

State of California  
**AIR RESOURCES BOARD**

Final Statement of Reasons for Rulemaking  
Including Summary of Comments and Agency Responses

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO  
THE CALIFORNIA REGULATIONS FOR NEW 1997 AND LATER  
OFF-HIGHWAY RECREATIONAL VEHICLES AND ENGINES**

Public Hearing Date: December 10, 1998  
Agenda Item No.: 98-14-5

**I. GENERAL**

The Staff Report: Initial Statement of Reasons ("staff report"), entitled "Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines," released October 23, 1998, is incorporated by reference herein.

Following a public hearing on December 10, 1998, the Air Resources Board (the Board or ARB) by resolution 98-66 approved the regional/seasonal riding season provisions for non-emission-compliant off-highway recreational vehicles, provisions for certification and vehicle identification requirements for vehicles that exceed the emissions standards, and other nonsubstantive, clarifying corrections to the regulations. Resolution 98-66 is attached hereto and incorporated by reference herein. The Board approved the regulatory language as proposed with some minor modifications that included a staff reevaluation of certain riding areas. The regulations subject to the amendments are in the California Code of Regulations (CCR), Title 13, Chapter 9, Article 3, Sections 2410 – 2415.

The amendments modified the existing off-highway recreational regulations to allow limited usage of vehicles that do not meet the applicable exhaust emissions standards in California's off-highway vehicle riding areas. The amended Article 3 applies to all California off-road motorcycles and all-terrain vehicles manufactured on/after January 1, 1997 (manufactured on/after January 1, 1999 for vehicles under 90 cc engine displacement). The proposal does not change existing exhaust emissions standards, but does provide more flexibility and opportunities for the use of vehicles that do not meet the exhaust emissions standards.

The amendments incorporate certification and vehicle identification requirements for vehicles that exceed the emissions standards. Their vehicle identification number will designate emissions complying and noncomplying vehicles. The amendments also make nonsubstantive clarifying corrections to the regulations.

In order to identify whether a vehicle is subject to limited-use restrictions, a two-sticker system (OHV Green/OHV Red) will be incorporated by the Department of Motor Vehicles to register vehicles. Currently only one sticker is available which allows access to OHV riding areas. The creation of an alternate sticker for vehicles that exceed the exhaust emissions standards will distinguish the status of the vehicle and assist public land managers with enforcement in limited-use OHV riding areas.

Pertinent Title 13 sections reflecting the OHRV amendments are noted and the changes are described below. Section 2412(b) incorporates the standards for exhaust emissions from new off-highway recreational vehicles and engines sold in the State. Section 2412(c)(1) incorporates by reference the test procedures for determining compliance with these standards. Section 2412(f) incorporates by reference the allowance for limited usage of off-road motorcycles and all-terrain vehicles that do not meet the emission standards in Section 2412(b). Table 1 in Section 2415(a) lists the off-highway vehicle riding areas and applicable riding season time frames for these non-emission-compliant vehicles.

**Economic and Fiscal Impacts.** The Board has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Board has determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will not negatively affect small business. The Executive Officer has also determined that adoption of the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Board has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected resulting from the proposed action.

Finally, the Board has determined that the proposed regulatory action will not negatively affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. Assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

**Alternatives.** For reasons set forth in the Initial Statement of Reasons, staff's comments and responses at the hearing, and in this Final Statement of Reasons, the Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective or less burdensome to affected private persons than the action taken by the Board.

## **II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES**

At the December 10, 1998 hearing, oral testimony was received from:

John Paliwoda, California Motorcycle Dealers Association\*  
Dave Oakleaf, District 37 Legislative Officer, American Motorcyclist Association\*  
Bill Dart, District 36 Legislative Officer, American Motorcyclist Association\*  
Jerry Fouts, District 36 President, American Motorcyclist Association  
Harold Soens, District 38 Legislative Officer, American Motorcyclist Association\*  
Don Fuller, Department of Parks and Recreation, Off-Highway Vehicle Division\*  
Dana Bell, Western States Representative, American Motorcyclist Association\*

Those names above with asterisks also submitted written comments. Most of these written submissions were comments on the proposed amendments to the regulations and were received during the 45-day comment period. While the testimony given by these individuals expressed support of the proposal, many of their written comments contained requests for changes to the riding seasons at certain locations. These comments are addressed below.

Additional written comments were received by the hearing date from:

Ed Waldheim, President, California Off Road Vehicle Association  
J. Kelly Skeen  
Orrin W. Line  
Dan Thunborg  
May Joe  
Doug Clagg  
Mike Smith  
Dean Ruth  
Larry Engwall  
Joseph J. North

Phillip D. McDowell  
Paul Smith  
Ben Delliskave  
Steven Pack  
Michael Graves  
Eric J. Lundquist, Senior Legislative Affairs Specialist, American Motorcyclist Association  
Jeff Miller, District 37 Chairman, American Motorcyclist Association  
Alan Klumph, San Diego Off-Road Coalition  
Edward Stovin  
Timothy L. Brown  
Les Roberts  
Mark Cunningham  
Peter T. Clounts  
Jeffrey J. Petron  
Jay Peterson  
Susan Peterson  
David Drill  
Vincent Meyer  
D. Stover  
Dan Simon  
Mark Halael  
Malcolm Smith, Owner, Malcolm Smith Motorsports  
Tim Rice  
David Kaiser  
Unsigned  
Pamela Amette, Vice President, Motorcycle Industry Council  
David Raney, Manager, Environmental and Energy Affairs, American Honda Motor Company, Incorporated

A number of the commenters supported adoption of the proposed amendments pertaining to the regional/seasonal riding season provisions for non-emission-compliant off-highway recreational vehicles. Comments in support of the amendments are not summarized below. These commenters included:

Dave Murray  
David Tharp  
Andrew Smirnoff  
Robert Shore  
Michael R. Cox  
John A. Wagster  
William D. Benson  
Paul Peorroll  
Ron L. Maxie  
Frank T. Havlik

Stephanie Nethers  
James Howell  
Lanay Stearns  
Rick Araujo

Set forth is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation or the reasons for making no change. The comments have been grouped by topic wherever possible. Comments not involving objections or recommendations specifically directed towards the rulemaking or to the procedures followed by ARB in this rulemaking are not summarized below.

#### **WRITTEN COMMENTS RECEIVED DURING THE PERIOD REQUIRED BY GOVERNMENT CODE SECTION 11346.4**

##### **A. General comments regarding the necessity of regulating off-highway recreational vehicles (OHVs).**

Several comments were received that raised the question of the necessity for having OHV regulations. Primarily, there was doubt among many that these vehicles contribute significantly to the air quality problem in California. Additionally, since regulations for on-road motorcycles were also proposed at the December 1998 Board Hearing, some comments contain mention of both.

**1. Comment:** As you must be fully aware of, motorcycles are responsible for an almost minute amount of pollution. It certainly seems to me that the public would be better served by CARB going after the real violators. The refineries, factories, trucking industry. The violators who can pay the fines or buy the 'pollution credits' and continue to do business-as-usual. (Unsigned)

**2. Comment:** Off-highway vehicles are such a small part of the air quality issue, something less than 1/10<sup>th</sup> of one percent of the total, that I suspect that our contribution has been greatly exaggerated in your study of the problem. Most off-highway vehicle use is far from most urban population centers, and most use occurs on weekends and other off-peak emission times. A typical off-highway vehicle is used for only a few hours on any riding day, a couple of times per month. (Doug Clagg)

**3. Comment:** I do not ride my motorcycles very often. The two-stroke is probably ridden 10 to 15 times per year total and not more than 4-5 hours on any of those occasions. The emissions impact could not be too great. Most people I know who also ride have a similar riding frequency. (Paul Smith)

**4. Comment:** As an owner of a dirt bike (2-stroke) and a high performance street bike (4-stroke), I ride only on the weekends. Emissions from these two motorcycles are actually not enough! For most motorcyclists, motorcycles are a recreational/hobby type of event, not daily transportation. (Steven Pack)

**5. Comment:** Two years ago, I read an article which interviewed someone from the State of California or CARB, defending the position of reducing the emissions to the point where two-cycle engines would no longer qualify for use on public lands. He cited computer models and pounds of emissions removed. I wondered about the data and formulas and how the conclusions were reached. Were the number of hours each vehicle is utilized exaggerated? Did all the vehicles pollute equally? Were there considerations for the individuals like myself who own a few motorcycles? I can only ride one at a time, so the others can't be polluting when left in the garage. (Michael Graves)

**6. Comment:** Please do not use off road vehicle registration numbers when determining their air emission impact; do look at actual use rates. (Mark Cunningham)

**Agency Response:** The staff disagrees with these characterizations of the emissions impact of OHVs on California's air quality, and continues to find OHV regulations necessary to meet and attain state and federal air quality standards. In 1994, the Board adopted the regulations for OHVs. The Initial Statement of Reasons for the regulations indicated the significance of OHVs emissions impact and provided clear and compelling reasons for controlling the emissions emitted by OHVs. The emission inventory estimate for hydrocarbons from all OHVs was approximately 49 tons per day, statewide in 2010. Of these 49 tons, off-road motorcycles and all-terrain vehicles (ATVs) emitted approximately 37. The primary reason for the significant emission contribution from these vehicles was that two-stroke engines powered the majority of these vehicles. Sales and registration data had shown two-strokes were found on approximately 60 percent of the OHV population. Furthermore, emission testing had determined that these uncontrolled two-stroke engines emitted smog-forming emissions equal to 118 new cars, on a mile-for-mile basis. With a population exceeding 300,000 vehicles, the impact on air quality is indeed significant. Given California's unique air quality problem, the Board has sought and will continue to seek new and additional emission reductions from a variety of mobile source categories.

**B. Comments perceiving an intent by ARB to further control emissions from OHVs.**

**7. Comment:** With regards to the “two stroke ban,” I find it difficult to understand how these vehicles could be banned across the board in California considering their extremely limited use. (Mark Cunningham)

**8. Comment:** I am not in favor of any strict emission standards for motorcycles on road or off road. I've been riding motorcycles for 33 years. I just can't see what the big deal is when motorcycles are only ½ of 1% of the vehicles on the road. (Orrin W. Line)

**9. Comment:** I am opposed to the new emission standards that you are proposing for motorcycles in California. Now I can't buy a new 2-stroke motorcycle to ride on my public land! These regulations are prohibitively restrictive, and will damage both the motorcycle industry and those of us who like to ride motorcycles. Your regulations have cut the number of OHVs available in this state from about 100 to down around 10 or so. (Dan Thunborg)

**10. Comment:** In addition, the two-stroke ban should not be considered a viable option for pollution reduction as the tiny amount of two-stroke motorcycles being ridden in our state has a miniscule effect on the pollution now found in Southern California and the Sacramento Valley, especially in the summer when pollution is at its worst. Banning these bikes will not solve the problem. (Larry Engwall)

**11. Comment:** This is a request that no more pollution restrictions be placed on motorcycles. Doing so would result in costlier motorcycles and a significant change in design and character of many, causing them to be less saleable with no measurable pollution reduction. Estimates of total pollution from all motorcycles are generally about .5% to .6% of all pollution. Off road motorcycles would be a very small fraction of this. (May Joe)

**12. Comment:** It's ridiculous to believe you are doing anything good by banning two stroke motorcycles in the state of California. Let me re-educate you on a few stats and facts which you have obviously forgotten:

- 1) Motorcycle riders, including four stroke owners, are only 2% of California's population.
- 2) Motorcycles emit only 0.00625% of California's population.
- 3) All of your efforts will only reduce emissions by less than 1%. (Dean Ruth)

**Agency Response:** The staff disagrees that their amendments will result in the banning of 2-stroke engines or in the establishment of more stringent emission standards. Neither is true because the amendments do not modify the existing emission standards. Instead, these amendments sought to address the

unintended economic impact that many dealers had experienced with the lack of emission-compliant product. The assumption in 1994 was that manufacturers would provide a full-line of emission-compliant product. Unfortunately, this did not fully materialize as envisioned and sales were disrupted, so a committee was formed in order to address the problem.

The 1998 amendments were the result of the committee's efforts. The regional/seasonal approach allowing the use of non-emission-compliant OHVs was a compromise that provided an opportunity for economic relief to dealers, while still achieving air quality benefits. Within a reasonable distance, users of non-emission-compliant OHVs should have access to public lands for a six- to eight-month period in which they can operate their vehicle(s), as well as at all sanctioned competition events. This opportunity for usage is anticipated to result in improved sales for California dealers and a better selection of vehicles for purchase.

See also the agency response to comments 1-6.

### **C. Comment specifying revised emission standards for OHVs.**

**13. Comment:** What I would like to see is a rational compromise, one which would require the off-highway motorcycles to be cleaned up, but not to the level that would eliminate their functionality. For instance, a combined HC + NOx level of 2-3 g/km over the driving cycle would allow all four stroke and only clean burning two-stroke engines to power these products. This would be an improvement over current emissions levels and would still provide the option for the enthusiast to select between a two-stroke or four-stroke product. (Phillip D. McDowell)

**Agency Response:** Staff need not respond to this comment because it is directed at changing the emissions standards, which is not a subject of the proposal. Nonetheless, the commenter suggests a mechanism to potentially increase the number of models available that comply with the emission standards by reducing the stringency of the standards. These models would then be allowed unlimited use at off-highway parks. No data were supplied to suggest that more models would actually be available at the suggested emission levels. Although the approved amendments do not specifically provide the users with more emission compliant vehicles available for purchase, they provide increased usage for those vehicles that do not meet the exhaust emission standard. As a result, the selection of vehicles that may be used only during sanctioned racing events has been greatly reduced and replaced with more vehicles that may be used for unlimited riding in ozone attainment areas and limited riding in ozone nonattainment areas.

**D. Comments regarding the impact the OHV regulations have on access to and funding of California's OHV parks.**

**14. Comment:** I strongly favor amending the standards to allow two-cycle competition motorcycles their constitutional and fundamental right of access to public lands. This segment of society has been unfairly targeted for blame for pollution; their impact is, in fact, minimal. (Les Roberts)

**15. Comment:** I would strongly support a change to laws which have prevented the registration of 1998 and newer off road motorcycles for use on public lands. (Jeffrey J. Petron)

**Agency Response:** Because the amendments approved by the Board will provide the owners of two-cycle competition models and other OHVs that do not meet the emission standards additional access to public lands, staff believes the amendments address this concern.

**16. Comment:** I'm a member of the American Motorcyclist Association (AMA) and find your regulations on the use of off-road motorcycles and ATV's that can't meet the overly strict requirements for emissions very unfair, being that it has basically eliminated use of new dirt bikes and ATV's from public lands that were funded for their use through "Green Sticker" fees. (Mike Smith)

**17. Comment:** As we all know, public funding in the green sticker program has taken a dramatic drop due to the restrictions applied to non-attainment engines. To reverse this trend and keep funding available we should lift the restrictions and find another way. (Jay Peterson, Susan Peterson)

**Agency Response:** The revised identification and registration program will ensure that funding from OHV registration fees will be forwarded to the Department of Parks for use to maintain and improve off-highway parks. All OHVs used for recreational purposes and registered by DMV will receive either a green or red sticker registration, depending on whether the vehicle meets exhaust emission standards or does not meet exhaust emission standards, respectively. Registration fees from both the green and red stickers will be used to continue to fund the off-highway parks, as was done prior to the implementation of the 1997 OHVs emission regulations. See also agency response to comments 7-12.

**E. Comments regarding the proposed riding season time frames.**

Several comments were received that sought additional time to the proposed riding seasons. Many of these commenters expressed general approval with the proposed "riding season" concept; however, they found the riding season time frames too stringent in certain areas.

**18. Comment:** We would like to request that you make some exceptions in the basic regulations. Our comments are as follows:

We are concerned with the seasons for riding in the areas outlined in pages 12 through page 18. These seasons are too short and are confusing. In a lot of areas, the riding season coincides with snow in the mountains where we cannot access the area anyway. What good does it do us to have a riding season if we are unable to reach or ride the area?

Page 12: Riding season in the State Vehicular Recreation Area (SVRA) should be September 15 to June 30. All of them should be the same. The SVRA's are all at higher elevations or in outlying areas. It is reasonable to shut down during summer months, which are July, August, and part of September. That is when smog tends to be at its worse. We believe that for enforcement and public relations purposes it would be easier for all areas that have a date to be the same. September 15 to June 30 with no riding in July, August, and part of September. This will achieve the desired result for CARB.

Page 13: Clear Creek should be from September 15 to June 30. Chappie Shasta: September 15 to June 30. You lose a lot of riding time during the winter months due to snow. California Desert should all be September 15 to June 30. That is our riding season and after that everything shuts down due to the heat.

Page 14: BLM areas should be the same dates, September 15 to June 30. Lark Canyon is prohibited. I have no idea why this was done. No monitoring was done in this area to warrant such a drastic measure. It should be the same as every other area. Angeles National Forest: The same riding season should be imposed, September 15 to June 30. These areas are at a higher elevation and at remote locations where air quality is not an issue.

Page 15: Cleveland National Forest: Corral Canyon is the only area close to the San Diego Riders. The riding time should be extended; this is very much a family area and now we are going to keep them out. Families and their children need access to this area.

In all of the snow areas, I would suggest just extending the riding season at both ends and you will accomplish what you expect. (Ed Waldheim, President, California Off-Road Vehicle Association)

**19. Comment:** There has been much discussion regarding the riding seasons and the reasoning behind the designated dates. It was the general consensus of the group that the seasons should be extended at least one month at each end, or from September 1<sup>st</sup> through May 31<sup>st</sup>. Since Department of Parks and Recreation's (DPR) SVRA's (page 12) are at higher elevations, it would seem to make sense to make their season from Sept. to June 30<sup>th</sup>. Riding in the National

Forests should be at least extended to these months, as there is snow at these elevations for much of the season currently allowed. Most of our competitive racing is done in Johnson and Stoddard Valley (page 13) and we would like to see these seasons expanded to include September through May. In our discussions it was indicated that the air quality has improved over the past twenty or so years and we would like to make sure that as the air is monitored and determined to be improving, that these seasons and areas are expanded.

Also the areas indicated as Spangler and Jawbone (page 13) be extended one month earlier to include September. These areas are at a higher elevation and are quite remote. (Dave Oakleaf, District 37 Legislative Officer, American Motorcyclist Association)

**20. Comment:** I am writing to express my support for any and all revisions that will allow the continued responsible use of 2-stroke OHV manufactured after 1997. I urge all board members to revise these regulations to allow continued year round 2-stroke use. (Peter T. Clounts)

**21. Comment:** The pending regulation to expand and provide relief to motorcycle dealers and users throughout the state should be applauded. I would encourage you to further expand the “limited use” seasons to correspond with the proposed seasons of northern California public lands (i.e., year-round). (Jay Peterson; Susan Peterson)

**22. Comment:** I understand that CARB is considering a “zoning” initiative that appears to be a step in the right direction. The vast majority of off-road vehicle riders in California use their vehicles on weekends only, and only during the months of October through April (low smog periods). Fact is, the open desert and foothills are far too hot to ride during the summer months. Prohibiting the use or decreasing the emissions from off road bikes that operate in high smog areas makes more sense and I could support that. (Mark Cunningham)

**23. Comment:** Please consider opening up areas in Southern California as well as Northern California to use by noncomplying motorcycles during seasons of lower air pollution. Although Southern California has a more severe air pollution problem than Northern California, our riding areas are generally many miles from population centers where pollution exists. (Jeffrey J. Petron)

**24. Comment:** The Board should also lessen the restrictions in Southern California. (David Drill, Vincent Meyer, D. Stover, Dan Simon, Mark Halael)

**Agency Response:** The main air quality benefit associated with the OHV regulations was hydrocarbon emission reductions, an ozone precursor. Therefore, to determine the appropriate riding seasons, data reflecting ozone levels, ozone exceedances and meteorological (wind) data from each area surrounding an OHV park were analyzed. Of particular interest was the frequency of exceedances of state standards as well as the dates in which these exceedances occurred.

Many of the commenters raised issues about elevation and the typical remoteness (i.e., far from large population areas) of the OHV riding areas. While it is recognized that these riding areas are usually in rural or undeveloped places, many happen to be downwind of major metropolitan areas. With most of the population residing on or near the coast (e.g., San Francisco, Los Angeles, San Diego) and the prevailing wind patterns flowing eastward, the OHV riding areas that lie inland are often in an area that is not in attainment for ozone. In fact, the majority of OHV riding areas are in ozone nonattainment areas, regardless of elevation. The proposed riding season time frames reflected this fact. Because extending the riding seasons beyond those provided in the amendments could contribute to ozone exceedances, the proposal was not modified in response to these comments.

As reflected in many of the comments, the riding season time frames in Southern California tend to be more stringent than in Northern California. Not surprisingly, ozone nonattainment is also more prevalent and more critical in Southern California than in Northern California. Recognizing these differences in ozone levels, ozone attainment and nonattainment, population, wind patterns, etc., all serve to demonstrate how this problem varies. Because of this variance, a single, statewide, riding season time frame would not yield meaningful emission reductions, especially where most necessary, unless the time frame was very limited. However, because of the thorough analysis that was undertaken to determine the air quality on a site-by-site basis, the proposed riding season time frames do provide more opportunities than previously allowed under the original OHV regulations

**25. Comment:** My only concern is that I would still like to see the standards modified for users based in Southern California, as I have a home in San Diego County and do much of my riding in Orange and Riverside County's. The plan is still too restrictive for users based in these regions. (J. Kelly Skeen)

**26. Comment:** I am an off-road motorcycle rider and racer who does not support the proposed emission standards and restriction of riding seasons in southern California. My recreational opportunities will be drastically reduced if the seasonal use proposals are adopted. The restricted riding seasons would be limiting in much the same way as my choice of off-road motorcycles has been limited due to the 1997 emission rules. (Doug Clagg)

**Agency Response:**

See agency responses to comments 18-24 and to comments 7-12.

**27. Comment:** We agree that cleaner air is a priority for California and we will at this time accept the proposed Amendments. However, we remain concerned with the data that has driven the restriction, with realistic availability of future complying vehicles, and with the desirability of such vehicles that would encourage scrapage of old ones. Should data become available or circumstances change that could allow a broader use of all off-highway recreational vehicle types we trust that the staff and Board will consider reasonable proposals. (Dana Bell, Western States Representative, American Motorcyclist Association; Eric J. Lundquist, Senior Legislative Affairs Specialist, American Motorcyclist Association)

**28. Comment:** The American Motorcyclist Association District 37 does understand and respects the California Air Resources Board's mission. We do have reservations about the accuracy of the data concerning the High Desert area. This is due to the Locations of the Ozone Detectors. We also feel because of the extreme heat during the summer months, that the Off Road Vehicle areas receive minimal use, resulting in no effect on the air quality. (Jeff Miller, District 37 Chairman, Board of Directors, American Motorcyclist Association)

**29. Comment:** During the qualification process for each off-road recreational site or area, we felt that the staff's assessment for a number of the sites was too stringent, based on subjective meteorological determinations, resulting in usage seasons that were too restrictive, especially in the San Bernardino National Forest and the Southern California high desert. However, we feel that the staff proposal should be adopted, and that we should collectively monitor the sites' ambient ozone levels attributable to off-road motorcycle and ATV use. If the levels are less than expected, these sites' riding season should be extended. (John Paliwoda, Director of Government Relations, California Motorcycle Dealers Association)

**Agency Response:** The most currently available air quality monitoring, meteorological, and emissions data were used to establish the riding seasons for OHV parks in Ozone nonattainment areas. Staff acknowledged that conditions may change based on new data. Thus, section 2415 (b) provides the Executive Officer authority to modify the riding seasons as areas are redesignated from nonattainment to attainment status.  
See also agency response to comments 18-24.

**30. Comment:** I do have a couple of areas I think need to be revisited. Corral Canyon and Lark Canyon are areas in east San Diego County Mountains, and in most cases have very clean air all years. The altitude is about 45 hundred feet. Lark Canyon is about 10 miles off of Interstate 8. Corral Canyon is another recreation area located approximately 6 miles off Interstate 8. These areas are used moderately but are very important to people that use them; they are the only motorized recreation in East San Diego Mountains and should cause no harm to air quality. (Harold Soens, District 38 Legislative Officer, American Motorcyclist Association)

**31. Comment:** There are, however, a couple of changes to the new proposed restriction that we would like to address for your consideration. We feel that the “Prohibited” restriction being placed on Corral Canyon, Lark Canyon and Arroyo Salado and the limited riding season at Wildomar (Dec 1 – Feb 28/29) are way to severe and wish that you consider relaxing them somewhat. (Alan Klumph, San Diego Off-Road Coalition; Edward Stovin)

**32. Comment:** I wish to have you consider changing the overly restrictive riding seasons listed for Corral Canyon, Lark Canyon, and Arroyo Salado. Corral Canyon and Lark Canyon OHV areas are located in the mountains east of metropolitan San Diego. The prevailing weather/wind patterns flow easterly, which removes any reason to consider their impact on the San Diego area air quality. There is no possible connection between vehicle use in these regions with the photochemical smog in the San Diego area. These two areas should have no seasonal restrictions. Arroyo Salado which is directly adjacent to the Ocotillo Wells SVRA should have the same riding season (October 15 to May 15) as the Ocotillo Wells SVRA, since there is no practical difference in location. (Timothy L. Brown)

**Agency Response:** There were three OHV riding areas directly east of San Diego that were classified as “Prohibited” to use by non-emission-compliant OHVs because of instances of ozone exceedances in nearly every month of the year. These prohibitions were subsequently modified in response to these comments and others, as explained in more detail under the Board Hearing Oral Testimony section, below.

#### **F. Comments regarding the economic impacts due to the regulations.**

Comments were received that addressed the potential economic impact that the OHV regulations could have/have had on dealers and industry.

**33. Comment:** As you are aware, manufacturers of off and on road motorcycles, as well as personal watercraft, are critically aware of environmental concerns and are developing new units to comply with EPA guidelines. The necessary timeline for the research and development of these products is absolutely critical

to the future of my business. If the California Air Resources Board implement restrictions the manufacturers cannot meet, it would be the demise of yet another California industry. I request that you support the position by the California Motorcycle Dealers Association. (Malcolm Smith, Owner, Malcolm Smith Motorsports)

**34. Comment:** I own and operate a motorcycle/personal watercraft dealership in this state. Last year we lost a lot of sales due to the strict emission standard that was imposed on dirt bikes. While these vehicles may have engines that are considerably dirtier than cars, the amount of time that they are operated is a fraction of what a car is. I wonder if anyone at CARB took that into consideration. The manufacturers were unable to supply cleaner two stroke dirt bikes after January 1, 1997 and as a result, the California motorcycle dealers lost a lot of business. CARB should consider what is practical, otherwise businesses like mine whom employ 20 Californians get caught in the middle. Please be reasonable. (Tim Rice)

**35. Comment:** You can count myself as one person who is very concerned about the new proposed emission standards regarding both on and off-road motorcycles. These unrealistic standards jeopardize future growth of motorcycling in the State of California by placing unrealistic standards that can't be met without a substantial increase in the overall cost of a new motorcycle. As one who makes their living in the Powersports industry (our company employs 500+ people), I can't help but feel that if passed, the new standards would have a detrimental effect on our future business. CARB promised that the 1997 2 Stroke ban would not impact the sport, yet in fact, it has reduced the number of green sticker OHVs available for individuals to purchase by 90%. In closing, I worry about our environment, yet I have become very dismayed when CARB and the EPA try to regulate me and my family out of a job for the sake of the very minor improvements in the environment. (David Kaiser)

**Agency Response:** When the OHV regulations were approved by the Board in 1994, the manufacturers supported the regulations and suggested that by 1997 new, cleaner OHVs would be available for purchase. Upon implementation of the OHV standards in 1997, the lack of certified product became a reality. While there was sufficient numbers of complying ATVs, there were only 10 models of off-road motorcycles certified to meet the standards. It was reported, by the OHV dealers, that sales declined. However, manufacturer sales data reported that sales had not dropped. The result was that many non-emission-compliant OHVs were being sold, registered, and used as emission-compliant OHVs.

As a result of the situation noted above, the staff developed its proposal. The proposal encourages manufacturers and users to offer and buy, respectively, complying OHVs because they may be used at all OHV parks, anytime. It also provided an avenue for dealers and users to offer and use, respectively, non-emission-compliant OHVs in certain areas and seasons. Furthermore, the proposal helps to maintain the anticipated emission reductions during high smog periods, by allowing only emission-compliant OHVs to operate.

The intent of these amendments was to provide relief to dealers and users, while maintaining air quality benefits. In developing these amendments, ARB consulted with and received general approval from the California Motorcycle Dealers Association, an organization of which the majority of California dealers are members. The ARB has made public outreach efforts to publicize and explain the new rules. As the affected public becomes more aware of the new rules and their options – in terms of usage for compliant versus noncompliant OHVs, the riding seasons for the various OHV areas, the opportunities for practice in preparation for competitions, etc. – they will be more confident to purchase new OHVs, which will rectify the impact many dealers experienced.

#### **G. Comments regarding certification of non-emission-compliant OHVs.**

For proper implementation of the proposed amendments to the OHV regulations, a new requirement for manufacturers was proposed. This requirement involved obtaining an Executive Order for the non-emission-compliant OHVs. Comments were received regarding the proposed format of this new certification requirement.

**36. Comment:** After reviewing your draft application, MIC members still strongly recommend a much simpler format.

As we have already stated, many of the requirements you propose, such as the engine information, are not necessary to accomplish the intended goals of the amendments and pose an unjustified burden on the manufacturers. As you know, the off-highway emissions regulation already requires that a non-complying vehicle be designated by a “C” or “3” in the eighth character of the VIN. Furthermore, engine family names are not assigned to non-complying vehicles and the request for exhaust ECS is not applicable since these vehicles do not have emission control systems.

A sample of MIC’s proposed certification application is attached for your consideration. We recommend that a one-page certification application be used for all non-complying vehicles rather than the burdensome application for each

model as you have proposed. Based on your draft application, we assume that the proposed requirements in section 86.416-80(b)(2), (5) and (6) have been eliminated. Please let me know if this is an incorrect assumption. (Pamela Amette, Vice President, Motorcycle Industry Council)

**37. Comment:** Honda recommends that the Application not be required and alternatively, we provide the data in our quarterly sales reports. These reports could be expanded to include the additional information that is necessary to accomplish what we perceive as your goal; that is providing the ability to identify non-conforming vehicles in this category.

The information requested in your draft Application is troublesome to Honda for the following reasons:

1) Compiling, reviewing, recording, and updating the information periodically represents an additional burden to both manufacturers and the ARB certification staff without providing any perceived benefit to ARB.

2) In the case of competition motorcycles, the engine-specific information will probably not be meaningful due to model variability experienced in a competition environment.

3) We do not understand why ARB is interested in attaching an Executive Order. Also, the association of this information with a Certification Application actually implies that we are seeking certification for vehicles/engines that are exempt from regulation. We do not believe that an E.O.# and Application should be associated with this information, therefore, we are suggesting the alternative format of our quarterly report. (David Raney, Manager, Environmental and Energy Affairs, American Honda Motor Company, Incorporated)

**Agency Response:** Two key components for the successful implementation of the OHV regulations involve registration and enforcement. Agreement to enforce the riding season limitations on non-emission-compliant OHVs has been obtained from the public land agencies. With the Green Sticker program already in place, the additional enforcement requirements of the Red Sticker program pose no real burden. However, in order to perform this enforcement function efficiently, registration must be properly issued by the Department of Motor Vehicles (DMV). DMV issues the proper form of registration based on the vehicle identification number (VIN). Non-emission-compliant OHVs must have a properly coded VIN; otherwise such high-polluting OHVs could obtain the wrong registration, operate year-round, and exacerbate the ozone problem.

While for marketing purposes, manufacturers may refer to an OHV as a competition vehicle, sound and safety requirements dictated by the California Vehicle Code and enforced by public land authorities make modifications necessary (e.g., exhaust pipe silencer/spark arrester) such that for use on public

lands, these OHVs are not identical to the vehicles used by competitors at the highest professional levels. Hence, ARB recognizes two classes of OHV: emission-compliant and non-emission-compliant. Both require Executive Order certification.

With this new requirement for certifying a non-emission-compliant vehicle, a much shortened certification application was envisioned, since emission test results were not considered necessary. However, there was disagreement from industry regarding what information should be included. Initially, ARB's proposal paralleled the requirements already in place for golf carts, which was adopted by the Board in 1994. During the 45-day comment period staff streamlined the data required for certification and drafted an application for manufacturers to review. Retained are identification and description of the vehicle(s) covered by the certification application, projected sales figures for California, and a copy of the owner's manual. These changes were addressed in Attachment B and presented to the Board for consideration at the time of the Board Hearing.

The comment from Honda misunderstands ARB's need for this application. The brevity of the application, typically one page, will not pose a burden for ARB certification staff. Also, because some of the similarities in data are already found in the quarterly reporting, the application should not cause a burden to manufacturers. The distinction is this certification application is now required of all manufacturers of non-emission-compliant OHVs, as opposed to the quarterly sales reports, which are only received from the large-volume manufacturers that voluntarily agreed to provide this information for a three-year period, expiring in 2000. As stated above, the information is very important in order to ensure proper registration and enforcement. Furthermore, detailed vehicle descriptions are necessary for ARB inspection and enforcement efforts.

#### **H. Out-of-state comment.**

One comment was received from an individual from the state of Florida, who had some misconceptions about the regulations.

**38. Comment:** "I am writing in concern of the "Green Sticker" law on off-road motorcycles. I am confused on why this issue is solely focusing on off-road motorcycles and worried that this will spread to my state. From what I have read in numerous articles, California has enacted a "Green Sticker" law on off-road motorcycles manufactured after the date of January 1, 1997. My questions include: Why was this so abrupt? Were bike manufacturers prewarned of this? Why is this only an issue with off-road motorcycles? Finally, are there any possibilities of a "Green Sticker" law in the state of Florida?" (Joseph J. North)

**Agency Response:** The regulations adopted by ARB are applicable only for California vehicles. The Green Sticker is not a law, per se, but evidence of off-highway vehicle registration. The initiation of this requirement many years ago was not motivated by air quality reasons. The fees charged for this registration are used for the betterment of the OHV community in such areas as grooming of trails, upkeep of public lands, safety enforcement, etc.

The regulations adopted by ARB have, with the consent of California's Department of Motor Vehicles (DMV), changed the criteria DMV will use in its sticker program. Only emission-compliant OHVs now qualify for the Green Sticker. These vehicles can be used year-round. Non-emission-compliant OHVs are eligible for the Red Sticker. For ease of enforcement, the Red Sticker visibly identifies an OHV as emissions noncompliant, and thus, subject to the usage limitations of the riding seasons.

As with all regulations that ARB proposes, industry and other concerned and involved parties were notified of and consulted with during the development process of these regulations.

### **BOARD HEARING ORAL TESTIMONY**

As previously mentioned, the individuals that gave testimony at the Board Hearing expressed approval and/or acceptance of the proposed amendments. These oral comments added no negative comments in need of response beyond the responses provided above to parallel written comments. The one comment below is a portion of testimony that reiterated the concerns about the "Prohibited" riding areas near San Diego.

**39. Comment:** There's 87 riding areas on here. Unfortunately, two of them that are not allowed to be ridden in at all are in my district, approximately 30 miles apart. One is in the Cleveland National Forest, the other one is in BLM country, the high desert area. I'd just like to relook at this and see if we can get some kind of time, any kind of time, a month, an hour, any time... (Harold Soens, District 38 Legislative Officer, American Motorcyclist Association)

**Agency Response:** As directed by the Board, staff re-evaluated the ozone data for the OHV riding areas east of San Diego. Although ozone exceedances were recorded in every month but January at the Alpine monitoring station, the exceedance in December was very early in the month, with the rest of the days registering in attainment. Therefore, both Lark Canyon (under Bureau of Land Management (BLM) jurisdiction) and Corral Canyon (under U.S. Forest Service jurisdiction), which in the original regulatory text were classified as "Prohibited" for use by non-emission-compliant OHVs, now have a riding season from December 1 through January 31.

The other “Prohibited” OHV site within the vicinity of San Diego, Arroyo Salado, was also modified. It became known that Arroyo Salado, which at the time of the Board Hearing was under the jurisdiction of BLM, was scheduled to be incorporated into the domain of Ocotillo Wells and managed by the California Department of Parks and Recreation (DPR). Arroyo Salado was subsequently removed from the list of OHV riding areas. Due to its proximity to Ocotillo Wells and concerns for uniform enforcement, the riding season for Ocotillo Wells remains October 15 through May 15. Since the infusion of new land to Ocotillo Wells’ territory only moderately increases the riding area, it is reasonable to conclude that this modification poses no significant impact to air quality. These changes to the riding season schedule were made and presented in the Notice of Public Availability of Modified Text for this regulatory item on March 5, 1999.

### **MODIFICATIONS TO THE ORIGINAL PROPOSAL NOTICE OF MODIFIED TEXT**

At the hearing, the Board approved the proposed amendments to Sections 2410 – 2415, Title 13, CCR, and the associated test procedures with some modifications to the originally proposed regulatory language. The following is a description of the modifications, by section number.

**Section 2411** – The weight limit of 600 pounds was removed from the definition of “All-Terrain Vehicle (ATV).” The definition of an ATV is no longer limited by vehicle weight. All-terrain vehicles used for recreational purposes are typically less than 600 pounds. There are other ATVs, which weigh more and are typically used under worklike applications. At the October 22, 1998 hearing for Large Off-Road Spark-Ignition Engine regulations, the Board directed staff to modify the definition of ATV in Section 2411 to remove the 600 pound unladen weight limit restriction, resulting in the inclusion of all ATVs, regardless of weight, into the OHRV regulations. To accomplish the Board’s directive, staff included this change as part of the 15-day Notice of Modified Text for the OHRV rule. Also language was added to the definition of “Vehicle Identification Number (VIN)” to provide an alternative VIN when the federal VIN cannot be obtained from the National Highway Traffic Safety Administration (NHTSA). The alternative VIN must be approved by the Executive Officer of the ARB.

**Section 2415** – This section contains a table that specifies the riding seasons for the OHV areas. A two-month riding season (December 1 through January 31) was allowed for the Lark Canyon and Coral Canyon OHV areas. In addition, the OHV area previously known as Arroyo Salado has been incorporated into the Ocotillo Wells OHV area. The riding season for Ocotillo Wells remains the same.

Language regarding the Sunset Review of Regulations was added to this section in accordance with Governor's Executive Order W-144-97, which affects other regulatory items as well. This language requires that the ARB review this section within five years from its date of adoption or date of implementation, whichever comes later, to determine whether it should be retained, revised, or repealed.

**Test Procedures** – The same changes that were made to the definitions of ATV and VIN in Section 2411 of the regulations, as described above, were also made in the test procedures. Language was added that allows manufacturers of off-highway recreational vehicles that cannot obtain federal VIN numbers from NHTSA, to use an alternate VIN approved by the Executive Officer of the ARB for the purpose of certification. This modification mirrors the VIN definition modifications described above. Minor changes were made in the information required to be submitted during certification for non-emission-compliant off-highway recreational vehicles.

#### **WRITTEN COMMENTS IN RESPONSE TO THE NOTICE OF MODIFIED TEXT**

No comment letters were received.