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: July 24, 2003
Agenda Item No.: 03-42-6

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 June 6, 2003, is incorporated by reference herein.

Following a public hearing on July 24, 2003, the Air Resources Board (the Board or ARB) by Resolution 03-06 approved the change in language regarding the model year of Off-Highway Recreational Vehicles (OHRV) affected by the regional/seasonal riding season provisions for non-emission-compliant off-highway recreational vehicles. Resolution 03-06 is attached hereto and incorporated by reference herein. The Board approved the regulatory language as proposed. The regulations subject to the amendments are in the California Code of Regulations (CCR), title 13, chapter 9, article 3, section 2415 (a).

The amendments modified the existing off-highway recreational regulations to indicate that riding season use restrictions begin with the 2003 model year. The amendments simply reflect the delay in riding season enforcement that occurred in the field by the land management agencies due to inconsistent registrations of these vehicles. The amended article 3 continues to apply 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 90cc engine displacement). The proposal does not change existing exhaust emissions standards, but does provide for an enforceable riding season program in the field.

The only section affected by this regulatory action is section 2415(a) of title 13, article 3, chapter 9, CCR. Specifically, the language "Model 2003 and later" has been added in Section 2415(a) to reflect the delay of the enforcement in the riding areas.

Fiscal Impacts on School Districts and Local Agencies. 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.

Alternatives. For the 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. See Resolution 03-06 at page 4.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

At the July 24, 2003 hearing, oral testimony was received from:

John Paliwoda, California Motorcycle Dealers Association
Mr. Paliwoda also submitted written comments. The written submission commented on the proposed amendments to the regulations and was received during the 45-day comment period. While the testimony given by this individual expressed support of the proposal he requested the implementation date for enforcement be pushed to model year 2004 or 2005 rather than the proposed model year 2003. There were similar written comments from the public requesting such an extension; the agency's response is given below. Mr. Paliwoda had two additional points in his written comments and those comments are addressed below.

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 extending the green sticker grandfathering through model year 2003.

The majority of comments received (24) pertained to extending the green sticker grandfathering beyond model year 2002, through the 2003 model year, which would have resulted in the grandfathering of model years 1998-2003 rather than adopted years 1998-2002. The commenters asked why model year 2002 was chosen to be the cutoff for grandfathering when the technology of many of the OHRVs was the same from model year 2002 to 2003. Additionally, the argument was made that some non-emissions-compliant (red sticker) model year 2003 OHRVs had already been purchased by consumers with the expectation that those vehicles would not be subject to the limited riding seasons applicable to red sticker OHRVs.

Agency Response: Model year 2002 and older OHRVs were included in the green sticker grandfathering because 2003 was the earliest practical time to enforce the riding season restrictions as adopted in 1998. The Initial Statement of Reasons explains the reasoning behind the date chosen in detail:

> " The amendment simply reflects the delay in riding season enforcement that has already occurred in the field by the land management agencies due to inconsistencies in the program. The emission reductions originally intended by the riding season amendments will now be achieved because the California Department of Motor Vehicles (DMV) will be correctly registering OHRVs and California Department of Parks and Recreation (DPR) will begin riding season enforcement beginning with the 2003-riding season. The amendment supports program changes that will reduce registration inconsistencies that resulted in lack of enforcement in the field confirming the regulation to reflect the actual date of enforcement of the riding season limitations will avoid confusion for the riding public. The Board's adoption of these proposed amendments reflects that these problems have been substantially corrected and that riding area enforcement has begun. The amendment to postpone the riding season use restrictions to the 2003 Model Year supports DMV's registration of all 2002 Model Year and older OHRVs with a green sticker and supports DPR's enforcement actions beginning with the 2003 riding season. With these improvements in place, there is no reason to delay the emission reductions intended by the original regulation any further."

B. Comments regarding the necessity of the red sticker portion of the OHRV regulations and why four stroke vehicles receive red stickers.

Four comments were received that raised the question of the necessity for having the red sticker portion of the OHRV regulations at all and seven comments questioned why not all four stroke OHRVs receive green stickers.

1. ***Comment:*** "…issue all modern 4 stroke engines green stickers or… take out the whole red sticker and limited riding time idea." (Danny)

2. ***Comment:*** "I hope that they will consider issuing the newer motorcycles green stickers or just eliminating the red/green sticker rule and just go back to registering the vehicle and enjoying the use of it." (Brad Jackson)

3. ***Comment:*** "Please reconsider this (red sticker) restriction on something my entire family loves." (Kenneth Stevison)

4. ***Comment:*** "There should not be a red sticker program. Having a separate red sticker for OHRVs which do not comply with exhaust emission standards is an absurdity. Why not have special stickers for automobiles which do not pass smog checks? The sticker would allow them to be driven at only certain time of the year. I ask that the red-sticker program be discontinued." (Thomas Walsh)

5. ***Comment:*** "I can't ride my so called non compliant 4 stroke dirt bike 4-5 months our the of the year! I thought this law was to stop 2 strokes from pollution the air? A huge amount of competitive riders convert from 2 strokes to 4 strokes just to find out we still can't get green stickers!" (Todd Romero)

6. ***Comment:*** "This red sticker law makes no sense to me anyhow. How can a KTM 450 EXC be licensed with green sticker and a DRZ 400 be red sticker? This makes no sense. The law made marginal sense when applied to oil burning 2 stroke engines, but four strokes????" (Zac Mickel)

7. ***Comment:*** "I just purchased an '03 YZ450 dirt bike that is powered by a clean burning four stroke motor. However, to my surprise it was given a red sticker and now I limited on where and when I can ride. I simply cannot understand the fact that I purchased a much cleaner burning bike, yet I am now penalized by the state by excessive restrictions." (Dan Hayden)

8. ***Comment:*** "If the ARB were thinking of the environment all two-strokes bikes would be red sticker from now on and all four stroke bikes would be green sticker. The new four strokes are becoming very popular and are much cleaner than the two-strokes." (Bill Perdersen)

***Agency Response**:* This rulemaking did not consider getting rid of the red sticker category of OHRVs nor did it consider changing the underlying exhaust emission standards. The rulemaking was simply a delay in the enforcement of the red sticker program to reflect the real world delay in enforcement as discussed in staff report. Therefore, as the above comments are not specifically directed at the proposed action, they are irrelevant to this rulemaking and need not be responded to. Nevertheless, the following response is provided for the commenters' benefit.

The red sticker program remains important both for continued emission reductions and OHRV availability for California. This is discussed at length in the 1998 amendment's Initial Statement of Reasons and continues to be the ARB's position.

The above comments fail to recognize that not all four stroke OHRVs meet the required OHRV emission standards. Manufacturers of OHRVs are required by the regulation to meet set emission standards in order to qualify for a green sticker. The non-emissions-compliant four stroke product that is eligible for a red sticker has not been built or certified by the manufacturer to meet those emission standards. Therefore, an OHRV is not eligible for a green sticker just because it has a four stroke engine. It is the manufacturer's choice, not ARB's, to build a vehicle to meet the emission standards and certify it as emissions-compliant (green sticker) or to build a vehicle that does not meet the standards and certify it as non-emissions-compliant (red sticker).

C. Comment specifying revised emission standards for OHRVs.

***9. Comment:* "**Please raise the CO standard to that which the EPA has recently adopted for 2006 OHMs of 25 g/km." (John Paliwoda)

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. See also preceding response.

D. Comment specifying re-evaluating the riding seasons with the intent to extend the riding time for red sticker OHRVs.

10. Comment: "OHV use area must be re-evaluated with the intent to extend the riding seasons in areas that warrant it." (John Paliwoda)

Agency Response: Staff need not respond to this comment because it is directed at changing the riding seasons (e.,g. their lengths or locations), which are not subjects of the proposal. However, the comment is similar to an official request by the California State Parks to ARB. As staffing and other priorities permit, ARB staff may re-evaluate the riding seasons in order to provide a more uniform schedule for

areas that are geographically close to each other or contiguous.

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 individual 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.