

TITLE 26 - DEPARTMENT OF THE ENVIRONMENT

SUBTITLE 11 - AIR QUALITY

CHAPTER 13 - Control of Gasoline and Volatile Organic Compound Storage and Handling

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.07 Control of VOC Emissions from Portable Fuel Containers.

A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) Distributor.

(a) "Distributor" means a person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce.

(b) "Distributor" does not include a manufacturer, retailer, or consumer.

(2) "Fuel" means all gasoline, gasoline-alcohol mixtures or blends, or petroleum derivatives, having a true vapor pressure within the range of 1.5 to 11 pounds per square inch absolute (psia) (10.3 to 75.6 kilonewtons/square meter) for use in internal combustion engines or aircraft.

(3) "Kerosene" means any light petroleum distillate having a true vapor pressure within the range of 0.0041 to 0.029 pounds per square inch absolute (psia) (0.028 to 0.2 kilonewtons per square meter) for use in space heaters, cooking stoves, water heaters, or wick-fed lamps.

(4) "Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a portable fuel container or spout or both portable fuel container and spout.

(5) "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

(6) "Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

(7) "Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

(8) Portable Fuel Container.

(a) "Portable fuel container" means a container or vessel with a nominal capacity of 10 gallons or less intended for reuse, that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

(b) "Portable fuel container" does not include containers or vessels permanently embossed or permanently labeled, meeting the requirements of 49 CFR §172.407(a) and intended for use with non-fuel or non-kerosene products.

(9) "Retail outlet" means an establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied, or offered for sale.

(10) "Spill-proof spout" means a spout that complies with all of the performance standards set forth in §C(2) of this regulation.

(11) "Spill-proof system" means a configuration of portable fuel container and firmly attached spout that complies with all of the performance standards as set forth in §C(1) of this regulation.

(12) Spout.

(a) "Spout" means a device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

(b) "Spout" does not include lengthening devices that can be used to accommodate necessary applications.

(13) "Target fuel tank" means a receptacle that receives fuel from a portable fuel container.

B. Applicability and Exemptions.

(1) This regulation applies to a person who manufactures, sells, advertises, or makes available for use portable fuel containers or spouts or both portable fuel containers and spouts in the State.

(2) This regulation does not apply to a person or manufacturer who sells, advertises, or makes available for use:

(a) Portable fuel container or spouts or both portable fuel containers and spouts manufactured in the State for shipment, sale, and use outside of the State;

(b) Safety cans meeting the requirements of 29 CFR Chapter 17, Part 926, Subpart F;

(c) Portable fuel containers with a nominal capacity less than or equal to 1 quart;

(d) Rapid refueling devices with nominal capacities greater than or equal to 4 gallons, if these devices are:

(i) Designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions; or

(ii) 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;

(e) 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; or

(f) Closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

(3) This regulation does not apply to a manufacturer or distributor who does not comply with the performance standards specified in §C of this regulation if the manufacturer or distributor demonstrates that:

(a) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State; and

(b) The manufacturer or distributor has taken reasonable prudent precautions to ensure that the portable fuel container or spout or both portable fuel container and spout is not distributed within the State.

(4) The exemption in §B(3) of this regulation does not apply to a person who sells, supplies, or offers for sale portable fuel containers or spouts or both portable fuel containers and spouts to retail outlets in the State.

(5) The performance standards specified in §C of this regulation do not apply to portable fuel containers or spouts or both portable fuel containers and spouts that are certified for use and sale by the manufacturer through CARB and covered by a CARB Executive Order before June 30, 2007.

(6) This regulation does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and State statutes and regulations such as State fire codes, safety codes, and other safety regulations, nor will the Department test for or determine compliance with such other statutes or regulations.

C. Performance Standards for Portable Fuel Containers and Spill-Proof Spouts.

(1) Except as provided in §B(2) of this regulation, a person may not manufacture, sell, or make available for use after June 30, 2007, a portable fuel container or a portable fuel container and spout that does not meet all of the following performance standards:

(a) Contains an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

(b) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

(c) Contains only one opening for both filling and pouring;

(d) Does not exceed a permeation rate of 0.4 grams per gallon per day; and

(e) Is warranted by the manufacturer for a period of not less than 1 year against defects in materials and workmanship.

(2) Except as provided in §B(2) of this regulation, a person may not manufacture, sell, or make available for use after June 30, 2007, any spout that does not meet all of the following performance standards:

(a) Contains an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

(b) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel; and

(c) Is warranted by the manufacturer for a period of not less than 1 year against defects in materials and workmanship.

(3) Notwithstanding the provisions of §C(1) and (2) of this regulation, a portable fuel container or spout or both portable fuel container and spout manufactured 30 days after the effective date of this regulation, may be sold, supplied, or offered for sale until 1 year after the time period beginning 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.

(4) Except as provided in §B of this regulation, a portable fuel container, spout, or portable fuel container and spout produced on or after July 1, 2007, that is manufactured for sale, advertised for sale, sold, or offered for sale in Maryland or that is introduced, delivered, or imported into Maryland for commerce and that is subject to any of the standards specified in this regulation and documents incorporated by reference, shall be certified for use and sale by the manufacturer through CARB and covered by a CARB Executive Order.

D. Innovative Products.

(1) Portable fuel containers or spouts or both portable fuel containers and spouts which have been granted an innovative product exemption by the California Air Resources Board (CARB) are exempt from the requirements in §C of this regulation for the period of time that the CARB Innovative Products exemption remains in effect. Any manufacturer claiming such an exemption on this basis shall submit to the Department a copy of the CARB exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption.

(2) For any portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this regulation, the manufacturer shall notify the Department in writing at least 30 days before the manufacturer changes a product's design, delivery system, or other factors that may effect the VOC emissions during recommended usage. The manufacturer shall also notify the Department within 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.

(3) If the performance standards specified in §C of this regulation are amended for a product category, all innovative product exemptions granted for products in the product category have no effect as of the effective date of the amended performance standards.

E. Labeling and Notification.

(1) A manufacturer shall clearly display on each spill proof system:

- (a) The phrase "Spill-Proof System";
- (b) The date of manufacture or representative date; and
- (c) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with §C(1) of this regulation.

(2) A manufacturer shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (a) The phrase "Spill-Proof Spout";
- (b) The date of manufacture or representative date; and
- (c) A representative code identifying the spout as subject to and complying with §C(2) of this regulation.

(3) A manufacturer subject to °C(4) of this regulation shall clearly display on each portable fuel container or portable fuel container and spout:

- (a) The phrase "Spill-Proof Spout";

(b) The date of manufacture or representative date; and

(c) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container or portable fuel container and spout.

(4) A manufacturer subject to §E(1) or (2) of this regulation shall file an explanation of both the date code and representative code with the Department not later than the later of 3 months after the effective date of this regulation or within 3 months of production, and within 3 months after any change in coding.

(5) A manufacturer subject to §E(2) of this regulation shall clearly display the make, model number, and size of only those portable fuel containers the spout is designed to accommodate and demonstrate compliance with §C(1) of this regulation on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(6) A manufacturer not subject to or not in compliance with §C of this regulation may 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 thereto, or on any accompanying package.

(7) A manufacturer subject to and complying with §C of this regulation that due to its design or other features cannot be used to refuel one or more on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 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.

F. Variances.

(1) Portable fuel containers and spouts or both portable fuel containers and spouts which have been granted a variance by CARB are exempt from the requirements in §C of this regulation for the period of time that the CARB variance remains in effect. A manufacturer claiming a variance on this basis shall submit to the Department a copy of the CARB variance decision (that is, the Executive Order), including all conditions established by CARB applicable to the variance.

(2) A person or manufacturer who cannot comply with the requirements set forth in §C of this regulation, due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall set forth:

(a) The specific grounds upon which the variance is sought;

(b) The proposed date or dates by which compliance with the provisions of §C of this regulation will be achieved; and

(c) A compliance report detailing the methods by which compliance will be achieved.

(3) A variance may not be granted unless:

(a) Due to reasons beyond the reasonable control of the applicant, required compliance with §C of this regulation 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.

(4) The Department may hold a public comment hearing to receive comments on a request for a variance.

(5) An approval of a variance shall specify a final date by which compliance with the provisions of §C of this regulation shall be achieved. An approved variance shall:

(a) Specify a compliance date;

(b) Contain conditions that the Department finds necessary to carry out the purposes of this regulation; and

(c) Cease to be effective upon failure of the party to whom the variance is granted to comply with a term or condition of the variance.

(6) Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of §C of this regulation after holding a public comment hearing in accordance with the provisions of §F(4) of this regulation.

G. Testing Requirements and Record Keeping.

(1) Testing Requirements.

(a) Testing to determine compliance with §C(2) of this regulation shall be performed using the following test methods approved by CARB which are incorporated by reference:

(i) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts", amended by CARB on July 26, 2006; and

(ii) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts", adopted by CARB on July 6, 2000.

(b) Testing to determine compliance with §C(1) of this regulation shall be performed using all test methods in §G(1)(a) and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems", adopted by CARB on July 6, 2000, which is incorporated by reference.

(c) Testing to determine compliance with §C(4) of this regulation shall be performed by using the test methods in "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts", adopted by CARB on July 26, 2006, which is incorporated by reference.

(d) A manufacturer shall perform tests for determining compliance as set forth in this section to show that their product meets and complies with the performance standards before allowing the product to be offered for sale.

(e) Alternative test methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Department and the Environmental Protection Agency (EPA).

(2) Record Keeping. A manufacturer subject to this regulation shall keep all records of compliance tests for as long as the product is available for sale in the State, and make the records available to the Department within 60 days of a request.

[Regulation .07 is amended; the SIP effective date is 8/18/08]