

State of California  
Air Resources Board

Resolution 08-41

November 21, 2008

Agenda Item No.: 08-10-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or the Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Health and Safety Code sections 43013 and 43018 direct ARB to set emission control requirements for off-road mobile source categories including marine vessels, locomotives, utility engines, off-road motorcycles, and off-highway vehicles;

WHEREAS, section 209(e)(1) of the federal Clean Air Act preempts states and their political subdivisions, including the State of California and the local districts, from adopting or enforcing emission standards or other requirements relating to the control of emissions of new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles;

WHEREAS, section 209(e)(2) authorizes California to adopt standards and to seek authorization from the United States Environmental Protection Agency (U.S. EPA) prior to enforcing emission standards or other requirements relating to the control of emissions from nonroad engines, not otherwise preempted by section 209(e)(1);

WHEREAS, in 1998, the Board adopted certification emission credits intended to provide flexibility to small off-road engine and equipment manufacturers and represent real and enforceable emission reductions beyond those required by regulation;

WHEREAS, in 1998, the Board also adopted production emission credits which were intended to be used to offset compliance problems, and were considered and rejected by U.S. EPA;

WHEREAS, in 2003, the Board adopted more stringent exhaust emission standards which were based on reductions achievable with the use of a catalyst;

WHEREAS, manufacturers have requested that ARB harmonize with the federal certification fuel requirements in regards to the ethanol content, which may be up to ten percent of the fuel by volume;

WHEREAS, the existing program includes regulations and procedures for emission control labels, warranties, enforcement procedures, and compliance testing necessary to adequately enforce the exhaust emission standards and test procedures;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

Exhaust emissions from small off-road engines remain a significant source of air pollution;

Manufacturers were able to earn a large amount of emission credits by making small off-road engines incrementally cleaner than the Tier 2 emission standards.

Excessive accumulation of emission credits has kept small off-road engines from achieving expected emission;

Despite the fact that the last of the Tier 3 emission standards went into effect in 2008, over seventy percent of small off-road engines do not meet the standards directly but only through the use of emission credits;

Certification emission credits are based on the difference between the emission standards and the level at which the manufacturer certifies the engine;

Production emission credits are based on the difference between manufacturer's compliance level and emissions certification level;

Production emission credits do not necessarily represent emission reductions beyond those required by regulation and may not, therefore, represent real emission reductions;

Production emission credits can be converted to certification emission credits with a slight discount;

Equipment with small off-road engines has a useful life of approximately five years of which benefits of credits are experienced;

Certification emission credits remain banked beyond the equipment's useful life;

To meet the emission reduction requirements of State and federal laws, ARB must ensure that expected emission reductions from mobile sources, including small off-road engines are being achieved;

Promotion of zero emission equipment credits may aid engine and equipment manufacturers in marketing zero emission equipment and encourage development of advanced cleaner technology, leading to possible reduced emissions;

Consumers often do not receive adequate warranty coverage due to language barriers between the warranty contact and the consumer;

Durability is currently defined in hours, even though small off-road engines generally do not have hour meters;

Certification fuel requirements are not harmonized with U.S. EPA's rules and may unnecessarily increase certification costs for the manufacturers;

WHEREAS, the Board further finds that:

Limiting the lifetime of certification emission credits is necessary to keep emission credits from accumulating indefinitely;

Elimination of production emission credits is necessary to ensure real emission benefits;

Introduction of zero emission equipment credits would encourage advancement in technology for cleaner small off-road equipment;

Requiring manufacturers to provide an American toll free warranty contact number with an English speaking contact would provide better warranty protection for the consumer;

Including a useful life definition in terms of years of use at five years in addition to the hours of use definition would provide a more measurable useful life definition;

Allowing the use of fuel with an ethanol content of up to ten percent will more closely align with U.S. EPA procedure and will simplify the process of certification for industry;

The regulations would not result in any adverse environmental impacts;

The economic and cost impacts of the amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The amendments to the small off-road engine regulations are necessary, cost-effective, and technologically feasible to carry out the purposes of the state and federal clean air laws;

No alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 2403, 2405, 2406, 2408, and 2409, title 13, California Code of Regulations and the "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines" as set forth in Attachment A-1 hereto, with the modifications described in Attachment A-2 hereto.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California small off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the California emission standards and test procedures as adopted herein will not cause the California requirements to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the Environmental Protection Agency pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that pursuant to the determinations set forth above, the Board directs staff to file a request for authorization from the United States Environmental Protection Agency pursuant to section 209(e)(2) of Title II of the federal Clean Air Act as amended in 1990 to the extent necessary.

I hereby certify that the above is a true and correct copy of Resolution 08-41, as adopted by the Air Resources Board.

/s/

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Monica Vejar, Clerk of the Board

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**Identification of Attachments to the Board Resolution**

ATTACHMENT A-1: Proposed Amendments to the California Regulations for Small Off-Road Engines, section 2403, 2405, 2406, 2408, and 2409 within Chapter 9, Title 13, California Code of Regulations, as set forth in the attachment A to the Initial Statement of Reasons, released October 3, 2008.

ATTACHMENT A-2: Proposed Amendments to the "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines," as set forth in the attachment B to the Initial Statement of Reasons, released October 3, 2008.