

**PART 239**

**PORTABLE FUEL CONTAINER SPILLAGE CONTROL**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0305)

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**Historical Note**

Part (Subparts 239-1 — 239-9) filed Oct. 4, 2002 eff. 30 days after filing.

**SUBPART 239-1**

**APPLICABILITY**

Sec.

239-1.1                    Applicability

**Historical Note**

Subpart (§ 239-1.1) filed Oct. 4, 2002 eff. 30 days after filing.

**§ 239-1.1 Applicability.**

Except as provided in Subpart 239-4 of this Part, this Part applies to any person who sells, supplies, offers for sale, or manufactures for sale in the State of New York portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of New York.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

## SUBPART 239-2

### DEFINITIONS

Sec.  
239-2.1 Definitions

#### Historical Note

Subpart (§ 239-2.1) filed Oct. 4, 2002 eff. 30 days after filing.

#### § 239-2.1 Definitions.

For the purpose of this regulation, the following definitions apply:

- (a) *ASTM* means the American Society for Testing and Materials.
- (b) *Consumer* means any 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. Persons acquiring a portable fuel container or spout or both portable fuel container and spout for resale are not consumers for that product.
- (c) *Distributor* means any 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.
- (d) *Fuel* means all fuels subject to any provision of Subpart 225-3 of this Title.
- (e) *Manufacturer* means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.
- (f) *Nominal capacity* means the volume indicated by the manufacturer that represents the maximum recommended filling level.
- (g) *Outboard engine* means a spark-ignition marine engine that, when properly mounted on a marine water craft in the position to operate, houses the engine and drive unit external to the hull of the marine water craft.
- (h) *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.
- (i) *Person* means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.
- (j) *Portable fuel container* means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.
- (k) *Product category* means 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 department.
- (l) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (m) *Retail outlet* means any establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied, or offered for sale.
- (n) *Spill proof spout* means any spout that complies with all of the performance standards specified in section 239-3.1(b) of this Part.
- (o) *Spill-proof system* means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in section 239-3.1(a) of this Part.
- (p) *Spout* means any 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.

(q) *Target fuel tank* means any receptacle that receives fuel from a portable fuel container.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

**SUBPART 239-3****PERFORMANCE STANDARDS FOR PORTABLE FUEL CONTAINERS AND SPILL-PROOF SPOUTS**

Sec.

239-3.1

Performance standards for portable fuel containers and spill-proof spouts

**Historical Note**

Subpart (§ 239-3.1) filed Oct. 4, 2002 eff. 30 days after filing.

**§ 239-3.1 Performance standards for portable fuel containers and spill-proof spouts.**

(a) Except as provided in Subpart 239-4 of this Part, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York on or after January 1, 2003, any portable fuel container or any portable fuel container and spout which, at the time of sale or manufacture, does not meet all of 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:
  - (i) not less than one-half 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 one inch below the top of the target fuel tank opening; or
    - (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 one 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 the accompanying package, if any; or
  - (ii) not less than one 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; or
  - (iii) not less than two 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 gram per gallon per day; and
- (6) is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(b) Except as provided in Subpart 239-4 of this Part, no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York on or after January 1, 2003, any spout which, at the time of sale or manufacture, does not meet all of 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:
  - (i) not less than one-half 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 one inch below the top of the target fuel tank opening; or

(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 one 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 the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or

(ii) not less than one 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; or

(iii) not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons; and

(4) is warranted by the manufacturer for a period of not less than one 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 Subpart 239-8 of this Part. The manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts must perform the tests for determining compliance as set forth in Subpart 239-8 of this Part to show that their product meets the performance standards of this section prior to allowing the product to be offered for sale in the State of New York. The manufacturer must maintain records of these compliance tests for as long as the product is available for sale in the State of New York and make those test results available to the State of New York within 60 days of request.

(d) Compliance with the performance standards in this section 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.

(e) Notwithstanding the provisions of subdivisions (a) and (b) of this section, 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.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

## SUBPART 239-4 EXEMPTIONS

Sec.  
239-4.1 Exemptions

### Historical Note

Subpart (§ 239-4.1) filed Oct. 4, 2002 eff. 30 days after filing.

### § 239-4.1 Exemptions.

(a) This Part does not apply to any portable fuel container or spout or both portable fuel container and spout manufactured in the State of New York for shipment, sale, and use outside of the State of New York.

(b) This Part does not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of New York a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in Subpart 239-3 of this Part, as long as the manufacturer or distributor can demonstrate that:

(1) the portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State of New York; and

(2) that 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 to the State of New York.

This subdivision does not apply to portable fuel containers or spouts or both portable fuel containers and spouts that are sold, supplied, or offered for sale by any person to retail outlets in the State of New York.

(c) This Part does not apply to safety cans meeting the requirements of chapter 17, title 29, part 1926 subpart F of the *Code of Federal Regulations* (see Table 1, section 200.9 of this Title).

(d) This Part does not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

(e) This Part does not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided such 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.

(f) This Part 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.

### Historical Note

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

## SUBPART 239-5

### INNOVATIVE PRODUCTS

Sec.  
239-5.1 Innovative products

#### Historical Note

Subpart (§ 239-5.1) filed Oct. 4, 2002 eff. 30 days after filing.

#### § 239-5.1 Innovative products.

(a) Consumer products which have been granted an exemption by the California Air Resources Board (CARB) Consumer Product Regulation, under the innovative products provisions in chapter 9, article 6, section 2467.4 of title 13 of the *California Code of Regulations* (see Table 1, section 200.9 of this Title) shall be exempt from the performance standards in Subpart 239-3 of this Part for the period of time that the CARB innovative products exemption remains in effect. Any manufacturer claiming such an exemption on this basis must submit to the director, Division of Air Resources, Department of Environmental Conservation a copy of the CARB exemption decision (*i.e.*, the Executive Order), including all conditions established by CARB applicable to the exemption upon request.

(b) A portable fuel container or spout or both portable fuel container and spout may be exempted from one or more of the requirements of Subpart 239-3 of this Part 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.

(1) For the purposes of this section, *representative spill-proof system* or a *representative spill-proof spout* means a portable fuel container or spout or both portable fuel container and spout which, at the time of application in paragraph (2) of this subdivision, meets the performance standards specified in Subpart 239-3 of this Part.

(2) A manufacturer (applicant) must apply in writing to the director, Division of Air Resources, Department of Environmental Conservation for an innovative product exemption claimed under this subdivision. 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. In addition, the applicant must provide any information necessary to establish enforceable conditions for granting the exemption. All information including proprietary data submitted by a manufacturer pursuant to this Section shall be handled in accordance with the procedures specified in Part 616 of this Title.

(3) Within 30 days of receipt of the exemption application the department shall determine whether an application is complete.

(4) Within 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 Subpart 239-3 of this Part will be permitted. The applicant and the department may mutually agree to a longer time period for reaching a decision. An applicant may submit additional supporting documentation before a decision has been reached. The department will 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 emissions reductions specified in this subdivision, and that such emissions reductions can be enforced.

(5) In granting an innovative product exemption for a portable fuel container or spout or both portable fuel container and spout, the State of New York shall specify the test methods for determining conformance to the conditions established. The test methods may include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

(6) For any portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted pursuant to this Subpart, the manu-

facturer 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 must 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.

(7) If the performance standards specified in Subpart 239-3 of this Part are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in paragraph (8) of this subdivision, have no force and effect as of the effective date of the amended performance standards.

(8) 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 subdivision, the department may hold a public hearing in accordance with the procedures specified in Part 621 of this Title, to determine if the exemption should be modified or revoked.

**Historical Note**

*Sec. filed Oct. 4, 2002 eff. 30 days after filing.*

## SUBPART 239-6

### ADMINISTRATIVE REQUIREMENTS

Sec.  
239-6.1 Administrative requirements

#### Historical Note

Subpart (§ 239-6.1) filed Oct. 4, 2002 eff. 30 days after filing.

#### **§ 239-6.1 Administrative requirements.**

(a) Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with section 239-3.1(a) of this Part must clearly display on each spill-proof system:

- (1) the phrase spill-proof system;
- (2) a date of manufacture or representative date; and
- (3) a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with section 239-3.1(a) of this Part.

(b) Each manufacturer of a spout subject to and complying with section 239-3.1(b) of this Part must 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:

- (1) the phrase spill-proof spout;
- (2) a date of manufacture or representative date; and
- (3) a representative code identifying the spout as subject to and complying with section 239-3.1(b) of this Part.

(c) Each manufacturer subject to subdivision (a) or (b) of this section must file an explanation of both the date code and representative code with the director, Division of Air Resources, Department of Environmental Conservation no later than the later of three months after the effective date of this Subpart or within three months of production, and within three months after any change in coding.

(d) Each manufacturer subject to subdivision (a) or (b) of this section must clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

(e) Each manufacturer of a spout subject to subdivision (b) of this section must clearly display the make, model number, and size of only those portable fuel container(s) the spout is designed to accommodate and can demonstrate compliance with Subpart 239-3 of this Part on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(f) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with Subpart 239-3 of this Part 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.

(g) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with Subpart 239-3 of this Part that due to its design or other features cannot be used to refuel one or more on-road motor vehicles must clearly display the phrase not intended for refueling on-road motor vehicles in type of 34-point or greater on each of the following:

- (1) for a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

(2) 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.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

**SUBPART 239-7  
VARIANCES**

Sec.  
239-7.1                      Variances

**Historical Note**

Subpart (§ 239-7.1) filed Oct. 4, 2002 eff. 30 days after filing.

**§ 239-7.1 Variances.**

(a) Any person or manufacturer who cannot comply with the requirements set forth in Subpart 239-3 of this Part, due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the department for a variance. The variance application must set forth:

- (1) the specific grounds upon which the variance is sought;
- (2) the proposed date(s) by which compliance with the provisions of Subpart 239-3 of this Part will be achieved; and
- (3) a compliance report detailing the method(s) by which compliance will be achieved.

(b) No variance may be granted unless all of the following findings are made:

- (1) that, due to reasons beyond the reasonable control of the applicant, required compliance with Subpart 239-3 of this Part would result in extraordinary economic hardship;
- (2) that 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
- (3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

(c) Any approval of a variance shall specify a final compliance date by which compliance with the requirements of Subpart 239-3 of this Part will be achieved. Any approval of a variance shall contain a condition that specifies increments of progress necessary to assure 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.

(d) 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.

(e) Upon the application of any person, the department may review, and for good cause, modify or revoke a variance from requirements of Subpart 239-3 of this Part after holding a public hearing in accordance with the provisions of subdivision (b) of this section.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

## SUBPART 239-8 TEST PROCEDURES

Sec.  
239-8.1 Test procedures

### Historical Note

Subpart (§ 239-8.1) filed Oct. 4, 2002 eff. 30 days after filing.

### § 239-8.1 Test procedures.

(a) Testing to determine compliance with section 239-3.1(b) of this Part 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 (see Table 1, section 200.9 of this Title).
- (2) Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts, adopted by CARB on July 6, 2000 (see Table 1, section 200.9 of this Title).
- (3) Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts, adopted by CARB on July 6, 2000 (see Table 1, section 200.9 of this Title).

(b) Testing to determine compliance with Subpart 239-3 of this Part shall be performed by using all test procedures in subdivision (a) of this section and Test Method 513, Determination of Permeation Rate for Spill-Proof Systems, adopted by CARB on July 6, 2000 (see Table 1, section 200.9 of this Title).

(c) Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the director, Division of Air Resources, Department of Environmental Conservation.

### Historical Note

Sec. filed Oct. 4, 2002 eff. 30 days after filing.

**SUBPART 239-9  
SEVERABILITY**

Sec.  
239-9.1 Severability

**Historical Note**

Subpart (§ 239-9.1) filed Oct. 4, 2002 eff. 30 days after filing.

**§ 239-9.1 Severability.**

Each Subpart of this Part is severable, and in the event that any Subpart of this Part is held to be invalid, the remainder of this Part continues in full force and effect.

**Historical Note**

Sec. filed Oct. 4, 2002 eff. 30 days after filing.