

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER ADOPTION OF REGULATION FOR THE
CERTIFICATION, PERFORMANCE STANDARDS, AND TEST PROCEDURES FOR
PORTABLE OUTBOARD MARINE TANKS AND COMPONENTS

Public Hearing Date: September 25, 2008
Agenda Item No.: 08-8-3

I GENERAL

In furtherance of its mandate to attain and maintain ambient air quality standards throughout California, the Air Resources Board (ARB) described proposed regulations in the Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Adoption of Regulation for the Certification, Performance Standards, and Test Procedures for Portable Outboard Marine Tanks and Components (Staff Report), released August 8, 2008 and incorporated by reference herein.

California law, including the California Clean Air Act as codified in the Health and Safety Code (HSC), including Sections 43013 and 43018, grants the ARB authority to regulate off-road mobile sources of emissions and fuels. Such sources include outboard engines, personal watercraft, all-terrain vehicles, off-road motorcycles and small off-road engines and equipment. Outboard engines use portable outboard marine tanks and components (OMT) to supply fuel for operation. ARB is therefore authorized to regulate OMT emissions both as an off-road mobile source and as an emission source associated with motor vehicle fuel.

The proposal was based on the principle of technology transfer. It requires permeation and evaporative technologies that are currently available, cost effective, and have already been applied to reduce various sources of gasoline vapor emissions including portable fuel containers (PFC) and small off-road engines and equipment (SORE).

On September 25, 2008, the Board conducted a public hearing to consider ARB staff's proposed regulation for OMT. After considering comments received during the 45-day public comment period, testimony received at the public hearing, and staff's proposed modifications to the regulation, the Board adopted Resolution 08-33 to approve the certification and test procedures that were incorporated by reference.

In accordance with section 11346.8 of the Government Code, the Resolution directed the ARB Executive Officer to incorporate modification into the proposed certification and test procedures, with such other conforming modifications as might be appropriate, and to make the modified text available for a supplemental comment period of at least 15 days.

The text of all the modifications to the originally posted certification and test procedures was made available for a supplemental 15-day public comment period with a "Notice of Public Availability of Modified Text (Notice)." This text was made available on February 4, 2009, to all necessary parties, including those who submitted comments during the 45-day comment period and other generally interested in the ARB's rulemaking concerning the control of evaporation and permeation of gasoline. The Notice listed the ARB internet web site from which interested parties could obtain the complete text of the incorporated documents that would be affected by the modifications to the original proposal, with all the modifications clearly indicated in strikeout and underline format. These documents were also published on ARB's internet web page (<http://www.arb.ca.gov/regact/2008/omt08/omt08.htm>) for this rulemaking on February 4, 2009.

As no further comments were received during the supplemental 15-day public comment period, the Executive Officer has taken final action to adopt the regulation, certification procedures and test procedures with the modifications as set forth in Attachment E to Resolution 08-33 adopted by the Board on September 25, 2008.

The regulation adds to title 13, California Code of Regulations (CCR), Chapter 9, and Article 6.5 sections 2468, 2468.1, 2468.2, 2468.3, 2468.4, 2468.5, 2468.6, 2468.7, 2468.8, 2468.9 and 2468.10. In addition the Board approved and the Executive Officer finalized the incorporated documents: "CP-510 Certification Procedure for Portable Outboard Marine Tanks and Components", "TP-511 Diurnal Rate from Portable Outboard Marine Tanks", and "TP-512 Permeation Rate from Portable Outboard Marine Tank Fuel Hoses and Portable Outboard Marine Tank Primer Bulbs."

The newly incorporated and adopted certification and testing procedures were available during the regulatory action and will continue to be available after Office of Administrative Law approval on ARB's internet web site, as well as in print upon request from ARB staff from the Evaporative Controls and Certification Branch. Because the newly incorporated certification and test procedures will be used by a very limited number of people, ARB has determined that it would be cumbersome, unduly expensive, and otherwise impractical to publish the document in the CCR.

Fiscal Impact: In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action may have minor impacts on the creation or elimination of new jobs within the State of California, and may have minor impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minor impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Section 11346.5 of the Government Code requires State agencies to estimate the cost or savings to any State, local agency and school district in accordance with instructions adopted by the Department of Finance. The estimate shall include any non-discretionary cost or savings to local agencies and the cost or savings in federal funding to the State. The Executive Officer has determined that there are no significant costs to any State, local agency or school district imposed by the proposed regulation.

In accordance with Government Code section 11346.9, the Executive Office has determined that the proposed regulatory action does not impose a mandate on any State or local agencies or school districts

The Executive Officer has found that there are no significant economic impacts to business within California due to the performance standards or implementation schedule. Businesses potentially affected by the regulation include manufacturers of OMT tanks and components. The regulation will impose additional certification costs on OMT tank and component manufacturers. The potential impact on a retail customer is an increase in the initial cost of the OMT tank and associated components offset by a fuel savings over the life of the OMT. These costs are found in the compliance costs and savings discussion found in the Staff Report

The regulation is not expected to have an adverse impact on the status of California businesses. Manufacturers of OMTs are located outside of the State and are expected to pass cost increases on to the consumer. The consumer will ultimately benefit from the fuel savings associated with reduced fuel losses.

A full discussion of the costs, savings and impacts due to the regulation can be found on pages 13 through 16 of the Staff Report

The Board has further determined that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective is carrying out the purpose for which the action is prescribed or would be as effective as and less burdensome to affected private persons or businesses than the prescribed action. After considering the staff's alternatives, there having been no other alternatives presented or brought to its attention, the Board approved the regulation as the most effective action.

II MODIFICATIONS TO THE ORIGINAL PROPOSAL

At the hearing the staff presented, and the Board approved, modifications to the regulation originally proposed in the Staff Report released on August 8, 2008, in response to continuing review and comments received since the Staff Report was published. The modifications, described in detail below, affect the text of certification and test procedures, CP-510, TP-511, and TP-512.

A Modifications to CP-510

Section 2 of CP-510 was modified from original noticing to provide clarity to affected industry regarding the test results accepted for certification. The modifications clarify for affected industry that test results used for Federal certification can also be used for California certification.

B Modifications to TP-511 and TP-512

As originally noticed section 5.7 of TP-511 and section 5.6 of TP-512, Test Fuel required the use of E-10 defined as 90% fuel complying with California Phase 3 Reformulated Gasoline requirements with 10% +/- 0.5% by volume Ethanol. E-10 was replaced with CE10 which is a blend of 45% toluene, 45% isooctane, and 10% ethanol that has been standardized in the American Society of Testing and Materials publication D471-98 (ASTM D471-98) as a reference fuel for evaluating the evaporative permeability of fuel-containing materials.

III SUMMARY OF COMMENTS AND AGENCY RESPONSES

During the 45-day comment period, Staff received written comments from Wayne Garver of Saint Gobain and communicated verbally with the following organizations and companies:

- National Marine Manufacturers Association (NMMA) – John McKnight
- Scepter Corporation – David Jones
- Mercury Marine – Mark Reichers
- Moeller Marine – Earnie Cook
- Yamaha – Dan Ostroski

Each of these companies expressed concern over the designation of the fuel used for testing to determine compliance with the standards. Additional concerns expressed include whether the hose and primer bulb are to be tested separately or as an assembly and that requiring six test samples is excessive. The following is a summary of the issues discussed, the comments and the Board's response:

ISSUE SUMMARY:

There are actually two issues with the test fuel that are closely related.

1. The fuel required for certification and compliance testing as specified in the notice of public availability released on August 8, 2008 was E-10 defined as 90% fuel complying with California Phase 3 Reformulated Gasoline requirements with 10% +/- 0.5% by volume Ethanol (RFG3-E10). Affected industry expressed a need for a more definitive specification of the fuel to be used. In other words industry wanted a precise specification of RFG3-E10.
2. Affected industry expressed a concern about the availability of RFG3-E10.

COMMENT SUMMARY:

Manufacturers of OMT, the NMMA and users requested that specifications for the fuel used for certification and compliance testing be explicitly stated in the certification and test procedures to provide consistency for testing or replace the requirement in the noticed documents with a more readily available fuel such as CE10.

BOARD RESPONSE:

Staff agreed with affected industry and proposed to the Board a modification to the test fuel, replacing RFG3-E10 with CE10 to provide consistency with federal certification provisions.

COMMENT SUMMARY:

The test procedure for hoses and primer bulbs does not expressly state whether the hose and bulb are to be tested separately or as an assembly. {identify commenter(s)}

BOARD RESPONSE:

Staff drafted the test procedure to ensure flexibility for manufacturers. A manufacturer can test a hose, a primer bulb or an assembly of the two, depending on how the manufacturer is intending on marketing the regulated item.

COMMENT SUMMARY:

The requirement for six test specimens is excessive compared to the three specimens contained in SAE J30 and SAE J1527 which are acceptable for compliance with the EPA regulation. {identify commenter(s)}

BOARD RESPONSE:

Staff believes six test specimens provides a more robust and statistically valid result. {need more here: some reason 3 is not enough and 6 is}