

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

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

Public Hearing Date: July 20, 2006
Agenda Item No.: 06-7-4

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking (“staff report”), entitled “Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines,” released June 2, 2006, is incorporated by reference herein.

Following a public hearing on July 20, 2006, the Air Resources Board (the Board or ARB) by Resolution 06-23 approved for new 1997 and later off-highway recreational vehicles and engines (OHRVs): 1) the adoption of evaporative emission standards for fuel tanks and hoses, equivalent to those required federally and becoming effective in 2008; 2) the reclassification of off-road utility vehicles from the large spark-ignition (LSI) category and the reclassification of sand cars from the LSI and small off-road engine categories, which will allow the manufacturers to use the all-terrain vehicle test procedure, as is allowed federally; 3) the clarification of engine labeling requirements; and 4) the amendment of the riding seasons (section 2415) to improve uniformity and facilitate more efficient enforcement by the park rangers and land managers. Resolution 06-23 is attached hereto and is incorporated by reference herein.

The amendments modified the existing off-highway recreational regulations to include evaporative emission standards. These standards control the evaporative losses that occur due to fuel permeating through the fuel tanks and hoses. Because these standards are also required federally, there is no additional burden on manufacturers to comply with the requirements.

The reclassification of off-road utility vehicles is limited to those vehicles that meet the criteria specified in the definition. This action parallels the decision in the federal rule for OHRVs, and serves to streamline the manufacturers’ certification requirements. Similarly, because the federal OHRV rule provides for the certification of sand cars, these vehicles have also been reclassified. In addition, a new vehicle type, the off-road sport vehicle, has been added to the OHRV category.

The amendments to the labeling requirements are merely a clarification that the original labeling requirements remained in effect. A previous, unrelated Board action had amended the labeling requirements for on-highway motorcycles. These labeling requirements were contained in a document that was incorporated by reference by both the OHRV and on-highway motorcycle regulations. In the on-highway rulemaking, the federal labeling requirements were adopted, and the incorporated document's applicability for these vehicles was sunsetted in 2004. Because many on-highway manufacturers also produce OHRVs, there was confusion as to whether the incorporated document was still in effect for OHRVs. Therefore, the language from the labeling document was directly inserted into the title 13 regulation; thus, clarifying that the original requirements remain as before.

Making revisions to the riding seasons and locations is prescribed in section 2415 of the OHRV regulation. Staff analyzed ozone readings from California's air quality monitoring network and made recommendations that reflect more recent data. Additionally, the public land agencies who enforce the riding seasons requested that there be more uniformity with the riding season dates. Because the air quality data showed fewer exceedances for ozone than in years past, staff reevaluated the riding season dates and accommodated the land agencies' needs. The original set of 17 different dates has now been reduced to only 6.

Incorporation of Test Procedures. The amended exhaust emission test procedures are incorporated by reference in title 13, CCR, section 2412(c)(1). The test procedures document is readily available from the ARB upon request and was made available in the context of this rulemaking in the manner specified in Government Code section 11346.5(b). The test procedures are available online at ARB's internet site.

The test procedures are incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to print them in the CCR. Existing ARB administrative practice has been to have the test procedures incorporated by reference rather than printed in the CCR because these procedures are highly technical and complex. They include the "nuts and bolts" engineering protocols, computer modeling, and laboratory practices required for certification of the regulated engines and equipment and have a very limited audience. Because ARB has never printed complete test procedures in the CCR, the directly affected public is accustomed to the incorporation format used therein. The ARB's test procedures as a whole are extensive, and it would be both cumbersome and expensive to print these lengthy, technically complex procedures for a limited audience in the CCR. Printing portions of ARB's test procedures that are incorporated by reference would be unnecessarily confusing to the affected public.

Fiscal Impacts on School Districts and Local Agencies. The Board has determined 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 Board has determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will not negatively affect small business. The Executive Officer has also determined that adoption of the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Board has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected resulting from the proposed action.

Finally, the Board has determined that the proposed regulatory action will not negatively affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. Assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

Consideration of Alternatives. For the reasons set forth in the Initial Statement of Reasons, staff's comments and responses at the hearing, and in this Final Statement of Reasons, the Board has determined that no alternative considered by the agency or that was otherwise identified and brought to the Board's attention would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective or less burdensome to affected private persons than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

At the July 20, 2006 public hearing, the Board approved the proposed amendments to Sections 2111 – 2112 and 2411 – 2415, Title 13, CCR and the associated test procedures, with some modifications to the originally proposed regulatory language. These modifications were subsequently published in two Notices of Modified Text, which gave stakeholders two 15-day comment periods for further participation in the process.

A. First Notice of Modified Text

The first 15-day notice modifications included a minor change to the proposed riding seasons, and the addition of off-road sport vehicles and sand cars to the off-highway recreational vehicle category. Included with these additional vehicle types is the option for manufacturers to demonstrate compliance with California's exhaust emission standards using either chassis-based testing or engine-based testing. The regulations under which these vehicles were previously classified allowed engine-based testing only. The following is a more detailed description of the modifications, by section number.

Section 2111 – The Procedures for In-Use Vehicle Voluntary and Influenced Recalls was amended to include the vehicle types that were added to the off-highway recreational vehicle category.

Section 2112 – The useful life period for the off-highway recreational vehicle category was amended to include the vehicle types that were added.

Section 2411 – The (a)(1) definition of “all-terrain vehicle (ATV)” was amended to consolidate the proposed Class I and II definitions and retain the width description. These changes will prevent confusion that could occur by having an ATV definition that differs from the definition in the California Vehicle Code. Also, the proposed Class III definition was deleted in favor of “off-road utility vehicles,” which harmonizes with the definition in the federal regulation for these vehicles.

The (a)(13) definition of “off-highway recreational vehicle engines” or “engines” was amended to include off-road sport vehicles, off-road utility vehicles, and sand cars.

The (a)(17), (a)(18), and (a)(19) definitions of “off-road sport vehicle,” “off-road utility vehicle,” and “sand car,” respectively, were added to include these types of vehicles in the off-highway recreational vehicle regulation. The reason for adding these new definitions was in response to industry's request to streamline their certification efforts, as much as possible, with the federal requirements.

Section 2412 – Under subsection (b), the original exhaust emission table was revised to include the new vehicles that have been added to the off-highway recreational vehicle category. Additionally, a second table was added to clarify the exhaust emission standards for those manufacturers that use engine-based testing for certification. The engine-based test procedures come from the small off-road engine (SORE) regulation. Although there are different SORE test cycles, only the 6-mode Test Cycle A is appropriate for off-highway recreational vehicles and has been clarified in the modified text.

Under subsection (c), language was added to clarify which test procedures are applicable to off-highway recreational vehicles, as well as clarifying which Subparts from the Code of Federal Regulations are incorporated by reference into California's test procedures.

Under subsection (d), determining corporate averaging of emissions was clarified between chassis-based testing and engine-based testing with the addition of an appropriate formula for the engine-based certifications. In the same fashion that the exhaust emission standards for engine-based testing were added to subsection (b), the corresponding formula for determining corporate averaging was added to subsection (d). This formula was derived from the SORE regulation and is appropriate for engines that are tested under the 6-mode Test Cycle A.

Because of the new language for engine-based testing contained in the previous subsections of section 2412, the language in paragraph (e) was deleted. Paragraph (e) now contains the reporting requirements for manufacturers, which were previously contained in paragraph (d).

Paragraph (4) was added to subsection (g) to extend the requirements that all other off-highway recreational vehicles have conformed to, upon their respective implementation dates for compliance to the exhaust emission standards.

Section 2413 – In subsections (a), (b), and (c), the words “off-road motorcycle and ATV” were replaced, where appropriate, with the words “off-highway recreational vehicle” to underscore that the requirements apply to all vehicles in this category.

Section 2415 – In subsection (a), language was added to clarify that, although there are new vehicle types in the off-highway recreational vehicle category, some riding areas cannot accommodate certain types of vehicles or the terrain is not appropriate. Language was also added to clarify the new arrangement of riding areas in Table 1. Previously, the riding areas were grouped according to the land agency with jurisdiction. Now, the riding areas are listed according to location, from north to south, which is more intuitive for the off-highway recreation community.

Also in Table 1, the riding season for Heber Dunes was changed to “year round,” based on comments received from the California State Parks.

Test Procedures:

86.401-90 was amended to include the new types of vehicles in the off-highway recreational vehicle category.

86.402-78 was amended to be consistent with the definitions in section 2411. Additionally, because these test procedures were taken from the United States Environmental Protection Agency’s test procedures for motorcycles, the definition of “motorcycle” was amended to include all the vehicle types comprising California’s off-highway recreational vehicle category.

The following sections were amended to include the new types of vehicles in the off-highway recreational vehicle category:

86.407-78 86.408-78 86.409-78 86.410-90 86.411-78 86.412-78
86.413-78 86.414-78 86.416-80 86.425-78 and 86.437-78.

The following sections were added to the test procedure document, solely for completeness and compatibility with Part 86 of the Code of Federal Regulations.

86.401-2006	86.401-97	86.402-98	86.410-80
86.410-2006	86.419-2006	86.445-2006	86.446-2006
86.447-2006	86.448-2006	86.449-2006	86.505-2004
86.513-87	86.513-94	86.513-2006	86.529-98.

1051.110 was amended to clarify that, when using the federal average, banking, and trading (AB&T) program in California, the generated or used evaporative emission credits must be from vehicles produced for sale in California.

1051.145 was amended to retain subparagraphs (g) and (h) from the federal language, which outlines how credits and deficits are to be handled, with regards to evaporative emissions.

Staff made other non-substantial modifications throughout the regulation and test procedures to correct grammatical and typographical errors, correct references and citations, and improve the overall clarity of these documents.

B. Second Notice of Modified Text

In response to the comments received from the first Notice of Modified Text, staff made the following additional modifications.

Section 2411 –

The (a)(17) definition of “off-road sport vehicle” was amended to allow for a higher payload capacity: increasing from 350 to 600 pounds. Staff learned in the first 15-day public comment period that a 350-pound limit was insufficient. The increased payload capacity for carrying cargo is a technical modification that more accurately reflects the Board’s intent to include this vehicle type into California’s off-highway recreational vehicle regulation. This change streamlines industry’s certification efforts because all of these sport vehicles certify under the federal off-road recreational vehicle rule; therefore, industry will be able to use the same emission test procedures in California as they do federally.

Section 2412 –

Under subsection (b), compression-ignition off-highway recreational vehicles are not subject to the evaporative emission standards in paragraph (2). This amended text clarifies staff’s intent, as approved by the Board, to harmonize California’s regulation with the federal evaporative requirements. The new text, which expressly excludes compression-ignition off-highway recreational vehicles from the evaporative emission requirements, is a clarifying modification. Because of its low volatility, diesel fuel does not permeate through fuel tanks and hoses like gasoline does.

Therefore, staff believes the express exclusion clarifies the Board's intent not to expand the California's OHRV evaporative emission requirements beyond those contained in the federal rule.

Test Procedures –

The following two modifications parallel the changes in the title 13 sections above.

86.402-78: The definition of "off-road sport vehicle" was amended to allow for a higher payload capacity: increasing from 350 to 600 pounds.

1051.5 was added to clarify that compression-ignition vehicles are not subject to the evaporative standards and test procedures for off-highway recreational vehicles.

C. Nonsubstantive Modification

With regard to section 1051.5 of the test procedures mentioned above, a minor oversight was corrected in section 2412 of the title 13 regulations. Specifically, in paragraph (c)(1) the letter "A" was added to the list of subparts from Part 1051 of the Code of Federal Regulations, which are incorporated by reference. While this Subpart A was listed and discussed in the proposed change to the incorporated test procedures as noticed in the second 15-day comment period, that notice inadvertently omitted listing Subpart A in the corresponding section 2412 sentence listing the incorporated Subparts. This minor modification was made for clarity and consistency with the test procedures.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

At the July 20, 2006 board hearing, oral testimony was received from:

Pamela Amette, Motorcycle Industry Council (MIC)
Tom Austin, Sierra Research Consultant to MIC
John Begin, Suspensions Unlimited (and representing Sand Car manufacturers)
Susan Matthews, Points West ARGO representing Ontario Drive & Gear
John Paliwoda, California Motorcycle Dealers Association (CMDA)
Robert A. Wyman, Latham & Watkins LLP representing ATV manufacturers:

- Artic Cat
- Bombardier Recreational Products
- Polaris Industries
- Yamaha Motor Corporation

Written comments were received by the hearing date from:

Pamela Amette, MIC
Tom Bernardo, California Department of Parks and Recreation (DPR)
Matt Bilyeu
Eric Brisco
John Janke

John Paliwoda, CMDA
Ronald Perry
Ray Rodriguez, Short Course Off Road Enterprises (SCORE)
Lawrence St. George

Written comments were received in response to the first 15-day Notice of Modified Text from:

Mike Schmitt, Yamaha Motor Corporation
Jeffrey D. Shetler, Kawasaki Motors Corporation
Chris Wright, Arctic Cat
Robert A. Wyman, Latham & Watkins LLP

Written comments were received in response to the second 15-day Notice of Modified Text from:

Frank Whitman
Chris Wright, Arctic Cat
Robert A. Wyman, Latham & Watkins LLP

Set forth is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation or the reasons for making no change. The comments have been grouped by topic wherever possible. Comments not involving objections or recommendations specifically directed towards the rulemaking or to the procedures followed by ARB in this rulemaking are not summarized below.

WRITTEN COMMENTS RECEIVED DURING THE PERIOD REQUIRED BY GOVERNMENT CODE SECTION 11346.4

A. General comments regarding the necessity of regulating off-highway recreational vehicles (OHRVs).

A few comments were received that raised the question of the necessity for amending the OHRV regulations or the necessity of having any OHRV regulations. Some commented that these vehicles don't contribute significantly to the air quality problem in California.

- 1. Comment:** "I am opposed to any changes in the regulations for OHRV and engines. We do not need more regulation just enforce the rules already on the books." (Ray Rodriguez, SCORE)
- 2. Comment:** "No more off-road rules. We are 1% of the population in CA, but we have more rules than any other hobby group." (Lawrence St. George)

Agency Response: The staff disagrees with these minimizations of the emissions impact of OHRVs on California's air quality, as in its Resolution the Board continued to find OHRV regulations necessary to meet and attain state and federal air quality standards. Although there are cleaner OHRVs today, the population of these vehicles has more than doubled since the regulations were adopted. The revised riding seasons will help in the effort to enforce the regulation's riding seasons. Additionally, as pointed out in the staff report, this regulatory action will reduce evaporative emissions by 4.5 tons per day in 2020. Therefore, the OHRV regulations continue to be a necessary component in the Board's effort to improve California's air quality.

Comments regarding the definition of ATVs and utility vehicles

3. **Comment:** "...we would like the proposed new definitions modified so that utility vehicles are not referred to as "ATVs." In addition, to achieve greater harmonization, we recommend that the definition be revised so that the speed criterion for utility vehicles is changed from ">25 mph" to "≥25 mph." (Pamela Amette, MIC)
4. **Comment:** "CVC (California Vehicle Code), Section 111, gives specific standards for ATVs, including the 50" maximum width, handlebars and a straddled seat. This definition is used to identify ATVs for recreation purposes. In addition, these are the standards which are used when building recreational trails. There is no need to establish a separate classification for an ATV with a passenger seat. At this time, a utility vehicle should remain a utility vehicle. To blur the lines will only lead to more confusion on behalf of the DMV, the public, and the public land managers. Given the definition which currently exists in CVC, Section 111, there doesn't seem to be any reason for CARB to make these changes. While I appreciate your efforts to try and expand the definition of ATVs, it does present a number of problems for our operational management. (Tom Bernardo, DPR)

Agency Response: Staff generally agreed with this comment and amended the definition of "all-terrain vehicle (ATV)" to consolidate the proposed Class I and Class II definitions and to retain the width description. This consolidation will prevent confusion that could occur by having an ATV definition that differs from the definition in the California Vehicle Code. Also, the proposed Class III definition was deleted in favor of "off-road utility vehicles," which harmonizes with the definition in the federal regulation for these vehicles. In addition, the speed criterion for these utility vehicles was changed to greater than or equal to 25 miles per hour, which harmonizes with the federal definition.

C. Red Sticker Comments

5. **Comment:** "I am requesting an amendment to the current Red Sticker OHV law that prohibits my single piston four stroke motorcycle to be ridden in most areas for most of the year." (Ronald Perry)

6. Comment: "...please abolish the entire red sticker program and make all bikes green sticker..." (Matt Bilyeu)

Agency Response: The amendment or elimination of the red sticker program for vehicle registration was not within the scope of this rulemaking. However, amendments were made to the riding seasons that expanded riding opportunities for off-road enthusiasts.

Comment: "A person with a red stickered bike cannot ride there [Hungry Valley OHV] between May and September. However, during that same period that same person can ride the same red sticker bike at I-5MX motocross park which is right next to Hungry Valley OHV. How is riding a couple miles away keeping our air cleaner?" (Matt Bilyeu)

Agency Response: The ARB's regulatory authority for determining the riding seasons does not extend to riding areas located on private land or closed course race tracks. The I-5 MX motocross park has three race tracks: a one mile long track for adults, and two smaller tracks for children. The maximum number of OHRVs that the I-5 MX park can accommodate is nowhere near the number of OHRVs that Hungry Valley can accommodate with its 130 miles of trails.

8. Comment: "If this is really about air quality why not make this rule apply to everyone on the road. For instance make every automobile with the letter C in the VIN only able to drive on Mondays, with a D Tuesdays, and so on." (Eric Brisco)

Agency Response: Unlike automobiles and other pollution sources that must comply with California's standards, the OHRV regulation allows the sale and use of off-road motorcycles and all-terrain vehicles that do not comply with emissions standards. Because of the higher emissions from these noncomplying vehicles, their usage is restricted when ozone levels exceed ambient air standards. There are numerous OHRVs available that meet California's standards and can operate without restriction.

9. Comment: "If I was informed ahead of time I wouldn't have bought a bike with a red sticker." (Eric Brisco)

Agency Response: The red sticker program has been in place since 1998. Efforts to inform the public began at that time. Information about the program has been available on numerous websites, including ARB's and the public land agencies. Fact sheets have been available through ARB and the Department of Motor Vehicles. The California Motorcycle Dealers Association has also contributed to the effort by providing information to their member dealers.

10. Comment: “I feel strongly that you can require the use of a low noise <92db exhaust system with a US Forestry Service approved spark arrestor and allow the use of such vehicles throughout the year. I would like to see that if someone makes the effort to modify the noise level and provide spark prevention they should be able to amend their red sticker to a green one...even if it required annual or bi-annual inspections.”
(Ronald Perry)

Agency Response: Although ARB supports the land agencies in their efforts to control noise levels and prevent forest fires, spark arrestors are not emission control devices. For an OHRV to be eligible for green sticker registration, the manufacturer must demonstrate that the vehicle will meet California’s emission standards throughout the vehicle’s useful life.

11. Comment: “While we see no major problems with the proposed riding season changes on the current State Vehicular Recreation Area (SVRA) list, we do have some concerns regarding the addition of Heber Dunes to the schedule...historically the area has had little or no law enforcement presence. Because of its close proximity to Mexico, many visitors to Heber Dunes are from out of state. Since CARB exempts out of state vehicles, it is doubtful any substantial reduction in air pollution can be realized at Heber Dunes. Furthermore, trying to limit the few California residents using Heber Dunes to a red sticker riding season, when the park is used primarily by exempt vehicles from Mexico, is problematic. Given these obstacles and our desire not to implement something which isn’t practical, I would recommend removing Heber Dunes SVRA from the riding season schedule.” (Tom Bernardo, DPR)

12. Comment: “We would like to see all of the SVRAs (State Vehicle Recreation Areas) open year-round for red sticker vehicle use, because it has become increasingly difficult for off-highway vehicles to find legal, or appropriate, places that provide for off-road motorized recreation. At least, if all of the SVRAs were open year-round, that would provide more opportunity for regulated OHV sites, cutting down on illegal OHV use on private property and public land, thereby contributing to already smog impacted areas. Please consider assigning Clay Pit year-round usage. We respectfully request that the Hungry Valley SVRA be reclassified for year-round red sticker use instead of only the seven months that it now can be used.” (John Paliwoda, CMDA)

Agency Response: The OHRV regulation provides for the periodic review of the riding season schedule. Although provisions in the regulation allow the Executive Officer to make changes to the riding seasons without a public hearing, staff elected to include the revisions in this rulemaking in order to foster participation by the stakeholders. After evaluating the air quality data throughout California, and taking into account the land agencies’ request to make the riding season dates more uniform, the revised riding season

schedule provides both more riding opportunities for off-road enthusiasts and easier enforcement for the land agencies.

The riding season for Heber Dunes was changed to “year round” based on comments received from the California State Parks and because, due to its location, the change won’t significantly impact the air quality in ozone nonattainment areas. Changes to the other areas mentioned in the preceding comments would significantly impact the air quality of ozone nonattainment areas and cannot be modified any further at this time.

13. Comment: “The federal land managers will have to speak on behalf of their own units and the impacts of the proposed changes to their units. However, they have expressed their concerns to the Division regarding the posting of the “year-round” designation on the riding schedule. The use of this designation does not include all of the riding areas throughout the state which are open “year-round” and which are not.” (Tom Bernardo, DPR)

Agency Response: Because of the numerous riding areas on federal lands, the areas were arranged by the “field office” or “ranger district” (as appropriate) so that all the riding areas in a particular jurisdiction would have a harmonized riding season, whether year round or limited.

D. Exhaust Emission Requirement Comments

14. Comment: “The California exhaust emissions standards for ATVs should also be harmonized with the federal standards. This will not result in a loss of emissions control...” (Pamela Amette, MIC)

Agency Response: The staff disagrees. Both the federal and California regulations allow ATV manufacturers two test methods to demonstrate compliance: a chassis-based test and an engine-based test. These tests have different, but comparable exhaust emission standards. With regards to chassis-based testing, the federal standard for carbon monoxide, as shown on page 7 of the staff report, is more than double the California standard. However, it is important to point out that virtually all manufacturers opt for the engine-based test. With the engine-based test, the federal and California standards are the same for ATVs with engine displacements greater than 100 cc; which covers the majority of the fleet and eases the manufacturers’ certification efforts. But the federal rule, as shown on page 8 of the staff report, has much higher emission standards for ATVs with engine displacements less than 100 cc. Therefore, harmonizing with the federal standards would result in a loss of emissions control for California.

E. Evaporative Emission Requirement Comments

15. Comment: “I do not see the value in trying to regulate evaporative emissions from off-highway vehicles. It seems to be such a miniscule percentage compared to other fuel-intensive industries and recreational

activities, such as auto racing and normal everyday automobile fueling.”
(John Janke)

Agency Response: As demonstrated on page 14 of the staff report, significant emission reductions can be achieved by controlling losses due to permeation. Not only are the control measures cost-effective for manufacturers, but consumers also benefit in fuel savings; which is particularly important with current trends in gasoline prices.

16. Comment: “The proposed evaporative emissions regulations need to be revised slightly to achieve the stated objective of harmonization with the federal standards. As proposed, the CARB regulation does not include the “pull ahead” or “deficit credit” provisions in the federal regulation. These provisions allow for a delay in meeting the ultimate gas tank permeation standard for manufacturers who either generate offsetting credits by certifying to a less stringent standard ahead of schedule or who overcomply in subsequent years.” (Pamela Amette, MIC)

Agency Response: Indeed, the objective behind adopting the evaporative emission standards in California was to harmonize with the requirements contained in the federal rule. Besides having the same standards for evaporative emissions, the programs shall also provide the same types of flexibilities related to compliance, such as the two-year delay for eligible small volume manufacturers, and the option to generate credits with early introduction of low-permeation components. Therefore, the staff agrees and section 1051.145 of the test procedures was amended to retain subparagraphs (g) and (h) from the federal language, which outlines how credits and deficits are to be handled, with regards to evaporative emissions.

F. Labeling Comments

17. Comment: “Because 2007 model year vehicles are already in production, compliance during the 2007 model year is not feasible. MIC therefore requests that the “applicability” provision in section 2413(b)(1) be changed as shown below, rather than as proposed by staff, such that the current labeling requirements continue in place for the 2007 model year and the new requirements apply beginning with the 2008 model year.”

(1) All 2007 and earlier model year off-road motorcycles, all-terrain vehicles and engines used in such vehicles, except those certified according to section 2412(f), produced on or after January 1, 1997, for sale, lease, use of introduction into commerce in California, shall comply with the labeling requirements of Title 13, California Code of Regulations, Chapter 1, Article 2, Section 1965, and the incorporated “California Motor Vehicle Emission Control and Smog Index Label Specifications,” adopted March 1, 1978, as last amended June 24, 1996 (as corrected September 20, 1996), and which are incorporated by reference herein. Any reference to motorcycles in the incorporated documents applies to off-road

motorcycles, all terrain vehicles, and engines used in such vehicles. All 2008 and later model year motorcycles, all terrain vehicles and engines used in such vehicles, except those certified according to Section 2412(f), shall comply with the labeling requirements in this section."
(Pamela Amette, MIC)

Agency Response: The staff disagrees with the proposed language in this comment because it is redundant. As explained on page 13 of the staff report, following the action taken in the 2002 rulemaking for on-road motorcycles there was a false interpretation among some manufacturers that the labeling requirements for OHRVs has not been in effect since 2004. In 2002, the labeling document, which had been mutually incorporated by reference by both the on-road and OHRV regulations, had been sunsetted for on-road motorcycles and was replaced with the federal labeling requirements; however, OHRVs were not part of this regulatory action. Although convenient, it is inconsistent for manufacturers to contend on the one hand that the sunseting action of the on-road rulemaking applied to OHRVs, but then contend on the other hand that the new labeling requirements in that same rulemaking did not apply to OHRVs.

Nevertheless, recognizing the confusion that the on-road rulemaking inadvertently caused and to clarify the labeling requirements issue for OHRVs, the requirements from the incorporated labeling document are now contained in section 2413 of the regulatory text.

18. Comment: "Under section 2413 there is a requirement that the label include the phrase, "is certified to (specify applicable HC standard) HC engine family exhaust emission standard in California." Since most ATVs are certified to the optional, engine dynamometer standards, the phrase should be revised to read "is certified to (specify applicable HC or HC+NO_x standard) ~~HC~~ engine family exhaust emission standard in California." (Pamela Amette, MIC)

Agency Response: The language given in paragraph 2413(c)(4)(G) is solely an example. Therefore, manufacturers using engine-based testing for certification would use a statement containing the HC+NO standard.

G. Miscellaneous

19. Comment: "There are some obviously unintentional errors in the proposed amendments regarding the optional standards and permeation equation that need to be corrected. We have already given staff the language necessary to address this problem." (Pamela Amette, MIC)

Agency Response: Section 1051.110 of the test procedures was amended to clarify that, when using the federal average, banking, and trading (AB&T) program in California, the generated or used evaporative emission credits must be from vehicles produced for sale in California.

H. Supportive Comments

20. Comment: “I am very pleased to see the ARB is considering extending red sticker riding seasons...I feel the present riding seasons are way too short and the proposed season is a compromise that I could live with.”
(John Janke)

21. Comment: “We are pleased that the current rulemaking is, for the most part, opening up the riding seasons for established areas, and even creating new areas, often with unlimited OHV usage. I have reviewed the emission monitoring station locations, and am pleasantly surprised to see that an additional 19 net monitoring sites have been added since 1998. This increased the accuracy of establishing appropriate riding seasons that obviously support your staff’s recommendations for extending the red sticker riding use areas and times. CARB’s methodology has improved much since 1998 and it is difficult to criticize the results.”
(John Paliwoda, CMDA)

BOARD HEARING ORAL TESTIMONY

22. Comment: “There are two areas though I would respectfully ask the staff and you folks to take a look at. There’s two SVRAs. One, Clay Pit, is outside of Oroville, California in northern California...I would like perhaps to recommend that that be made year-round...And the last one is Hungry Valley SVRA. Hungry Valley SVRA is the second largest SVRA in the system. It is at the uppermost point of Los Angeles County where it meets Kern County. The elevation is 3,000 feet. So it’s above the inversion layer. The main pollution generator in that area is quite frankly a narrow band of the 5 freeway. And that SVRA is adjacent to it, and it is fairly restricted. There’s seven months of usage there...in the interest of equality perhaps taking a look and seeing whether you can make that year-round. It’s a very large SVRA. It attracts an enormous amount of people from the L.A. basin and giving them the opportunity to recreate there year-round would cut down on the possible illegal use of these non-certified vehicles on private property, on public lands.”
(John Paliwoda, CMDA)

Agency Response: See the agency response to comments 11-12.

23. Comment: “The labeling requirements that are proposed, we don’t have any real problem with the proposal except for the fact that the way it’s written it would apply immediately. And we’re in the middle of the 2007 model year right now, and we would like to have a minor modification to delay the change in the labeling requirements to the 2008 model year. It’s our understanding your staff is basically ok with that.”
(Tom Austin, Sierra Research)

Agency Response: See the agency response to comments 17-18.

24. Comment: “There is a really minor change we’d like to have made having to do with harmonizing the federal and California definitions for utility vehicles. We think this is just inadvertent, but the federal definition is for vehicles that have a speed of equal to or greater than 25 miles per hour. And the staff’s proposal is greater than 25 miles an hour, leaving vehicles that have a maximum speed of 25 in different categories under California and federal definitions. We also understand your staff is okay making that change with the 15-day notice.” (Tom Austin, Sierra Research)

Agency Response: See the agency response to comments 3-4.

25. Comment: “The one thing that we really didn’t agree on was the statement you heard about the federal standards not being as stringent as the California standards. EPA didn’t agree with that. We don’t agree with that. We think in the aggregate the federal standards are more stringent, but it’s really not that big a deal because most of the ATVs at least are certified under the optional standards, the engine dyno test standards rather than chassis test standards. And under those optional standards, all the ATVs above 100 CCs have to meet exactly the same standards under the federal program, under the California program. So there’s no real practical difference...We think you’d be better off with the federal standard.” (Tom Austin, Sierra Research)

Agency Response: See the agency response to comment 14.

26. Comment: “...it’s likely we think in the next few weeks possibly there’s going to be a new set of optional standards for ATVs that will be published by EPA. We think that we’ll be able to demonstrate at that time those optional standards are more stringent than the current optional standards that apply in California and apply federally. And so we think it would be a good idea to delegate to your Executive Officer the authority to harmonize with the new optional federal standards should those be published in the immediate future and if your staff agrees they are, in fact, more stringent than the current optional standards.” (Tom Austin, Sierra Research)

Agency Response: At the hearing, staff agreed to follow the progress of the United States Environmental Protection Agency (U.S. EPA), as they were evaluating a new engine-based test cycle for ATVs. As of April 2007, no new standards have been promulgated by U.S. EPA. Moreover, it is the staff’s understanding that U.S. EPA is considering only chassis-based testing in the future.

27. Comment: “We are a very small, very small industry. Most of us came from a garage builder aspect, and nobody in this industry has a large deal of money by any sort. But we still are required to comply to the rules, and we would just like for you to consider possible a low volume exemption of some sort...” (John Begin, Sand Rail Industry)

Agency Response: Staff acknowledged the size of the industry and continues to work with it towards achieving compliance with California's standards. These vehicles use modern automotive engines that are equipped with advanced fuel controls. Therefore, meeting the standards is not an insurmountable task. Similar success has been achieved with inboard and stern-drive vessels, which is another small industry that also uses modern automotive engines.

MODIFICATIONS TO THE ORIGINAL PROPOSAL FIRST NOTICE OF MODIFIED TEXT

WRITTEN COMMENTS IN RESPONSE TO THE NOTICE OF MODIFIED TEXT

28. Comment: "Due to high molecular weight and low volatility of diesel fuel there is no need for corresponding permeation standards. A specific exclusion is needed in the Modified Text to the effect that CARB permeation standards for fuel tanks and fuel lines do not apply to ATV's and OHRV's powered by diesel engines. After raising this issue informally in February we received correspondence from ARB on 3/6/2007 that ARB will not require diesel ATVs to meet the permeation standards that begin in 2008. It appears that the need for a specific exclusion to execute this policy may have been overlooked." (Chris Wright, Arctic Cat)

29. Comment: "The language should confirm that the references to "evaporative" emissions in the regulation are not intended to apply evaporative or permeation requirements to diesel off-highway recreational vehicles or engines." (Robert A. Wyman, Latham & Watkins LLP)

Agency Response: As stated in the staff report and presented to the Board, the intent of the proposed evaporative emission standards was to harmonize with the federal rule. Therefore, staff amended the regulations and test procedures to clarify that compression-ignition engines are not subject to the OHRV evaporative emission standards.

30. Comment: "We support a minor adjustment to the cargo load provision of the off-road sport vehicle category (i.e., to permit loads above 350 pounds." (Robert A. Wyman, Latham & Watkins LLP)

31. Comment: "...the Companies request that the proposed definition of "off-road sport vehicle" in §2411(17) be revised to specify that it includes such vehicles "having a rear payload up to 600 pounds." This requested revision in the proposed definition is consistent with Board Resolution 06-23, as well as with the intentions and expectations of the ARB staff which underlie the proposed amendments to the OHRV regulation." (Jeffrey D. Shetler, Kawasaki Motors Corporation and Mike Schmitt, Yamaha Motor Corporation)

Agency Response: The staff agrees, and the “off-road sport vehicle” definition was amended by increasing the maximum rear payload to 600 pounds.

MODIFICATIONS TO THE ORIGINAL PROPOSAL SECOND NOTICE OF MODIFIED TEXT

WRITTEN COMMENTS IN RESPONSE TO THE NOTICE OF MODIFIED TEXT

32. Comment: I am sure that the Red Sticker program was put into place with good intentions but it is very likely causing more pollution than it is saving. Today's four stroke off-road vehicles put out almost no emissions, yet the program unfairly targets them. They do not burn oil in their gasoline. Riders are forced to drive an extra 30-60 minutes to get to areas where they can ride. The trucks carrying these bikes put out several times the emissions that the actual bikes would be emitting because of the additional gallons of fuel they burn driving the extra distance. In addition, this causes extra wear and tear on the roadways. Common sense should tell you that these bikes should be exempt from the program. Isn't it the oil burning bikes that you should be targeting? (Frank Whitman)

Agency Response: These comments, with which the staff disagrees, are not within the scope of the specific changes to the regulatory language that were made for the second notice of modified text. However, the staff notes that these assertions have been raised before and have been addressed in prior actions. Off-road recreational vehicles emit higher levels of pollutants than on-highway vehicles. Although the off-road emission standards have never been as stringent as the on-highway standards for motorcycles, in 1998 the Board approved even more stringent exhaust emission standards; thus, making the on-highway motorcycles even cleaner than the off-road models. Moreover, after more than 30 years of catalyst technology and other design advancements for on-highway applications, cars and light duty trucks are significantly cleaner than off-highway vehicles.

33. Comment: “We support the staff’s suggested modifications.”
(Robert A. Wyman, Latham & Watkins LLP)

34. Comment: “Thank you for sending the modified text. I think I am happy with it and expect to have no further comment.”
(Chris Wright, Arctic Cat)

Agency Response: No response is necessary for these supportive comments.