

Executive Summary

Amendments to 25 Pa. Code Chapter 130, Subchapter A

Portable Fuel Containers: Repeal

Purpose and Summary of the Final-Omitted Rulemaking

The final-omitted rulemaking rescinds the portable fuel container requirements in 25 Pa. Code Chapter 130, Subchapter A (relating to portable fuel containers), as set forth in §§ 130.101—130.108. The portable fuel container requirements were approved as final rulemaking by the Environmental Quality Board (Board) on July 16, 2002, and published at 32 Pa.B. 4819 (October 5, 2002). The Department's portable fuel containers regulation was promulgated as a measure to reduce emissions of volatile organic compounds (VOC) in this Commonwealth and was part of the Commonwealth's specific action plan to attain and maintain the National Ambient Air Quality Standard for ground-level ozone in this Commonwealth. VOCs are a precursor to the formation of ground-level ozone.

Emissions from portable fuel containers are primarily of three types: evaporative emissions from unsealed or open containers; permeation emissions from gasoline passing through the walls of the plastic containers; and evaporative emissions from gasoline spillage during use. To reduce these types of emissions, the Department's regulation specifies the use in this Commonwealth of spill-proof systems (container and spout) that meet design- and performance-based standards including: automatic shut-off and automatically closing and sealing spouts; only one opening for both filling and pouring; fuel flow rates and fill level limits; a permeation rate that does not exceed 0.4 grams per gallon per day; and a warranty by the manufacturer for at least 1 year against defects in material and workmanship. The Department's regulation also includes test procedures for determining compliance with the standards.

The Department's regulation is superseded by the Federal regulation published at 72 FR 8428, which established an emissions performance-based standard of 0.3 grams per gallon per day of hydrocarbons to control both evaporative and permeation losses for portable fuel containers manufactured in or imported into the United States beginning January 1, 2009, for use in the United States. The Federal regulation includes a requirement for automatically closing containers without automatic shut-off requirements, because the automatic shut-off spout designs frequently failed in use due to the wide variety of fill-hole designs of the receiving fuel tanks. This led to increased, rather than decreased, fuel spillage and VOC emissions. For these reasons, the Federal regulation does not include a requirement for automatic shut-off. The Federal regulation does not require one opening for filling and pouring, fuel flow rates or fill level limits. The EPA specified an emissions performance standard rather than design standards to allow flexibility in container and spout design. Overall, the Federal standard is more stringent than the standards set forth at §§ 130.101—130.108.

Like the Department's regulations, the Federal regulation requires testing of containers for compliance with the standard; certification and labeling of compliant containers; and that manufacturers provide the consumer with an emissions warranty of 1 year. While the Department's portable fuel containers regulation applies just to containers and spouts designed to

hold gasoline, the Federal regulation specifically applies to gasoline, diesel and kerosene portable containers and spouts to preclude circumvention of the rule by consumers.

The Department's regulation now provides no ozone air quality benefit for the Commonwealth because the Federal requirements are more stringent and apply to gasoline, diesel and kerosene containers and spouts sold in Pennsylvania. The Commonwealth's clean air goals are benefitting from the improved containers that have been designed in response to the Federal regulation, with which manufacturers and importers must already comply.

The Department's regulation was approved as a revision to the State Implementation Plan (SIP) by the United States Environmental Protection Agency (EPA) at 69 FR 70893 (December 8, 2004) and is codified at 40 CFR § 52.2063(c)(229).

Affected Parties

Manufacturers, importers, distributors, suppliers and sellers of portable fuel containers and spouts in this Commonwealth for use in this Commonwealth will be positively affected by not having to meet the requirements of two different regulations.

Advisory Groups

The Department discussed the final-omitted rulemaking with the Air Quality Technical Advisory Committee (AQTAC) on June 23 and August 4, 2011. During the June meeting, members of AQTAC requested additional information regarding enforceability of the Federal regulation by Commonwealth enforcement staff. The Department provided this information at the August meeting, at which AQTAC voted 12-2-2 to concur with the Department's recommendation to move the final-omitted rulemaking forward to the Board. The AQTAC also voted 9-6-1 to recommend that the Department consider adopting the Federal regulation by reference. The Department consulted the Small Business Compliance Advisory Committee (SBCAC) on July 27, 2011. The members of the SBCAC had no concerns. The rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee had no concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with proceeding to the Board.

Public Comments and Board Hearings

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968, P.L. 769, No. 240 (45 P.S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Omission of notice of proposed rulemaking is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. The portable fuel containers regulation is superseded by a more stringent Federal regulation, applicable Nationwide that was promulgated at 72 FR 8428 (February 26, 2007). The Federal regulation, codified at 40 CFR §§ 59.600-59.699, applies to all portable fuel, diesel and kerosene containers and spouts manufactured in or imported into the United States beginning January 1, 2009.