State of California
AIR RESOURCES BOARD

Adoption of the Regulatory Proposal to Determine and Control Evaporative Emissions From Off-Highway Recreational Vehicles

Resolution 13-33

July 25, 2013

Agenda Item No.: 13-7-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or 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, 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 sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility of air pollution control from motor vehicles;

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, including, but not limited to, off-highway motorcycles, off-highway vehicles, and utility 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(a) of the Health and Safety Code directs the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to attain State ambient air quality standards at the earliest practicable date;

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

WHEREAS, the 2007 amendments to the SIP adopted by the Board require action to expand OHRV evaporative emission standards;
WHEREAS, in May 2011, the Board adopted revisions to the rulemaking calendar for California's SIP, to commit ARB to expand OHRV emission standards in 2013;

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

WHEREAS, in January 1994, the Board adopted title 17, California Code of Regulations (CCR), sections 2410, 2411, 2412, 2413, 2414, and 2415, "Off-Highway Recreational Vehicles and Engines" and its incorporated documents, which established exhaust emission standards, test procedures, and enforcement provisions for OHRVs and OHRV engines;

WHEREAS, in December 1998, the Board adopted amendments to the OHRV Regulation, which as amended, establish certification and vehicle identification requirements for OHRVs that exceed emissions standards and restrict the riding seasons for OHRVs so certified (red sticker vehicles);

WHEREAS, in November 2002, the U.S. EPA finalized its own regulation for OHRVs, which contains standards for both evaporative and exhaust emissions;

WHEREAS, in July 2003, the Board adopted amendments to the OHRV Regulation, which as amended, delay enforcement of the OHRV riding season restrictions;

WHEREAS, in July 2006, the Board adopted amendments to the OHRV Regulation, which as amended, revise the riding seasons for noncompliant vehicles, and harmonize with the federal evaporative permeation standards;

WHEREAS, the OHRV regulatory proposal applies to OHRVs including off-road motorcycles, all-terrain vehicles, off-road utility vehicles, off-road sports vehicles, and sand cars, produced on or after January 1, 2018;

WHEREAS, the proposed amendments to the OHRV Regulation, and incorporated documents, as set forth in Attachment A hereto include the following primary elements:

Expands control of evaporative emissions from OHRVs to include a stringent diurnal standard as well as a "tip test" to address potential fuel spillage on all vehicle operation modes;

Separates evaporative emission standards from the current exhaust regulation, which includes federally harmonized fuel tank and fuel hose permeation requirements, to prohibit non-compliant red sticker vehicles from operating without evaporative emission controls;

Allows small volume OHRV manufacturers that sell less than 50 vehicles in California per model year, for three consecutive model years, to certify vehicles to design-based emission standards;

Adds provisions for certification, labeling requirements, enforcement, recall, and use restrictions;

Simplifies and streamlines duplicative labeling language to allow an integrated emissions label for use on OHRVs certified to exhaust and evaporative emissions standards;

Allows emissions credits to be generated by certifying zero emissions and advanced technology, which will promote these technologies in the off-road sector; and

Minimizes evaporative emissions component tampering by requiring integrated designs or tamper resistant fasteners.

WHEREAS the regulation as proposed may result in confusion as to the extent of the warranty coverage of OHRV operating under the Red Sticker Program; and

WHEREAS, the proposed amendments to the OHRV test procedure, "Test Procedure for Determining Evaporative Emissions from Off-Highway Recreational Vehicles (TP-933)," as set forth in Attachment B hereto includes the following primary elements:

Requiring durability tests on the evaporative emissions control system to ensure that the devices continue to function as designed for the useful life of the vehicle;

Preconditioning of vehicles to ensure that the measured values represent steady state emissions rates;

Promoting well designed vehicles by requiring the canister protection tip test to ensure carbon canister protection from liquid fuel when the OHRV is tipped during regular use, to achieve emissions reductions throughout the vehicles' expected life;

Preparing vehicles for stringent diurnal testing by requiring running loss and hot soak preconditioning cycles to ensure that the carbon canister is properly purged; and

Providing flexibility for manufacturers by developing multiple testing options to demonstrate adequate control of diurnal emissions.

WHEREAS, in developing the regulatory proposal staff conducted several public workshops, released concepts for public review and comment, and held numerous focused stakeholder meetings throughout the rulemaking process, in order to involve the public and affected stakeholders in the regulatory development process;

WHEREAS, the proposed regulatory action will ensure full implementation of the OHRV regulation and will achieve the intended emissions reductions from OHRVs prospectively;

WHEREAS, the proposed regulatory action will not change the existing exhaust emission standards adopted in 1994, or the federally harmonized evaporative emission standards adopted in 2006, for OHRVs;

WHEREAS, staff prepared a Regulatory Notice and Staff Report: Initial Statement of Reasons (Staff Report) for these provisions and presented them to the Board with a single analysis of emissions, costs, and associated environmental impacts and benefits;

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

WHEREAS, the Board has considered the community impacts of the proposed regulatory action, including environmental justice concerns;

WHEREAS, the California Environmental Quality Act (CEQA) requires that a public agency not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental impacts of such a project; in the event that specific economic, social, or other conditions make infeasible the alternatives or mitigation measures, the project may be approved if it is determined that any remaining unavoidable significant impacts are acceptable due to overriding considerations;

WHEREAS, Public Resources Code section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the California Resources Agency has certified the regulatory program;

WHEREAS, that portion of ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary of the California Resources Agency (CEQA Guidelines, section 15251(d));

WHEREAS, in accordance with ARB's certified regulatory program in title 17, CCR, section 60005 (b), and the policy and substantive requirements of CEQA, as part of the Staff Report, ARB staff has prepared an assessment of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulation and a succinct analysis of those impacts; the environmental analysis found that the provisions will not result in any significant adverse impacts on the environment;

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 California Government Code;

WHEREAS, pursuant to section 11346.9 of the California Government Code, staff is preparing a Final Statement of Reasons with responses to comments received on the record during the initial 45-day comment period, comments presented at the July 25 Board hearing both orally and in writing;

WHEREAS, after consideration of the proposed amendments to the OHRV Regulation, and test procedure TP-933, written comments, and public testimony it has received to date, the Board finds that:

Despite advances in reducing emissions from motor vehicles, California is faced with some of 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;

Control of evaporative emissions from OHRVs will help to reduce ozone levels in non-attainment areas throughout California and especially in the San Joaquin Valley Air Pollution Control District and South Coast Air Quality Management District;

More comprehensive evaporative emissions control is an essential piece of the enforceable commitments for reactive organic gas (ROG) emissions reductions in the State Implementation Plan;

While the amendments to the OHRV Regulation, as proposed herein, are different from the federal regulations administered by U.S. EPA, the proposed amendments are authorized by State law, and the cost of state regulation, as amended, continues to be justified by the benefits to human health, public welfare, the environment; and

Based on the technical studies and the analyses set forth in the Staff Report, all of the proposed regulatory actions are necessary, appropriate, cost-effective, and technologically feasible.

WHEREAS, the Board further finds that:

On the basis of the whole record, including the environmental analysis included in the Staff Report and comments received, there is no substantial evidence that the regulation will result in any significant adverse impacts on the environment;

The regulatory proposal will reduce criteria pollutants precursor (9.9 tons of ROG per day per day in 2035) and will prevent premature deaths in California and help achieve attainment of ambient air quality standards; and

The regulatory proposal is consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption sections 2416, 2417, 2418, 2419.1, 2419.2, 2419.3, 2419.4, 2419.5 and TP-933 "Test Procedure for Determining Evaporative Emissions from Off-Highway Recreational Vehicles," incorporated by reference, title 13, California Code of Regulations, as set forth in Attachment A and B as modified consistent with the proposed modifications set out on Attachment C.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 2416, 2417, 2418, 2419.1, 2419.2, 2419.3, 2419.4, 2419.5 and TP-933 "Test Procedure for Determining Evaporative Emissions from Off-Highway Recreational Vehicles," incorporated by reference, title 13, California Code of Regulations, as set forth in Attachments A and B, with the modifications described in Attachment C, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and any additional supporting documents and information as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the regulation and test procedure TP-933 to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to review the exclusion of red sticker OHRV's from the regulatory amendments approved herein and return to the Board by December 31, 2015, with a recommendation regarding continuing that exclusion or a more comprehensive recommendation regarding the red sticker program generally;

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations approved for adoption herein will not cause California 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 approved for adoption herein will not cause the California requirements to be inconsistent with section 209(a), (b)(1)(C), or (e)(1) of the Clean Air Act and raise no new issues affecting previous authorization determinations of the Administrator of the U.S. EPA pursuant to section 209(e)(2)(A) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon final adoption, forward the regulations to the U.S. EPA with a request for a new authorization or confirmation that the regulations are within the scope of an existing authorization pursuant to section 209(e)(2)(A) of the Clean Air Act, as appropriate.

FILED
JUN 06 2014
Resources Agency of California

I hereby certify that the above is a true and correct copy of Resolution 13-33, as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 13-33

July 25, 2013

Identification of Attachments to the Board Resolution

Attachment A: Proposed adoption of the Regulation for "Off-Highway Recreational Vehicles: Evaporative Emission Control" title 13, California Code of Regulations, sections 2416, 2417, 2418, 2419.1, 2419.2, 2419.3, 2419.4, and 2419.5 as set forth in Attachment A of the Initial Statement of Reasons, released June 5, 2013.

Attachment B: Proposed adoption of the "Test Procedure for Determining Evaporative Emissions from Off-Highway Recreational Vehicles (TP-933)," as set forth in Attachment B of the Initial Statement of Reasons, released June 5, 2013.

Attachment C: Summary of Proposed Modifications to the Original Proposal (Presented at the July 25, 2013 ARB hearing)