

State of California
AIR RESOURCES BOARD

Resolution 95-49

December 14, 1995

Agenda Item No.: 95-13-4

WHEREAS, Section 39003 of the Health and Safety Code charges the Air Resources Board (the "Board") with coordinating efforts to attain and maintain ambient air quality standards; and

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize 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; and

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 attacking the serious air pollution problem caused by motor vehicles; and

WHEREAS, in Section 43000.5 of the Health and Safety Code, the Legislature has declared that the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including both on- and off-road vehicles, light-duty cars and trucks, and heavy-duty vehicles; to achieve improvements in both the emissions levels and in-use performance; and

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

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

WHEREAS, the Board has adopted regulations under Title 13, California Code of Regulations (CCR), Chapter 1, Article 2 for on-road motor vehicles, including heavy-duty vehicles and engines; and

WHEREAS, the Board has adopted regulations under Title 13, CCR, Chapter 9 for off-road vehicles and engines pollution control devices, including utility and lawn and garden engines, off-highway recreational vehicles and engines, and heavy-duty off-road diesel cycle engines; and

WHEREAS, the staff has proposed that Sections 1905, 2400(c), and 2420(d) of Title 13, CCR, be adopted to provide for a national security exemption for tactical military vehicles and equipment; and

WHEREAS, on- and off-road engines used in or on military tactical vehicles and equipment would be excluded, exempted, or covered by a certificate of conformity by the United States Environmental Protection Agency (U.S. EPA) under 40 Code of Federal Regulations, Parts, 85, 89, or 90; and

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

WHEREAS, pursuant to Section 43013(e) of the Health and Safety Code and Government Code Sections 11346.3, the Board has considered the effects of the proposed amendments on the economy and businesses of the state, including the ability of businesses to compete with businesses in other states; and

WHEREAS, Section 209(e) of the Federal Clean Air Act, as amended in 1990, requires that the Board receive authorization from the Administrator of the U.S. EPA to adopt and enforce standards relating to the control of emissions from engines or vehicles that are not otherwise preempted by federal law; and

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; and

WHEREAS, the Board finds that:

Provisions for exclusion and exemption of military tactical vehicles, engines, and equipment are necessary;

The proposed provisions would clarify and update the regulations to provide flexibility to the military in order to allow the military to maintain a uniform, combat-ready fleet worldwide; and to preserve the military's readiness for national defense;

The proposed provisions will ensure consistency between the California regulations and federal requirements for military tactical vehicles, engines, and equipment; and

WHEREAS, in accordance with the California Environmental Quality Act and Board regulations, the Board further finds that:

The proposed adoption of the exclusions and exemptions for military tactical vehicles may result in some adverse impacts on the environment;

To the extent that such impacts may occur as a result of the exclusions and exemptions provided for military tactical vehicles, overriding considerations based on the national security needs identified above exist for the adoption of these provisions; and

There are no other feasible mitigation measures that would reduce the potential environmental impacts while at the same time providing the flexibility needed by the military for a uniform, combat-ready fleet worldwide that is necessary to preserve the military's readiness for national defense.

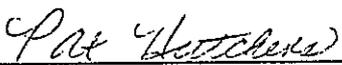
NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts Section 1905, and amends Sections 2400(c) and 2420(d), Title 13, CCR, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board hereby determines that the adopted provisions herein will not undermine previously granted motor vehicle waivers or nonroad authorizations granted by the Administrator of the U.S. EPA and that California motor vehicle and nonroad emission standards, in the aggregate, continue to be at least as protective of public health and welfare as applicable federal standards.

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 Section 202(a) and 209 of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. EPA pursuant to Sections 209(b) and (e) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the U.S. EPA with a request that the adopted amendments be found to be within the scope of previously granted waivers and authorizations.

I hereby certify that the above is a true and correct copy of Resolution 95-49, as adopted by the Air Resources Board.



Pat Hutchens, Board Secretary

ATTACHMENT A

[Note: The regulatory amendments proposed in this rulemaking are shown in underline to indicate additions to the text.]

SECTION 1905, TITLE 13, CCR

Adopt Section 1905 to Title 13, California Code of Regulations, to read as follows:

1905. Exclusion and Exemption of Military Tactical Vehicles and Equipment.

(a) For purposes of this chapter, military tactical vehicle means a motor vehicle owned by the U.S. Department of Defense and/or the U.S. military services and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(b) This chapter shall not apply to vehicles defined as military tactical vehicles or to engines used in military tactical vehicles. This includes all vehicles and engines:

(1) Excluded from regulation under 40 CFR Part 85, subpart R, section 85.1703, which is incorporated by reference herein, and

(2) Exempted from regulations under the federal national security exemption, 40 CFR, subpart R, sections 85.1702(a)(2), 85.1704(b), 85.1708, and 85.1710, which are incorporated by reference herein. It shall also not apply to those motor vehicles or motor vehicle engines covered by the definition of military tactical vehicle, including commercially available vehicles, for which a federal certificate of conformity has been issued under 40 CFR Part 86, which is incorporated by reference herein.

(c) On January 1, 1997, the U.S. Department of Defense shall submit to the ARB a list of all vehicles that are excluded and or exempted under the above provisions and which are located in the State of California. If any additional vehicle types are added to the list during the previous 12 months, the U.S. Department of Defense shall update the list and submit it to the ARB by January 1 of the following year.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Sections 43013 and 43018, Health and Safety Code.

SECTION 2400, TITLE 13, CCR

Amend Section 2400, Title 13, California Code of Regulations, to read as follows:

2400. Applicability.

(a) through (b) [No Change]

(c)(1) For purposes of this article, military tactical vehicles or equipment means vehicles or equipment owned by the U.S. Department of Defense and/or the U.S. military services and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(2) This article shall not apply to engines used in off-road military tactical vehicles or equipment which have been exempted from regulations under the federal national security exemption, 40 CFR, subpart J, section 90.908, which is incorporated by reference herein. It shall also not apply to those vehicles and equipment covered by the definition of military tactical vehicle that are commercially available and for which a federal certificate of conformity has been issued under 40 CFR Part 90, subpart B, which is incorporated by reference herein.

(3) On January 1, 1997, the U.S. Department of Defense shall submit to the ARB a list of all vehicles and equipment that are exempted under the above provisions and which are located in the State of California. If any additional vehicle and equipment types are added to the list during the previous 12 months, the U.S. Department of Defense shall update the list and submit it to the ARB by January 1 of the following year.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101, 43102 and 43104, Health and Safety Code. Reference: Sections 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43150-43154, 43205.5 and 43210-43212, Health and Safety Code.

SECTION 2420, TITLE 13, CCR

Amend Section 2420, Title 13, California Code of Regulations, to read as follows:

2420. Applicability.

(a) through (c) [No Change]

(d)(1) For purposes of this article, military tactical vehicles or equipment means vehicles or equipment owned by the U.S. Department of Defense and/or the U.S. military services and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(2) This article shall not apply to engines used in off-road military tactical vehicles or equipment which have been exempted from regulations under the federal national security exemption, 40 CFR, subpart J, section 89.908, which is incorporated by reference herein. It shall also not apply to those vehicles and equipment covered by the definition of military tactical vehicle that are commercially available and for which a federal certificate of conformity has been issued under 40 CFR Part 89, subpart B, which is incorporated by reference herein.

(3) On January 1, 1997, the U.S. Department of Defense shall submit to the ARB a list of all vehicles and equipment that are exempted under the above provisions and which are located in the State of California. If any additional vehicle and equipment types are added to the list during the previous 12 months, the U.S. Department of Defense shall update the list and submit it to the ARB by January 1 of the following year.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101, 43102 and 43104, Health and Safety Code. Reference: Sections 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43150-43154, 43205.5 and 43210-43212, Health and Safety Code.