

State of California
AIR RESOURCES BOARD

**PROPOSED AMENDMENTS TO THE RED STICKER PROGRAM FOR
OFF-HIGHWAY RECREATIONAL VEHICLES**

Resolution 19-11

April 25, 2019

Agenda Item No.: 19-4-1

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

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State, and sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility of air pollution control from motor vehicles;

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

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

WHEREAS, section 43018(a) of the Health and Safety Code directs the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to attain State ambient air quality standards at the earliest practicable date;

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

WHEREAS, the 2007 amendments to the SIP adopted by the Board, require action to expand OHRV evaporative emission standards;

WHEREAS, in May 2011, the Board adopted revisions to the rulemaking calendar for California's SIP, to commit CARB to expand OHRV emission standards in 2013;

WHEREAS, in July 2013, the Board adopted revisions to the OHRV regulation, to expand OHRV evaporative emission standards;

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

WHEREAS, in January 1994, the Board adopted title 13, California Code of Regulations, sections 2410, 2411, 2412, 2413, 2414, and 2415, "Off-Highway Recreational Vehicles and Engines" and its incorporated documents, which established exhaust emission standards, test procedures, and enforcement provisions for OHRVs and OHRV engines (OHRV Regulation);

WHEREAS, in December 1998, the Board adopted amendments to the OHRV Regulation, which as amended, allowed certification for noncompliant OHRV motorcycles and ATVs and restricted riding seasons on public lands for such "red sticker" OHRVs so certified (Red Sticker Program);

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

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

WHEREAS, in July 2006, the Board adopted amendments to the OHRV Regulation, which as amended, revised the riding seasons for noncompliant vehicles, and applied evaporative permeation standards to OHRVs, which was the same as the federal standards;

WHEREAS, the Red Sticker Program was intended as a temporary measure to provide manufacturers with adequate time to develop engine and emission control technologies allowing for a full range of certified OHRV to comply with applicable standards;

WHEREAS, sales, marketing, and recreational use of OHRV with no emission controls persists throughout California more than 20 years after the Red Sticker program was established, despite the availability of cost effective engine and emission control technologies that can meet applicable standards;

WHEREAS, staff has proposed amendments to exhaust and evaporative emissions standards for certain OHRVs, including off-road motorcycles, all-terrain vehicles, off-road utility vehicles, off-road sports vehicles, and sand cars for model year 2020 and later, as set forth in Appendix A (proposed amendments) to the Initial State of Reasons (ISOR) released to the public on March 5, 2019;

WHEREAS, staff has also proposed amendments to the Red Sticker Program for Off-Highway Recreational Vehicles as part of this regulatory proposal;

WHEREAS, the proposed amendments include the following primary elements:

1. Ending certification of uncontrolled red sticker OHRV beginning with model year 2022 and lifting riding restrictions on public lands for red sticker OHRV in 2025;
2. Harmonizing California's emission standards for off-highway motorcycles with U.S EPA standards for evaporative controls from 2020 through 2026 and for exhaust controls from 2022 through 2027;
3. Adopting more stringent emissions standards for OHRV from 2026 (for evaporative emissions) and 2027 (for exhaust emissions) onward;
4. Adding provisions for alternative certification of evaporative systems; and
5. Enhancing fleet averaging and zero emissions credit provisions to provide flexibility and promote zero emissions technologies in the off-road sector;

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

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

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

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

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

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, CARB staff prepared an environmental analysis (EA) under its certified regulatory program for the proposed amendments, and circulated it as part of the Staff Report for 45 days; the EA concluded there is no substantial evidence to support a fair argument that the proposed amendments will result in any significant adverse impacts on the environment;

WHEREAS, CARB staff estimates that the proposed amendments will reduce emissions of ozone precursors, reactive organic gas and oxides of nitrogen, from OHRV by nearly six tons per day statewide in 2040, helping to improve air quality by reducing the formation of harmful ground level ozone;

WHEREAS, staff has determined the proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the amendments will enhance the environment by better protecting the public from health impacts associated with exposure to hydrocarbon, oxides of nitrogen, and ground level ozone, the regulatory process involves procedures for protection of the environment, and the amendments will not result in any significant adverse environmental impacts as described in Chapter VI of the Staff Report;

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

WHEREAS, the Board finds that:

Despite advances in reducing emissions from motor vehicles, California is faced with some of the most severe air pollution problems in the United States;

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

While the California motor vehicle emissions regulations as proposed herein are different from the federal regulations administered by U.S. EPA, the proposed California regulations herein are authorized by State and federal law;

Control of exhaust and evaporative emissions from OHRVs will help to reduce ozone levels in non-attainment areas throughout California and especially in the

San Joaquin Valley Air Pollution Control District and South Coast Air Quality Management District;

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

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 benefits to human health, public welfare, the environment;

Based on studies and the analyses performed for OHRV initial statement of reasons, all of the proposed regulatory actions are necessary, appropriate, cost-effective, and technologically feasible;

The proposed amendments meet the statutory requirements to adopt and implement emission standards to control air contaminants from motor vehicles, including OHRVs, as identified in sections 43013, 43018, and 43101 of the Health and Safety Code;

The proposed amendments were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15308 because substantial evidence in the record shows that it will enhance the environment by better protecting the public from health impacts associated with exposure to ozone precursors (e.g.; hydrocarbons and NOx), the regulatory process involves procedures for protection of the environment, and the proposal will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 2411, 2412, 2415, 2416, 2418, and 2419.4, Title 13 California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15-day public comment periods may affect the conclusion of the EA, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by CARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make the modified regulatory language in Attachment B, to determine if any additional conforming modifications are appropriate, and if so, to make the modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate modifications.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, submit the proposed regulatory action to the U.S. EPA for approval as a revision to the California SIP as required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intending to reduce emissions of air pollutants to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA under the CAA.

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

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the Environmental Protection Agency with a request for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) or authorization pursuant to section 209(e)(2)(A) of the Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 19-11 as adopted by the California Air Resources Board.

Cristina Granados, Clerk of the Board

Resolution 19-11

April 25, 2019

Identification of Attachments to the Board Resolution

Attachment A*: Proposed Amendments to the Red Sticker Program for Off-Highway Recreational Vehicles, sections 2411, 2412, 2415, 2416, 2418, and 2419.4, Title 13, California Code of Regulations, as set forth in Appendix A to the Initial Statement of Reasons, released March 5, 2019.

Attachment B: Summary of Proposed Modifications to the Original Proposal (Presented at the April 25, 2019, Board Hearing).

***Attachment A is NOT attached to the proposed resolution; it is simply described on this page.**

ATTACHMENT B

Staff's Suggested Modifications to the PROPOSED AMENDMENTS TO THE RED STICKER PROGRAM FOR OFF-HIGHWAY RECREATIONAL VEHICLES

(Distributed at the April 25, 2019, Board Hearing)

This attachment shows the modifications to the originally proposed regulatory language. The originally proposed regulatory language is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The suggested modifications to the proposed regulation are shown in double underline to indicate additions and ~~double-strikeout~~ to indicate deletions.

Shown below are only those portions of the originally proposed regulation that have been modified. Additional changes are also described and modified regulatory language will be developed by staff as described, and the modified language will be made available to the public for a fifteen-day comment period prior to final adoption.

* * * * *

Amend section 2419.4, title 13, California Code of Regulation (CCR), to read as follows:

§ 2419.4. Evaporative Emissions Control System Testing and Certification Requirement.

...

(b) Certification Requirements.

(1) OHRV Manufacturer Certification Requirements.

For model years 2018 and later, OHRVs must be tested with the entire evaporative emissions control system as a complete vehicle or be certified in compliance with the alternative standards in section 2418(e). To obtain an Executive Order of Certification, an OHRV manufacturer must demonstrate compliance with one of the following two options: option one—comply with subparagraph (A) and subparagraphs (C) through (F) below, option two—comply with subparagraph (B) and subparagraphs (C) through (F) below.

(A) Perform OHRV testing in accordance with section 2418(c) or section 2418(e). Measured emissions must be at or below the applicable evaporative emissions standards listed in section 2418(a) or 2418(e) unless certifying as a zero emissions off-road vehicle