

## UPDATED INFORMATIVE DIGEST

### AMENDMENTS TO THE CALIFORNIA REGULATIONS FOR NEW 1997 AND LATER OFF-HIGHWAY RECREATIONAL VEHICLES AND ENGINES

**Sections Affected:** Amendment of title 13, California Code of Regulations (CCR), Division 3, Chapter 9, Article 3, sections 2411-2413 and 2415; and the incorporated "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 situations, 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

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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.

On July 20, 2006, the Board conducted a public hearing to consider the staff's proposal to further amend California's existing off-highway recreational vehicle regulations through the adoption of evaporative emissions standards and other modifications. At the conclusion of the hearing, the Board adopted Resolution 06-23, in which the Board approved the adoption of the proposed regulations with the modifications presented by staff at the hearing and directed staff to work with industry to finalize the regulatory package through use of the 15-day modified text process.

Staff's revised the proposed regulations and test procedures, with the modified text clearly indicated, were made available to the public for a 15-day comment period on March 29, 2007. Several written comments were received during the comment period. Staff responded to those comments with further revisions, which, with the modified text clearly indicated, were made available to the public for a 15-day comment period on May 2, 2007. Additional written comments were received during the comment period. Staff has responded to all comments received during the regulatory process, including those submitted in response to the two notices of modified text, in its Final Statement of Reasons regarding this rulemaking.

**Description of Regulatory Action:** On July 20, 2006, the Board amended California's existing off-highway recreational vehicle regulations by adding evaporative emission standards for new OHRVs, and revising the riding seasons for OHRVs that do not meet California's exhaust emission standards. The board also approved the insertion of, the specific language related to the labeling requirements for OHRVs, which was previously incorporated by reference and contained in a separate document into section 2413, title 13, CCR, and amended the category to better describe ATVs and to allow certain types of utility and sport vehicles to certify to the ATV standards.

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

The Board also approved an updated listing of the riding areas designated for off-highway motorcycle and ATV usage. More specifically, the Board modified the riding seasons for noncomplying or "Red Sticker" vehicles to reflect current air quality data and to simplify compliance for both riders and enforcement personnel.

As noted, the Board reclassified certain types of utility vehicles. The reclassification includes 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 will certify these vehicles under the OHRV regulation. However, the vehicles subject to this reclassification are not 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 reclassification should reduce what would otherwise be the cost of demonstrating the engine's compliance to two different regulatory categories using different procedures.

In addition, the Board added label specifications directly to the regulatory language of section 2413, title 13, CCR. The label specifications added were previously in a separate document that had incorporated this language by reference, so this is not a new requirement.

### **COMPARABLE FEDERAL REGULATIONS**

In November 2002, U.S. EPA finalized its own regulation for OHRVs at 40 CFR Part 1051. The federal regulations contain standards for both evaporative and exhaust emissions. The amendments proposed here seek 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. The differing state regulations are authorized by the Division 25 of the Health and Safety Code, and any added cost of these differing state regulations continues to be justified by the human health benefits of the greater emission reductions achievable from California's separate program, as detailed in the Initial Statement of Reasons.

### **BENEFITS OF THE PROPOSAL**

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

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The amendments will 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 amendments will simplify compliance for OHRV users and improve enforceability by the public land managers.

### **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.

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The Board has determined 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 amendments were intended, or would be as effective as and less burdensome to affected private persons, than the amended regulation. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

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