

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CURRENT
REGULATIONS FOR SMALL OFF-ROAD ENGINES**

Public Hearing Date: November 21, 2008
Public Availability Date: February 4, 2010
Deadline for Public Comment: February 19, 2010

This notice announces a supplemental period in which the public may comment on additional proposed modifications to the regulation for small off-road engines. No action by the public is necessary unless a person wishes to comment on the additional modifications.

At its November 21, 2008, public hearing, the Air Resources Board (ARB or Board) approved amendments to the California Code of Regulations (CCR), title 13, chapter 9, sections 2403, 2405, 2406, 2408, and 2409. The approved amendments to the regulations include discontinuation of the production emission credit program, modifications to the certification emissions credit program, and the addition of a zero-emission equipment (ZEE) credit program for small off-road engines.

At the conclusion of the hearing, the Board adopted Resolution 08-41, in which it approved the originally proposed amendments. Staff responded to the comments made at the hearing in the Final Statements of Reasons that was submitted to the Office of Administrative Law (OAL) as part of the submittal for final regulatory action approval. The final rulemaking package was submitted to OAL on September 8, 2009.

On October 27, 2009, OAL formally disapproved the rulemaking action regarding the 2008 amendments to the small off-road engine regulations. The main reasons for OAL's disapproval was a lack of consistency with proposed section 2403(i) and a lack of specificity with ZEE credit program provisions.

Modifications in response to OAL's disapproval of the regulatory action, as well as corrected drafting errors in the regulatory text, are now being made available for a 15 day comment period and are presented below.

By this notice, the modified text is being made available for comment before resubmittal to OAL for final regulatory action approval. The modifications are discussed below and set forth in the document appended to this notice as an Attachment. The Attachment to this notice contains the text of CCR, title 13, chapter 9, sections 2401, 2403, 2404, 2405, 2406, 2408, and 2408.1 that shows the proposed 15 day modifications to the

originally proposed regulatory amendments. Resolution 08-41 is available at ARB's website for this rulemaking: <http://www.arb.ca.gov/regact/2008/sore2008/sore2008.htm>.

I. Summary of the Proposed Modifications

A. Substantive Modifications to the Regulatory Text

1. Section 2401. Staff is adding definitions of “eight-hour workday” in order to establish a basis of comparison of ZEE operation with that of conventional equipment; “professional level” to establish a basis of equipment performance comparisons; “standard battery package” to establish a basis for quantifying battery capacity delivered in a one-hour period; “zero-emission equipment credits” to identify emission reductions achievable by ZEE; and, “zero-emission equipment engine family” to identify specific ZEE that generate credits.

2. Section 2403(i). Staff had proposed to allow the Executive Officer the discretion to make minor technical changes to the test procedures to provide for harmonization with the United States Environmental Protection Agency's regulations that were promulgated after October 3, 2008. However, this creates a process that is inconsistent with Government Code Section 11340.5(a). For that reason, staff is removing this language from the proposed regulation changes.

3. Sections 2404(m)(1) and (2). Staff is adding an optional ZEE label because staff believes placing professional-level ZEE labels may encourage and facilitate environmentally conscious commercial consumers to purchase ZEE over conventional equipment. Staff has made this label optional because some of the small-sized equipment lack available space due to the other labeling requirements.

4. Section 2405(h)(1). Staff is adding a requirement that ZEE, including batteries and battery chargers, be warranted against defects for at least two years.

5. Section 2405(h)(2). Staff is adding an allowance for equipment manufacturers to make contractual agreements with battery manufacturers to provide warranty coverage for the batteries. The equipment manufacturer is ultimately responsible for covering all of the consumer's warranty needs.

6. Section 2408(f)(7). Staff removed this section because the provisions for a ZEE credit program were not well defined. Accordingly, staff introduced a more defined program in section 2408.1.

7. Section 2408.1(a). As with the certification emission credit program, the credit program for ZEE is a voluntary program. Staff is proposing that ZEE may begin to generate ZEE credits with the 2010 model year, and ZEE credits

may be used to offset negative credits from any small off-road engine family beginning with the 2011 model year. However, any equipment that receives funding by any emission reduction program funded by ARB (e.g., Assembly Bill 118 funding), or a manufacturer participating in the Blue Sky program, may not generate ZEE credits. Accordingly, staff is adding language to address this issue.

8. Section 2408.1(b)(1). Although staff wishes to encourage new technology by providing a ZEE credit program, the possibility of manufacturers introducing other equipment that has excessive emissions is undesirable. To address this concern, staff is adding language which would prevent the usage of ZEE credits to offset excessively “dirty” engines.

9. Section 2408.1(b)(2). Staff is adding an exclusion for any ZEE that is not sold in California from generating ZEE credits. Staff’s intention is to allow credit generation only to equipment that are sold and used in California.

10. Section 2408.1(b)(3). Staff is adding an allowance for manufacturers that find it difficult to separate out exact sales of an engine family in California, to use their entire production of that engine family when calculating the usage of ZEE credits. This option is only allowed for the usage of credits, and not in the generation of credits.

11. Section 2408.1(b)(4)(A). Staff is adding a requirement that a ZEE may generate ZEE credits when it is certified. Also, ZEE credits may be used for averaging, banking or trading, or a combination of these three actions.

12. Section 2408.1(b)(4)(B). Staff is adding a durability requirement for ZEE. Staff proposes to set the durability requirement at the maximum durability period to ensure that only professional-level equipment can generate ZEE credits. This is meant to encourage new technology that may not yet be in production. The durability periods would be different for each engine displacement category. The displacement category would correspond to the engine in the conventional equipment.

13. Section 2408.1(b)(4)(C). In response to comments at the Board hearing, staff proposes to allow a reduced ZEE durability requirement with a corresponding reduction in credit generation. A ZEE certified at the lower durability level may generate only seventy-five percent of the ZEE credits that the engine family would have generated at the normal durability period. To generate reduced ZEE credits, the engine family must meet a minimum durability period of 225 hours for engines with a displacement under 80cc or 375 hours for engines with displacement greater than 80 cubic centimeters (cc) and less than 225cc. This provision would be allowed through the 2012 model year.

14. Section 2408.1(b)(4)(D). Staff is adding minimum professional-level requirements. Conventional professional-level lawn and garden equipment are generally expected to provide one hour of continuous use before refueling is required. A similar one-hour operating period expectation will apply to professional-level ZEE. However, because current battery technology does not enable a single battery to power equipment constantly for one hour, staff is allowing for up to four batteries to be used. If multiple batteries are necessary to meet this requirement, they must be provided with the equipment. Additional requirements are also included for durability testing and minimum battery durability.

15. Section 2408.1(b)(4)(E). Staff is clarifying the requirement that enough batteries be provided to allow for one hour of continuous operation.

16. Section 2408.1(b)(4)(F). In addition to the required one hour of continuous operation, staff proposes to require manufacturers to demonstrate that a commercial operator could use the equipment through a typical workday without difficulty. The manufacturer must show that this is possible with the limitations of the battery charging and recharging times.

17. Section 2408.1(b)(4)(G). Staff is clarifying how manufacturers must comply with the use of ZEE credits.

18. Section 2408.1(b)(4)(H). Staff proposes requirements that would track batteries originally sold with ZEE for credit generation. This requirement would be useful for both consumers and manufacturers to identify which batteries are covered under warranty. This section also clarifies that replacement batteries cannot generate ZEE credits.

19. Section 2408.1(c)(1). Staff proposes that up to fifty percent of the negative emission credits from a particular engine family may be offset by ZEE credits. The remaining credit balance must be offset by positive certification credits. Requiring the use of certification emission credits, in addition to ZEE credits, encourages manufacturers to use other advanced emission control technologies in addition to the zero emission technology.

20. Section 2408.1(c)(2). To ensure that ZEE credits used to offset emissions from other equipment are legitimate, staff is requiring that ZEE credits be banked before they can be used.

21. Sections 2408.1(c)(3) and (4). Keeping ZEE credits separated by displacement categories was requested by manufacturers. Staff also believes that it is beneficial to segregate ZEE credits by displacement because of the differential in the emission standards for each displacement category. In addition, ZEE is expected to

replace equivalently performing conventional equipment, so the credits should be used only in that displacement category. Accordingly, staff is adding language that specifies this requirement.

22. Sections 2408.1(d)(1) and (2). Staff is proposing provisions for banking ZEE credits. Specifically, banking of these credits may begin in the 2010 model year, and that these credits can be banked only at the end of the model year.

23. Sections 2408.1(d)(3) and (4). Staff is proposing that ZEE credit life be limited to five years just as are certification emission credits. After five years, ZEE credits would expire and would no longer be usable for offsetting negative certification emission credits.

24. Section 2408.1(e). Staff is proposing provisions for trading ZEE credits. Specifically, credits that are available for trading are credits that were banked in previous model years, and that these credits expire five years from the time they were generated.

25. Section 2408.1(f). This section provides clarifying language for the calculation of ZEE credits.

26. Section 2408.1(g). Staff is adding the certification requirements for equipment that generate ZEE credits. These requirements mirror the requirements for certification emission credits.

27. Section 2408.1(h). Staff is proposing that the maintenance of records requirements for ZEE credits also mirrors the requirements for certification emission credits. The records for ZEE credits also include maintaining records for the batteries, as well.

28. Section 2408.1(i). Staff is proposing that the end-of-year and final reports for ZEE credits be similar to the reports for certification emission credits.

B. Non-Substantive Modifications to the Regulatory Text

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

1. Section 2403(b)(3). Minor changes to correct references were made in this section.

2. **Section 2406(b)(2).** Staff is correcting the grammar in the sentence by pluralizing the word “call.”

3. **Section 2408(i)(3).** The mailing address for the end-of-year and final reports was changed to indicate the correct address.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 95550, title 17, CCR, after making it available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if warranted.

Written comments will only be accepted on the modifications approved by the Board and may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo

de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachment