

DISTRICT DEPARTMENT OF THE ENVIRONMENT

Chapter 7 - Volatile Organic Compounds

751 PORTABLE FUEL CONTAINERS AND SPOUTS – GENERAL REQUIREMENTS

- 751.1 The requirements of §§ 751 through 758 apply to any person who sells, supplies, offers for sale, advertises, or manufactures a portable fuel container or spout for use in the District of Columbia, except as provided in § 753.
- 751.2 No person shall sell, supply, offer for sale, advertise, or manufacture for sale in the District of Columbia a portable fuel container or spout, or combination portable fuel container and spout, thirty (30) days after the effective date of this regulation, unless said portable fuel container or spout, or combination portable fuel container and spout is covered by a CARB Executive Order, except as provided in § 753.
- 751.3 For purposes of §§ 752 through 758 and of any definitions in §799 applicable to §§ 752 through 758, the District incorporates by reference rules and test methods from the Code of Federal Regulations (C.F.R.), the California Air Resources Board (CARB), and Title 13, California Code of Regulations, §§ 2250 through 2298, where specifically cited.
- 751.4 Each part of §§ 751 through 758 shall be deemed severable, and if any part is held to be invalid, the remainder continues in full force.

752 PORTABLE FUEL CONTAINERS AND SPOUTS –PERFORMANCE STANDARDS AND TEST PROCEDURES

- 752.1 Except as provided in § 753, every portable fuel container, spout, or combination portable fuel container and spout, produced thirty (30) days after the effective date of this regulation, that is manufactured for sale, advertised for sale, sold, or offered for sale in the District of Columbia or that is introduced, delivered, or imported into the District of Columbia for introduction into commerce and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through CARB and covered by a CARB Executive Order.
- 752.2 The criteria for obtaining certification, including all test procedures for determining certification and compliance with the standards applicable to portable fuel containers, spouts, or combination portable fuel containers and spouts produced thirty (30) days after the effective date of this regulation, that are manufactured for sale, advertised for sale, sold, or offered for sale in the District of Columbia, or that are introduced, delivered, or imported into the District of Columbia for introduction into commerce and that are subject to any of the

standards prescribed in this article and documents incorporated by reference therein are set forth in “CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts,” adopted by CARB July 26, 2006, including any subsequent amendments.

752.3 Compliance with the performance standards in § 752 or the certification and compliance standards specified in § 755 does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and District of Columbia statutes and regulations, including, but not limited to, fire codes, safety codes, and other safety regulations.

752.4 Notwithstanding the provisions of § 752.1, a portable fuel container or spout or combination portable fuel container and spout manufactured before thirty (30) days after the effective date of this regulation, may be sold, supplied, or offered for sale until one (1) year starting thirty (30) days after the effective date of this regulation, if it is labeled or designated for use solely with kerosene and if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

753 PORTABLE FUEL CONTAINERS AND SPOUTS – EXEMPTIONS

753.1 The following shall be exempt from compliance with §§ 751 through 758:

- (a) Any portable fuel container or spout manufactured in the District of Columbia for shipment, sale, and use outside of the District of Columbia;
- (b) A manufacturer or distributor who sells, supplies, or offers for sale in the District of Columbia, a portable fuel container or spout or combination portable fuel container and spout that does not comply with the performance standards § 752 or the certification and compliance standards specified in § 755, as long as the manufacturer or distributor can demonstrate that:
 - (1) The portable fuel container or spout or combination portable fuel container and spout is intended for shipment and use outside of the District of Columbia; and
 - (2) The manufacturer or distributor has taken reasonable prudent precautions to ensure that the portable fuel container or spout or combination portable fuel container and spout is not distributed in the District of Columbia;
- (c) Paragraph (b) of this subsection does not apply to portable fuel containers or spouts or combination portable fuel containers and spouts that are sold, supplied, or offered for sale by any person to retail outlets in the District of Columbia;

- (d) Safety cans meeting the requirements of Chapter 17, Title 29, Part 1926, Subpart F of the Code of Federal Regulations (29 C.F.R. §§ 1926.150, *et seq.*);
- (e) Portable fuel containers with a nominal capacity less than or equal to one quart (1 qt.);
- (f) Rapid refueling devices with nominal capacities greater than or equal to four gallons (4 gal.), provided such devices are designed for use in officially sanctioned off-highway motor sports, such as car racing or motorcycle competitions, or either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank;
- (g) Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine; and
- (h) Closed-system portable fuel containers that are used exclusively for fueling remote control airplanes.

754 PORTABLE FUEL CONTAINERS AND SPOUTS – LABELING REQUIREMENTS

754.1 Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with § 752 must clearly display the following on each spill-proof system:

- (a) The phrase “Spill-Proof System”;
- (b) A date of manufacture or date code; and
- (c) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container or portable fuel container and spout.

754.2 Each manufacturer of a spout subject to and complying with §752 must clearly display the following on the accompanying package, or spout sold without packaging, on either the spout or a label affixed to the spout:

- (a) The phrase “Spill-Proof Spout”;
- (b) A date of manufacture or date code; and
- (c) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container or portable fuel container and spout.

- 754.3 Each manufacturer subject to § 754.1 and 754.2 shall file an explanation of both the date code and representative code with the Department no later than the later of three (3) months after the effective date of this regulation or within three (3) months of production, and within three (3) months after any change in coding.
- 754.4 Each manufacturer of a spout subject to § 754.2 shall clearly display the make, model number, and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with § 752, on the accompanying package, or for spouts sold without packaging, on either the spout, or a label affixed to the spout.
- 754.5 Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with § 752 shall not display the phrase “Spill-Proof System” or “Spill-Proof Spout” on the portable fuel container or spout, respectively, on any sticker or label affixed to the product, or on any accompanying package.
- 754.6 Each manufacturer of a portable fuel container or spout subject to and complying with § 752 that due to its design or other features cannot be used to refuel one (1) or more on-road motor vehicle, must clearly display the phrase “Not Intended For Refueling On-Road Motor Vehicles” in type of thirty-four (34) point or greater on each of the following:
- (a) For a portable fuel container or portable fuel container and spout sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and
 - (b) For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

755 PORTABLE FUEL CONTAINERS AND SPOUTS – CERTIFICATION AND COMPLIANCE TEST PROCEDURES

- 755.1 Testing to determine compliance with § 752 shall be performed by using test procedures specified in “CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts,” adopted by CARB on July 26, 2006, including any subsequent amendments, which are incorporated by reference herein.
- 755.2 Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Department.
- 755.3 Test procedures referred to in this section can be obtained from the Department and may be available at <http://www.arb.ca.gov>.

756 PORTABLE FUEL CONTAINERS AND SPOUTS – ENFORCEMENT

756.1 If the Department finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the District of Columbia a portable fuel container or spout, or both portable fuel container and spout that does not comply with the requirements set forth in this article, the Department may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable fuel containers or spouts or combination portable fuel containers and spouts, in the District of Columbia pursuant to 20 DCMR chapter 1. The Department may also assess penalties to the extent permissible under 20 DCMR § 105.

756.2 Before seeking remedial action against any manufacturer, distributor, or retailer, the Department will consider any information provided by the manufacturer, distributor, or retailer.

757 PORTABLE FUEL CONTAINERS AND SPOUTS – INNOVATIVE PRODUCT EXEMPTION

757.1 Portable fuel containers, spouts, or combination portable fuel containers and spouts which have been granted an innovative product exemption by the CARB, shall be exempt from the requirements in §752 for the period of time that the CARB Innovative Products exemption remains in effect.

757.2 Any manufacturer claiming an exemption on the CARB Innovative Products basis shall submit to the Department, a copy of the CARB exemption decision, including but not limited to, the executive order and all conditions established by CARB applicable to the exemption.

757.3 The District may exempt a portable fuel container or spout from one (1) or more of the requirements of § 752 if a manufacturer demonstrates by clear and convincing evidence that, due to the product’s design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

757.4 For the purposes of this section, a “representative spill-proof system” or a “representative spill-proof spout” means a portable fuel container, spout, or combination portable fuel container and spout which, at the time of exemption, meets the performance standards specified in § 752 or the Certification Requirements Specified in “CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts,” adopted by CARB July 26, 2006, including any subsequent amendments.

757.5 A manufacturer shall submit an application in writing to the Department for an innovative product exemption according to the following requirements:

- (a) The application must include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data;
- (b) The applicant must provide any information necessary to enable the Department to establish enforceable conditions for granting the exemption; and
- (c) All information including proprietary data submitted by a manufacturer pursuant to this section shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR § 106.

757.6 Within thirty (30) days of receipt of the exemption application, the Department shall notify the applicant in writing either that the application is complete or that additional information or testing is required before it can be deemed complete;

757.7 Within ninety (90) days after an application has been deemed complete, the Department will determine whether, under what conditions, and to what extent, an exemption from the requirements of § 752 will be permitted:

- (a) The applicant and the Department may mutually agree to a longer time period for reaching a decision;
- (b) An applicant may submit additional supporting documentation before a decision has been reached; and
- (c) The Department shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from use of the product will meet the performance standards specified in § 752, and that such emissions reductions can be enforced.

757.8 In granting an innovative product exemption for a portable fuel container or spout, the Department shall specify the test methods for determining conformance to the conditions established, which may include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

757.9 For any portable fuel container or spout for which an innovative product exemption has been granted pursuant to this section, the manufacturer shall notify the Department in writing at least thirty (30) days before the manufacturer changes a product's design, delivery system, or other factors that may affect the VOC emissions during recommended usage; the manufacturer shall notify the Department within thirty (30) days after the manufacturer learns of any information that would alter the emissions estimates submitted to the Department in support of the exemption application.

757.10 If the Performance Standards specified in § 752 are amended for a product category,

all innovative product exemptions granted for products in the product category, except as provided in § 757.11, have no effect as of the effective date of the amended performance standards.

757.11 If the Department believes that a portable fuel container or spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may hold a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq.* (2006 Repl.), before a final determination.

758 PORTABLE FUEL CONTAINERS AND SPOUTS – VARIANCE

758.1 Portable fuel containers, spouts, or combination portable fuel containers and spouts, which have been granted a variance by CARB, shall be exempt from the requirements in § 752 for the period of time that the CARB variance remains in effect.

758.2 Any manufacturer claiming such a variance on this basis must submit to the Department a copy of the CARB variance decision (such as, the Executive Order), including all conditions established by CARB as applicable to the variance.

758.3 Any person or manufacturer who cannot comply with the requirements set forth in § 752, due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following information:

- (a) The specific grounds upon which the variance is sought;
- (b) The proposed dates by which compliance with the provisions of § 752 will be achieved; and
- (c) A compliance report detailing the methods by which compliance will be achieved.

758.4 No variance shall be granted by the Department unless all of the following findings are made:

- (a) Due to circumstances beyond the reasonable control of the applicant, required compliance with § 752 would result in extraordinary economic hardship;
- (b) The public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and
- (c) The compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

- 758.5 Any approval of a variance by the Department shall specify a final compliance date wherein compliance with the requirements of § 752 will be achieved. Any approval of a variance shall contain a condition that specifies increments of progress necessary to ensure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of this regulation.
- 758.6 A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.
- 758.7 Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of § 752 after holding a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501, *et seq.* (2006 Repl.).