the petitioner requested an extension of the comment period. Because the comment period has expired, the attached notice would reopen the comment period for 30 days.

Please indicate your vote on the following options:

- I. Approve publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

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

(Signature)

(Date)

III. Do not approve publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice on “Petition Requesting Non-See-Through Packaging for Torch Fuel and Lamp Oil”

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[Docket No. CPSC-2011-0048]

Petition Requesting Non-See-Through Packaging for Torch Fuel and Lamp Oil

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The U.S. Consumer Product Safety Commission (“Commission” or “we”) has received a petition (PP 11-1) requesting that the Commission initiate rulemaking to require special packaging for torch fuel and lamp oil to make it impossible to see the product when it is in the container. We are announcing a reopening of the comment period for 30 days.

DATES: Submit comments by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2011- 0048, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through

<http://www.regulations.gov>.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. 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 electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6833.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of July 26, 2011 (76 FR 44506), we published a notice, stating that the Commission had received a submission

from John L. Branum, Attorney at Law, on behalf of Betsy Bumpas (“petitioner”), dated May 9, 2011, requesting that we initiate rulemaking to require torch fuel and lamp oil to be packaged in containers that are not see-through. The notice explained that we were docketing the request as a petition under the Poison Prevention Packaging Act (“PPPA”). 15 U.S.C. 1471–1477.

The PPPA authorizes the Commission to issue requirements that certain household substances must be sold in child-resistant containers. 15 U.S.C. 1471-1477. Child-resistant packaging requirements currently apply to torch fuel and lamp oil. (More specifically, the child-resistant packaging requirements apply to “kindling and/or illuminating preparations,” which includes “cigarette lighter fuel, charcoal lighter fuel, camping equipment fuel, torch fuel, and fuel for decorative and functional lanterns, which contain 10 percent or more by weight of petroleum distillates and have a viscosity of less than 100 Saybolt universal seconds at 100[deg] Fahrenheit.” 16 CFR 1700.14(7)). The PPPA does not authorize the Commission to prescribe specific packaging designs for household substances. 15 U.S.C. 1472(d). However, in the case of a household substance for which special packaging (*i.e.*, child-resistant packaging), is required, the Commission may prohibit the packaging of such substance in packages that it determines are unnecessarily attractive to children. *Id.* Therefore, in order to issue a rule requiring that torch fuel and lamp oil not be sold in see-through containers, the Commission would need to determine that the packaging is “unnecessarily attractive” to children.

The petitioner asserts that certain petroleum distillates, including torch fuel and lamp oil, as currently packaged, resemble juice. The petitioner notes that because young

children enjoy the taste of juice and are accustomed to drinking it regularly, packaging petroleum distillates in clear plastic bottles causes needless danger, as children may mistake it for juice.

The petitioner states that “the New Jersey Poison Information and Education System stated in June 2008 that four people were hospitalized, one was critically ill, and one killed due to torch oil being mistaken for apple juice.” The petitioner also states that “from 2002 through 2009 the Annual Report of the American Association of Poison Control Centers' National Data System has chronicled the exposure of many young children to lamp oils, which includes torch fuels.” The petitioner’s son died after ingesting torch fuel from a clear plastic bottle.

While torch fuel and lamp oil already are subject to child-resistant packaging and labeling requirements under the PPPA and the Federal Hazardous Substances Act, the petitioner asserts that additional special packaging is necessary. Specifically, the petitioner requests that the CPSC initiate rulemaking “that would require manufacturers of [torch fuel and lamp oils] to package the product in containers that make it impossible to see the product when in the container.” The petitioner notes that this could be accomplished “by packaging the fuel in a solid container or opaque plastic child-resistant container or a metal container.”

The notice that we published in the *Federal Register* of July 26, 2011 (76 FR 44506) stated that we invited comments on the petition, and it informed interested parties how to obtain a copy of the petition. The notice indicated that the comment period would close on September 26, 2011.

Recently, counsel representing the petitioner contacted the Commission to request an extension of the comment period. We note that the docket for this proceeding, as of September 28, 2011, contains nearly 260 comments. Thus, given the interest in this subject, we are reopening the comment period for any interested parties until [insert date 30 days after date of publication in the FEDERAL REGISTER].

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, MD, or from our website at: <http://www.cpsc.gov>.

Dated: _____

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety
Commission.