

State of California
AIR RESOURCES BOARD

Resolution 98-66

December 10, 1998

Agenda Item No.: 98-14-5

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) 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, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or nonvehicle engine categories;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date;

WHEREAS, in January 1994 the Board adopted title 13, California Code of Regulations, Division 3, Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines" and its incorporated documents, which established exhaust emission standards, test procedures, and enforcement provisions for off-highway recreational vehicles and engines;

WHEREAS, the off-highway recreational vehicles and engines subject to the above regulations included off-road motorcycles, all-terrain vehicles (ATVs), golf carts, specialty vehicle engines less than 25 horsepower, and go-karts and specialty vehicle engines 25 horsepower and greater;

WHEREAS, with regard to off-road motorcycles and ATVs, the emissions standards of the above regulations apply to off-road motorcycles and ATVs with engines greater than 90 cubic centimeters produced on or after January 1, 1997, and to off-road motorcycles and ATVs with engines 90 cubic centimeters or less produced on or after January 1, 1999;

WHEREAS, the State Implementation Plan (SIP) adopted by the Board in November 1994, which establishes the state strategy for attaining the national ambient air quality standards for ozone in all areas of the state by 2010 as required by federal law, includes the emissions reductions associated with the current standards for off-highway recreational vehicles;

WHEREAS, in March 1998 the Board adopted amendments to title 13, California Code of Regulations, Division 3, Chapter 9, Article 1, "Small Off-Road Engines" and its incorporated documents, which designate emission standards and test procedures for small off-road engines;

WHEREAS, as a result of the March 1998 amendments to title 13, California Code of Regulations, Division 3, Chapter 9, Article 1, "Small Off-Road Engines," the engines regulated under this Article now include specialty vehicle engines less than 25 horsepower, which were previously regulated under title 13, California Code of Regulations, Division 3, Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines";

WHEREAS, in October 1998 the Board adopted title 13, California Code of Regulations, Division 3, Chapter 9, Article 4.5, "New 2001 and Later Off-Road Large Spark-Ignition Engines (25 and Greater Horsepower)" and its incorporated documents, which established exhaust emission standards and test procedures for off-road large spark-ignition (LSI) engines 25 horsepower and greater;

WHEREAS, the engines regulated under title 13, California Code of Regulations, Division 3, Chapter 9, Article 4.5, "New 2001 and Later Off-Road Large Spark-Ignition Engines (25 and Greater Horsepower)" include go-kart and specialty vehicle engines 25 horsepower and greater, which were previously regulated under title 13, California Code of Regulations, Division 3, Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines";

WHEREAS, there are currently no equivalent federal regulations for off-highway recreational vehicles;

WHEREAS, for off-highway recreational vehicles to be ridden in California Off-Highway Vehicle areas, they must receive a green sticker upon Department of Motor Vehicle (DMV) registration;

WHEREAS, to receive a green sticker from DMV, off-highway recreational vehicles must comply with the off-highway recreational vehicle regulations;

WHEREAS, when the Board adopted the off-highway recreational vehicle regulations in January 1994, the ARB believed that a full line of complying off-road motorcycles and ATVs could be produced and available to consumers in 1997, and manufacturers supported the implementation of the regulations and anticipated the introduction of new, cleaner off-road motorcycles;

WHEREAS, after the standards for off-highway recreational vehicles were adopted in 1994, but before the January 1, 1997 implementation date, off-highway recreational vehicle user groups and dealers expressed concerns that an adequate variety of complying off-highway recreational vehicles would not be available;

WHEREAS, although manufacturers have produced an adequate variety of complying ATV models, and Honda has produced several models of complying four-stroke off-road motorcycles, there is still not an adequate variety of complying off-road motorcycles;

WHEREAS, to address the concerns of the user groups and dealers, the Recreational Off-Highway Vehicle Working Committee was formed in April 1997, which included representatives from ARB, Department of Motor Vehicles, Department of Parks and Recreation, Bureau of Land Management, United States Forest Service, American Motorcyclist Association, American Trials Association, California Motorcycle Dealers Association, California Off-Road Vehicle Association, Motorcycle Industry Council, K. H. Wolf Consulting (representing various aftermarket and small-volume manufacturers), American Honda Motor Company, American Suzuki Motor Corporation, Kawasaki Motors Corporation, and Yamaha Motor Corporation;

WHEREAS, during the course of the Recreational Off-Highway Vehicle Working Committee meetings, it became apparent that the benefits of the adopted regulations were being impeded because the shift to complying off-road motorcycles was not occurring, owners of new non-complying motorcycles were obtaining registration and use permits, and competitive riders were not provided with adequate practice opportunities, and that a regulatory solution was necessary;

WHEREAS, staff proposes to create riding seasons, designed to coincide with times and places favorable to good air quality, during which non-emission-compliant off-highway recreational vehicles could be ridden in Off-Highway Vehicle areas, thus addressing the needs of users to ride the variety of off-road motorcycles that are available;

WHEREAS, in the short term, until manufacturers produce a full line of emission-compliant off-road motorcycles, the creation of riding seasons as described above should maintain availability of non-emission-compliant off-road motorcycles, and thus address dealers' concerns for having an adequate availability of the off-road motorcycle models currently available;

WHEREAS, staff proposes to allow for certification of non-emission-compliant off-highway recreational vehicles, and that such certified vehicles would be eligible to receive red stickers upon DMV registration, and that vehicles with red stickers could be ridden in Off-Highway Vehicle areas only during the designated riding seasons;

WHEREAS, staff proposes that certified emission-compliant off-highway recreational vehicles continue to be eligible to receive green stickers upon DMV registration, which would allow them to continue to be ridden year-round in all Off-Highway Vehicle areas;

WHEREAS, some off-highway recreational vehicle manufacturers that currently do not have and cannot obtain federal Vehicle Identification Numbers issued from the National Highway Traffic and Safety Administration, can obtain alternative Vehicle Identification Numbers from the Society of Automotive Engineers, which satisfy California's requirements;

WHEREAS, maintaining the current emission standards for off-highway recreational vehicles, while allowing non-emission-compliant off-highway recreational vehicles to be ridden during the

riding seasons described above, and listed in Table I of proposed section 2415, title 13, California Code of Regulations, would still provide incentive to manufacturers to produce emission-compliant off-road motorcycles, because users would still want off-road motorcycles that could be ridden year-round in all Off-Highway Vehicle areas;

WHEREAS, the Board has considered how the creation of riding seasons as described above would affect hydrocarbon (HC) and oxides of nitrogen (NO_x) emissions in ozone attainment areas and in ozone nonattainment areas;

WHEREAS, the Board has considered how the creation of riding seasons as described above would affect exceedances of the California ambient air quality standards for particulate matter (PM);

WHEREAS, the Board has considered the impact of having fewer emission-compliant off-road motorcycles in the short term than would exist under the current regulations on short term HC and NO_x emissions, relative to the current regulations, in ozone nonattainment areas;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that 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, the Governor's Executive Order W144-97 requires that regulations proposed by state agencies contain a provision for Sunset Review;

WHEREAS, the Board has considered the effects of the proposed standards on the economy of the state;

WHEREAS, section 209(e) of the federal Clean Air Act, as amended in 1990, requires that the ARB receive authorization from the U.S. EPA Administrator to adopt and enforce standards relating to the control of emissions from nonroad engines or vehicles;

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:

Despite advances in reducing emissions from motor vehicles, California still has the most severe air pollution problems in the United States;

To meet Federal and California Clean Air Act emissions reductions requirements, ARB must continue to seek proportional and incremental reductions from all sources under its authority, including off-highway recreational vehicles;

Adopting the proposed riding seasons for Off-Highway Vehicle riding areas will allow for the recreational use of off-road motorcycle models, whether emission-compliant or non-emission-compliant, thus responding to the desire of users to ride the variety of off-road motorcycles that are available;

To ensure that the proper sticker is applied to off-highway vehicles, the regulations must require alternative identification for vehicles that have not received a federal Vehicle Identification Number;

Adopting the proposed riding seasons for Off-Highway Vehicle riding areas will result in continued availability, until manufacturers produce a full line of emission-compliant products, for non-emission-compliant off-road motorcycles, thus responding to the needs of dealers to sell an adequate variety of the off-road motorcycles currently available;

Maintaining the current emission standards for off-highway recreational vehicles, while adopting the riding seasons for non-emission-compliant off-highway recreational vehicles, would still provide incentive to manufacturers to produce emission-compliant off-road motorcycles for unlimited use;

If there is a change in designation from ozone nonattainment to ozone attainment for an area in which Off-Highway Vehicle areas reside, or if there are changes in the geographic domain of Off-Highway Vehicle areas, the Executive Officer should have the authority to revise the riding seasons, without consulting the Board, provided that such revisions would not result in or contribute to exceedances of the California one-hour ambient air quality standard for ozone;

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 proposed amendments to the off-highway recreational vehicle regulations would cause an increase in HC and NO_x emissions in some ozone attainment areas, and in some ozone nonattainment areas during certain months without an ozone problem;

The creation of riding seasons as described above should not cause or contribute to exceedances of the California ambient air quality standards for particulate matter (PM), although it would cause an increase in PM in times and places that non-emission-compliant vehicles would be ridden;

The proposed amendments to the off-highway recreational vehicle regulations would cause a short term HC and NO_x emissions decrease, relative to the current regulations, in ozone nonattainment areas during months when the ozone standard may be exceeded;

There are no other feasible alternatives or mitigation measures that would reduce these potential adverse environmental impacts while at the same time providing the benefits described above;

The considerations identified above override any adverse environmental impacts that may occur as a result of achieving fewer emissions reductions statewide from off-highway recreational vehicles in the near term; and

The proposed regulations contain an adequate Sunset Review provision.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves amendments to Title 13, California Code of Regulations, Division 3, Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines," sections 2411-2414, and the incorporated "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines"; and approves Title 13, California Code of Regulations, Division 3, Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines," sections 2415, "California Off-Highway Vehicle Areas and Riding Seasons for Off-Highway Recreational Vehicles With Use Restrictions," all as set forth in Attachment A hereto, with the modifications described in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to consult with District 38 of the American Motorcyclists Association regarding the year-round prohibition on riding in two OHV areas in that District, as set forth in Attachment A hereto, and modify Attachment A as appropriate and make it available for public comment as provided below.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the above amendments as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto and such other conforming modifications and technical amendments as may be appropriate, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the amendments to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby grants the Executive Officer the authority to revise, without consultation with the Board, the Off-Highway Vehicle area riding seasons listed in Table 1 of section 2415(a), Title 13, California Code of Regulations, Division 3,

Chapter 9, Article 3, "Off-Highway Recreational Vehicles and Engines," under the conditions specified in section 2415(b) of this Article, provided that the Executive Officer shall publish in the California Regulatory Notice Register and notify potentially affected Off-Highway Vehicle Area Managing Entities regarding revisions to this Table at least 30 days before the revisions take effect.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause the California emissions 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 the Federal Clean Air Act, as amended, and raise no new issues affecting previous waiver determinations of the Administrator of the Environmental Protection Agency pursuant to section 209 of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the Environmental Protection Agency with a request for confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209 of the Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 98-66, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Resolution 98-66

December 10, 1998

Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to title 13, California Code of Regulations, sections 2410-2414, and proposed new section 2415, as set forth in Attachment A to the Staff Report: Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines (released October 23, 1998); and the incorporated "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines," as set forth in Attachment B to the Staff Report: Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines (released October 23, 1998).

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on December 10, 1998).