

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CURRENT REGULATIONS FOR SMALL OFF-ROAD 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 for small off-road engines (SORE).

DATE: November 20, 2008

TIME: 9:00 a.m.

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

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., November 20, 2008, and may continue at 8:30 a.m., November 21, 2008. This item may not be considered until November 21, 2008. Please consult the agenda for the meeting, which will be available at least 10 days before November 20, 2008, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette or computer disk. For assistance, please contact ARB's Reasonable Accommodations/Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services, or go to <http://www.arb.ca.gov/html/ada/ada.htm>

If you are a person with limited English and would like to request interpreter services to be available at the Board meeting, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2403, 2405, 2406, 2408 and 2409, within chapter 9, article 1, title 13, California Code of Regulations (CCR); proposed amendments to the incorporated "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines," as adopted July 26, 2004.

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 small off-road engines, through the setting of emission standards and other requirements.

In 1990, the Board approved exhaust emission control regulations for new small off-road engines. Small off-road engines are equal to or less than 19 kilowatts (kW) and include both handheld equipment (such as string trimmers and chain saws) and nonhandheld equipment (such as lawn mowers and generators, as well as industrial equipment).

In 1998, the Board revised the standards and required manufacturers to meet the emission standards for the life of the engine instead of just when the engines are new. In addition, the Board adopted an emissions credit program.

In 2003, ARB adopted evaporative emissions standards and more stringent catalyst-based exhaust standards. The tier 3 hydrocarbon plus oxides of nitrogen (HC+NO_x) emission standards for engines less than 50 cubic centimeters (cc) went into effect with the 2005 model year. The new catalyst-based standards were to be implemented with the 2007 model year for engines between 80 and 225 cc, and with the 2008 model year for engines 225 cc and above. Overall, these catalyst-based standards represented an additional 35 percent reduction in engine-out exhaust emissions from the previous HC+NO_x emission standards.

As noted above, one of the changes made in 1998 was the establishment of an emissions credit program. The program involved two types of credits: certification credits and production credits. A manufacturer obtains certification emission credits when it certifies an engine to a family emission level (FEL) below the standards. The other method of obtaining credits is through the production emission credit program. Manufacturers can obtain emission credits for the amount the production line test results are below the FEL.

Currently, manufacturers have banked in excess of 10,000 tons of HC+NO_x emissions reduction credits as of the end of the 2007 model year. At the same time, the tier 3 emissions standards for engines greater than 80 cc are coming into effect in 2007 and 2008. Because of the large amount of emissions credits banked, however, the air quality benefits of the new tier 3 standards are not being realized. Manufacturers are building very few engine families that meet the tier 3 standards, relying instead on banked credits to meet the tier 3 requirements. In other words, these temporary banked emission reductions, reductions that will be returned to the ambient air as they are used, are postponing the beneficial effects of the permanent reductions that come from compliance with the tier 3 standards.

Description of the Proposed Regulatory Action:

Staff's proposal addresses issues that have developed since the Board's 2003 rulemaking and enhances alignment with other ARB and United States Environmental Protection Agency (U.S. EPA) regulations. The major changes would:

- eliminate the generation of production emission credits after model year 2009;
- modify the use of existing production emission credits; and
- limit the lifetime of future certification emission credits to five model years.

The elimination of production emission credits would bring the SORE regulations in alignment with other emissions credit programs.

The proposal also includes other minor changes as follows:

- an option to accept the use of a certification fuel with up to ten percent ethanol content;
- requirements for an English-speaking contact for warranty issues; and
- Executive Officer discretion to make technical modifications.

A more detailed description of staff's proposal is included in the Staff Report: Initial Statement of Reasons for Rulemaking to Consider Amendments to the Current Regulations for Small Off-Road Engines.

COMPARABLE FEDERAL REGULATIONS

Small off-road engines are currently subject to federal regulations contained in title 40 Code of Federal Regulations (CFR), part 90. On September 4, 2008, U.S. EPA approved its "Final Rule: Control of Emissions of Air Pollution from New Nonroad Spark-Ignition Engines, Equipment, and Vessels" for nonroad spark-ignition engines and equipment that would institute "phase 3" standards that generally harmonize with existing tier 3 California exhaust standards for SORE. These changes will be placed in 40 CFR part 1054.

Neither the existing federal regulation nor the final federal rule includes production emission credits. The U.S. EPA certification credit program will impose limitations on the use of certification credits to meet the phase 3 standards. Emission credits which are above the new standard and obtained before the standard change could be used for two years after the phase 3 emission standards are implemented. However, emission credits generated by engines under the phase 3 exhaust averaging, banking, and trading program are proposed to have an unlimited credit life.

The proposed regulations are expected to indirectly reduce emissions by insuring full implementation of the tier 3 emission standards, beyond what would be accomplished by the existing federal regulations. Thus, the need for the separate California program is justified by the benefit to human health, public welfare, and the environment. In addition, Health and Safety Code sections 43013 and 43018 authorize the differences from the federal program.

BENEFITS OF THE PROPOSAL

Staff's objectives in recommending the revisions to California's SORE regulations are to provide harmonization with other regulatory programs and the federal requirement. It is also Staff's objective to address the unlimited accumulation of emission credits. Small off-road engine manufacturers possess over 10,000 tons of banked HC+NO_x emission credits. If those credits were to be expended over the proposed credit lifetime of five years, it would represent an increase of over five tons per day of HC+NO_x emissions. The proposed changes would not modify the emission standards themselves.

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 Rulemaking, Public Hearing to Consider Amendments to the Current Regulations for Small Off-Road 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 web site 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 November 20, 2008.

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 web site 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 Ms. Yun Hui Park, at (626) 450-6263 or ypark@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 Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. 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/2008/sore2008/sore2008.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 would 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 cost or savings to state or local agencies. The ARB may incur additional implementation or enforcement costs at some future time.

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 would 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 would 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 would have some impact, although not significant, on small businesses that buy and sell off-road equipment using these engines.

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 ISOR.

SUBMITTAL 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, November 19, 2008**, 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

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

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 that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43102, 43104, and 43105. This action is proposed to implement, interpret and make specific sections 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43150-43154, 43205.5, and 43210-43212.

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

/s/

James N. Goldstene
Executive Officer

Date: September 23, 2008