State of California
AIR RESOURCES BOARD

Resolution 06-23

July 20, 2006

Agenda Item No. 06-7-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or the Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles and utility vehicles;

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

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

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, in January 1994 the Board adopted title 13, California Code of Regulations (CCR), division 3, chapter 9, article 3, "Off-Highway Recreational Vehicles and Engines" and its incorporated documents, which established exhaust emission standards, test procedures, and enforcement provisions for Off-Highway Recreational Vehicles (OHRV) and Engines;

WHEREAS, in December 1998 the Board adopted amendments to the OHRV Regulation, which as amended, provide for emissions noncompliant certification and restricted riding seasons for OHRVs so certified;

WHEREAS, the OHRV Regulation applies to OHRVs including off-road motorcycles and all-terrain vehicles with engines greater than 90 cubic centimeters produced on or after January 1, 1997, and to off-road motorcycles and all-terrain vehicles with engines 90 cubic centimeters or less produced on or after January 1, 1999;

WHEREAS, the State Implementation Plan (SIP) adopted by the Board in November 1994, which establishes the state strategy for attaining the national ambient air quality standards for ozone in all areas of the state by 2010 as required by federal law, includes the emissions reductions associated with the OHRV Regulation;

WHEREAS, in November 2002, the United States Environmental Protection Agency (U.S. EPA) finalized its own regulation for OHRVs, which contains standards for both evaporative and exhaust emissions, while the current California OHRV Regulations have no evaporative emissions requirements;

WHEREAS, the federal regulation of OHRVs did not begin until the 2006 model year, and will not be completed until 2008;

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

WHEREAS, OHRVs certified as emissions noncompliant under the OHRV Regulation do not meet the exhaust emission standards set forth therein; these vehicles receive red sticker registration from DMV and can only be operated in California OHRV riding areas during the designated riding seasons listed in title 13, CCR, section 2415, table 1;

WHEREAS, staff has proposed amendments to the OHRV Regulation, set forth in Attachment A hereto, and to the incorporated "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines," set forth in Attachment B hereto, which include the following:

> Adoption of evaporative emission standards for OHRVs that will align with the U.S. EPA standards and further reduce ozone-forming emissions due to OHRV permeation losses;
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> Amendments to the definitions in title 13, CCR, section 2411 for vehicles that are subject to the OHRV regulation in order to clarify the applicability to and/or include all-terrain vehicles and certain types of off-road utility vehicles;
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> Allowing manufacturers of certain types of off-road utility vehicles to follow the same certification test procedures as all-terrain vehicles, in order to demonstrate compliance with proposed exhaust emission standards in the OHRV regulation that are of equivalent stringency as the large spark-ignition engine or small off-

road engine standards which currently apply to these vehicles, taking the test procedures into account;

Clarifying the labeling requirements for OHRVs by inserting into title 13, CCR, section 2413, the language that had been previously incorporated by reference;

Revising the riding seasons for red-stickered OHRVs to a more uniform schedule of dates that reflect current air quality and facilitate enforcement;

WHEREAS, in response to comments received from the public since issuance of the Staff Report: Initial Statement of Reasons on June 2, 2006, the staff is suggesting that the Board approve the originally proposed amendments with the modifications set forth in Attachment C hereto, which would allow off-road sport vehicles, off-road utility vehicles and sand cars to be certified using the OHRV test procedures to standards;

WHEREAS, the amendments approved herein will ensure full implementation of the OHRV Regulations and will achieve the intended emissions reductions from OHRVs prospectively;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

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

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

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

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

WHEREAS, because California's more stringent exhaust standards provide better assurances for lower ozone-forming emissions and carbon monoxide emissions, the current and continued use of the OHRV exhaust emissions standards offers the best protection for California;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

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

WHEREAS, a pre-proposal public workshop on potential OHRV amendments was held at ARB's offices in El Monte, California on March 23, 2006;

WHEREAS, in consideration of the Initial Statement of Reasons, written comments, and public testimony it has received, the Board finds that:

Despite advances in reducing emissions from motor vehicles, California still has the most severe air pollution problems in the United States;

To meet federal and California Clean Air Act emissions reduction requirements, ARB must continue to achieve proportional and incremental reductions from all sources under its authority, including OHRVs;

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

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

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

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

Based on its independent judgment and analysis of the whole record before it, composed of all materials in the rulemaking record that is available at the Board's offices, the amendments approved herein will not have a significant or potentially significant negative effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to title 13, CCR, division 3, chapter 9, article 3, "Off-Highway Recreational Vehicles and Engines," sections 2411, 2412, 2413 and 2415, as set forth in Attachment A hereto, and to the incorporated "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines," as set forth in Attachment B hereto, with the modifications described in Attachment C hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the above amendments as set forth in Attachments A and B hereto, with the modifications set forth in Attachment C hereto and such other conforming modifications and technical amendments as may be appropriate, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the amendments to the Board for further consideration if she determines that this is warranted.

BE IT FURTHER RESOLVED that the staff is directed to continue to meet with interested parties including industry on the best way to categorize various kinds of vehicles that are or may be subject to the OHRV regulation; the conforming modifications to the amendments approved herein may reflect refinements resulting from these discussions as long as the refinements do not reduce the overall stringency of the standards that currently apply to these vehicles.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause the California emissions standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the California emission standards and test procedures as adopted herein will not cause the California requirements to be inconsistent with the federal Clean Air Act, as amended, and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. Environmental Protection Agency pursuant to section 209 of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the U.S. Environmental Protection Agency with a request for confirmation that the regulations are within the scope of an existing authorization, or if necessary seek a new authorization, pursuant to section 209 of the Clean Air Act.

RECEIVED BY
Office of the Secretary

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RESOURCES AGENCY OF CALIFORNIA

I hereby certify that the above is a true and correct copy of Resolution 06-23, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Resolution 06-23

July 20, 2006

Identification of Attachments to the Resolution

Attachment A:	Proposed amendments to the Off-Highway Recreational Vehicles and Engines Regulation, as set forth in Attachment A to the Staff Report: Initial Statement of Reasons released June 2, 2006.
Attachment B:	Proposed amendments to the "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines," as set forth in Attachment B to the Staff Report: Initial Statement of Reasons released June 2, 2006.
Attachment C:	Staff's Suggested Modifications to the Original Proposal, distributed at the Board Hearing on July 20, 2006.