TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER A DELAY IN THE IMPLEMENTATION DATE OF THE UTILITY AND LAWN AND GARDEN ENGINE EMISSION REGULATIONS

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider the modification of regulations regarding exhaust emission standards for utility and lawn and garden engines and equipment engines.

DATE: April 8, 1993

TIME: 9:30 a.m.

PLACE: Embassy Suites Hotel
Queen of the Lake Ballroom
4130 Lake Tahoe Boulevard
South Lake Tahoe, California

This item will be considered at a one-day meeting of the Board. Please consult the agenda for the meeting which will be available at least 10 days before April 8, 1993, to determine the exact scheduling of this item.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Amendment of the following chapters 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 1, General Provisions; Section 2400, Applicability; Article 2, Approval of Utility and Lawn and Garden Equipment Engines Pollution Control Devices; Section 2403, Exhaust Emission Standards and Test Procedures - Utility and Lawn and Garden Equipment Engines and the incorporated "California Exhaust Emission Standards and Test Procedures for 1994 and Later Utility and Lawn and Garden Equipment Engines"; Section 2404, Emission Control Labels - 1994 and Later Utility and Lawn and Garden Equipment Engines; Article 3, Emission Control System Warranty; Section 2405, Defects Warranty Requirements for 1994 and Later Utility and Lawn and Garden Equipment Engines; Section 2406, Emission Control System Warranty Statement; Article 4, Enforcement of Off-Road Vehicles and Engines Emission Standards; Section 2407, New Engine Compliance and Quality-Audit Testing - New Utility and Lawn and Garden Equipment Engine Selection, Evaluation, and Enforcement Action.

The California Clean Air Act (CCAA) as codified in the Health and Safety Code (HSC) Sections 43013 and 43018 grants the ARB authority to regulate several currently unregulated sources in the off-road category. Included are construction and farm equipment, marine vessels, locomotives, utility engines, off-road motorcycles, and off-highway vehicles.

In December, 1990, the Air Resources Board ("ARB" or "Board") approved emission control regulations for utility engines. (See Title 13, CCR, sections 2400-2407 and documents incorporated therein.) The regulations were adopted by the ARB on March 20, 1992, and approved by the office of Administrative Law on May 1, 1992.

In November, 1990, after publication of the utility engine proposal, but prior to the public hearing, the federal Clean Air Act Amendments (CAA) of 1990 were enacted. Section 209 (e)(1) of the CAA established a federal preemption prohibiting any state or political subdivision thereof from regulating emissions from new construction or farm equipment less than 175 horsepower. Section 209 (e)(2) of the CAA provides that California may adopt standards and other requirements for off-road engines used in vehicles and equipment that are not otherwise preempted by section 209(e)(1). However, prior to such standards and other regulations becoming enforceable, California must receive authorization from the Environmental Protection Agency (EPA). To date, EPA has not promulgated final rules defining the scope of the farm and construction preemption and, as a consequence, has not issued a final decision on California's request for authorization, which was submitted to EPA on December 27, 1990.

Without a final rule defining the scope of the preemption and without express authorization from EPA delineating California's authority to regulate engines that may arguably be used in new farm and construction equipment and vehicles under 175 horsepower, industry has been left uncertain as to how the preemption of state authority would affect the utility engine regulations. In August 1992, the Portable Power Equipment Manufacturers Association (PPEMA) petitioned the Board to hold a public hearing to consider delaying the January 1, 1994 implementation date, set forth in Title 13, CCR, section 2400 et seq., one year to January 1, 1995. Additionally, since the Board approved the utility engine regulations, PPEMA and several manufacturers have expressed doubt about their ability to meet the January 1, 1994 implementation date and that without approval of the waiver, and without a firm knowledge of which equipment types would be preempted, effective allocation of engineering resources was virtually impossible. The Executive Officer of the ARB approved the petition in a decision dated December 18, 1992.

Therefore, the staff has prepared a proposal to delay the implementation of the 1994 utility engine regulations by one year, until January 1, 1995. The staff's proposal also includes a delay of implementation of the quality audit provisions of section 2407 from January 1, 1995 to January 1, 1996.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the air quality impacts of the proposal. The Staff Report, the full text of the proposed regulations, and any other information on which the proposal is based will be available for inspection and may be obtained at the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing.

Further inquiries regarding this matter should be directed to Ms. Jackie Lourenco, Manager, Off-Road Controls Section at (818) 575-6632 or Air Resources Board, Mobile Source Division, 9528 Telstar Avenue, El Monte, CA 91731.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The Board's Executive Officer has determined that the regulations 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.

The Executive Officer has further determined that the adoption of these proposed amendments will not have a significant adverse economic impact on business. To the contrary, the proposed amendments are expected to economically benefit affected industries, by affording them additional time to comply with previously adopted regulations. There will be no direct reporting, recordkeeping or other compliance requirements imposed by these proposed amendments.

The Exeuctive Officer has also determined that there will be no, or an insignificant, potential cost impact on private persons or businesses directly affected by the proposed amendments to the regulation.

The Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, April 7, 1993, or received by the Board Secretary at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. 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 regulations.

STATUTORY AUTHORITY AND HEARING PROCEDURES

These regulations are proposed under that authority granted in Health and Safety Code Sections 39600 and 39601. The regulations are proposed to implement, interpret and make specific Health and Safety Code Section 43013, 43017 and 43018.

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 proposed regulations as proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulations with other modifications if the regulations as modified are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action; in such event the full text of the regulations with the modifications clearly indicated will be made available to the public, for written comment, at least 15 days before they are adopted. The public may request the text of the modified regulations from the Board's Public Information Office, 2020 L Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

James D. Boyd
Executive Officer

Date: February 11, 1993