

**State of California  
California Environmental Protection Agency  
AIR RESOURCES BOARD**

**PUBLIC HEARING TO CONSIDER PROPOSED CALIFORNIA EVALUATION  
PROCEDURES FOR AFTERMARKET CRITICAL EMISSION CONTROL PARTS  
ON HIGHWAY MOTORCYCLES**

**FINAL STATEMENT OF REASONS**

**JUNE 2009**

State of California  
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER PROPOSED CALIFORNIA EVALUATION  
PROCEDURES FOR AFTERMARKET CRITICAL EMISSION CONTROL PARTS  
ON HIGHWAY MOTORCYCLES

Public Hearing Date: January 22, 2009  
Agenda Item No.: 09-1-3

**I. General**

The Staff Report: Initial Statement of Reasons for Rulemaking ("Staff Report") entitled "Public Hearing to Consider Proposed California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles," released October 24, 2008, is incorporated by reference herein.

In this rulemaking, the Air Resources Board (ARB or Board) adopted amendments to existing aftermarket part regulations that would allow manufacturers, for the first time, to sell, offer for sale, advertise, or install aftermarket critical emission control parts for highway motorcycles. Aftermarket critical emission control parts for highway motorcycles include, but are not limited to, catalytic converters, oxygen sensors, and hydrocarbon adsorbers. Since these parts are typically installed on new or relatively new highway motorcycles that are still under warranty for emissions, the incorporated evaluation procedures require part manufacturers to demonstrate the emissions reliability and durability of parts over the motorcycles' useful lives, similar to what motorcycle manufacturers do to obtain new vehicle emissions certification from ARB. The requirements correspondingly include vehicle mileage accumulation and emissions testing, emission defects warranty and recordkeeping requirements, audit testing, warranty defects reporting, and recall procedures. The adopted provisions require that any exempted aftermarket critical emission control part demonstrate equivalent durability, functionality, and emissions compliance characteristics as the original emission control part it replaces to receive an exemption from California's anti-tampering laws.

On October 24, 2008, ARB published a notice for a December 11, 2008, public hearing to consider the proposed regulatory action. A Staff Report: Initial Statement of Reasons (Staff Report) was also made available for public review and comment beginning October 24, 2008. The Staff Report provides the rationale for the adopted amendment and incorporated evaluation procedures. The text of the proposed amendment to title 13, California Code of Regulations (CCR), section 2222 and the test procedure incorporated by reference therein, "California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles" was included as an Appendix to the Staff Report. These documents were also posted on ARB's Internet website for the rulemaking at:

<http://www.arb.ca.gov/regact/2008/amhmc08/amhmc08.htm>

On November 7, 2008, a Notice of Postponement was issued delaying consideration of the proposed amendments until a hearing on January 22, 2009. All of the applicable rulemaking documents were posted at the ARB Internet website address noted above.

On January 22, 2009, the Board conducted the public hearing and received oral and written comments. At the conclusion of the hearing, the Board adopted Resolution 09-2, which approved the proposed amendment without modification.

This Final Statement of Reasons contains a summary of the comments received by the Board on the proposed regulatory amendments and ARB's responses to those comments, and clarifies minor issues that arose during this rulemaking.

**Incorporation of Test Procedures.** The regulatory amendment approved by the Board incorporates by reference new evaluation procedures for aftermarket critical emission control parts on highway motorcycles that in turn incorporate United States Environmental Protection Agency test procedures in Title 40, Code of Federal Regulations (CFR), Part 86.

Title 13, CCR, section 2222(j) incorporates by reference "California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles," as adopted January 22, 2009. These incorporated evaluation procedures were identified by title in the informative digest of the notice of proposed action (no date of publication or issuance was specified as the evaluation procedure was proposed for adoption in the notice) and is identified by title and date in title 13, CCR, section 2222(j). The incorporated evaluation procedures are readily available from ARB upon request, and were made available in the context of this rulemaking in the manner specified in Government Code Section 11346.5(b). The CFR is published by the Office of the Federal Register, National Archives and Records Administration, and is therefore reasonably available to the affected public from a commonly known source.

The federal test procedures are incorporated by reference because it would be impractical to print them in the CCR. Existing ARB administrative practice has been to have test procedures incorporated by reference rather than printed in the CCR because these procedures are highly technical and complex. They include the "nuts and bolts" engineering protocols and laboratory practices required for certification of regulated engines and equipment, and have a very limited audience. Because ARB has never printed complete test procedures in the CCR, the affected public is accustomed to the incorporation format utilized therein. ARB's test procedures as a whole are extensive and it would be both cumbersome and expensive to print these lengthy, technically complex procedures with a limited audience in the CCR. Printing portions of ARB's test procedures that are incorporated by reference would be unnecessarily confusing to the affected public.

The test procedures incorporate portions of the CFR because many ARB requirements are substantially based on federal regulations. Manufacturers typically certify vehicles and engines to a version of the federal emission standards and test procedures that have been modified by state requirements. Incorporation of the

federal regulations by reference makes it easier for manufacturers to know when the two sets of requirements are identical and when they differ. Each of the incorporated CFR provisions is identified by date in ARB's evaluation procedures.

**Fiscal impacts.** The Board has determined that this regulatory action would not result in a mandate to any local agency or school district, the costs of which are reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code. The Board has further determined that the proposed regulatory action would result in some additional costs to ARB to implement and enforce this regulatory action. In addition, the Board has determined that the proposed regulatory action would not create costs or savings in federal funding to the State, and will not result in other nondiscretionary savings to State or local agencies.

**Consideration of Alternatives.** The regulatory amendment and incorporated evaluation procedures proposed in this rulemaking were the result of extensive discussions and meetings involving ARB and manufacturers of motorcycle aftermarket exhaust systems. As discussed in the Staff Report, staff evaluated and ultimately rejected two regulatory alternatives: (1) require manufacturers to equip highway motorcycles with an aftermarket critical emission control part and submit a certification application for both the motorcycle and the aftermarket critical emission control part, and (2) leave the requirements for new aftermarket parts unchanged.

For the reasons set forth in the Staff Report, and based on staff's comments and responses at the hearing and in this FSOR, the Board has determined that no alternative considered by the agency or brought to the attention of the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

The Board rejected the alternative of requiring part manufacturers to essentially recertify highway motorcycles equipped with aftermarket critical emission control parts because this would have imposed very significant annual costs (i.e., costs associated with obtaining certification of new highway motorcycles) on part manufacturers that would exceed most of their financial and other resources, and would likely cause many to go out of business or to scale back their product offerings.

The Board rejected the alternative of not changing current requirements because this would not prevent the sale of illegal aftermarket critical emission control parts and the emissions increases associated with such parts. Furthermore, inaction would also prevent parts manufacturers from legally selling products that have been designed to ensure that highway motorcycles can comply with applicable emission standards and that have demonstrated levels of durability equivalent to original equipment manufacturer parts.

## II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The ARB received written and oral comments during the 45-day comment period in response to the October 24, 2008, public hearing notice. At the January 22, 2009, Board Hearing, ARB received written comments and/or oral testimony from:

Dr. Joseph Kubsch, Manufacturers of Emission Controls Association (MECA)  
Mr. John Paliwoda, California Motorcycle Dealers Association (CMDA)  
Mr. Tom Austin, Motorcycle Industry Council (MIC)  
Ms. Bonnie Holmes-Gen, American Lung Association (ALA)

Written comments in response to the 45-day notice were received during the comment period prior to the hearing from:

Mr. Rasto Brezny, (MECA)  
Mr. Barry Wallerstein, South Coast Air Quality Management District (SCAQMD)

Set forth below is a summary of each objection or recommendation made regarding the specific regulatory action proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. The comments have been grouped by topic whenever possible. MECA, ALA and SCAQMD provided comments and/or testimony in support of the regulation without making any objections or recommendations for changes. Their comments, therefore, are not included in the summary.

### RECORDKEEPING REQUIREMENTS APPLICABLE TO INSTALLERS AND RETAILERS

1. **Comment:** Section (c)(2)(D)(ii) of the “California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles” requires retailers and installers to “keep more detailed records than they are now required to, including vehicle identification numbers (VINs).” (CMDA)

**Agency Response:** The agency disagrees with CMDA’s characterization of the recordkeeping requirements. The agency has made clear throughout the Staff Report (pp. iii, 1, and 4) that no exemption procedures currently exist for non-OEM aftermarket critical emission control parts for highway motorcycles, and therefore retailers and installers are presently not required to maintain any records related to these critical emission control parts.

To the extent that CMDA’s comment can be construed as comparing the recordkeeping requirements to existing recordkeeping requirements, as explained in section V.B of the Staff Report, parts dealers and retailers are currently required to maintain records related to the sale or installation of non-exempted parts. The more extensive recordkeeping requirements are justified for critical emission control parts, given that the approved amendments allow exempted parts to replace fully functional OEM emission

control systems within the original emission warranty period, and given that the procedures also incorporate safeguards to ensure that any exempted parts do not reduce the effectiveness of any required pollution control device or cause motorcycles to exceed applicable emission standards, as required by Vehicle Code sections 27156 and 38391.

2. **Comment:** Often consumers do not want to disclose personal information to retailers and the less information that must be collected by retailers the better. **(CMDA)**

**Agency Response:** The Agency's response to Comment #1 is incorporated herein. Consumers of non-exempted parts for highway motorcycles are presently required to provide their names and addresses to parts dealers and retailers pursuant to Title 13, California Code of Regulations section 2222(f). The evaluation procedures' requirement that consumers provide names and addresses simply mirrors existing requirements. Moreover, it is important to remember that the adopted amendments and evaluation procedures establish an exemption process for parts that highway motorcycle owners elect to install, and owners are not required to purchase such parts.

3. **Comment:** Most consumers will not have their motorcycle VINs when they attempt to purchase aftermarket critical emission control parts, because they will drive to the dealership in a car or truck to carry the part home, instead of riding in on their motorcycle. Dealers will then be forced to turn away these customers, resulting in lost sales, and those customers will likely purchase and install non-exempted parts, which will lead to increased emissions. **(CMDA and MIC).**

"Currently there is no requirement that records of VINs be maintained for sales of legal emissions parts, so consumer resistance to that disclosure will be powerful." **(CMDA)**

**Agency Response:** Requiring consumers to provide their motorcycle VINs when purchasing exempted parts may require consumers to modify their existing purchasing habits, but such modifications should not be significant. James Goldstene, ARB's Executive Officer, explained at the public hearing that motorcycle operators are required to carry their registrations when operating motorcycles, and that those registrations contain the motorcycle VINs. Therefore, after the first time owners are unable to purchase exempted parts, they can readily obtain the VINs from their registrations and provide them during their subsequent visits to dealers.

The Agency does not believe that owners who are precluded from purchasing exempted parts because they did not supply a VIN will instead purchase and install non-exempted parts, because doing so violates the law, and the requirement to collect VINs applies to all installers and retailers that supply,

distribute, offer for sale, advertise, or install aftermarket critical emission control parts for sale in California.

The Agency disagrees with CMDA's comment that there is currently no requirement to maintain records of VINs for sales of legal emissions parts. Current regulations for aftermarket catalytic converters used in automobiles also require the collection of VINs during purchase. Also, see the Agency's response to Comment #1 above.

4. **Comment:** Most dealers will never realize they are required to record the motorcycle's VIN before selling an exempted aftermarket critical emission control part. **(MIC)**

**Agency Response:** Jackie Lourenco, Chief of the New Vehicle/Engine Programs Branch, indicated at the public hearing that ARB will work with both MIC and CMDA to inform parts dealers and retailers of their compliance requirements arising from this regulatory action.

5. **Comment:** The requirement for providing a VIN is unnecessary because "the combination of warranty card returns, the collection of customer information by most dealers and, if necessary, advertising will be sufficient to track down owners in the unlikely event of a recall. (I say unlikely because all catalyst-equipped exhaust systems sold pursuant to this regulation are going to undergo the same durability testing required of OEM systems before they are approved for sale)." **(MIC)**

CMDA and MIC suggest that section (c)(2)(D)(ii) of the evaluation procedures be amended to include "requiring retailers to retain aftermarket critical emission control part sale or installation documentation that consists only of the following: part number, model number, date of sale and/or installation, and the name and address of the buyer, if available." **(CMDA and MIC)**

The requirement for recording the VIN should be deleted. "We think the specific language suggested by the California Motorcycle Dealers Association (CMDA) is reasonable and we encourage the board to accept CMDA's recommendation." **(MIC)**

**Agency Response:** No change was made in response to this comment. The Agency disagrees that requiring a motorcycle's VIN is unnecessary or redundant. The effectiveness of an ordered recall is highly dependent upon how successful aftermarket part manufacturers are in contacting owners of motorcycles with defective aftermarket emission control parts, and ensuring that the parts are repaired or replaced. The VIN allows aftermarket part manufacturers to accurately locate the motorcycle's owner based on the Department of Motor Vehicle's database. Locating an owner utilizing only an owner's name and address as provided on warranty cards could be less

effective because a motorcycle can be sold to a new owner, or its owner can move after a warranty card is submitted.

The Agency also disagrees with MIC's statement that warranty cards, customer information, and advertisements would be sufficient to locate owners during a recall. According to the adopted evaluation procedures, aftermarket part manufacturers are required to obtain a warranty card return rate of only 50 percent. In addition, as mentioned above, owner information may not be current or the motorcycle may have been sold after the warranty card was submitted. Advertisements would not provide adequate assurance because there is no guarantee that they would reach sufficient numbers of owners or be viewed, read or heard, due to their arbitrary nature.

Finally, the Agency disagrees with MIC's statement that it is unlikely that recalls will be needed for exempted aftermarket critical emission control parts. At the public hearing, Chief Deputy Executive Officer Tom Cackette explained that exempted parts will be subjected to severe operating environments such as vibrating exhaust systems and high exhaust flow rates, and there is a real risk that these parts will not perform as well as the original equipment manufacturer parts they replaced. This regulatory action therefore incorporates recall provisions to help ensure that any exempted parts will not reduce the effectiveness of any required pollution control device or will not cause the modified highway motorcycle to exceed applicable standards.