APPENDIX A

PROPOSED AMENDMENTS TO THE REGULATION ORDER FOR PORTABLE FUEL CONTAINERS

Proposed Regulation Order
Portable Fuel Container Regulation

Amend sections 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.8, and 2467.9; and repeal of section 2467.7, title 13, California Code of Regulations, to read as follows:

(Note: The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text.)

Article 6 Portable Fuel Containers and Spouts

§ 2467. Applicability.

(a) Except as provided in ~~S~~section 2467.3, this article applies to any person who sells, supplies, offers for sale, advertises or manufactures for sale in California portable fuel container~~s or spouts or both portable fuel containers and spouts~~ systems or their components for use in California.

(b) Except as provided by ~~S~~section 2467.3, no person shall sell, supply, offer for sale, advertise, or manufacture for sale in California a portable fuel container ~~or spout or both portable fuel container and spout~~system or its components on or after July 1, 2007, unless said portable fuel container ~~or spout or both portable fuel container and spout~~system or its components ~~is~~are covered by an Executive Order issued pursuant to this article.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.1. Definitions.

(a) The definitions in ~~S~~section 1900(b), ~~T~~title 13 of the California Code of Regulations apply with the following additions:

(1) "ASTM" means ~~the American Society for Testing and Materials~~ ASTM International, an international standards organization.

(2) "Automatic closure" means a device or mechanism that causes a ~~spill-proof system or~~portable fuel container system spout to automatically close, seal, and remain completely closed when not dispensing fuel.

(3) "Automatically close" means a closure occurs through the activation of a device or mechanism that causes a ~~spill-proof system or~~ spout to close, seal, and remain completely closed when not dispensing fuel.

(4) "Consumer" means the first person who in good faith purchases a new portable fuel container system or its components~~spout or both portable fuel container and spout~~ for purposes other than resale, including but not limited to personal, family, household, or institutional use.

(5) "Distributor" means any person to whom a portable fuel container system or its components~~or spout or both portable fuel container and spout is~~ are sold or supplied for the purposes of resale or distribution in commerce. Manufacturers, retailers, and consumers are not distributors.

(6) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her designee.

(7) "Fuel" means all fuels subject to any provision of ~~Title 13, California Code of Regulations~~Cal. Code Regs, title 13, division 3, ~~C~~chapter 5, Standards for Motor Vehicle Fuels, ~~S~~sections 2250 - 2298, except for ~~S~~sections 2292.5, 2292.6, and 2292.7, or subject to 40 C.F.R. Part 1065.710 of Subpart H.

(8) "Kerosene" means any light petroleum distillate that is commonly or commercially known, sold, or represented as kerosene, that is used in space heating, cook stoves, and water heaters, and is suitable for use as a light source when burned in wick-fed lamps.

(9) "Manufacturer" means any person who imports, manufactures, assembles, packages, repackages, or re-labels a portable fuel container or spout ~~or both portable fuel container and spout~~.

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

(11) "Outboard Marine 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.

(12) "Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container system ~~directly to the outside ambient air~~and evaporate from its outside surface.

(13) "Person" has the same meaning as defined in Health and Safety Code ~~S~~section 39047.

(14) "Portable Fuel Container (PFC)" means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed, used, sold, advertised, or offered for sale for receiving, transporting, storing, and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled, as defined in 49 Code of Federal Regulations ~~S~~section 172.407(a), ~~as it existed on September 15, 2005,~~ with language indicating said containers or vessels are solely intended for use with non-

fuel or non-kerosene products.

(15) "Portable Fuel Container System" means any configuration of portable fuel container and components, including firmly attached spout, any caps, gaskets, vents, and other parts provided to consumers.

~~(15)~~(16) "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 Executive Officer.

~~(16)~~(17) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

~~(17)~~(18) "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.

~~(18) "ROG" (Reactive Organic Gas) means a reactive chemical gas, composed of hydrocarbons, that may contribute to the formation of smog. ROG is sometimes referred to as Non-Methane Organic Compounds (NMOC's).~~

(19) "Reactive Organic Gas (ROG)" means any compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, and excluding the following:

(A) methane;
methylene chloride (dichloromethane);
1,1,1-trichloroethane (methyl chloroform);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
chlorodifluoromethane (HCFC-22);
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);
1,1-dichloro-1-fluoroethane (HCFC-141b);
1-chloro-1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
trifluoromethane (HFC-23);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1,2-tetrafluoroethane (HFC-134a);
pentafluoroethane (HFC-125);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
ethoxy-nonafluorobutane (HFE 7200);
trans-1,3,3,3-tetrafluoropropene (HFO-1234ze);
cyclic, branched, or linear completely methylated siloxanes;

the following classes of perfluorocarbons:

1. cyclic, branched, or linear, completely fluorinated alkanes;
2. cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
3. cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
4. sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine, and

(B) the following low-reactive organic compounds which have been exempted by U.S. EPA:
acetone;
ethane;
methyl acetate;
parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene);
perchloroethylene (tetrachloroethylene);
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);
fluoroethane (ethyl fluoride or HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC-245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1-chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (*n*-$C_3F_7OCH_3$, HFE-7000);
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)-hexane (HFE-7500);
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
methyl formate ($HCOOCH_3$);
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
propylene carbonate;
dimethyl carbonate;
HCF_2OCF_2H (HFE-134);
$HCF_2OCF_2OCF_2H$ (HFE-236cal2);
$HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13);
$HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));

trans 1-chloro-3,3,3-trifluoroprop-1-ene;
2,3,3,3-tetrafluoropropene; and
2-amino-2-methyl-1-propanol.

~~(19) "Spill-Proof Spout" means any spout that complies with all of the performance standards specified in Section 2467.2(b) or with the certification requirement in Section 2467.2(c) and with the requirements in Section 2467.5.~~

~~(20) "Spill-Proof System" means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in Section 2467.2(a) or with the certification requirement in Section 2467.2(c) and with the requirements in Section 2467.5.~~

~~(21)~~(20) "Spout" means any device that can be firmly attached to a portable fuel container ~~for conducting pouring~~and through which the contents of a portable fuel container can be dispensed, not including a device that can be used to lengthen the spout to accommodate necessary applications.

~~(22)~~(21) "Target Fuel Tank" means any receptacle that receives fuel from a portable fuel container.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.2. ~~Performance Standards and Test~~Certification Procedure~~s~~ for Portable Fuel Container~~s and Spill-Proof Spouts~~ Systems.

~~(a) Except as provided in Section 2467.3, during the time period beginning 30 days after the date of filing of this subsection with the Secretary of State, and ending June 30, 2007, no person shall sell, supply, offer for sale, or manufacture for sale in California 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) An automatic shut-off 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) Does not exceed a permeation rate of 0.4 grams per gallon per day.~~

~~(5) Warranted for a period of not less than one year against defects in materials and workmanship.~~

~~(b) Except as provided in Section 2467.3, during the time period beginning 30 days after the date of filing of this subsection with the Secretary of State, and ending June 30, 2007, no person shall sell, supply, offer for sale, or manufacture for sale in California any spout which, at the time of sale or manufacture, does not meet all of the following Performance Standards for Spill-Proof Spouts:~~

~~(1) An automatic shut-off 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) Warranted for a period of not less than one year against defects in materials and workmanship.~~

~~(c)~~(a) Except as provided in ~~S~~section 2467.3, every portable fuel container~~, spout, or portable fuel container and spout~~ system or its components produced on or after July 1, 2007, that ~~is~~are manufactured for sale, advertised for sale, sold, or offered for sale in California or that ~~is~~are introduced, delivered, or imported into California for introduction into commerce and that ~~is~~are subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order issued pursuant to ~~S~~section 2467.2~~(d)~~(b).

~~(d)~~(b) The criteria for obtaining certification, including all test procedures for determining ~~certification and~~ compliance with the standards applicable to portable fuel container~~s~~ systems~~, spouts, or portable fuel containers and spouts~~ produced on or after July 1, 2007, that are manufactured for sale, advertised for sale, sold, or offered for sale in California, or that are introduced, delivered, or imported into California for introduction into commerce and that are subject to any of the standards prescribed in this article and documents incorporated by reference therein are set forth in "CP-501, *Certification Procedure for Portable Fuel Container~~s~~ and Spill-Proof Spouts~~Systems*," adopted July 26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein.

(c) Except as provided in section 2467.3, no manufacturer or importer may sell, offer for sale, introduce or deliver for introduction into commerce in California, or import any new portable fuel container system or its components that are subject to the emissions standards of this article and are manufactured after December 31, 2017, unless they are certified for use and sale to the standards prescribed in "CP-501, *Certification Procedure for Portable Fuel Container Systems*," adopted July 26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein. After June 30, 2018, no manufacturer or importer may sell, offer for sale, introduce or deliver into commerce in California, or import any new portable fuel container system or its components that were manufactured prior to January 1, 2018, unless they meet the requirements of this article.

(d) No wholesale distributor may sell, offer for sale, or distribute any portable fuel container system or its components in California that are subject to the emissions standards of this article and are manufactured after December 31, 2017, unless they are certified for use and sale to the standards prescribed in "CP-501, *Certification Procedure for Portable Fuel Container Systems*," adopted July 26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein. After December 31, 2018, no wholesale distributor

may sell, offer for sale, or distribute in California any portable fuel container system or its components that were manufactured prior to January 1, 2018, unless they meet the requirements of this article. After December 31, 2018, all new portable fuel container systems shall be deemed to be manufactured after December 31, 2017, unless they are in retail inventory.

(e) The Executive Officer shall coordinate ~~compliance~~the certification procedure~~s with these Performance and Certification and Compliance Standards~~ with the California State Fire Marshal.

~~(1) California State Fire Marshal (SFM)~~

~~(2) California Department of Industrial Relations, Division of Occupational Safety and Health (DOSH)~~

(f) Compliance with the ~~Performance Certification or Compliance Standards~~certification requirements in this ~~S~~section does not exempt ~~spill-proof systems or spill-proof spouts~~portable fuel container systems 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 Air Resources Board test for or determine compliance with such other statutes or regulations.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§2467.3. Exemptions.

(a) This Article does not apply to any portable fuel container system or its components ~~or spout or both portable fuel container and spout~~ manufactured in California for shipment, sale, and use outside of California.

(b) This article does not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California a portable fuel container ~~or spout or both portable fuel container and spout~~system or its components that ~~does~~do not comply with ~~the Performance Standards specified in Sections 2467.2(a) or (b), or~~ the ~~C~~certification ~~and Compliance Standards~~requirements specified in ~~S~~section 2467.2~~(d)~~(b), as long as the manufacturer or distributor can demonstrate that: (1) the portable fuel container ~~or spout or both portable fuel container and spout~~system or its components ~~is~~are intended for shipment and use outside of California; 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~~system or its components ~~is~~are not distributed to California.

This subsection (b) does not apply to portable fuel container~~s or spouts or both portable fuel containers and spouts~~systems or their components that are sold, supplied, or offered for sale by any person to retail outlets in California.

(c) This Article does not apply to safety cans meeting the requirements of ~~T~~title 29, Code of Federal Regulations ~~P~~part 1926, ~~S~~subpart F (§ 1926.150 et seq.).

(d) This Article does not apply to portable fuel container~~s~~ systems with a nominal capacity less than or equal to one quart.

(e) This Article 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 motor sports such as car racing or motorcycle competitions and 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 Article does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and ~~the~~an outboard marine engine for the purpose of operating the outboard marine engine.

(g) This Article does not apply to closed-system portable fuel container~~s~~ systems that are used exclusively for fueling remote control model airplanes.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.4. Innovative Products.

(a) The Executive Officer may exempt a portable fuel container system~~or spout or both portable fuel container and spout~~ from one or more of the requirements of ~~S~~section 2467.2 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 ROG emissions below the highest emitting representative ~~spill-proof system or representative spill-proof spout~~portable fuel container system in its product category as determined from applicable testing.

(b) For the purposes of this ~~S~~section, "representative ~~spill-proof system~~portable fuel container system" ~~or a "representative spill-proof spout"~~ means a portable fuel container~~or spout or both portable fuel container and~~, spout, and components, which, at the time of application in (c) of this ~~S~~section, meets the ~~Performance Standards specified in Sections 2467.2 (a) or (b) or the~~ ~~C~~certification ~~R~~requirements specified in "CP-501, Certification Procedure for Portable Fuel Containers~~ and Spill-Proof Spouts~~," adopted July 26, 2006,~~"~~ and amended MM DD, YYYY,~~ which is incorporated by reference herein.

(c) A manufacturer (applicant) must apply in writing to the Executive Officer for an innovative product exemption claimed under subsection (a). 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 enable the Executive Officer 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 ~~Title 17, California Code of Regulations~~Cal. Code Regs, title 17, ~~S~~sections 91000-91022.

(d) Within 30 days of receipt of the exemption application, the Executive Officer shall determine whether an application is complete as provided in Cal. Code Regs, title 17, section 60030(a)~~, Title 17, California Code of Regulations~~.

(e) Within 90 days after an application has been deemed complete, the Executive Officer will determine whether, under what conditions, and to what extent, an exemption from the requirements of ~~S~~sections 2467.2 will be permitted. The applicant and the Executive Officer 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 Executive Officer 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 subsection (a), and that such emissions reductions can be enforced.

(f) In granting an innovative product exemption for a portable fuel container system ~~or spout or both portable fuel container and spout~~, the Executive Officer 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.

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

~~(h) If the Performance Standards specified in Section 2467.2 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this subsection (i), have no force and effect as of the effective date of the amended Performance Standards.~~

~~(i)~~(h) If the Executive Officer believes that a portable fuel container system~~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 subsection (a), the Executive Officer may hold a public hearing in accordance with the procedures specified in ~~T~~title 17, Cal~~ifornia.~~ Code ~~of~~ Reg~~ulations~~., ~~D~~division 3, ~~C~~chapter 1, ~~S~~subchapter 1.25, to determine if the exemption should be modified or revoked.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.5. Administrative Requirements.

~~(a) Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with Section 2467.2(a) 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 2467.2(a).~~

~~(b) Each manufacturer of a spout subject to and complying with Section 2467.2(b) 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 2467.2(b).~~

~~(c)~~(a) Each manufacturer of a portable fuel container ~~or portable fuel container and spout~~ subject to and complying with ~~S~~section 2467.2~~(c)~~(a) must clearly display and permanently emboss on each ~~spill-proof system~~portable fuel container:

~~(1) the phrase "Spill-Proof System";~~
~~(2)~~(1) ~~a date~~the month and year of manufacture ~~or representative date~~; and

~~(3)~~(2) ~~a representative code identifying~~ the Executive Order Number issued by the Air Resources Board for the portable fuel container system ~~or portable fuel container and spout~~.

~~(d)~~(b) Each manufacturer of a spout subject to and complying with ~~S~~section 2467.2(~~c~~a) 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)~~(1) ~~a date~~the month and year of manufacture ~~or representative date~~; and

~~(3)~~(2) ~~a representative code identifying~~ the Executive Order Number issued by the Air Resources Board for the portable fuel container systems which use the spout.

~~(e) Each manufacturer subject to subsection (a), (b), (c) or (d) must file an explanation of~~

~~both the date code and representative code with the Executive Officer no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding.~~

~~(f)~~(c) Each manufacturer of a spout subject to subsection (b)~~ or (d)~~ must clearly display the make, model number, and size of only those portable fuel container~~(s)~~ with which the spout has been certified pursuant to ~~is designed to accommodate and can demonstrate compliance with~~ S~~s~~ection 2467.2(a)~~ or 2467.2(c)~~ on the accompanying package, or for ~~spill-proof~~ spouts sold without packaging, on either the ~~spill-proof~~ spout, or a label affixed thereto.

~~(g) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with Section 2467.2 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.~~

~~(h)~~(d) Each manufacturer of a portable fuel container system~~or spout or both portable fuel container and spout~~ subject to and complying with S~~s~~ection 2467.2 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:

(1) ~~Spill-proof system~~Portable fuel container or label affixed thereto, and on the accompanying package, if any; and

(2) package accompanying a ~~spill-proof~~ spout sold separately from a ~~spill-proof system~~portable fuel container system, or for ~~spill-proof~~ spouts sold without packaging, on either the ~~spill-proof~~ spout, or a label affixed thereto.

NOTE: Authority cited: S~~s~~ections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: S~~s~~ections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.6. Variances.

(a) Any person or manufacturer who cannot comply with the requirements set forth in S~~s~~ection 2467.2, due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Executive Officer 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 S~~s~~ection 2467.2 will be achieved; and

(3) a compliance report reasonably detailing the method~~(s)~~ by which compliance will be achieved.

(b) Upon receiving a complete variance application containing the information required in subsection (a), the Executive Officer shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in ~~S~~section 2467.2 is necessary and will be permitted. A hearing will be initiated no later than 75 days after receipt of a complete variance application. Notice of the time and place of the hearing must be sent to the applicant by certified mail not less than 30 days before the hearing. Notice of the hearing must also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such a notice, not less than 30 days before the hearing. The notice must state that the parties may, but do not need to be, represented by counsel at the hearing. At least 30 days before the hearing, the variance application must be made available to the public for inspection. Interested members of the public must be allowed a reasonable opportunity to testify at the hearing and their testimony must be considered.

(c) 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 ~~S~~section 2467.2 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.

(d) Any variance order shall specify a final compliance date by which the requirements of ~~S~~section 2467.2 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds it necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(e) 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.

(f) Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of ~~S~~section 2467.2, after holding a public hearing in accordance with the provisions of subsection (b).

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

~~§ 2467.7. Performance Standard Test Procedures.~~

~~(a) Testing to determine compliance with Section 2467.2(b) of this article 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 July 6, 2000, (section numbers corrected September 13, 2000), as amended July 26, 2006, which is incorporated by reference herein.~~

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

~~(b) Testing to determine compliance with Section 2467.2(a) of this article shall be performed by using all test procedures in (a) above and the following test procedure:~~

~~(1) "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted July 6, 2000, (section numbers corrected September 13, 2000), which is incorporated by reference herein.~~

~~(c) Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Executive Officer.~~

~~(d) Test procedures referred to in this Article can be obtained from the California Air Resources Board, and may be available at http://www.arb.ca.gov.~~

~~NOTE: Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).~~

§ 2467.~~8~~7. Certification and Compliance Test Procedures.

(a) Testing to obtain certification per section 2467.2(a) of this article shall be performed by using test procedures "TP-501, *Test Procedure for Determining Integrity of Portable Fuel Container Systems*" and "TP-502, *Test Procedure for Determining Diurnal Emissions from Portable Fuel Container Systems*" as specified in "CP-501, *Certification Procedure for Portable Fuel Container Systems*," adopted July 26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein.

~~(a)~~(b) Testing to determine compliance with ~~S~~section 2467.2~~(c)~~(a) of this article shall be performed by using ~~the~~ test procedures "TP-501, *Test Procedure for Determining Integrity of Portable Fuel Container Systems*" or "TP-502, *Test Procedure for Determining Diurnal Emissions from Portable Fuel Container Systems*", or both TP-501 and TP-502 as specified in "CP-501, *Certification Procedure for Portable Fuel Container~~s~~ and Spill-Proof Spouts~~Systems~~*," adopted July 26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein.

~~(b)~~(c) Alternative methods, as described in section 6 of ARB Certification Procedure "CP-501, Certification Procedure for Portable Fuel Container Systems," adopted July

26, 2006, and amended MM DD, YYYY, which is incorporated by reference herein, that are shown to be accurate, precise, and appropriate may be used upon written approval of the Executive Officer.

~~(c)~~(d) Test procedures referred to in this Article can be obtained from the California Air Resources Board, and ~~may be~~are available at: http://www.arb.ca.gov/consprod/fuel-containers/pfc/methods/methods.htm.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

§ 2467.~~9~~8. Enforcement.

(a) If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the State of California a portable fuel container ~~or spout or both portable fuel container and spout~~ system or its components that ~~does~~do not comply with the requirements set forth in this article, he or she may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable fuel container~~s or spouts or both portable fuel containers and spouts~~systems or their components~~,~~ in the State of California pursuant to ~~S~~section 43017 of the Health and Safety Code. The Executive Officer may also assess penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code and/or revoke any Executive Order~~(s)~~ issued for the noncompliant portable fuel container system or its components~~, spout or both portable fuel container and spout~~.

(b) Before seeking remedial action against any manufacturer, distributor, or retailer the Executive Officer will consider any information provided by the manufacturer, distributor, or retailer.

NOTE: Authority cited: ~~S~~sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: ~~S~~sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Pollution Control District,* 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).