

## 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 meeting at the time and place noted below to consider amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines.

DATE: July 24, 2003

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Central Valley Auditorium, Second Floor  
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 24, 2003, and may continue at 8:30 a.m., July 25, 2003. This item may not be considered until July 25, 2003. Please consult the agenda for the meeting, which will be available at least ten days before July 24, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact ARB's Clerk of the Board at (916) 322-4011 or [amalik@arb.ca.gov](mailto:amalik@arb.ca.gov) as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT** **OVERVIEW**

#### **SECTIONS AFFECTED**

Amendment of the following section of title 13, California Code of Regulations (CCR): chapter 9, Off-Road Vehicles and Engines Pollution Control Devices; article 3, Off-Highway Recreational Vehicles and Engines; section 2415, title 13, CCR.

#### **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, including off-road motorcycles and off-highway vehicles. In 1994, the board approved regulations to control emissions from off-highway recreational vehicles (OHRV). These regulations affected off-road motorcycles and all-terrain vehicles manufactured on/after January 1, 1997.

In order to ensure product availability in California, in December 1998, the Board amended the regulations to allow only seasonal use of vehicles that do not meet the applicable exhaust emissions standards (non-emissions-compliant) in California's OHRV riding areas; that is noncompliant vehicles could be operated in OHRV riding areas located in ozone attainment areas year-round but only during the non-peak ozone season in ozone nonattainment areas. The regulations as amended are codified at title 13, CCR, sections 2410-2415. Following the 1998 amendments, non-emissions-compliant OHRVs were to be registered by California's Department of Motor Vehicles (DMV) with a red sticker. OHRVs meeting exhaust emission standards (emissions-compliant) were to be registered with a green sticker. The stickers were to enable California's Department of Parks and Recreation (DPR) to enforce the limited usage of non-emissions-compliant OHRVs in California's off-highway vehicle riding areas.

Since the adoption of the amendments in 1998, ARB staff have worked with the Department of Motor Vehicles (DMV) and the Department of Parks and Recreation (DPR) to implement the seasonal riding program. One step in that effort was ARB's regular enforcement of its certification requirements against manufacturers and dealers who allowed vehicles to reach the California market with incorrect or no California certification. The violating manufacturers have made corrections and paid penalties to the Air Pollution Control Fund. Another step is DMV recent commitment to automate their registration system to better ensure that OHRVs are registered correctly as either emissions-compliant (green sticker), or non-emissions-compliant (red sticker). DPR in turn has committed to enforce the riding season limitations beginning in 2003.

This regulatory amendment is proposed simply to reflect the delay in riding season enforcement. In crafting the proposal, the ARB staff met numerous times with DMV and DPR staff. The goal of the proposal is to facilitate effective and equitable implementation and enforcement of the OHRV regulation as originally intended. This goal can best be met by acknowledging by regulation that as a practical matter riding season use restrictions are enforceable beginning with the 2003 model year.

## **STAFF PROPOSAL**

The proposal would modify the existing off-highway recreational vehicle regulations to indicate that riding season use restrictions set forth in, section 2415, title 13 CCR would apply to all non-emissions-compliant California off-road motorcycles and all-terrain vehicles 2003 and later model year. The proposal does not change exhaust emission standards or certification requirements, but does provide for a workable enforcement program in the California riding areas. As a result, the proposal reflects that we are now achieving the air quality benefits intended by the 1998 riding season amendments to the OHRV regulations.

The proposed amendment reflects the emission reductions originally intended by the riding season amendments will now be achieved because DMV will be correctly registering OHRVs and DPR will begin riding season enforcement beginning with the 2003 riding season. The amendment supports program changes that will reduce registration inconsistencies that resulted in lack of enforcement in the field confirming the regulation to reflect the actual date of enforcement of the riding season limitations will avoid confusion for the riding public. The Board's adoption of these proposed amendments will reflect that these problems have been substantially corrected and that riding area enforcement has begun. If adopted, the proposed amendments to postpone the riding season use restrictions to the 2003 Model Year will support DMV's registration of all 2002 Model Year and older OHRVs with a green sticker and will support DPR's enforcement actions beginning with the 2003 riding season.

### **COMPARABLE FEDERAL REGULATIONS**

The U.S. Environmental Protection Agency does not currently have emission control regulations for the 1997 and later model year vehicles and engines that are subject to the proposed amended regulations. Pursuant to Clean Air Act section 209(e), the ARB may need to seek a determination from the federal Environmental Protection Agency that the proposed amendments are within the scope of the previously authorized OHRV regulations.

### **BENEFITS OF THE PROPOSAL**

To date, non-emissions-compliant OHRVs 2002 model year and older have not been restricted to the riding times as intended by the regulation due to lack of enforceability. Consequently the delay in enforcement means ARB cannot accurately determine the level of emissions reductions achieved from the riding season restrictions to date. This is because there has been no enforcement in the California riding areas and therefore the non-emissions-compliant OHRVs have had the ability to ride year-round. The lack of use restriction likely has not provided for the anticipated hydrocarbon reductions. Therefore this amendment will not result in any additional emissions; at most it acknowledges reductions that may not have been achieved. The proposed amendments will reflect that we will now begin to realize the full benefits anticipated from the riding season provisions of the 1998 regulatory amendments.

### **AVAILABILITY OF DOCUMENTS AND CONTACT PERSON**

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action that includes a summary of the environmental and economic impacts of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the ARB's Public Information Office, Visitors and Environmental Services Center,

1001 I Street, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (July 24, 2003).

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 website listed below.

Inquiries concerning the substance of the proposed regulation should be directed to the agency contact person for this rulemaking: Michelle Shultz-Wood, Enforcement Division, at (626) 459-4338 or e-mail, [mshultz@arb.ca.gov](mailto:mshultz@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or 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 agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board's ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and subsequent regulatory documents, including the FSOR once it has been prepared pursuant to Government Code section 11346.9(a), will also be available on the ARB Internet site for this rulemaking at:

<http://www.arb.ca.gov/regact/ohrv03/ohrv03.htm> or at [www.arb.ca.gov/enf/enf.htm](http://www.arb.ca.gov/enf/enf.htm).

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determination of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6) 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 agency is not aware of any cost impacts

that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

In accordance with Government Code sections 11346.3 and 11346.5(a)(10), the Executive Officer has determined that the proposed amendments should have minimal or no impacts on the creation or elimination of jobs within the State of California, minimal or no impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal or no impacts on the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the action does not create any new requirements, detriments, or benefits. Any such effects were analyzed, as required in previous rulemakings.

Finally, pursuant to Government Code sections 11346.3(a)(2) and 11346.5(a)(8), the Executive Officer has made an initial determination that adoption of the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the Board's attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **SUBMISSION OF COMMENTS**

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments submissions not physically submitted at the meeting must be received **no later than 12:00 noon, July 23, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic mail is to be sent [ohrv03@listserv.arb.ca.gov](mailto:ohrv03@listserv.arb.ca.gov) and received at the ARB **no later than 12:00 noon, July 23, 2003.**

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, July 23, 2003.**

The Board requests, but does not require 30 copies of any written submission. Also, the ARB requests that written and e-mail statements be filed at least ten days prior to the meeting so that ARB staff and Board members have time to fully consider each comment.

### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under the authority granted in Health and Safety Code sections 39600, 39601, 43013, 43018, and 43107, and Vehicle Code sections 38020 and 38390. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 43013, 43018, and, 43107, and Governor's Executive Order W144-97.

### **HEARING PROCEDURES AND AVAILABILITY OF MODIFIED TEXT**

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 nonsubstantial 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 Board's Public Information Office, Air Resources Board, 1001 I Street, 1<sup>st</sup> Floor, Visitors and Environmental Services Center, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon

## Executive Officer

Date:

*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](http://www.arb.ca.gov).*