State of California
AIR RESOURCES BOARD

Supplemental Final Statement of Reasons for Rulemaking.
Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER THE ADOPTION OF EMISSION CONTROL REGULATIONS FOR OFF-HIGHWAY RECREATIONAL VEHICLES AND ENGINES.

Public Hearing Date: January 13, 1994
Agenda Item No: 94-1-1

On November 23, 1994, the Air Resources Board (ARB or Board) filed with the Office of Administrative Law (OAL) the above-entitled rulemaking file for approval. On January, 10, 1995, OAL disapproved the rulemaking file for the reasons set forth in its Decision of Disapproval of Regulatory Action, dated January 17, 1995. The Decision of Disapproval states that the proposed regulations failed failed to comply with the clarity and consistency standards contained in Government Code section 11349.1 and the procedural requirements of the Administrative Procedures Act. The ARB submits this Supplemental Final Statement of Reasons to respond to the deficiencies identified in the Decision of Disapproval.

Clarity of section 2413(a):

The Decision of Disapproval states that section 2413(a) is unclear because the section incorporates both Title 13, CCR, section 1965 and the "California Emission Control Label Specifications," as amended on July 12, 1991. At the time that section 2413(a) was approved by the ARB for adoption, section 1965 specifically incorporated the July 12, 1991 version of the specifications. Subsequently, however, section 1965 was amended by the Board to incorporate a later version of the specifications. The March 24, 1994 version of the specifications added provisions that apply exclusively to heavy-duty diesel engines used in busses.

To correct the clarity problem, the ARB has deleted the reference to Title 13, CCR, section 1965 and specifically incorporates just the July 12, 1991 version of the specifications. This version of the specifications contains all relevant labeling requirements as they relate to off-highway recreational vehicles and is the version that was made available to the public during the 45 day comment period.

Consistency of Sections 2410, 2412, and 2413:

The Decision of Disapproval recites that adopted sections 2410, 2412, and 2413 are inconsistent with Government Coded section 11343.4 and court decisions prohibiting retroactive application of a regulation in the absence of statutory authorization. The Decision of Disapproval indicates that the problem exists because sections 2410, 2412, and 2413 state that their provisions are applicable to specialty vehicles produced on or after January 1, 1995.

The ARB has addressed this perceived problem by including a note in section 2410 which states that under section 209(e)(2) of the Federal Clean Air Act, California cannot enforce its regulations prior to receiving express authorization from the Administrator of the U.S. Environmental Protection Agency. (42 U.S.C. 7543(e); see also 59 Fed.Reg 36969, 36982 [July 20, 1994].

Incorrect APA Procedures Were Followed:

Finding Required under Government Code Section 11346.3:

The Decision of Disapproval states that the rulemaking file did not include the finding required by Government Code section 11346.3 regarding reports required by business. The ARB disagrees with the Decision of Disapproval in that the Board specifically made the requisite finding in Resolution 94-1, at page 3.

Failure to Properly Address a Comment:

The Decision of Disapproval states that the ARB failed to respond in the initial Final Statement of Reasons to a comment submitted by the Motorcycle Industry Council, Inc. (MIC), which was written in response to the Notice of Availability of Modified Text, dated March 22, 1994. In its comment, MIC requested that section 86.416-80(c)(1), be modified by adding the phrase "produced for sale in California" to refer to off-road noncompetition vehicles for which manufacturers must provide an accounting. The ARB did not accept MIC's suggested language because it had determined that the language was unnecessary in that subsection (c)(2) made it clear that the accounting only applies to those vehicles produced for sale in California on or after January 1, 1997.

Other Corrections:

In the Decision of Disapproval and in a follow-up phone conversation the ARB had with Staff Counsel Gordon R. Young, several typographical errors were identified that needed to be corrected. The ARB has made those corrections.