

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Addendum to the Final Statement of Reasons for Rulemaking, Including
Summary of Comments and Agency Response, for Emission Standards
and Test Procedures for New 2001 and Later Model Year Spark-Ignition
Marine Engines**

Public Hearing Date: **December 10, 1998**

Agenda Item No.: 98-14-2

I. BACKGROUND

On October 22, 1999, the Air Resources Board (ARB) submitted a Final Regulation Order, adopting sections 2440-2448, Title 13, California Code of Regulations (CCR), to California's Office of Administrative Law (OAL) for review, OAL File No. 99-1022-05S. On December 8, 1999, the OAL approved all regulatory sections submitted with the exception of section 2443.3, which it disapproved. Section 2443.3 requires that at point of sale each marine engine display a "hang tag" with facsimiles of the three environmental labels specified in the approved and effective section 2443.2.

In its December 15, 1999, notice, the OAL gave two principal reasons for disapproving section 2443.3, based on clarity problems with subsection (b)(2). First, the OAL found the period of applicability unclear. Subsection (a) had identified the hang tag requirements to apply beginning in model year 2001, while (b)(2) had stated such requirements applied until that year. Second, the OAL found unclear the criteria that the Executive Officer would use to set a date, other than the specified (and unclear) 2001 model year, as the date by which the two-label facsimile option could expire.

In response to the OAL disapproval, the ARB provided public notice of a third set of modifications to the regulatory text. The ARB received five letters during the comment period.

II. Applicability Period

2004 is the date that the ARB had intended in 2443.3(b)(2). Hang tags are required beginning in 2001, the first year of mandatory exhaust emission standards. In response to concerns about representing three engine emissions levels to consumers when only two were available, ARB had agreed that hang tags need only display two labels until no later than the 2004 model year for personal watercraft and outboard engines over 130 horsepower. In model year

2004, the third (Ultra-Low) emission label will be needed for comparison to the then minimum certification (Very Low) level. This regulatory language was changed accordingly in the third notice of modified text, and no comments were received regarding this change.

III. Executive Officer Discretion

The rationale for allowing the two-facsimile label hang-tag option disappears once Ultra-Low emitting versions of the affected engine types become commercially-available. Therefore, the ARB had intended for the Executive Officer to extinguish the two-facsimile option, thereby requiring hang tags to show all three labels, upon a determination that such engines were available. To clarify the criteria to be used in making such a determination, the regulatory language was changed accordingly in the third notice of modified text. Before 2004, the three-facsimile label will be required for personal watercraft hang tags if and when one engine is certified to the 2008 (Ultra-Low) standards, and similarly for outboards over 130 horsepower. The ARB received two comment letters that addressed points within the scope of the changes made in the third 15-day notice.

A. Applicable model year

1. **Comment:** As proposed in the most recent mail out, sections 2443.3(b)(2)(B) and 2443.3(b)(3)(B) provide the dates for implementation of the hang tag to be “the date the ARB certifies the first (outboard>130 HP/pwc) engine family to the 2008 model year standards.” Because engine information is typically confidential until the certification process is complete, implementation should be delayed until the following model year to allow the information to be communicated throughout the industry. As currently worded, the section is impossible to comply with, unless manufacturers have advance notice of what other manufacturers are doing, and this is not acceptable. It is suggested that “date” in 2443.3(b)(2)(B) and (b)(3)(B) be modified to “The first model year after the date...” (Mercury Marine, NMMA)

Agency Response: The ARB agrees with the commenter’s argument that manufacturers would need until the next model year to adjust their certification applications to comply with the potential loss of the two-tier facsimile hang tag option. Throughout the marine engine regulations, manufacturers’ duties are triggered by the model year for which they are producing engine families. The ARB had intended that the exempted manufacturers’ new obligations --to provide hang tag facsimiles and owners’ manual sections depicting all three labels with their certification applications – would be applicable in a given model year. Unfortunately, the ARB inadvertently used the incongruous term “date” in the third 15-day

notice. Accordingly, the ARB has made nonsubstantive changes to the text to align it with that intended in the third 15-day notice.

The model year to which the exempted manufacturers' new obligations apply cannot be the same one in which the first affected engine family is certified. To argue so would potentially render engines already on or in transit to showroom floors in violation. Certification applications pending at the ARB when it certifies the first affected engine to the 2008 standards must be similarly grandfathered, otherwise, as the commenter points out, manufacturers' compliance with subsections (c) and (d) would be impossible. Further, given the model year triggers, the regulation must allow the reasonable time period, until the following model year, for manufacturers to receive notice regarding to comply with their new obligations.

B. Engine family and power rating

2. **Comment:** Because the regulations provide for a manufacturer to use Family Emission Levels (FEL), and because the standard is a function of power, the applicability trigger is confusing. It is suggested that the term "engine family" in 2443.3 (b)(2)(B) and (b)(3)(B) be modified to require that the Trigger be when an engine family is certified to "an FEL at or below the 2008 model year standard for that engine family's rated power." (Mercury Marine, MNNA).

Agency Response: The ARB agrees that the commenter's additional suggested language describes how an "engine family" is certified, but is not making the suggested modification because the existing text already means what the commenter suggests. The term "certifies" includes a myriad of requirements that need not be specifically mentioned. Requirements pertaining to Family Emission Limit (FEL) and an engine family's rated power are implicit in certification.

Section 2441(a)(15) defines Family Emission Limit (FEL) as the emission value assigned by a marine engine manufacturer to an engine family for the purposes of complying with a corporate average exhaust emission standard. The FEL is the emission level manufacturers designate to a group of similar engines, taking into account product variability and in-use deterioration, that they certify they will not exceed. Though the FEL may not be the actual emission level of a given engine, the FEL value is used to determine compliance should the ARB audit the engine. Because manufacturers must designate an FEL for the engine or engines in any family to be certified for sale in California, adding the term FEL here would be redundant; i.e., every certified engine is part of some certified family with a given FEL.

The phrase "...for that engine family's rated power" is likewise unnecessary because rating an engine's power in turn is part of certifying engine families to FELs. In section 2442(a) the emission standards for marine engines are based on the "engine family's power rating" which is defined as P_{tx} . P_{tx} is further defined in section 2442(b) as the average power in kw (sales-weighted) of the subject engine family produced for sale in California in model year x. Certified Engine families must by definition contain an FEL, and in order to establish an FEL, the manufacturer must incorporate the engine family's rated power.

IV. Comments Outside the Scope

The remainder of the comments in Mercury Marine's and NMMA's letters, and all points in the other three letters received, were outside the scope of modifications to the text noticed in this third 15-day notice. That is, they are directed either at issues resolved at the December, 1998 hearing or at issues not raised by the proposed modified text, or both. Though the ARB need not respond to such comments, all issues raised therein were addressed in earlier Final Statement sections.

V. Late Submittals

The ARB continued to receive comments outside the public comment periods that addressed issues substantially similar to those identified elsewhere in this Final Statement.

VI. Signatories to Written Comments – Third 15-Day Modifications

Forton, Mike
Mercury Marine, signed by Susan Bucheger
National Marine Manufacturers Association, signed by Betsy L. Oilman
San Diego Council of Bass Clubs, by James M. Thompson
Spenger, Frank L.

VII. Conclusion

The ARB believes that the text has been sufficiently clarified, consistent with the Board's directives at the hearing, to specify both an endpoint (2004) and the earliest model year affected (that following the date the first engine certifies to the 2008 exhaust emission standards) such that affected manufacturers can now determine the conditions affecting the expiration of the two-tier hang tag option.