

Title 25 – ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 130]
Portable Fuel Containers

The Environmental Quality Board (Board) amends Chapter 130 (relating to standards for products) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to rescind the portable fuel container requirements in Chapter 130, Subchapter A (relating to portable fuel containers), as set forth in §§ 130.101—130.108, for the sale, supply, offer for sale and manufacture of portable fuel containers and spouts for sale and for use in the Commonwealth on or after January 1, 2003.

This final-omitted rulemaking rescinds §§ 130.101—130.108, which were approved as final rulemaking by the Board on July 16, 2002, and published at 32 Pa.B. 4819 (October 5, 2002).

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). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that the notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary or contrary to the public interest. Omission of notice of proposed rulemaking for the rescission of §§ 130.101—130.108 is appropriate because the notice of proposed rulemaking procedure 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. As more fully explained as follows, the portable fuel containers regulation is superseded by a more stringent Federal regulation, applicable Nationwide, that was promulgated at 72 FR 8428 (February 26, 2007).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.

This rescission of the regulations was adopted by order of the Board at its meeting of _____.

A. Effective Date

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons and Information

For further information, contact Arleen Shulman, Chief, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3436; or Kristen M. Furlan, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us (Keyword: Public Participation).

C. Statutory Authority

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

D. Background of the Amendments

The 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 (NAAQS) for ground-level ozone in this Commonwealth. See 32 Pa.B. 4819. VOCs are a precursor to the formation of ground-level ozone. The regulation was approved as a State Implementation Plan (SIP) revision 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).

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 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.

Overall, the Federal standard is more stringent than the standards in §§ 130.101—130.108, while there are aspects of the Federal regulation that simplify compliance. The Federal regulation published at 72 FR 8428 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. This is more stringent than the Commonwealth standard. The Federal regulation includes a requirement for automatically closing containers, but does not include the automatic shut-off requirements. According to the EPA, this is 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. See 72 FR 8428, 8500. 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.

Like the Department's regulation, 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 designed to hold

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

The Department's regulation now provides no ozone air quality benefit for the Commonwealth since the Federal requirements are more stringent and apply to gasoline, diesel and kerosene containers and spouts manufactured, sold or distributed in the Commonwealth beginning January 1, 2009. 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 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 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.

E. Benefits, Costs and Compliance

Benefits

Repeal of the Department's portable fuel containers regulation will limit confusion among retailers, distributors, importers and manufacturers of portable fuel containers about which set of standards apply to containers manufactured, imported, offered for sale, sold or distributed in this Commonwealth. Repeal of the regulation, which requires automatic shut-off spouts, could also benefit the Commonwealth's air and water systems. The automatic shut-off spouts have been found to lead to increased spills of fuel on the ground, which can leach into nearby groundwater aquifers and streams or evaporate.

Compliance Costs

This final-omitted rulemaking does not require additional costs for compliance, since the regulated community is already required to comply with the Federal regulations.

Compliance Assistance Plan

This final-omitted rulemaking does not require a compliance assistance plan.

Paperwork Requirements

No additional paperwork is required as a result of this final-omitted rulemaking.

F. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on _____, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on _____, the final-omitted rulemaking was deemed approved by the House and Senate committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-omitted rulemaking.

G. Findings

The Board finds that:

- (1) The amendments as set forth in Annex A are appropriate to repeal the portable fuel containers regulation.
- (2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL is, in this instance, impracticable, unnecessary and contrary to the public interest. The requirements of Chapter 130, Subchapter A, have been superseded by a more stringent Federal regulation.
- (3) This final-omitted rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

H. Order

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 25 Pa. Code Chapter 130, are amended by deleting §§ 130.101—130.108 to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MICHAEL KRANCER
Chairman