

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

AGENCY: Air Resources Board)	NOTICE AND DECISION OF
)	DISAPPROVAL OF
ACTION: Adoption of section 2443.3)	REGULATORY ACTION
of Title 13 of the California Code of)	(Gov. Code Section 11349.3)
Regulations)	
_____)	OAL File Number 00-0218-05RS

BACKGROUND

On December 8, 1999, OAL approved all but one of the Air Resources Board's new regulations establishing emission standards and test procedures for certain spark ignition marine engines. OAL disapproved proposed section 2443.3 because it was not clear. The disapproved regulation would have required a consumer / environmental label to be furnished with each new marine engine or watercraft at the time of sale. The board amended section 2443.3 and resubmitted it to OAL for review on February 18, 2000. By this notice and decision, OAL again disapproves the adoption of proposed section 2443.3.

DECISION

OAL disapproves the adoption of section 2443.3 because the Board made a substantial change to the text of the regulation and submitted it for OAL review without first making the change available for public comment.

DISCUSSION

Proposed section 2443.3 would require a label, known as a hang tag, that would provide persons shopping for an outboard motor or personal watercraft with information concerning the Board's one, two, and three star engine emissions rating system. OAL first issued a Decision of Disapproval concerning section 2443.3 on December 15, 1999. The Board then prepared an amendment to the regulation addressing the clarity problem noted by OAL, and mailed it to persons who had commented on the marine engine regulations, or who were on the Board's mailing list for such changes. Based upon comments submitted by Mercury Marine and by the National Marine Manufacturers Association, the Board made an additional change to the regulation to clarify the duration of an exemption that allows for use of a tag that does not include the three star symbol.

Under the proposal noticed to the public on December 22, 1999, the exemption for hang tags on outboards would expire:

"the date the ARB certifies the first outboard engine family greater than 130 horsepower to the 2008 model year standards."

Similarly, the exemption for hang tags on personal watercraft would expire:

“the date the ARB certifies the first personal watercraft engine family to the 2008 model year standards.”

Mercury Marine and the National Marine Manufacturers Association both objected to this proposal. They noted that sudden expiration of the exemption would cause them to be out of compliance without notice and sufficient time to supply new hang tags. Responding to these comments, the Board sought to afford the manufacturers additional time by changing the proposal so that the exemption would continue until “the first model year after” the certification date described above.

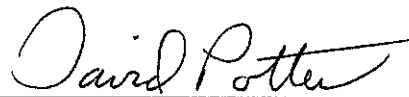
Although the Board’s responsiveness to the concerns of the regulated public is commendable, it must nevertheless follow prescribed APA procedures for soliciting additional public comment after making a substantial change to the regulation. The change is clearly one with regulatory effect, as it may afford additional time before the hang tag must display a three star image. Please refer to Government Code sections 11346.8, subdivision (c), and 11347.3, subdivision (b)(9), and CCR, Title 1, section 44 for information concerning the applicable notice requirements.

Prior to resubmission please also correct the following minor defects noted by OAL during its review:

The beginning date of the last public comment period identified in section (B)(3) of the OAL form 400 is incorrect.

The display of citations in proposed section 2443.3, subdivision (b), paragraphs (2) and (3) contains errors in the use of parentheses.

Date: April 3, 2000



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