State of California
AIR RESOURCES BOARD

Resolution 03-19

July 24, 2003

Agenda Item No.: 03-6-3

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, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or non-vehicle engine categories;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state and, in sections 39002 and 39003 of the Health and Safety Code, has charged the Board with the responsibility of systematically addressing the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 43013, 43101, and 43104 of the Health and Safety Code authorize the Board to adopt motor vehicle emission standards, in-use performance standards, and test procedures, which it finds to be necessary, cost-effective, and technologically feasible;

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 to accomplish the attainment of state ambient air quality standards by 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 (OHRV);

WHEREAS, in December 1998 the Board adopted amendments to the OHRV Regulations, which, as amended (OHRV Regulations), provided for a non-emissions-compliant certification and restricted riding seasons for OHRVs so certified;

WHEREAS, the OHRV Regulations apply to OHRVs including 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 OHRV Regulations;

WHEREAS, federal regulation of OHRVs will not begin phasing in until 2006;

WHEREAS, to receive a green sticker from California's Department of Motor Vehicles (DMV) at registration, OHRVs must comply with the OHRV Regulations including the exhaust emission standards set forth therein; properly green-stickered vehicles are not subject to riding season limitations in California Off-Highway Vehicle (OHV) riding areas;

WHEREAS, OHRVs certified as non-compliant under the OHRV Regulations do not meet the exhaust emission standards set forth therein; these vehicles receive a red sticker from DMV at registration and can only be operated in California OHV riding areas during designated riding seasons as listed in title 13, California Code of Regulations (13 CCR), section 2415, table 1;

WHEREAS, beginning in 1998, DMV used a non-automated registration system to register OHRVs. That system, in addition to some miscoded OHRVs reaching California, caused inconsistencies in OHRV registrations. These inconsistencies have resulted in the registration of some non-emissions-compliant OHRVs with green stickers and some emissions-compliant OHRVs registered with red stickers;

WHEREAS, in June of this year DMV automated its registration system to ensure correct OHRV registration;

WHEREAS, California's Department of Parks and Recreation (DPR) and other land management agencies enforce the riding seasons based on sticker color. To date, DPR has not enforced the riding seasons on OHRV owners or operators due to inconsistencies in DMV registration. As a result of the recent improvements and DMV automation of the OHRV registration system, DPR has committed to enforce the riding season limitations beginning in 2003;

WHEREAS, ARB staff met with DMV and DPR staff to determine the best way to modify the regulation and achieve an enforceable program. The proposed amendment to the OHRV Regulation will facilitate enforcement of the riding season requirement of the regulation and specifically the 1998 OHRV Amendments;

WHEREAS, the proposed amendment will modify the OHRV Regulations to indicate that riding season use restrictions (i.e., restrictions on red-stickered OHRV operation) begin with 2003 model year vehicles. The amendment simply reflects the delay in riding season enforcement that occurred in the field;

WHEREAS, certified emission-compliant OHRVs will continue to be eligible to receive green stickers upon DMV registration, which will allow them to continue to be operated year-round in all OHV areas;

WHEREAS, the proposed amendment will allow certified emission-non-compliant OHRVs model year 1998-2002 to receive green stickers upon DMV registration or renewal, which will permit them to continue operating year-round in all OHV areas;

WHEREAS, the proposed amendment reflects that certified emission-non-compliant OHRVs model year 2003 and newer will receive red stickers upon DMV registration, which will ensure enforcement of the prohibition on operating these vehicles in California OHV riding areas outside designated riding seasons as set forth in 13 CCR, section 2415, table 1;

WHEREAS, the proposed amendment will ensure full implementation of the OHRV Regulations and will achieve the intended emissions reductions from OHRV prospectively;

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, the Board has considered the impact of this proposed regulatory action on the economy of the state;

WHEREAS, the Board must find that no alternative considered would be more effective, or equally effective and less costly, in achieving the regulatory objectives sought than the proposed regulations;

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

WHEREAS, the proposed amendments will not change the existing exhaust emission standards adopted in 1994 or any of the certification and related requirements of the regulation;

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 administrative procedures described immediately above require public involvement before state agencies propose regulations that are complex or numerous;

WHEREAS, in consideration of the Initial Statement of Reasons, written comments, and public testimony it has received, 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 reduction requirements, ARB must continue to achieve proportional and incremental reductions from all sources under its authority, including OHRVs;

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

California regulation of OHRVs differing from federal regulation is authorized by law, and the cost of differing state regulations continues to be justified by the benefit to human health, public welfare, and the environment;

No reasonable alternative considered would be more effective, or equally effective and less costly, in achieving the emission reductions enabled by the proposed amendment;

No public involvement pre-proposal was necessary because the proposed amendments were neither complex nor numerous; this is a simple amendment that merely acknowledges a delay in implementing existing regulations that has already occurred;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

Based on its independent judgement and analysis of the whole record before it, composed of all materials in the rulemaking record that is available at the Board's offices, the proposed amendment will not have a significant effect on the environment. The proposed amendments will not cause an emission increase or decrease different from that anticipated by the current OHRV Regulations.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts amendments to title 13, California Code of Regulations, division 3, chapter 9, article 3, "Off-Highway Recreational Vehicles and Engines," section 2415 (a), as set forth in Attachment A hereto.

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 U.S. 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 U.S. Environmental Protection Agency with a request for confirmation that the regulations are within the scope of an existing waiver of federal preemption, or if necessary seek a new waiver, pursuant to section 209 of the Clean Air Act.

I hereby certify that the above is a true and correct copy of Resolution 03-17, as adopted by the Air Resources Board.

Alexa Malik, Clerk of the Board

Recv'd By
Office of the Secretary
MAR 16 2004
Resources Agency of California

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and Response to Significant Environmental Issues

Item:	California Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines
Approved By:	Resolution 03-19
Agenda Item:	03-6-3
Public Hearing Date:	July 24, 2003
Issuing Authority:	Air Resources Board
Comment:	No comments were received identifying any significant environmental issues pertaining to this item. The Staff Report identified no adverse environmental effects.
Response:	N/A
Certified:	A. Malik Alexa Malik, Regulations Coordinator Board Administration & Regulatory Coordination Unit
Date:	3-15-04

Recv'd By
Office of the Secretary

MAR 16 2004

Resources Agency of California