

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the California regulations and test procedures for new 1997 and later off-highway recreational vehicles and engines (OHRV). The amendments would add evaporative emission standards and revise the riding seasons for OHRVs that do not meet California's exhaust emission standards. On the whole, the amendments will lead to additional emission reductions and more efficient enforcement of the OHRV regulation. This notice summarizes the proposed regulatory amendments. The staff report presents the proposed amendments in greater detail.

DATE: July 20, 2006

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., July 20, 2006, and may continue at 8:30 a.m., July 21, 2006. This item may not be considered until July 21, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before July 20, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of amendments to sections 2411, 2412, 2413 and 2415, title 13, California Code of Regulations (CCR), and to the following document incorporated by reference therein: "California Exhaust Emission Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines," as last amended October 22, 1999.

Background:

Health and Safety Code sections 43013 and 43018 direct ARB to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories, including off-highway vehicles and off-highway motorcycles, through the setting of emission control and other requirements.

The Board first adopted the OHRV regulation (sections 2410-2414, title 13, CCR, and the documents incorporated by reference therein) in January 1994. The primary goal of the regulation was to control a significant source of ozone-forming emissions. To that end, the regulation implemented exhaust emissions standards for a segment of off-road vehicles that, prior to 1994, were not subject to any emission control measures. Specifically, the Board adopted exhaust emission standards for off-road motorcycles and all-terrain vehicles (ATV), as well as required the use of zero-emission (e.g., “electric”) golf carts at golf courses located in nonattainment areas for ozone.

Soon after the standards went into effect, California motorcycle dealers and off-road enthusiast associations (i.e., consumers) began to voice their concerns about the OHRV regulation. Specifically, their interrelated concerns were two-fold: 1) many of the popular-selling two-stroke/competition OHRVs were not modified by their manufacturers to meet the new emission standards and thus were no longer eligible for off-highway registration, so most consumers would not buy them; and 2) of the compliant OHRVs that were available, none possessed performance characteristics that were satisfactorily similar to the two-stroke/competition models, which a large segment of consumers desired. Moreover, some manufacturers chose to produce no emission-compliant OHRVs; and thus, their dealers were negatively impacted economically.

To address these unintended outcomes, a committee of stakeholders was formed. Comprising the committee were: the California Motorcycle Dealers Association; off-road enthusiast groups and associations, including the American Motorcyclist Association; several OHRV manufacturers; public land agency managers from the California State Parks, the Bureau of Land Management, and the United States Forest Service; representatives from the Department of Motor Vehicles’ (DMV) registration policy unit; and ARB staff. The committee held several meetings over the course of approximately a year and a half and considered various strategies to accommodate the concerns of the dealers and off-road enthusiasts. The goal was to develop a solution that would provide relief to the dealers and off-road enthusiasts, while still achieving meaningful emission reductions. The solution that was ultimately chosen accomplished this objective and was approved by the Board at the December 10, 1998 public hearing.

The two main elements of the 1998 rulemaking were: 1) the creation of a new form of off-highway vehicle registration, specifically for noncomplying OHRVs; and 2) a schedule of dates for OHRV riding areas, known as the “riding seasons” (section 2415, title 13, CCR), during which ambient ozone was low and non-complying OHRVs could be ridden. Together, these measures provided for the limited use of noncomplying OHRVs, without significantly impacting ambient air quality levels for ozone.

On July 24, 2003, the OHRV regulation was amended a second time. The amendments reflected a delay in riding season enforcement by the land management agencies, due to the inconsistent registration of these vehicles. The inconsistent registrations were caused by manufacturers not correctly following the regulatory requirements for identifying noncomplying OHRVs in the vehicle identification number, and a delay in the implementation of the appropriate computer programming for DMV to accurately process the off-highway vehicle registrations. At the time of the 2003 amendments, both of these problems had been largely resolved.

Description of the Proposed Regulatory Action: Staff proposes amendments to California's existing OHRV regulations to add evaporative emission standards for new OHRVs, and to revise the riding seasons for OHRVs that do not meet California's exhaust emission standards. Staff also proposes that the Board insert into section 2413, title 13, CCR, the specific language related to the labeling requirements for OHRVs, which was previously incorporated by reference and contained in a separate document, and amend the ATV category to better describe ATVs and to allow certain types of utility vehicles to certify to the ATV standards.

The proposed evaporative emissions standards are identical to those adopted by the United States Environmental Protection Agency (U.S. EPA) in 2002. Adoption of the standards will allow ARB to conduct its own enforcement action if it determines that the standards are not being met. The adoption will also ensure that ARB's OHRV program will continue to be at least as stringent as the federal program in future model years.

Staff proposes that the Board update the current listing of the riding areas designated for off-highway motorcycle and ATV usage. More specifically, staff proposes to modify the riding seasons for noncomplying or "Red Sticker" vehicles to reflect current air quality data and to address concerns that have been voiced regarding how to simplify compliance for both riders and enforcement personnel.

Staff is also proposing that the Board reclassify certain types of utility vehicles. The reclassification would include changes to definitions, emissions standards, and test procedures for the vehicles in question. Instead of certifying under California's large off-road spark-ignition regulation, manufacturers would certify these vehicles under the OHRV regulation. However, the vehicles subject to this reclassification would not be eligible for emissions noncompliant (i.e., red sticker) registration. Because these utility vehicles use engines that are also used in OHRVs (in particular ATVs), the proposal would reduce the cost of demonstrating the engine's compliance under two different regulatory categories that use different procedures. It is possible that manufacturers of utility vehicles and others covered by California's large off-road spark-ignition regulation, but not specifically identified by staff, may likewise seek such reclassification, and the Board may consider such reclassifications under this proposal.

In addition, staff proposes that the Board add label specifications directly to the regulatory language of section 2413, title 13, CCR. The label specifications to be added are currently in a separate document that is incorporated by reference.

A full description of the proposed amendments is presented in the “Staff Report: Initial Statement of Reasons,” as described below.

COMPARABLE FEDERAL REGULATIONS

In November 2002, U.S. EPA finalized its own regulation for OHRVs, which contains standards for both evaporative and exhaust emissions (40 CFR Part 1051). The amendments proposed here are designed to harmonize with the federal evaporative standards; California’s exhaust emissions standards for OHRVs remain more stringent than U.S. EPA's exhaust emission standards.

BENEFITS OF THE PROPOSAL

By 2020, the proposal would provide a reduction of approximately 4.5 tons per day of ozone-forming hydrocarbon emissions, due to the implementation of evaporative controls.

The proposal would benefit manufacturers by providing California and federal regulatory consistency for both OHRV evaporative emissions standards and for eligible utility vehicles certifying to ATV standards. In addition, through the revision of the riding seasons, the staff’s proposal will simplify compliance for OHRV users and improve enforceability by the public land managers.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: “Staff Report: Initial Statement Of Reasons For Proposed Rulemaking — Public Hearing To Consider Amendments To The California Regulations For New 1997 And Later Off-Highway Recreational Vehicles And Engines.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and ~~strikeout~~ format to allow for comparison with the existing regulations, may be accessed on the ARB’s website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on July 20, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB’s website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Scott Rowland, at (626) 575-6676 or

srowland@arb.ca.gov, or Mr. Andrew Spencer, at (626) 575-6675 or aspencer@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/ohrv2006/ohrv2006.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings 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 costs or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because there will be no

incremental cost, or an insignificant cost, associated with staff's proposal in addition to those already needed to comply with the federal regulation.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, July 19, 2006**, and addressed to the following:

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>

Facsimile submittal: (916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code sections 39600, 39601, 43013, 43018, 43101, 43105 and 43107, and in Vehicle Code sections 38020 and 38390. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 43013, 43018, 43101, 43102, 43104, 43105, 43107, and Vehicle Code sections 38020 and 38390.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: May 23, 2006

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web -site at www.arb.ca.gov.