

UPDATED INFORMATIVE DIGEST

Amendments to the Off-Highway Recreational Vehicle Regulations

Sections Affected: This action amends the following chapter and sections of Title 13, California Code of Regulations (CCR), and the documents incorporated by reference therein: Chapter 9, Off-Road Vehicles and Engines Pollution Control Devices; Article 3, Off-Highway Recreational Vehicles and Engines; Sections 2410-2414, and adoption of Section 2415, Title 13, CCR, and the incorporated "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines."

Background: The California Clean Air Act as codified in the Health and Safety Code sections 43013 and 43018 grants the ARB authority to regulate off-road mobile source categories. Included are marine vessels, locomotives, utility engines, off-road motorcycles, and off-highway vehicles.

In 1994, the Board approved regulations to control emissions from off-highway recreational vehicles. These regulations were implemented on off-road motorcycles and all-terrain vehicles manufactured on/after January 1, 1997. At this time, there is far less California-certified product available than anticipated in 1994 when the Board approved the regulations. In crafting this proposal, the ARB staff met with user group representatives, dealer representatives, public land management agencies, the Department of Motor Vehicles, off-highway vehicle manufacturers, and other interested parties in numerous individual meetings. The staff also held a public workshop on October 7, 1998.

The Amendments. On December 10, 1998, the Board considered and approved the amendments that staff proposed. Following is a description of specific major amendments, including modifications adopted in response to the Board's directives at the December 10, 1998 hearing.

These amendments modify the existing off-highway recreational vehicle regulations to allow limited usage of non-emission-compliant vehicles (i.e., vehicles that do not meet the applicable emissions standards) in California's off-highway vehicle riding areas. The amended Article 3 would apply to all California off-road motorcycles and all-terrain vehicles manufactured on/after January 1, 1997 (on/after January 1, 1999 for vehicles under 90cubic centimeters engine displacement). The amendments do not change existing emissions standards, but do provide more flexibility and opportunities for the use of non-emission-compliant vehicles.

The goal of the amendments is to provide relief to off-highway vehicle dealers and user groups while maintaining air quality goals. The amendments consist of a regional/seasonal approach for determining riding seasons at off-highway vehicle (OHV) riding areas for non-emission-compliant vehicles. Specifically, those OHV riding areas that are located within regions that have been classified as in "attainment" for the State's one-hour ozone air quality standard would be considered an "unlimited-use" area. In these unlimited-use areas, both emission-compliant and non-emission compliant vehicles would have the opportunity to be operated year-round. The OHV riding areas located within regions that have been classified as "nonattainment" for ozone would be considered "limited-use" areas. In limited-use areas, only emission-compliant vehicles would have the opportunity to operate year-round. Non-emission-compliant vehicles would be subject to the seasonal riding restrictions. The riding season for a given limited-use area is determined by considering historical data for ozone exceedances and meteorological conditions. This translates into a riding season that allows non-emission-compliant vehicles to operate during non-peak ozone times of the year.

The amendments incorporate certification and vehicle identification requirements for non-emission-compliant vehicles. Emission-compliant and non-emission-compliant vehicles will be identifiable by a distinguishing alphanumeric in the vehicle identification number. For enforcement purposes, in order to identify whether a vehicle is subject to limited-use restrictions, the Department of Motor Vehicles will implement a two-sticker system (OHV Green / OHV Red). Previously, during the vehicle registration process, only one sticker (OHV Green) was available, which allowed unlimited access to OHV riding areas. The creation of an alternate sticker (OHV Red) for non-emission-compliant vehicles now serves to distinguish the status of the vehicle, which assists public land managers with enforcement in limited-use OHV riding areas.

In response to testimony given at the December 10, 1998 hearing, the Board directed staff to reevaluate certain OHV riding areas classified as "prohibited." Upon further review, two OHV riding areas that were proposed to be classified as "prohibited" for use by non-emission-compliant vehicles, Lark Canyon and Corral Canyon, were reclassified as limited-use instead. Another OHV riding area, Arroyo Salado, was removed from the regulations because it became incorporated into Ocotillo Wells, a nearby OHV riding area. These changes were made available as part of the Notice of Public Availability of Modified Text.

Additions were made to the vehicle identification number definition that provide for an alternative number in cases where one cannot be obtained from the National Highway Traffic Safety Administration. Also included in the Notice of Public Availability of Modified Text was a change to the definition of all-terrain vehicles. Specifically, the unladen weight limit of 600 pounds was removed from the definition. All-terrain vehicles used for recreational purposes are typically less than 600 pounds. There are other vehicles quite similar to all-terrain vehicles, which weigh more and are used under worklike applications. This

modification, which was approved by the Board during the October 22, 1998 hearing for Large Off-Road Spark-Ignition Engine regulations, resulted in the inclusion of all all-terrain vehicles into the OHRV regulations. These two modifications were changed in both the CCR Title 13 Regulations and the incorporated Test Procedures for OHRVs. The Test Procedures were also changed to reflect the required information needed to identify non-emission-compliant OHVs.

The Board made other miscellaneous changes to the regulations and test procedures to conform with federal practices and to clarify existing regulatory language. These revisions were incorporated into the regulatory language and made available in the Notice of Public Availability of Modified Text, which was released March 5, 1999.

Lastly, in accord with Governor's Executive Order W144-97, a review of the adopted amendments was added. This review is due within five years of the effective date of adoption.

Incorporation of Test Procedures and Federal Regulations. The amended test procedures are incorporated by reference in Title 13, CCR, Section 2412. The amended test procedures, in turn, incorporate test procedures adopted by the U.S. Environmental Protection Agency and contained in Title 40 Code of Federal Regulations (CFR) Part 86.

Title 13, CCR Section 2412 identifies the incorporated ARB documents by title and date. The ARB documents are readily available from the ARB upon request and were made available during the subject rulemaking in the manner specified in Government Code Section 11346.7(a). The CFR is published by the Office of the Federal Register, National Archives and Records Administration, and is therefore reasonably available to the affected public from a commonly known source.

The test procedures are incorporated by reference because it would be impractical to print them in the CCR. The 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 required for certification of vehicles and have a very limited audience. Because the ARB has never printed complete test procedures in the CCR, the directly affected public is accustomed to the incorporation format utilized 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.

Economic and Fiscal Impact. The Board approved ARB staffs' evaluation of the potential economic impacts on private persons and businesses. There are

only very minor costs associated with the implementation of this proposal and there is no apparent adverse economic impact. The costs to industry are limited to the new requirement of certifying the non-emission-compliant vehicles. However, due to the limited information required to be submitted and the streamlined certification application for these vehicles, there is very little burden on manufacturers. Therefore, there should no increase in the cost of OHRVs because of this rulemaking.

Public outreach efforts (costs incurred by ARB) have been made to more rapidly disseminate the new opportunities for recreational vehicle users. From a “potential sales” perspective, dealers stand to benefit. Another benefit of the amendments is that the OHV recreation program will maintain necessary revenues due to the implementation of the newly proposed OHV Red Sticker. The costs of production for these stickers will be paid for over time, as the stickers are sold. Furthermore, the new enforcement procedures will closely parallel the procedures that were already in place, so there should be no additional burden for enforcement personnel.

Additionally, the Board has determined that this regulatory action will not result in a mandate to any local agency or school district, the costs of which would have been reimbursable pursuant to Part 7 (commencing with Section 17500), Division 4, Title 2 of the Government Code.

Consideration of Alternatives. Retaining the initial OHRV regulations would not be a preferred alternative. As already noted, many dealers have been or will be unintentionally impacted. Therefore, the status quo is not recommended.

On the other extreme, repealing the OHRV regulations would not be a recommended alternative. Although legislation was introduced that attempted to do this (SB 1726, Johannessen), it has been shown that these vehicles produce significant amounts of emissions, thereby necessitating emission control regulations on this segment of off-road mobile sources. Furthermore, by repealing the regulations, mitigating measures would certainly have to be developed to make up for the emissions shortfall. Obtaining the needed reductions from other sources is likely to be more costly.

Many of the few modifications proposed during the comment periods were incorporated into the final regulations. Finally, the Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

Comparison to Federal Regulations. Currently, there are no federal regulations governing exhaust emission standards for OHRVs.