

FINAL
Supporting Statement
for
Information Collection Request

Control of Evaporative Emissions from New and In-Use
Portable Gasoline Containers (Renewal)

EPA ICR 2213.03

June, 2010

Compliance and Innovative Strategies Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency

PART A OF THE SUPPORTING STATEMENT

1. Identification of the Information Collection

(a) *Title and Number of Information Collection.*

Control of Evaporative Emissions from New and In-Use Portable Gasoline Containers (Renewal), ICR 2213.03, OMB 2060-0597.

(b) *Short Characterization.*

Under regulations promulgated on February 26, 2007 (72 FR 8428; 40 CFR Part 59, Subpart F), manufacturers of new portable gasoline containers from 0.25 to 10.0 gallons in capacity are required to obtain certificates of conformity with the Clean Air Act. The rule applies to containers manufactured on or after January 1, 2009 (manufacturers and importers were given until June 30, 2009 and wholesale distributors until December 31, 2009 to dispose of stocks manufactured before January 1, 2009). Certificates are valid from the effective date until the end of the production period, with a maximum of five years. (The rulemaking collection request, ICR 2213.02, based its analysis on certificates being issued for one year only.) This ICR covers the burdens associated with the applications for certification and the required annual reports of successful warranty claims, based on experience during the first year and five months of the program. The applications are processed by the Compliance and Innovative Strategies Division (CISD), Office of Transportation and Air Quality, EPA. In essence, an application is in support of an emission limitation of 0.3 grams per gallon per day for the mandated five-year useful life of the container. Applicants submit test results conducted in accordance with the regulations, maintenance instructions and warranty information given to the purchasers, copies of the labels, and other information listed in section 4(b). Applications are submitted in no fixed format, although EPA did work with industry informally on application questions and provided non-confidential versions of acceptable received applications (“FOIA applications”) as examples to other potential applicants. Applications are submitted electronically as a part of the EPA’s Verify certification information system.

The current authorization is based on an estimated ten respondents for 638 hours and \$24,791 in costs, including \$519 in capital and O&M costs per year, the rest labor. That estimate did not include the applicant’s non-labor testing costs, which are traditionally included in ICRs.

The burdens in this ICR are based on experience administering the program from January 1, 2009, through May 17, 2010. During that period, EPA has issued twelve certificates to seven companies. All certificates were issued for five years. No annual warranty reports are due until July 1, 2010, and none have yet been received. The main changes from the prior ICR are the following: inclusion of non-labor testing costs in the respondent burden, adjustment of the reporting burden to reflect the normal certificate term of five years rather than one, elimination of references to mandatory defect reporting, updating the agency burden estimate, and updating labor costs. The current request estimates ten respondents for 213 hours and \$20,439 in costs, including \$10,519 for capital and O&M costs, including the costs of conducting tests.

2. Need for and Use of the Collection

(a) *Need/Authority for the Collection.*

Statutory authority for the portable gasoline container controls is found in Sections 183(e) and 111 of the Clean Air Act, 42 U.S.C. sections 7511b(e) and 7414. The EPA is required under Section 183(e) of the Clean Air Act (Act) to regulate Volatile Organic Compound (VOC) emissions from the use of consumer and commercial products. Pursuant to Section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation on March 23, 1995 (60 FR 15264). Consumer products were included in Group I of the list, and standards were promulgated on September 11, 1998. In the Administrator's judgment, VOC emissions from the use of consumer products contribute to ground-level ozone formation in ozone non-attainment areas. Portable gasoline containers are a consumer product which has been shown to be deficient in preventing VOCs in the form of fuel vapors from being emitted into the air. The certification program for portable fuel containers was promulgated in 2007 (72 FR 8533; February 26, 2007). The regulations appear in 40 CFR Part 59, Subpart F (40 CFR §§ 59.600 - 59.699).

The information in the application is needed to insure that the emission standard will be met during the useful life of the container and that the certified containers comply with the labeling, warranty, and other requirements of the regulations. The information is sufficient to allow the manufacture to aggregate containers of like design into one emission family. This saves the manufacturer the expense of testing models of similar but not identical design. The information is also detailed enough to allow subsequent recertification when a certificate has expired ("carry over").

The record keeping requirements are likewise in support of demonstration that the emissions family certified will meet the emission standard in the regulation. The records specified are to be provided to EPA upon request.

The annual warranty reports are needed to assure that the containers survive normal use and provide EPA important information on the success of its certification program, weaknesses therein, or examples or patterns of noncompliance. Cans showing excessive warranty claims could be candidates for in-use testing by EPA. Although EPA does not have the authority to recall portable fuel containers, the warranty information along with possible in-use testing by EPA could be used as grounds to withhold subsequent certification or to enter into enforcement action under the Clean Air Act.

(b) *Practical Utility/Users of the Information.*

Agency personnel will use the information collected to:

- Determine if a manufacture's portable gasoline containers meet the emission standard when new;
- Allow the agency to issue a certificate of compliance to the manufacturer so that they can market the approved containers;

- Allow the agency to issue carry-over certificates waiving the testing process required for a new design;
- Allow the agency to issue certificates to the manufacturer for containers that are substantially similar to the tested prototype and waive the testing process required for a new design (“carry across”);
- Provide information to the agency to indicate that the portable gasoline containers are meeting the standard in-use; and
- Provide information to the agency that a portable gasoline container design is not meeting the standard in-use and provide a basis on which to reject a manufacturer’s application for that design in subsequent model years or take other appropriate action.

3. Non-duplication, Consultations, and Other Collection Criteria

(a) Non-duplication.

The information collected includes product and manufacturing specifications, testing documentation, and successful warranty claims. Similar information is collected by the state of California and approximately 13 other states that have adopted the California Portable Fuel Container regulation¹. However, the California regulation is different in several key areas that make the information unsuitable for information collection required for Federal rule. These are all due to the following differences in the standards and certification requirements in the two rules:

- The test fuel and the temperature cycles used in the Federal program are more in keeping with nationwide ambient temperatures and fuels, while those required in the California regulation are more suitable to California fuels and ambient conditions.
- The Federal rule requires the reporting of successful warranty claims concerning fuel containers sold as certified under the rule. While the California regulation does require that the manufacturer issue warranties, it does not require them to report on the outcomes of successful claims against them.

These differences make the California data unsuitable for the Federal rule on fuel containers.

(b) Public Notice Required Prior to ICR Submission to OMB

An announcement soliciting public comment on this ICR was published in the Federal Register on April 14, 2010 (75 FR 19381). A copy of the draft ICR was placed in the docket. No comments were received.

(c) Consultations

For this renewal, EPA consulted the following individuals:

¹ “Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts”, California Air Resources Board July 22, 2005

<u>Organization</u>	<u>Name</u>	<u>Phone Number</u>
Blitz USA, Inc.	Dan Weibel	918-540-5154
No Spill, LLC	Tom Cray	913-888-9200
Testing Services Group	Andy Meloney	810-245-1600

Their responses were very helpful in developing this request. On the whole they approve of the EPA program and express frustration at the areas of the California program that differ from EPA, particularly the fuel specifications. Information from TSG on contract costs for testing and application preparation were particularly helpful.

(d) Effects of Less Frequent Collection.

Certificates of conformity are issued for the production period of the models covered in the emissions family, not to exceed five years. All certificates to date have been issued for five years. However, when a fuel container design is a “carried over” or a new version of a container that is substantially similar to a current container (“carry across”), the amount of new information required is substantially reduced. Warranty reports are required by regulation to be submitted annually.

(e) General Guidelines.

This ICR adheres to the guidelines for Federal data requesters, as provided at 5 CFR 1320.5(d)(2), with the exception that the regulation requires that records concerning the application for certification be maintained for 5 years (except for routine testing data for 1 year). The five-year requirement is consistent with the maximum production period and the consequent five-year duration of certificates. The retention is necessary to allow the agency to adequately monitor compliance. Information on successful warranty claims is required for the preceding model by July 1 of the following year. There is no requirement to report unsuccessful claims against container warranties. There is no requirement by EPA for the manufactures to retain that information beyond the extent necessary to report it annually.

(f) Confidentiality.

Any information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA regulations at 40 CFR 2.201 Part 2, as stated explicitly in the regulations (40 CFR §59.695). The section sets fort how to make confidentiality claims and how documents raising confidentiality issues will be handled.

(g) Sensitive Questions.

This collection does not involve matters of a sensitive nature.

4. The Respondents and the Information Requested

(a) Respondents/SIC and NAICS Codes.

Respondents to this information collection are manufacturers of portable fuel containers. They fall within standard industrial classification (SIC) 3411 and within the North American Industrial Classification System (NAICS) code of 332431 (metal can manufacturing) or SIC 3089, NAICS 326199 (all other plastic product manufacturing).

(b) *Information Requested.*

(i) *Data items.*

The required data items are specifically enumerated in the regulations (40 CFR §59.623):

(a) Describe the emission family's specifications and other basic parameters of the emission controls. List each distinguishable configuration in the emission family. Include descriptions and part numbers for all detachable components such as spouts and caps.

(b) Describe and explain the method of emission control.

(c) Describe the products you selected for testing and the reasons for selecting them.

(d) Describe the test equipment and procedures that you used, including any special or alternate test procedures you used (see §59.650).

(e) List the specifications of the test fuel to show that it falls within the required ranges specified in §59.650.

(f) Include the maintenance and use instructions and warranty information you will give to the ultimate purchaser of each new portable fuel container (see §59.613).

(g) Describe your emission control information label (see §59.615).

(h) State that your product was tested as described in the application (including the test procedures, test parameters, and test fuels) to show you meet the requirements of this subpart.

(i) Present emission data to show your products meet the applicable emission standards. Where applicable, §§59.626 and 59.627 may allow you to submit an application in certain cases without new emission data.

(j) Report all test results, including those from invalid tests or from any other tests, whether or not they were conducted according to the test procedures of §§59.650 through 59.653. We may ask you to send other information to confirm that your tests were valid under the requirements of this subpart.

(k) Unconditionally certify that all the products in the emission family comply with the requirements of this subpart, other referenced parts of the CFR, and the Clean Air Act.

- (l) Include estimates of U.S.-directed production volumes.
- (m) Include the information required by other sections of this subpart.
- (n) Include other relevant information, including any additional information requested by EPA.
- (o) Name an agent for service located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

An additional reporting requirement is listed in 40 CFR §59.628(e):

- (e) Send us an annual warranty report summarizing successful warranty claims by emission family under §59.612, including the reason for the claim. You must submit the report by July 1 for the preceding calendar year.

There is also a one-to-one correspondence between the recordkeeping requirements and the requirements listed in the regulations (40 CFR §59.628):

- (a) Organize and maintain the following records:
 - (1) A copy of all applications and any other information you send us.
 - (2) Any of the information we specify in §59.623 that you were not required to include in your application.
 - (3) A detailed history of each emission-data unit. For each emission-data unit, include all of the following:
 - (i) The emission-data unit's construction, including its origin and buildup, steps you took to ensure that it represents production containers, any components you built specially for it, and all the components you include in your application for certification.
 - (ii) All your emission tests, including documentation on routine and standard tests, as specified in §§59.650 through 59.653, and the date and purpose of each test.
 - (iii) All tests to diagnose emission-control performance, giving the date and time of each and the reasons for the test.
 - (iv) Any other relevant events or information.
 - (4) Production figures for each emission family divided by assembly plant.

(5) If you identify your portable fuel containers by lot number or other identification numbers, keep a record of these numbers for all the containers you produce under each certificate of conformity.

(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for five years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

(d) Send us copies of any maintenance instructions or explanations if we ask for them.

By implication, the annual report of successful warranty claims includes a requirement to keep records of such claims on a yearly basis until July 1 of the following year.

(ii) Respondent Activities.

The applications are in no set format but generally follow the enumerated application requirements specified in §59.623 (see 4(b)(i) above). The respondent will have to document fuel container specifications in detail, such as physical size, shapes, materials, quality of component fit, and production methods, in submitting its application(s) for certification. The respondent will also perform tests and keep records on them. The respondent must collect and keep information on successful warranty claims for annual reporting. The respondent must also retain records on the units produced, apply serial numbers to individual containers, and track the serial numbers to their certificates of conformity. Many of these activities are performed in the production of any modern consumer product, but clearly some of the information is uniquely required by the fuel container regulation.

5. The Information Collected--Agency Activities, Collection Methodology, and Information Management.

(a) Agency Activities.

The startup phase of the program involved several largely one-time activities, such as consultations with the industry on how to address generic application issues and developing the certificate template. During the renewal period the most significant portion of EPA's activity for the fuel container regulation will be spent reviewing new applications. Other activities include processing exceptions and answering questions concerning details of the testing and certification requirements, including researching the answers and communicating by email and telephone. Running change submissions must also be reviewed for possible impacts and manufacturers' evaluations thereof. A part of this process involves determining if "carry over" or "carry across" of data from a previous model year or addition of a new container model to an existing emissions family is appropriate or instead that new testing will be required. EPA has the right to select a number of containers for testing to confirm that the cans are indeed meeting the emissions standards, but no confirmatory testing burden is anticipated in this estimate. EPA will also be

reviewing the annual submissions of successful warranty claims and processing exemption requests.

(b) Collection Methodology and Management

Applicants submit their applications for certification in the document module of EPA's Verify information system. All Verify users go through an initial registration process that includes submission of basic information and assignment of a manufacturer code. It is anticipated that warranty reports will also be submitted through the Verify document module, with no set format.

(c) Small Entity Flexibility.

There are several provisions for small entity flexibility in the regulations. Hardship deadline extensions for compliance with the standard are available where, due to circumstances neither foreseeable nor preventable, compliance would jeopardize the solvency of the company. Exemptions are for up to one year and are renewable. There are also exemptions for containers intended only for export, used for the sole purpose of testing, or for national security. As with other certification programs, small as well as larger manufacturers have recourse to carry over and carry across. They may also request to use alternative testing methods or emissions data already collected using other procedures. The portable fuel container program currently collects no certification fees.

(d) Collection Schedule.

The portable fuel container regulation applies to all fuel containers as defined in the regulations manufactured on or after January 1, 2009. Information collections are on a production period basis, five years in all cases so far. Warranty reports are on a calendar year basis, with reports due July 1 for the previous calendar year.

6. Estimating the Burden and Cost of the Collection

These estimates represent the average annual burden that will be incurred by the affected industry during the three-year period beginning on June 30, 2010. It is believed that most of the record keeping and reporting costs were incurred during startup and the first round of submissions from calendar 2008 through the first half of 2010.

(a) Estimating Respondent Burden.

The previous ICR, 2213.02, estimated 638 hours and \$24,687 in labor hours and labor costs and \$519 in startup capital and O&M costs, for a (miscalculated) total of \$24,791 per year for all of ten estimated respondents, assuming a total of ten applications per year. All testing costs were counted as labor costs, and startup and O&M costs were limited to familiarization with the regulations, information software, and communicating with EPA.

Section 10.4 of the Final Regulatory Impact Analysis (<http://www.epa.gov/otaq/regs/toxics/fr-ria-sections.htm>) estimated \$7,500 per manufacturer (presumably per application) for contracted testing costs and \$5,000 for additional certification costs, for a total of \$12,500 per application, without mentioning warranty reporting.

Because nearly all the manufacturers contract for their testing as well as preparation of the application for certification, it is difficult to determine how many labor hours should be attributed to the contract cost. One manufacturer estimated \$15,000 per application in contract costs, and another \$150,000 for all testing and certification work for one family, including California certification, CPSC compliance (child resistance) and ASTM durability testing, but didn't consider this burdensome because they would be doing it anyway, since the California program came first and was already underway when the EPA program started. These estimates include development costs, which can be substantial, and it is assumed that the RIA figures also included development costs. This ICR does not include the costs of developing products that comply with the Clean Air Act, only the burdens of making the showing to EPA that they do. TSG, which does nearly all of the contract work, states that it charges under \$2,000 for application preparation and submission and under \$5,000 for testing work. Because the facility does a wide variety of testing, including for these clients, it is difficult to allocate these contracted costs among labor, capital, and O&M.

This ICR uses \$7,500 per application cost for new applications, allocated approximately 40% to labor and 60% to the contractor's remaining O&M costs, following the Regulatory Impact Analysis and the prior ICR. We retain the assumptions of the prior ICR concerning labor for warranty reporting and adjust a minor labor cost for record keeping. We assume six new applications in the next three-year reporting period, as most of the initial round of certificates have been issued for five-year durations. Following these assumptions, we estimate 183.2 hours for reporting and 30 hours for recordkeeping, for a total of 213.2 hours.

(b) Estimating Respondent Costs.

(i) Estimating Labor Costs

Rates for managers, mechanical engineer technicians, and administrative staff are from the May 2009 National Industry-Specific Occupational Employment and Wage Estimates (http://www.bls.gov/oes/2009/may/naics4_326100.htm , accessed May 24, 2010). With a overhead multiplier of 1.6, these are \$83.64, \$35.58, and \$26.85, respectively. Applying these figures to the application, warranty, and record keeping labor totals above, the total labor cost is \$16,919.

(ii) Estimating Capital and Operations and Maintenance Costs

This ICR retains the one-time startup cost estimate of \$519 per year in the prior request but adds \$5,000 in O&M costs per application to bring the estimate in line with industry estimates. Assuming six new applications in the next three years, the O&M total is \$10,000 and the capital cost is \$519 per year.

(c) Estimating Agency Burden and Cost.

Agency burden for this renewal includes no agency startup costs and a somewhat lower estimate than previously for application review and all associated activities such as telephone and email communications. The program is now in place and the considerable startup efforts are in the past. One hour per application by a GS 13, Step 10, EPA employee and three hours per

application by a Senior Environmental Employee (SEE) Program employee (the SEE Program is an employment program for older workers authorized by the Environmental Programs assistance Act, passed by Congress in 1984, and provides employment opportunities to senior citizens age 55 and over), are estimated for the portable fuel container certifications. There are no secretarial or database management costs, as these too small to differentiate from the very much larger Verify baseline as part of the motor vehicle certification IC. The EPA employee cost is \$86.96 per certification review and the SEE cost is approximately \$78.82, both after application of a 1.6 multiplier for overhead based on EPA's latest fees cost allocation study (1.37 indirect program cost overhead times 1.16 overall EPA overhead). The EPA labor estimate is based on Office of Personnel Management SALARY TABLE 2009-DET (<http://www.opm.gov/oca/09tables/pdf/salhr.pdf>). For two applications per year the estimated annual Agency burden is \$174. We anticipate some effort in eliciting and reviewing adverse warranty action reports, estimated at an average of 1.5 hours for each of approximately ten reports per year for a total of \$1,000. Finally, six hardship and national security exemption determinations were made in the first year and a half of the program at approximately 15 hours per determination (including legal and management review). Assuming twelve such rulings in the next three years, this adds 180 hours and \$15,653. The agency total is therefore 203 hours and \$16,827.

(d) Estimating the Respondent Universe and Total Burden and Costs

The following assumptions were used to estimate the respondent universe and total burden and costs for industry to comply with the various requirements of the rule.

- The estimated ten manufactures of fuel containers for the domestic market from the rulemaking and prior ICR are retained. So far seven manufacturers have applied for certificates.
- The twelve emission families certified to date will require no recertifications in the next three years.
- The estimate allows for six new applications by new or existing manufacturers in the next three years.
- Manufactures will continue to contract for testing services and most certificate application preparation.

(e) Bottom Line Burden Hours and Cost Tables.

(i) Respondent Tally

RESPONDENTS	10
BURDEN HOURS	213
LABOR COST	\$9,920
OPERATING COST	\$10,000
CAPITALIZED COST	\$519
TOTAL COST	\$20,439

(ii) *Agency Tally*

EMPLOYEES	2
STARTUP	\$0
LABOR HOURS	180
LABOR COST	\$16,827

(f) *Reasons for Change in Burden.*

The hours per application have been reduced considerably and the total cost per application has increased to \$7,500 to bring the estimate in line with contractor information as well as information contained in the Regulatory Impact Analysis for the final rule. The expected number of applications per year has been reduced from 10 to 2 because the prior ICR was based on the assumption that the duration of a permit is one year, whereas the final rule specifies that the duration of the certification is the production period not to exceed five year. All certificates issued so far are for five years, and most applications from on-going enterprises are assumed to have been already received. The prior ICR's cost per respondent was one-tenth of the \$ 24,687 estimate for the industry as a whole, including warranty reporting. Because of the lower number of certificate submissions, the net result is that this request totals \$20,439, including \$10,519 in non-labor costs. The prior ICR only included \$519 in non-labor costs, which were exclusively startup costs with no O&M costs. This ICR also includes a separate line item of 30 hours for record keeping per year.

(g) *Burden Statement*

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2010-0328, which is available for online viewing at www.regulations.gov, or in person viewing at the Air and Radiation Docket and Information Center Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742. An electronic version of the public docket is

available at www.regulations.gov . Use this site to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. EPA-HQ-OAR-2010-0328 and OMB Control Number 2060-0597 in any correspondence.