

SUMMARY OF BOARD ITEM

ITEM # 03-6-3: PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE OFF-HIGHWAY RECREATIONAL VEHICLES AND ENGINES REGULATIONS TO POSTPONE RIDING SEASON USE RESTRICTIONS TO THE 2003 MODEL YEAR

STAFF RECOMMENDATION: Staff recommends the Board adopt the amendment to the Off-Highway Recreational Vehicles and Engines (OHRV) Regulation as proposed.

DISCUSSION: The California Clean Air Act as codified in the Health and Safety Code sections 43013 and 43018 grants the Air Resources Board (ARB) authority to regulate off-road mobile source categories, including OHRVs. In 1994, the Board approved regulations to control emissions from OHRVs. These regulations apply to OHRVs manufactured on or after January 1, 1997. In order to ensure product availability in California, in December 1998, the Board amended the regulations to allow seasonal use of vehicles that do not meet the applicable exhaust emissions standards in California's OHRV riding areas.

Since the adoption of the amendments in 1998, ARB staff have worked with the Department of Motor Vehicles (DMV) and the Department of Parks and Recreation (DPR) to enforce the seasonal riding program. One step in that enforcement effort was ARB's regular enforcement of its certification requirements against manufacturers and dealers connected with vehicles reaching the California market with incorrect or no California certification. DMV has committed to automating their registration system to better ensure that OHRVs are registered correctly as either emissions-compliant (green sticker) or non-emissions-compliant (red sticker). DPR in turn has committed to enforce the riding season limitations beginning with the 2003 riding season. This regulatory amendment is proposed simply to reflect the delay in riding season enforcement.

SUMMARY AND IMPACTS:

The 1998 amendments to the OHRV regulations provided for a non-compliant (does not meet exhaust emission standards) category of OHRVs in addition to the existing compliant (meets exhaust emission standards) category. DMV was to register compliant OHRVs with a green sticker providing for unlimited riding use in designated California riding areas. DMV was to register non-compliant OHRVs with a red sticker that allows for limited, non-smog season usage of the vehicles in designated California riding areas.

Since 1998, a significant number of OHRVs were registered with incorrect stickers. Some non-emissions-compliant OHRVs have received green stickers, allowing for unlimited vehicle usage. And some emissions-compliant OHRVs have received red stickers erroneously limiting the vehicles' usage. Due to the registration errors, DPR and their affiliates have been unable to enforce the riding restrictions in California riding areas. Consequently, while most 1998 and later OHRVs reaching the California market were correctly certified and registered, the delay in enforcement means ARB cannot accurately determine the level of emissions reductions achieved from the riding season restrictions to date.

Inconsistencies in the program and lack of enforcement in the field have caused public confusion. The Board's adoption of these proposed amendments will reflect that these problems have been substantially corrected such that riding area enforcement can begin. If adopted, the proposed amendments to postpone the riding season use restrictions to the 2003 Model Year will support DMV's registration of all 2002 Model Year and older OHRVs with a green sticker.

Because the proposed amendment will grant all 2002 Model Year and older OHRVs year-round riding ability, owners of 2002 Model Year or older emissions-compliant OHRVs may claim that they needlessly bought a vehicle that was not as desirable as the non-emissions-compliant version in

order to maintain their year-round riding ability. However, these owners have benefited and will continue to benefit from operating a cleaner OHRV, and in the interim have not needed to worry about when DPR would begin enforcement. Alternatively, owners that were incorrectly issued a red sticker will receive the green sticker that their emissions-compliant OHRVs merit.

If the Board adopts this amendment as proposed, there will be five model years of OHRVs that will no longer be subject to seasonal use restrictions. Staff believes this is mitigated by the fact that there has not been field enforcement of the riding seasons to date. Therefore, actual foregone emission reductions are likely minimal because they were not being achieved in the past but will start being met with the field enforcement. In the future, the reductions lost will be limited to the 1998-2002 model year vehicles.

There are no economic and fiscal impacts associated with the proposed amendment to the regulations. This regulatory amendment simply acknowledges a delay in implementing the previous regulatory amendments. Costs and savings were fully considered in the previous rulemaking.

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

The Air Resources Board (the Board or ARB) will conduct a public meeting at the time and place noted below to consider amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines.

DATE: July 24, 2003

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Central Valley Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., July 24, 2003, and may continue at 8:30 a.m., July 25, 2003. This item may not be considered until July 25, 2003. Please consult the agenda for the meeting, which will be available at least ten days before July 24, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact ARB's Clerk of the Board at (916) 322-4011 or amalik@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**SECTIONS AFFECTED**

Amendment of the following section of title 13, California Code of Regulations (CCR): chapter 9, Off-Road Vehicles and Engines Pollution Control Devices; article 3, Off-Highway Recreational Vehicles and Engines; section 2415, title 13, CCR.

BACKGROUND

The California Clean Air Act as codified in the Health and Safety Code sections 43013 and 43018 grants the ARB authority to regulate off-road mobile source categories, including off-road motorcycles and off-highway vehicles. In 1994, the board approved regulations to control emissions from off-highway recreational vehicles (OHRV). These regulations affected off-road motorcycles and all-terrain vehicles manufactured on/after January 1, 1997.

In order to ensure product availability in California, in December 1998, the Board amended the regulations to allow only seasonal use of vehicles that do not meet the applicable exhaust emissions standards (non-emissions-compliant) in California's OHRV riding areas; that is noncompliant vehicles could be operated in OHRV riding areas located in ozone attainment areas year-round but only during the non-peak ozone season in ozone nonattainment areas. The regulations as amended are codified at title 13, CCR, sections 2410-2415. Following the 1998 amendments, non-emissions-compliant OHRVs were to be registered by California's Department of Motor Vehicles (DMV) with a red sticker. OHRVs meeting exhaust emission standards (emissions-compliant) were to be registered with a green sticker. The stickers were to enable California's Department of Parks and Recreation (DPR) to enforce the limited usage of non-emissions-compliant OHRVs in California's off-highway vehicle riding areas.

Since the adoption of the amendments in 1998, ARB staff have worked with the Department of Motor Vehicles (DMV) and the Department of Parks and Recreation (DPR) to implement the seasonal riding program. One step in that effort was ARB's regular enforcement of its certification requirements against manufacturers and dealers who allowed vehicles to reach the California market with incorrect or no California certification. The violating manufacturers have made corrections and paid penalties to the Air Pollution Control Fund. Another step is DMV recent commitment to automate their registration system to better ensure that OHRVs are registered correctly as either emissions-compliant (green sticker), or non-emissions-compliant (red sticker). DPR in turn has committed to enforce the riding season limitations beginning in 2003.

This regulatory amendment is proposed simply to reflect the delay in riding season enforcement. In crafting the proposal, the ARB staff met numerous times with DMV and DPR staff. The goal of the proposal is to facilitate effective and equitable implementation and enforcement of the OHRV regulation as originally intended. This goal can best be met by acknowledging by regulation that as a practical matter riding season use restrictions are enforceable beginning with the 2003 model year.

STAFF PROPOSAL

The proposal would modify the existing off-highway recreational vehicle regulations to indicate that riding season use restrictions set forth in, section 2415, title 13 CCR would apply to all non-emissions-compliant California off-road motorcycles and all-terrain vehicles 2003 and later model year. The proposal does not change exhaust emission standards or certification requirements, but does provide for a workable enforcement program in the California riding areas. As a result, the proposal reflects that we are now achieving the air quality benefits intended by the 1998 riding season amendments to the OHRV regulations.

The proposed amendment reflects the emission reductions originally intended by the riding season amendments will now be achieved because DMV will be correctly registering OHRVs and DPR will begin riding season enforcement beginning with the

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 will reflect that these problems have been substantially corrected and that riding area enforcement has begun. If adopted, the proposed amendments to postpone the riding season use restrictions to the 2003 Model Year will support DMV's registration of all 2002 Model Year and older OHRVs with a green sticker and will support DPR's enforcement actions beginning with the 2003 riding season.

COMPARABLE FEDERAL REGULATIONS

The U.S. Environmental Protection Agency does not currently have emission control regulations for the 1997 and later model year vehicles and engines that are subject to the proposed amended regulations. Pursuant to Clean Air Act section 209(e), the ARB may need to seek a determination from the federal Environmental Protection Agency that the proposed amendments are within the scope of the previously authorized OHRV regulations.

BENEFITS OF THE PROPOSAL

To date, non-emissions-compliant OHRVs 2002 model year and older have not been restricted to the riding times as intended by the regulation due to lack of enforceability. Consequently the delay in enforcement means ARB cannot accurately determine the level of emissions reductions achieved from the riding season restrictions to date. This is because there has been no enforcement in the California riding areas and therefore the non-emissions-compliant OHRVs have had the ability to ride year-round. The lack of use restriction likely has not provided for the anticipated hydrocarbon reductions. Therefore this amendment will not result in any additional emissions; at most it acknowledges reductions that may not have been achieved. The proposed amendments will reflect that we will now begin to realize the full benefits anticipated from the riding season provisions of the 1998 regulatory amendments.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action that includes a summary of the environmental and economic impacts of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (July 24, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the website listed below.

Inquiries concerning the substance of the proposed regulation should be directed to the agency contact person for this rulemaking: Michelle Shultz-Wood, Enforcement Division, at (626) 459-4338 or e-mail, mshultz@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board's ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and subsequent regulatory documents, including the FSOR once it has been prepared pursuant to Government Code section 11346.9(a), will also be available on the ARB Internet site for this rulemaking at:
<http://www.arb.ca.gov/regact/ohrv03/ohrv03.htm> or at www.arb.ca.gov/enf/enf.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6) 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 agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

In accordance with Government Code sections 11346.3 and 11346.5(a)(10), the Executive Officer has determined that the proposed amendments should have minimal or no impacts on the creation or elimination of jobs within the State of California, minimal or no impacts on the creation of new businesses and the elimination of existing

businesses within the State of California, and minimal or no impacts on the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the action does not create any new requirements, detriments, or benefits. Any such effects were analyzed, as required in previous rulemakings.

Finally, pursuant to Government Code sections 11346.3(a)(2) and 11346.5(a)(8), the Executive Officer has made an initial determination that adoption of the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the Board's attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMISSION OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments submissions not physically submitted at the meeting must be received **no later than 12:00 noon, July 23, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent ohrv03@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, July 23, 2003**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, July 23, 2003**.

The Board requests, but does not require 30 copies of any written submission. Also, the ARB requests that written and e-mail statements be filed at least ten days prior to

the meeting so that ARB staff and Board members have time to fully consider each comment.

STATUTORY AUTHORITY AND REFERENCES

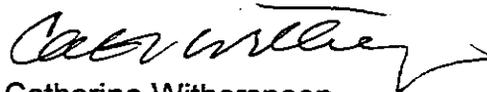
This regulatory action is proposed under the authority granted in Health and Safety Code sections 39600, 39601, 43013, 43018, and 43107, and Vehicle Code sections 38020 and 38390. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 43013, 43018, and, 43107, and Governor's Executive Order W144-97.

HEARING PROCEDURES AND AVAILABILITY OF MODIFIED TEXT

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, Air Resources Board, 1001 I Street, 1st Floor, Visitors and Environmental Services Center, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD



Catherine Witherspoon
Executive Officer

Date: May 27, 2003

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.arb.ca.gov.

State of California
AIR RESOURCES BOARD

**Staff Report: Initial Statement of Reasons
For Proposed Rulemaking**

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

Date of Release: **June 6, 2003**

Scheduled for Consideration: **July 24, 2003**

1. INTRODUCTION AND BACKGROUND

A. History

The California Clean Air Act, codified in the Health and Safety Code, requires the Air

Resources Board (ARB or the Board) to regulate emissions from certain off-road or non-vehicular engines and other non-vehicular sources (sections 43013 and 43018, Health and Safety Code). This legislation specifically mandates that ARB adopt measures to reduce emissions from off-highway vehicles and off-highway motorcycles. ARB has integrated these off-highway categories to include all-terrain vehicles (ATVs) and golf carts. The associated regulations are referred to hereafter under the general term Off-Highway Recreational Vehicles, or OHRV.

The Board first adopted regulations establishing exhaust emission standards, test procedures, and enforcement provisions for off-highway recreational vehicles and engines in 1994. See sections 2410-2414, Title 13, Article 3, Chapter 9, California Code of Regulations (CCR), and the documents incorporated by reference therein). Amendments to the OHRV regulations were adopted on December 10, 1998. (1998 OHRV Amendments.) The 1998 OHRV Amendments provided for a non-emissions-compliant certification and restricted riding seasons for Off-Highway Recreational Vehicles (OHRV) so certified.

The primary goal of the OHRV regulations was to implement emissions standards for a segment of off-road vehicles, which, until 1994, were not subject to any emissions standards. More importantly, sales data had shown that two-stroke engines powered the majority of the OHRVs, and motorcycles in particular. Due primarily to a process known as "scavenging," two-stroke engines are inherently extremely higher polluting, compared to four-stroke engines. With some exceptions, before California regulated OHRVs and their engines, most two-stroke powered motorcycles were marketed as "competition" vehicles. In

* Scavenging occurs when the intake and exhaust ports of a two-stroke engine are opensimultaneously, allowing roughly 20 to 30 percent of the fuel to exit the engine unburned.

order to be operated in non competition settings, (i.e., recreational riding) users were often required to modify the exhaust systems to meet sound level requirements as well as to meet safety requirements (in the form of a spark arrestor). With these modifications, along with the necessary OHRV registration and identification, users were able to operate these high performance vehicles both competitively and recreationally. Four-stroke powered vehicles, on the other hand, were typically used for recreational purposes only.

In 1994, to address the high emissions from and unrestricted use of two-stroke powered vehicles, which comprise the majority of off-highway recreational vehicles, the Board adopted OHRV Regulations establishing emissions standards and definitions for all-terrain vehicles (ATVs), off-road motorcycles, and competition vehicles. In the definitions, each vehicle type was described and, most important, usage was clearly outlined. Specifically, ATVs and off-road motorcycles were defined as those vehicles that could be operated for recreational riding, provided they complied with the new emission standards (section 2411, CCR, Title 13, Article 3, Chapter 9). The stringency level of these standards was purposely set such that only four-stroke engines and advanced two-stroke engines equipped with a catalytic converter could comply.

After the adoption, but before the January 1, 1997 implementation date of the off-highway recreational vehicle regulations, concerns were raised by certain groups about impending impacts. Primarily user groups and dealers voiced these concerns. User groups noted that, as written, the regulations did not provide legitimate, competitive riders the opportunity to participate in open-land racing events, nor to practice in preparation for a competition event. Dealers were concerned that manufacturers would not supply, in a timely fashion, the anticipated full line of certified off-road motorcycles and ATVs that were envisioned at the time the regulations were adopted. Especially necessary were higher performance, four-stroke off-road motorcycles. There was also a need to change the paradigm in the public's perception about four-stroke powered vehicles vis-à-vis their two-stroke counterparts.

In response to those concerns and in order to promote a full product line that would allow competitive business in California, the 1998 OHRV Amendments removed the distinction between competition OHRVs, which need not have complied with the exhaust emission standards, and all other OHRVs, which were so required. With those Amendments, vehicles that could not comply with the new exhaust emission standards could be certified as "non-emissions-complaint and sold in California for purposes other than "competition." However, this new class of OHRVs now had their use limited in the seasonal riding areas listed in new 2415, CCR, Title 13, Article 3, Chapter 9.

To support the 1998 OHRV Amendments, the California Department of Motor Vehicles (DMV or Department) was to modify registration procedures to reflect the differentiation in certification. Only California-certified emission-compliant OHRVs (i.e., vehicles CARB-certified to comply with the exhaust emission standards and other requirements) would be eligible to obtain the necessary

identification (Green Sticker) for unrestricted off-highway recreational use (section 38020, California Vehicle Code). The California certified non-emission-compliant OHRVs (i.e., vehicles CARB-certified as not meeting exhaust emissions standards) would be eligible to obtain the necessary identification (Red Sticker) for restricted off-highway recreational use (section 38020, California Vehicle Code). To enable DMV to provide the correct sticker at registration the regulations required manufacturers to code the vehicle identification number (VIN) with a distinguishing character in the eighth digit, which would signify whether a vehicle was an emissions-compliant model or a non-emissions-compliant model (California Exhaust Emissions Standards and Test Procedures, incorporating modified version of Code of Federal Regulations 86.413 - 78(b)). The VIN coding is used by DMV to distinguish between the two types of OHRVs and consequently to properly register the vehicles according to the way the OHRV is certified with the ARB. Together, these components were to support the effort to reduce the unrestricted use of competition vehicles while promoting the use of off-road vehicles that meet California's exhaust emission standards.

The adoption of the 1998 OHRV Amendments provided for ample product availability while preserving the emissions reduction benefits of the original regulations. The seasonal riding portion of the amendments restricts the use of non-emissions-compliant (Red Sticker) vehicles at OHRV areas located in smoggy areas during the smog season. In attainment areas, or in nonattainment areas during months when exceedances of the state ozone standard are not expected, a non-emissions-compliant (Red Sticker) vehicle could operate at OHV areas. Because non-emissions-compliant (Red Sticker) vehicles would only be able to operate during periods when ozone is not exceeding standards, the emissions reductions envisioned by the regulations would be achieved during the smog season.

In addition, the 1998 OHRV Amendments were intended to meet the desire of some riders to be able to operate a vehicle without regional or seasonal restrictions, and to continue the demand for cleaner vehicles. And in turn, the motorcycle manufacturers were expected to respond over time with production of more high performing, emissions-compliant models.

B. Recent Events

Since the adoption of the amendments in 1998, ARB staff has worked with the DMV and the Department of Parks and Recreation (DPR) to enforce the seasonal riding program. One-step in that enforcement effort was ARB's regular enforcement of its certification requirements against manufacturers and dealers to prevent vehicles from reaching the California market with incorrect or no California certification. The violating manufacturers and dealers have made corrections and paid penalties to the Air Pollution Control Fund.

To date DMV uses a non-automated registration system to register OHRVs. This system, in addition to some miscoded OHRVs reaching California, caused

inconsistencies in OHRV registrations. These inconsistencies have resulted in some non-emissions-compliant OHRVs being registered with Green Stickers and some emissions-compliant OHRVs being registered with Red Stickers. DMV has recently renewed their commitment to automate their registration system to better ensure that OHRVs are registered correctly.

The DPR and other land management agencies were to enforce the riding seasons based on sticker color. However, DPR did not enforce against pre-2003 OHRVs due to inconsistencies in DMV registration. Based on the DMV's renewed commitment to automate the OHRV registration system, DPR has committed to enforce the riding season limitations beginning in 2003.

In crafting the proposal, the ARB staff met numerous times with DMV and DPR staff. The proposed rulemaking is being conducted in order to facilitate enforcement of the regulation and specifically the 1998 OHRV Amendments. The proposal would modify the existing OHRV regulations to indicate that riding season use restrictions begin with the 2003 model year. The proposed amendments will simply reflect the delay in riding season enforcement that occurred in the field by the land management agencies.

II. SUMMARY OF STAFF PROPOSAL

The regulatory text of the staff proposal is contained in Appendix A. The proposal is intended to realize the emissions reductions of the current regulations, while supporting a viable enforcement program.

The proposed regulations are described below.

A. Delay in Riding Season Proposal

The proposal would modify the existing off-highway recreational vehicle regulations to indicate that riding season use restrictions begin with the 2003 model year. The amended, section 2415, Title 13, Article 2, Chapter 9, California Code of Regulations (CCR) would apply to all non-emissions-compliant California off-road motorcycles and all-terrain vehicles model year 2003 and newer. The proposal does not change exhaust emission standards or certification requirements, but does provide for a workable enforcement program. As a result, the proposal preserves the air quality benefits as intended by the 1998 riding season amendments to the off-highway recreational vehicle regulations.

The proposed amendment will ensure that the emission reductions originally intended by the riding season amendments are achieved because DMV will be correctly registering OHRVs and DPR will begin riding season enforcement beginning with the 2003-riding season. Additionally, the amendment supports program changes that will reduce registration inconsistencies and lack of enforcement in the field that may have confused the riding public. The Board's adoption of these proposed amendments will reflect that these problems have

been substantially corrected such that riding area enforcement can begin. If adopted, the proposed amendments to postpone the riding season use restrictions to the 2003 Model Year will support DMV's registration of all 2002 Model Year and older OHRVs with a green sticker and will support DPRs enforcement actions beginning with the 2003 riding season.

The current situation demonstrates that the intended emissions reductions of the off-highway recreational vehicle regulations are not being realized. The majority of emissions reductions that were predicted in 1994, were based on the conversion of the population of off-road motorcycles and ATVs from non-emissions-compliant motorcycles to emissions-compliant motorcycles. The regional/seasonal riding seasons for the non-emissions-compliant OHRVs were adopted in 1998 to realize the emission reductions anticipated in the original regulation. Due to the lack of enforcement of those riding seasons the emission reduction goals have not been met.

As a result of the situation that has occurred, the staff is proposing a regulatory amendment that will simply reflect the delay in riding season enforcement. This action will finally achieve the emissions reductions from off-road recreational vehicles as set out in the original regulation. The proposal would not change the existing exhaust emission standards adopted in 1994 or any of the certification requirements associated with the regulation. Model year 2003 and later OHRVs would receive the proper registration sticker based on their certification status; either green for emissions-complaint OHRVs allowing year-round use, or red for non-emission-compliant OHRVs allowing them to be used for noncompetitive use during periods of clean air. Enforcement of the use requirements using the sticker system would remain the responsibility of the OHRV area land managers. Vehicles produced prior to the original implementation of the emission standards in 1997 would remain unaffected by the regulations.

B. Changes to Existing Regulations

The proposal calls for changes and additions to the existing regulations found in section 2415 (a), Title 13, Article 3, Section 9, CCR. Specifically, the language "Model 2003 and later" will be added to reflect the delay of the enforcement in the riding areas.

III. DISCUSSION OF RECOMMENDED ACTION

A. Off-Highway Vehicle Areas

There currently exists an organized system of OHRV recreation areas throughout California, many of which offer access to off-road motorcycles and ATVs. The majority of these OHRV areas are managed by one of three public land agencies: (1) Department of Parks and Recreation, (2) Bureau of Land Management, or (3) United States Forest Service. There are more than 100

different areas in total and they are found in various locations throughout the State.

The agencies enforcing riding in these areas have to date been unable to enforce the riding seasons for OHRVs as set in the OHRV regulation because of the inconsistencies in the registration of these vehicles. The enforcement agencies are anxious to begin enforcement of the riding seasons and have committed to do so when the registrations are processed consistently.

B. Registration/Identification

A key component supporting the operation of OHRV areas has been the issuance of the OHRV Green and Red Stickers. The registration stickers are obtained when registering an off-road motorcycle or ATV with the DMV. These stickers serve as the sole identification device for the peace officers in riding areas to determine compliance with the riding seasons. Associated registration fees collected are used to develop and operate OHRV facilities.

At the time of the 1998 OHRV Amendments to the regulation, the DMV committed to prioritizing ARB's request to fully automate their registration system with the necessary programming modifications that would result in facilitating proper OHRV registrations. To date, that automation has not been put in place. In light of the enforceability issues over the last 5 years, the DMV has committed to having the automated registration system in place by June 2003.

C. Enforcement

The various public land agencies that manage these OHRV recreation areas have Peace Officers present to patrol and keep order. Included in their duties is to enforce the California Vehicle Code, as it pertains to OHRVs. Vehicles found without a sticker, and Red Sticker vehicles found in limited use areas outside of permitted riding seasons, may be cited for an infraction. See Sections 38020 and 38330, California Vehicle Code. Unfortunately, for the reasons discussed, that enforcement has not been carried out. Pending approval of the Board for the amendment proposed, the enforcement originally intended will take place beginning with the 2003 MY OHRV and 2003 riding season.

D. Outreach

The staff will work with the dealers, user groups, the DMV and the land managers to develop and distribute informative materials to educate current and prospective OHRV purchasers and users of the delay in riding season enforcement.

IV. AIR QUALITY, ENVIRONMENTAL AND ECONOMIC IMPACTS

A. Air Quality and Environmental Impacts

Since the proposed amendments simply reflect a delay of the program as intended by the 1998 OHRV Amendments, the analysis provided in the 1998 Staff Report remains pertinent. The following excerpt is reprinted from the 1998 Staff Report:

"The 1994 State Implementation Plan (SIP) for Ozone is California's master plan for achieving the federal ozone standard in all areas of the state by 2010. Because the off-highway recreational vehicle regulations were already adopted at the time the Ozone SIP was developed, emission reductions from those regulations were incorporated into the SIP baseline. The off-highway recreational vehicle regulations adopted in 1994 were expected to reduce emissions of HC from off-road motorcycles and ATVs by 33 tons per day statewide, from an uncontrolled baseline of 37 tons per day, in 2010. Emissions of NOx, which were determined to be 0.4 tons per day in an uncontrolled baseline, were expected to increase no more than 0.05 tons per day because controlled engines would operate under leaner fuel calibrations. However, the NOx increase was deemed relatively insignificant and would be more than compensated for by the associated HC benefits. Compared to the projected 1994 statewide estimates, implementation of the 1998 OHRV Amendments were to affect emissions in nonattainment areas and attainment areas (and, thus, also on a statewide basis) differently. In a nonattainment area such as the South Coast, riding was expected to decrease during the smog season due to the use restrictions on non-emissions-compliant vehicles. That means that emissions will be lower, since the regulatory assessment had assumed purchasers would have only bought emissions-compliant products and there would have been no reduction in riding. In the long term, however, it was expected that manufacturers would introduce a full line of high-performance emissions-compliant motorcycles, and when that occurred, emissions reductions in the nonattainment areas would be the same as had been predicted.

In the attainment areas, and in the nonattainment areas during months without smog violations, emissions would increase, however this would have no impact on ozone air quality since exceedances of the ozone standard do not

occur during the period in which riding is allowed. To the extent that HC emissions, which are the principal pollutant emitted from these vehicles, contribute to PM ambient air quality exceedances during these months, or to toxics, a *small adverse impact may occur. On a statewide basis, HC emissions will be higher because of the use of non-emissions-compliant vehicles in clean areas.*"

By delaying enforcement of the riding seasons, the same environmental and air quality impacts will materialize as predicted in the 1998 Staff Report. To date, non-emissions-compliant OHRVs 2002 MY and older have not been restricted to the riding times as intended by the regulation. Consequently, while most 1998 and later OHRVs reaching the California market were correctly certified and registered, the delay in enforcement means ARB cannot accurately determine the level of emissions reductions achieved from the riding season restrictions to date. This is because there has been no enforcement in the California riding areas and therefore the non-emissions-compliant OHRVs have had the ability to ride year-round. The lack of use restriction likely has not provided for the anticipated hydrocarbon reductions. Therefore this proposed amendment will not result in any additional emissions going forward; at most it acknowledges reductions that may not have been achieved. The proposed amendments will reflect that we will now begin to realize the full benefits anticipated from the riding season provisions of the 1998 OHRV Amendments.

B. CEQA Analysis

The California Environmental Quality Act (CEQA) and ARB policy require an analysis to determine the potential adverse environmental impacts of proposed regulations. Because the ARB's program involving the adoption of regulations has been certified by the Secretary of Resources (see Public Resources Code section 21080.5), the CEQA environmental analysis requirements are allowed to be included in the ARB Staff Report or Technical Document in lieu of preparing an environmental impact report or negative declaration. In addition, the ARB will respond in writing to all significant environmental points raised by the public during the public review period or at the Board hearing. These responses will be contained in the Final Statement of Reasons for the proposed amendments to the regulations.

Public Resources Code section 21159 requires that the environmental impact analysis conducted by ARB include the following: (1) an analysis of the reasonably foreseeable environmental impacts of the methods of compliance, (2) *an analysis of reasonably foreseeable feasible mitigation measures*, and (3) an analysis of reasonably foreseeable alternative means of compliance with the regulations. In 1998, the ARB determined that the 1998 OHRV Amendments would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures were proposed to avoid or reduce any significant effects on the environment.

This proposal will provide for the reductions and small increases in emissions as expected by the 1998 staff report. The following excerpt is reprinted from the 1998 Staff Report:

“Reductions in ozone nonattainment areas will be achieved due to use restrictions, at least in the short term. In the long term the reductions will be equal to or greater than expected from current regulations. The proposal will also provide for the originally anticipated increased emissions in attainment areas and in other areas during months in which ozone violations do not occur. Additionally as originally predicted in the 1998 OHRV Amendments, small increases in toxics and ambient PM may occur, however the staff is aware of no means of mitigating these potential impacts. The staff is unaware of any other alternatives that avoid increases of emissions in clean areas, while increasing the likelihood that the emissions reductions envisioned by the original [1994] regulations are achieved, and avoid an adverse impact on businesses, especially the dealers who sell off-road motorcycles.”

Because this regulatory proposal identifies no new potentially significant environmental effects, it would not have any significant or potentially significant effects on the environment. Therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment.

C. Economic Impact

There are a few possible economic concerns associated with the implementation of this proposal. Staff has considered these concerns as follows, but asserts that they present issues no different from the anticipated costs and benefits that were considered or are assumed to have been considered in the 1998 OHRV rulemaking.

Table 1 portrays the possible economic concerns associated with the implementation of this proposal.

Table 1.
Possible Economic Concerns Summary

Affected Group	Economic Concern
1997 MY* and older owners	Resale value potentially decreased
1998-2002 MY non-emissions-compliant owners	Resale value potentially increased
1998-2002 MY emissions-compliant owners	Resale value potentially decreased Resale ability potentially decreased
Dealers selling 2003 MY and later	Sale ability potentially decreased

*Model Year

i. 1997 Model Year and Older OHRV Owners

When the 1998 OHRV Amendments were implemented, a 1997 MY OHRV may have had a higher market value than prior to implementation. This was because a purchaser may have made the decision to buy an OHRV one model year older in order to obtain a green sticker with unrestricted use rather than buying a newer model that would receive a red sticker with restricted use associated. With the implementation of the proposed amendment, any higher market value that may remain for a 1997 MY OHRV would disappear because there would be 5 newer model years available, 1998-2002, that are eligible for green stickers. The 1998-2002 MY OHRVs would be more desirable to a purchaser than an older 1997 MY. Conversely, the higher market value of a 1997 MY OHRV may have already been lost simply based on the age of the vehicle in 2003. To the extent these concerns could be considered an economic impact, it simply reflects a delay in an impact, previously analyzed and considered, that would have started occurring in 1998 had enforcement begun then.

ii. 1998-2002 Model Year Non-Emissions-Compliant Owners

When the 1998 OHRV Amendments were implemented, non-emission-compliant 1998 MY and later OHRVs were to receive a Red Sticker at the time of registration denoting the vehicle's restricted use. Theoretically, the value of the emissions-complaint OHRVs would be higher than the value of the non-emissions-compliant OHRVs because purchasers would make their purchasing decision based on their desire to have unrestricted use of their OHRV. This theory may not have been true in many cases based on the technical differences

found between an emissions-compliant and non-emissions-compliant OHRV. Purchase decisions may have been based solely on the technology and performance of the OHRV without much consideration to the use restrictions. This type of purchase decision was likely because it was general knowledge that the riding seasons were not being enforced and therefore having a Red Sticker was not a detriment to the owner's riding ability.

In order to facilitate enforcement of the regulation and to obtain the anticipated emission reductions associated with the regulation, the proposal will result in this group of OHRVs receiving Green Sticker registrations. Implementation of the proposal will most likely remove any price differential found between non-emissions-compliant OHRVs and emission-compliant OHRVs that might have provided for a higher value and better resale ability of the non-emissions-compliant OHRVs. Again, to the extent these concerns could be considered an economic impact, it simply reflects a delay in an impact, previously analyzed and considered, that would have started occurring in 1998 had enforcement begun then.

iii. 1998-2002 Model Year Emissions-Compliant Owners

By delaying the enforcement of the riding seasons as is proposed, the possibility of a price differential between emission-compliant and non-emission-compliant OHRVs is also delayed. The current owners of 2002 and older emissions-compliant OHRVs may have expected their Green Sticker OHRV to fetch a higher resale price because of the vehicle's unrestricted use. The Green Sticker OHRV may have had a higher resale value than a similar non-emissions-compliant or Red Sticker OHRV. With the proposed amendment that potential differential disappears and may make it more difficult for those owners to sell their 1998-2002 MY used OHRVs. A purchaser of a used OHRV would more likely choose to buy a non-emissions-compliant OHRV that is perceived to be a superior vehicle over an emissions-compliant OHRV since they would both be eligible for a Green Sticker. Again, to the extent these concerns could be considered an economic impact, it simply reflects a delay in an impact, previously analyzed and considered, that would have started occurring in 1998 had enforcement begun then.

iv. Dealers Selling 2003 MY and Later OHRVs

As was anticipated in 1998 with the 1997 MY OHRVs, there may be a larger market for used 2002 and older OHRVs than there will be for new 2003 MY. This market may continue for one model year or more depending on manufacturing advances and other purchasing decision factors. Some manufacturers make significant changes in their product from one model year to the next making it desirable to purchase the newest product on the market. Other products are built from one model year to the next without significant changes made to the vehicle. The products that have not changed very much from 2002 MY to 2003 MY and beyond may experience decreased sales for one year or more. OHRV purchasers may decide to purchase a used 2002 MY OHRV that is eligible for a

Green Sticker and in turn unrestricted use rather than purchasing a new 2003 MY OHRV that would receive a Red Sticker and restricted use. This could cause some concern for dealers that are selling those OHRVs. To the extent this could be considered an economic impact, it would have occurred to dealers in 1998 if the regulation had been enforced properly.

Again, the possible decrease in 2003 MY sales is the same concern that was present in 1998 when those amendments were implemented. This concern is based on many different factors such as: personal preference of the potential customers, personal purchase decisions, new model availability and technological differences. Most of these determining factors are present with or without considering the proposed amendment.

In conclusion, while the proposed amendments present economic concerns, most are difficult if not impossible to isolate from other market factors that affected OHRV sales post-1998 OHRV Amendments. To the extent any such concerns could be isolated and treated as economic impacts, they were considered in the 1998 OHRV rulemaking. Thus these are not concerns affecting small business or creating economic impacts requiring further analysis or response.

V. ISSUES OF CONTROVERSY

The proposed amendment will ensure that the emission reductions originally intended by the riding season amendments are achieved because DMV will be correctly registering OHRVs and DPR will begin riding season enforcement beginning with the 2003-riding season. Additionally, the amendment supports program changes that will reduce registration inconsistencies and lack of enforcement in the field that may have confused the riding public. The Board's adoption of these proposed amendments will reflect that these problems have been substantially corrected such that riding area enforcement can begin. If adopted, the proposed amendments to postpone the riding season use restrictions to the 2003 Model Year will support DMV's registration of all 2002 Model Year and older OHRVs with a green sticker and will support DPRs enforcement actions beginning with the 2003 riding season.

This proposal simply clarifies what is already happening in the field. Staff believes there would be more controversy if the amendment were not made than if the proposal is adopted. If these clarifications are not made, the confusion in the field will continue and controversy over a regulation that is not being enforced will ensue.

VI. REGULATORY ALTERNATIVES

Retaining the regulations as they currently stand would not be a preferred alternative. As already noted, the emissions reductions set by the 1998 OHRV Amendments have not been met due to lack of enforceability. If the regulations are left as they are, enforcement in the riding areas cannot occur and the

emission reductions will continue to fall short of what is required by the OHRV regulations. On the other extreme, repealing the regulations would not be a recommended alternative. Although legislation was introduced that attempted to do this (SB 1726, Johannessen), it has been shown that these vehicles produce significant amounts of emissions, thereby necessitating emission control regulations on this segment of off-road mobile sources. Furthermore, by repealing the regulations, mitigating measures would certainly have to be developed to make up for the shortfall because the current regulations and the proposal are very cost effective. Obtaining the needed reductions from other sources is likely to be more costly.

VII. CONCLUSION

Staff recommends that the Board approve this regulatory proposal. The proposal described herein would facilitate enforcement of a program in place. No alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective or less burdensome to affected private persons than the proposed alternative.

APPENDIX A**Proposed Regulation Order**

Note: Set forth below is the proposed 2003 amendment to the Off-Highway Recreational Vehicles (OHRV) and Engines Regulation. The text of the proposed amendment is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions, compared to the current regulatory language. Subsections or parts thereof for which no changes are proposed are indicated by the phrase "[No changes.]"

Amend Title 13, California Code of Regulations, Chapter 9, Article 3, Section 2415, to read as follows:

§ 2415. California Off-Highway Vehicle Areas and Riding Seasons for Off-Highway Recreational Vehicles with Use Restrictions.

- (a) The following table lists the public off-highway vehicle (OHV) areas of California designated for off-highway recreational vehicle operation, including off-highway motorcycle and ATV operation. Model year 2003 and later off-highway motorcycles and ATVs that are certified pursuant to section 2412(f) are permitted to operate in the areas noted below only during the applicable riding seasons noted. Off-highway motorcycles and ATVs that meet the emissions standards noted in section 2412(b) are not subject to riding season use restrictions. This table contains the following information: OHV area managing entities, OHV area names, and the applicable riding seasons.

Table 1

[No changes.]

(b) [No changes.]

(1) [No changes.]

(2) [No changes.]

(c) [No changes.]

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018 and 43107, Health and Safety Code; and Sections 38020 and 38390, Vehicle Code. Reference: Sections 43013, 43018 and 43107, Health and Safety Code; and Governor's Executive Order W144-97.

