

State of California
AIR RESOURCES BOARD

**Addendum to the Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE REGULATORY
PROPOSAL TO DETERMINE AND CONTROL EVAPORATIVE EMISSIONS FROM
OFF-HIGHWAY RECREATIONAL VEHICLES

Public Hearing Date: July 25, 2013
First Public Availability Dates: January 14, 2014 – January 29, 2014
Second Public Availability Dates: April 28, 2014 – May 13, 2014
Third Public Availability Dates: August 7, 2014 – August 22, 2014
Fourth Public Availability Dates: September 17, 2014 – October 2, 2014
Agenda Item No.: 13-07-03

I. BACKGROUND

At its July 25, 2013 public hearing, the Air Resources Board (ARB or Board) approved for adoption the proposed changes to Cal. Code Regs., tit. 13, §§ 2416, 2417, 2418, 2419.1, 2419.2, 2419.3, 2419.4, and 2419.5, which expand evaporative emission control requirements for off-highway recreational vehicles (OHRV) to include a whole vehicle diurnal evaporative emission standard, certification, labeling, enforcement, anti-tampering, recall, and use restrictions. A new test procedure to measure evaporative emissions, TP-933 “Test Procedure for Determining Evaporative Emissions from Off-Highway Recreational Vehicles,” (TP-933) was also approved for adoption and is incorporated by reference in Cal. Code Regs., tit. 13, §§ 2417, 2418, and 2419.5.

At the hearing, the Board approved modifications to the regulatory language originally proposed in the Staff Report released on June 5, 2013, in response to comments received after the Staff Report was published. The new sections 2416-2419.5 were approved, as modified, in Board Resolution 13-33. The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website: <http://www.arb.ca.gov/regact/2013/ohrv2013/ohrv2013.htm>.

In accordance with the Government Code, section 11346.8, the Board directed the Executive Officer to adopt the proposed regulatory language as modified after making them available to the public for comment for a period of at least 15 days. The Board further directed the Executive Officer to consider written comments submitted during this period, make modifications as may be appropriate in light of the comments received, and present the regulations to the Board for further consideration if warranted. The direction given by the Board on July 25, 2013, to continue the exemption for

competition OHRVs was carried out in the First Notice of Public Availability of Modified Text and Availability of Additional Documents and Information (1st 15-day Change Notice) issued on January 14, 2014. The Second Notice of Public Availability of Modified Text (2nd 15-day Change Notice) was issued on April 28, 2014. The 2nd 15-day Change Notice corrected section enumeration and made minor changes to improve clarity.

The regulation was sent to the Office of Administrative Law (OAL) for review and was disapproved on July 28, 2014. The details of which can be found on the OHRV rulemaking website: <http://www.arb.ca.gov/regact/2013/ohrv2013/ohrv2013.htm>. The comments by OAL were resolved by making changes as detailed in a Third Notice of Public Availability of Modified Text (3rd 15-day Change Notice), which was issued on August 7, 2014. In addition to addressing the concerns raised by OAL in their notice of disapproval, the 3rd 15-day Change Notice included additional modifications to improve clarity and correct minor errors in the regulatory text and incorporated TP-933.

The 3rd 15-day Change Notice modifications include adding more specific certification language to section 2419.4 that is similar to OHRV exhaust certification requirements in section 86.416-80 "Application for Certification" of the "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines." The updated section provides more specificity to the certification requirements, application content, label format, and grounds for approval and disapproval of Executive Orders of Certification for OHRV manufacturers, small volume OHRV manufacturers, and evaporative emissions control component manufacturers. Furthermore, the updated section provides more specificity to the administrative requirements for the maintenance of records. The changes improve the overall clarity of the regulation and allow the evaporative emission certification application to be harmonized with the exhaust application, where appropriate.

The manufacturer's warranty coverage was amended to include unapproved modifications as a condition for voiding the warranty in section 2419.1. This amendment provides for consistency with the warranty statement language required in section 2419.2. To improve clarity and specificity throughout the regulation, new definitions were added for "Auxiliary Emission Control Device," "Component Executive Order of Certification," "Evaporative Emissions Control Component Manufacturer," "Evaporative Emissions Control Component," and "Independent Laboratory." Also, other minor language modifications were made. These modifications include correcting the authority and reference citations.

All references to the "Smog Check Program," including sections 44004, 44010, 44011, 44012, 44014, 44015, and 44017, Health and Safety Code (Health & Saf. Code), were removed. References to section 43204, Health & Saf. Code, were also removed. Additional authority was cited from section 43824, Health & Saf. Code. Corrections to reference citations and minor language changes were also made to the test procedure.

A Fourth Notice of Public Availability of Modified Text (4th 15-day Change Notice) was issued on September 17, 2014. The 4th 15-day Change Notice addressed comments received during the 3rd 15-day comment period regarding retesting a repaired test vehicle and retention of vehicles used for certification. The modifications included in the 4th 15-day Change Notice further improve clarity while preserving the intent of the Board approved amendments.

This addendum modifies the text in the final statement of reasons by adding language as highlighted in *italic underline* to section I(c) "CONSIDERATION OF ALTERNATIVES" as shown in the following paragraph:

"For the reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this addendum to the Final Statement of Reasons for Rulemaking (FSOR), the Board determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective as and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action taken by the Board."

This addendum, as well as additional supporting documents, constitutes the resubmittal filing for OAL File No. 2014-0606-03S. The documents contained in the resubmittal filing supplement the Board's file for the rulemaking. The Board addresses each of OAL's cited concerns in its July 28, 2014, Decision of Disapproval of Regulatory Action, and explains how it amended the proposed regulation and associated test procedures to provide manufacturers additional clarification. This addendum also provides a revised summary of the comments received for this rulemaking action and provides responses to the revised summary.

II. SUPPLEMENTAL STATEMENT OF REASONS

A. 3RD 15-DAY CHANGE MODIFICATIONS

In the 3rd 15-day Change Notice, the Board modified the proposed regulation and test procedures to address each of OAL's cited concerns and provide manufacturers greater flexibility and clarification. In order to provide a complete FSOR for this rulemaking, these modifications and clarifications are summarized below. Modified text in the regulation included:

1. Clarifying what a manufacturer must submit in their certification application by adding a reference in section 2419.4 to the requirements outlined in TP-933.
2. Modifying section 2419.1(i) to include unapproved modifications in the list of exclusions to be consistent with the labeling requirements in section 2419.2(a).

3. Modifying the authority and reference citations. All references to the “Smog Check Program” including sections 44004, 44010, 44011, 44012, 44014, 44015, and 44017, Health & Saf. Code were removed. References to section 43204, Health & Saf. Code, were also removed. Additional authority was cited from section 43824, Health & Saf. Code.
4. Removing section 2419.4(d)1(C) because it is redundant with section 2419.4(d)1(A).
5. Clarifying the criteria that the Executive Officer will use to approve a manufacturer submitted plan addressing why the records were unavailable and the steps taken to ensure future records will be available upon request, as outlined in section 2419.4(d)1(D).
6. Allowing for the additional testing laid out in section 2419.4(g)6 to be waived if the Executive Officer accepts a manufacturer submitted engineering evaluation showing that the change or changes do not affect evaporative emissions.
7. Revising section 2419.3 to clarify section references and include the full title of Appendix A.
8. Including new language in section 2419.4 that lists all the requirements for certification. The new language is similar to what is used for OHRV exhaust certification as outlined in section 86.416-80 “Application for Certification” of the “California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines.” The new language is now appropriate for evaporative emissions certification, includes a small volume certification option, and allows the evaporative application to be harmonized with the exhaust application, where appropriate.
9. Making other non-substantial changes to improve clarity and intent.

Changes were made to the test procedure (TP-933) in the 3rd 15-day Change Notice. Modified text in TP-933 included:

1. Correcting references.
2. Making other non-substantial changes to improve clarity and intent.

B. 4TH 15-DAY CHANGE MODIFICATIONS

As discussed in the 4th 15-day Change Notice, the Board modified the proposed regulation to address some of the comments received during the 3rd 15-day comment period. The changes provide manufacturers greater flexibility and clarification. In order to provide a complete FSOR for this rulemaking, these modifications and clarifications are summarized below. Modified text in the regulation included:

1. The changes include clarification of a manufacturer's options when notified that their test OHRV does not meet applicable standards as specified in section 2419.4(b)6(D).
2. To be consistent with other mobile source categories, the requirement to retain the test OHRV used to generate certification data specified in section 2419.4(d)1(C) is removed.
3. Section 2419(f)1(C) was made more specific by eliminating text regarding modifications allowed during compliance testing.

C. NON-SUBSTANTIAL CHANGES MADE TO THE REGULATION AND TEST PROCEDURE

During the 3rd and 4th 15-day changes some non-substantial errors were found and corrected. The changes to the regulation included the following, and where applicable the removed text is shown below in ~~strikeout~~ and added text is shown in underline format as follows:

1. Corrected spacing throughout the regulation.
2. Corrected capitalization throughout the regulation.
3. Corrected the use of commas.
4. Corrected the punctuation used for lists.
5. Corrected use of italic font throughout the regulation.
6. Replaced the word "is" with "are" in section 2419.2(a): "The warranty period for this OHRV is 30 months, or 2500 miles, or 250 hours, whichever comes first, except for "high-priced" warranty parts, which ~~are~~is covered for 60 months, or 5000 miles, or 500 hours, whichever comes first."
7. Updated the final report submittal address in section 2419.4(e)(2) to reflect ARB's restructured division name: "...Emissions Compliance, Automotive Regulations and Science Division~~Mobile Source Operations~~"

Division, Air Resources Board, 9528 Telstar Avenue, El Monte, CA 91731.”

8. Removed acronym for Emissions Compliance, Automotive Regulations and Science Division in section 2419.4(b)(1)(F): “...Emissions Compliance, Automotive Regulations and Science Division (~~ECARSD~~) Chief, Air Resources Board.”
9. Added staff position title to the submittal address in section 2419.4(f)(1)(A): “Unless otherwise directed by the Executive Officer, the OHRV or evaporative emissions control component must be delivered to: Chief, Emissions Compliance, Automotive Regulations and Science Division, Haagen-Smit Laboratory, Air Resources Board, 9528 Telstar Avenue, El Monte, CA 91731.”
10. Clarified reference to “VC 27156” in section 2419.4(h)(8)(B): “...from the prohibition of California Vehicle Code section 27156 if the part is found to do either of the following:”
11. Removed extra “sure” in section 2419.4(i): “...may, as deemed necessary to ensure ~~sure~~ compliance with this Article,...”
12. Corrected the date of adoption for TP-933, referenced in sections 2417(a)(36) and 2419.4(f)(1)(F) from June 6, 2013 to November 5, 2014, in order to be in accordance with Executive Order R-14-008, dated November 5, 2014.

Corrections to the test procedure include the changes listed in numbers one through three above and the following:

1. Replaced all section symbols (§) with the word “section.”
2. Changed “section” to reflect initial lowercase.
3. Corrected capitalization in section 3 for the title “Control of Emissions from New and In-Use Highway Vehicles and Engines,” and “California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles.”
4. Corrected appendix reference in Figure 6: “Show Compliance with Calculated Vented Emissions Requirement (Appendix AIII).”
5. Corrected the date of adoption on TP-933, from June 6, 2013 to November 5, 2014, in order to be in accordance with Executive Order R-14-008, dated November 5, 2014.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Board received written comments in connection with the 3rd and 4th 15-day comment periods. Set forth below are either the full text or a summary of each comment specifically directed at the proposed regulations or test procedures, followed by the agency response.

A. COMMENTS RECEIVED DURING THE 3RD 15-DAY COMMENT PERIOD

Commenter	Written Testimony	Affiliation
Parks, Shane	August 13, 2014	None (SP)
Amette, Pamela	August 25, 2014	Motorcycle Industry Council (MIC)

1. PORTABLE FUEL CONTAINERS COMPATIBILITY WITH OHRVs

Comment #1: Portable fuel containers currently available do not work well and ARB should pay for incompatibility with OHRVs. **[SP]**

Agency Response to Comment #1: The regulation of portable fuel containers is beyond the scope of this regulation, and specifically beyond the scope of the 3rd 15-day changes.

2. RETESTING A REPAIRED OHRV DURING CERTIFICATION

Comment #2: The proposed regulatory language says that if a test OHRV needs to be repaired during the certification process, it must be retested and an additional OHRV must be tested, both of which must be in compliance with the regulation. This section should be more similar to other existing regulations where manufacturers may either repair and retest or choose a new test OHRV and retest for certification testing. **[MIC]**

Agency Response to Comment #2: In the case of a test vehicle that requires repair, many existing regulations allow either repair or replacement followed by a retest. For this situation, the 4th 15-day change includes language that allows either repair or replacement followed by a retest of the test OHRV.

3. RETENTION TIME FOR TEST OHRV

Comment #3: The proposed regulatory language includes a requirement to keep a test OHRV for life of the executive order that it covers, this requirement has not been fully discussed with manufacturers and could pose a large burden and is beyond the scope of the current rulemaking. **[MIC]**

Agency Response to Comment #3: To be consistent with existing mobile source regulations, the 4th 15-day change eliminated the requirement to keep the test OHRV for confirmatory testing. Prior to ARB accepting an application, manufacturers will have to provide a vehicle for confirmatory testing, if requested by ARB.

4. REQUIREMENT TO INCLUDE INVALID AND VOIDED TEST DATA

Comment #4: MIC opposes the requirement to include invalid and voided tests as it is a significant unnecessary burden for manufacturers and has been added without adequate time for comment and discussion. **[MIC]**

Agency Response to Comment #4: ARB has a history of requiring all emissions data, including valid, invalid, and voided tests, to be provided with applications for certification. The requirement in the proposed language is similar to and consistent with the exhaust certification requirements for other mobile source categories certified by ARB including passenger cars and OHRVs. It is important for ARB to understand what all the test data looks like and not just the data specifically chosen to show compliance. For these reasons, the requirement to include invalid and voided data in the certification application must remain part of the regulation and no change is being made.

B. COMMENTS RECEIVED DURING THE 4TH 15-DAY COMMENT PERIOD

Commenter	Written Testimony	Affiliation
McCarthy, William	September 18, 2014	None (WM)

1. NEED FOR EMISSIONS REDUCTIONS FOR OHRVs

Comment #1: OHRVs don't emit enough emissions to warrant controlling. The regulation will only increase bureaucracy. **[WM]**

Agency Response to Comment #1: Substantial numbers of Californians live in areas that are not attaining federally-mandated ambient air quality standards for pollutants such as ozone. This regulation will reduce ambient levels of hydrocarbons, which are precursors to the formation of ozone. The net effect of the controls required by this regulation will be to reduce Californians' exposure to ground level ozone.