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Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Craig Tarpenning
Office of Administrative Law

FROM: George T. Poppic, Jr.
Senior Staff Counsel

DATE: 17 September 2004

SUBJECT: Small Off-Road Engines Regulations

In response to the issues you raised in our conversation this morning:

With respect to **TP 2005**, we have made the following revisions to the originally submitted document and have provided two copies:

1. In §90.103(a)(1) of Test Procedure 2005 ARB will add the words "in California" after the word "commerce" in the first sentence.
2. In the definition of "*Certification of Conformity*" in Test Procedure 2005, ARB will add the words "chapters 1 and 2" after the term "Part 5".
3. In section (2)(i) the definition of "*off-road engine*" ARB has clarified the reference to federal law to be 42 USC §7521.

With respect to the **exhaust emissions regulations**, we have made the following revisions to the originally submitted document and have provided seven copies:

4. The reference to the Code of Regulations in §2405.3(a)(1)(B) has been revised to be Article 1, Subchapter 1.25 of Title 17.
5. The reference to Chapter 1 in §2405.3 has been changed to Chapter 9.

With respect to the **evaporative emissions regulation**, we have made the following revisions to the originally submitted document and have provided seven copies:

6. In §2751 ARB will correct the numbering error.

7. In §2752(a)(12) ARB will correct the grammatical error "evaporative of" to "of evaporative"
8. The document referenced in §2752(a)(31) will be provided for inclusion into the rulemaking file. The document, ANSI B71.1, was proposed for inclusion by the regulated community. It is a document well known by and readily available to those who may be subject to this regulation.
9. ARB is not proposing any to change 2753(c)(3). This section provides that a manufacturer must give notice of any change to a certified evaporative emissions system. You have objected to the provision in that there is no time requirement for the notification. No time requirement is necessary. A manufacturer can only use certified emission systems. Before a manufacturer can use a modified system, therefore, the manufacturer must submit the modification for approval. If this explanation is not satisfactory, ARB is willing to delete this subsection in its entirety or replace it with a statement that a certified system that has been modified cannot be used without prior approval. The effect would be the same in any event.
10. ARB will revise the footnote to §2754 (footnote 3) by deleting the incomplete sentence at the end of the footnote.
11. ARB will correct the formatting and numbering errors in §2754(b)(1)(A).
12. The document referenced in §2759(c)(4)(C). The document, SAE J1930) will be provided for inclusion into the rulemaking file. This document is well known by and readily available to those who may be subject to this regulation.
13. ARB will change the references to a subsection (d) in §2760(c)(1), (2) and (3) to subsection (e).
14. ARB will change the reference to §2770 in §2763(a)(1) to §2771.
15. ARB will change the reference date for TP 901 in §2767(c) from September 25, 2003 to July 26, 2004. ARB is not proposing any additional change to §2767(c). In response to your question regarding whether the Executive Officer can withhold a determination of equivalency if a fuel tank meets the permeation standard the answer is no with the understanding that part of the equivalency analysis includes a statistical analysis of the data provided to ARB supporting equivalency.
16. ARB will change the reference in §2767(j) as stated in 4. above.
17. ARB will include citation to authority and reference in §§2754, 2754.1, 2754.2 and 2760.

18. You have interpreted §2770 to preclude the utilization of the procedures contained in that section by reference in other sections of the regulation including §§2754.1(b)(10) and (11) and 2769. We disagree with your analysis that the procedures contained in one section cannot be incorporated by reference into another. We believe this to be a standard practice. You have required a change to §2770 to provide for reference to the above mentioned sections. Accordingly, ARB will add a new subsection, §2770(a)(4), to specifically reference the three sections mentioned above to read as follows:

(a)(4) Pursuant to §§2754.1(b)(10) and (11) and 2769 above.

With respect to **CP 902**

19. You have also questioned the reference to timeliness of updates to Letters of Intent in §7.2 of CP 902. As noted in the text, a Letter of Intent is a planning aid for the allocation of resources. The regulated community objected having a specific time within which it must act and ARB therefore agreed to the language in its present form. The language in its present form is adequate for its purpose and therefore ARB is not proposing any modification to it.

With respect to the **Face Sheet**:

20. ARB will update Face Sheet Form 400 part B.2. to add the omitted sections 2752 and 2767.1 to of regulatory citations.

With respect to the **FSOR** a revised FSOR has been provided to include changes listed below, please replace with that which was originally submitted:

21. ARB will add the word "mandatory" before the words "recall of engines" in Comment 24.
22. You have expressed an objection over the discussion of recall alternatives in Comment 24. ARB agreed to provide this discussion at the request of the regulated community. You have objected to its content as constituting an "underground regulation". ARB disagrees with that analysis. The agency response presents only a summary interpretive discussion providing some insight as to how ARB would implement the recall alternative provision of the regulation. It does not purport to be a definitive or exhaustive analysis of the criteria that may be applied in any specific factual setting. If OAL persists in its analysis, ARB will remove the discussion from the FSOR and advise the regulated community that ARB has been precluded from responding as agreed.
23. ARB responses to OPEI's comments dated May 16th (pps. 3 and 4), incorporated as Attachment 1 in EMA's 45-Day comment letter dated September 25th, are addressed in responses to FSOR comments #1, #2, #17, and #45.

24. ARB will add Jeff Arnold's comment, dated September 25th (pps. 6 and 7), to comment #45 in the FSOR after EMA's comment. The agency response addresses Jeff Arnold's concern by allowing the Small Production Volume Tank exemption.
25. The EMA comment by Roger Gault dated September 25th (pps. 5 and 6) were addressed in response to comments #18, #21 and #22.
26. ARB response to Amos Gottlieb's comment regarding the fuel tank vapor seal, e-mail dated March 11th, is addressed in response to FSOR comment #201. ARB will respond to Amos Gottlieb's comment, regarding a request for a prescriptive standard for rollover valve, in a new Comment 302 provided below.

302. Comment: Suggest that the regulation be modified so that carbon canisters or the systems containing them be required to be equipped so that liquid fuel cannot enter the canister either during use or when the mower is tilted or inverted. (Random Technologies)

Agency Response: Rollover valves are industry standard components in evaporative emission systems. It is the manufacturers responsibility to design and manufacturer a safe product.

Substitute the attached revised "Certification" for closing the rulemaking record with that which was originally submitted, to reflect reopening of the rulemaking record to include addition of or changes to the above-mentioned documents.

The above responds to all issues you raised in our conversation. In the course of that discussion, you advised that all changes noted above, except item 9. which was not discussed, would be considered nonsubstantial changes. ARB agrees and proceeded on that basis.

Please feel free to contact me to contact me to discuss any of the above responses.