

FINAL-OMITTED RULEMAKING

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBPART C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

SUBCHAPTER A. PORTABLE FUEL CONTAINERS

Sec.

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§ 130.101. [~~Applicability.~~] [Reserved].

[~~Except as provided in § 130.104 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale, or manufactures for sale in this Commonwealth portable fuel containers or spouts or both portable fuel containers and spouts for use in this Commonwealth. This subchapter applies to liquid flammable and combustible fuels having a flash point below 200°F. For additional requirements, see section 7(e) of the Combustible and Flammable Liquids Act (35 P. S. § 1247(e)) and 37 Pa. Code § 11.7 (relating to container construction).~~]

§ 130.102. [~~Definitions.~~] [Reserved].

[~~The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:~~

~~*ASTM*—The American Society for Testing and Materials.~~

~~*Consumer*—A person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or~~

~~institutional use. A person acquiring a portable fuel container or spout or both portable fuel container and spout for resale is not a consumer for that product.~~

~~*Distributor*—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. This term does not include manufacturers, retailers and consumers.~~

~~*Manufacturer*—A person who imports, manufactures, assembles, produces, packages, repackages, or relabels a portable fuel container or spout or both portable fuel container and spout.~~

~~*Nominal capacity*—The volume indicated by the manufacturer that represents the maximum recommended filling level.~~

~~*Outboard engine*—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.~~

~~*Permeation*—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.~~

~~*Portable fuel container*—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.~~

~~*Product category*—The applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate and permeation rate, as applicable, as determined by the Commonwealth.~~

~~*Retailer*—A person who owns, leases, operates, controls or supervises a retail outlet.~~

~~*Retail outlet*—An establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied or offered for sale.~~

~~*Spill-proof spout*—A spout that complies with the performance standards specified in § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts).~~

~~*Spill-proof system*—A configuration of portable fuel container and firmly attached spout that complies with the performance standards in § 130.103(a).~~

~~*Spout*—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.~~

~~*Target fuel tank*—A receptacle that receives fuel from a portable fuel container.]~~

**§ 130.103. [Performance standards for portable fuel containers and spill-proof spouts.]  
[Reserved].**

~~[-(a) Except as provided in § 130.104 (relating to exemptions), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a portable fuel container or spout, or a portable fuel container and spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof systems:~~

~~(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.~~

~~(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.~~

~~(3) Has only one opening for both filling and pouring.~~

~~(4) Provides a fuel flow rate and fill level of one of the following:~~

~~(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of:~~

~~(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.~~

~~(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on an accompanying package.~~

~~(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.~~

~~(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.~~

~~(5) Does not exceed a permeation rate of 0.4 grams per gallon per day.~~

~~(6) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.~~

~~-(b) Except as provided in § 130.104, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof spouts:~~

~~(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.~~

~~(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.~~

~~(3) Provides a fuel flow rate and fill level of one of the following:~~

~~(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of one of the following:~~

~~(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.~~

~~(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on an accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.~~

~~(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.~~

~~(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.~~

~~(4) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.~~

~~(c) The test procedures for determining compliance with the performance standards in this section are set forth in § 130.108 (relating to test procedures). The manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts shall perform the tests for determining compliance as set forth in § 130.108 to show that its product meets the performance standards of this section prior to allowing the product to be offered for sale in this Commonwealth. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale in this Commonwealth and make those test results available to the Department within 60 days of request.~~

~~(d) Notwithstanding subsections (a) and (b), a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003, may be sold, supplied or offered for sale until January 1, 2004, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.]~~

**§ 130.104. [Exemptions.] [Reserved].**

~~[(a) This subchapter does not apply to a portable fuel container or spout or both portable fuel container and spout manufactured in this Commonwealth for shipment, sale and use outside of this Commonwealth.~~

~~[(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), if the manufacturer or distributor can demonstrate the following:~~

~~(1) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of this Commonwealth.~~

~~(2) The manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed in this Commonwealth.~~

~~[(c) This subchapter does not apply to portable fuel containers with a nominal capacity less than or equal to 1 quart.~~

~~[(d) This subchapter does not apply to rapid refueling devices, with nominal capacities greater than or equal to 4 gallons, provided the devices are designed for use in officially sanctioned off-highway 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.~~

~~[(e) This subchapter does not apply to 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.]~~

**§ 130.105. [Innovative products.] [Reserved].**

~~[The Department may exempt a portable fuel container or spout or both portable fuel container and spout from one or more of the requirements of § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) if a manufacturer demonstrates to the satisfaction of the Department 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.~~

~~(1) An applicant shall apply in writing to the Commonwealth for an innovative product exemption claimed under this section. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the~~

~~actual physical test methods used to generate the data. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption.~~

~~(2) For a portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this section, the applicant shall notify the Department in writing at least 30 days before the applicant changes a product's design, delivery system or other factors that may effect the VOC emissions during recommended usage. The applicant shall also notify the Department within 30 days after the applicant learns of information that would alter the emissions estimates submitted to the Department in support of the exemption application.~~

~~(3) If the performance standards specified in § 130.103 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this section, have no force and effect as of the effective date of the amended performance standards.~~

~~(4) If the Department believes that a portable fuel container or spout or both portable fuel container and spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may revoke or modify the exemption.~~

~~(5) The Department will advise the applicant in writing of the Department's decision on the application for an innovative product exemption within 90 days of receipt of a complete application.]~~

**§ 130.106. [Administrative requirements.] [Reserved].**

~~[(a) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103(a) (relating to performance standards for portable fuel containers and spill-proof spouts) shall clearly display the following on each spill-proof system:~~

~~(1) The phrase "Spill-Proof System."~~

~~(2) A date of manufacture or representative date.~~

~~(3) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with § 130.103(a).~~

~~(b) Each manufacturer of a spout subject to and complying with § 130.103(b) shall clearly display the following on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:~~

~~(1) The phrase "Spill-Proof Spout."~~

~~—(2) A date of manufacture or representative date.~~

~~(3) A representative code identifying the spout as subject to and complying with § 130.103(b).~~

~~(c) Each manufacturer subject to subsection (a) or (b) shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on an accompanying package.~~

~~(d) Each manufacturer of a spout subject to subsection (b) 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 § 130.103(a) on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.~~

~~(e) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103 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.]~~

#### § 130.107. [Variances.] [Reserved].

~~[(a) A person or manufacturer who cannot comply with § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), 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:~~

~~(1) The specific grounds upon which the variance is sought.~~

~~—(2) The proposed dates by which compliance with § 130.103 will be achieved.~~

~~(3) A compliance report detailing the methods by which compliance will be achieved.~~

~~(b) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.~~

~~(c) Upon the application of a person, the Department may review and modify or revoke a variance from § 130.103.]~~

#### § 130.108. [Test procedures.] [Reserved].

~~[(a) Testing to determine compliance with § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts) shall be performed by using the following test procedures:~~

~~(1) “Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts,” adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.~~

~~(2) “Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts,” adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.~~

~~(3) “Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts,” adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.~~

~~(b) Testing to determine compliance with § 130.103(a) shall be performed by using all test procedures in subsection (a) and “Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems,” adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.]~~