

Proposed Revisions to 14 CCR 4609
45 Day Public Comment Period
7/03/2009-8/17/2009
Response to Comments

General Comments:

Comment

"I think this is a good idea however, I also feel that specific identification should be established on all rental ATV,s as well as independent identification on all Guide/instructor ATV,s." *Randy Jordan*

Department's Response to Comment

The Department already has the ability under existing statute and regulation to add these provisions to concession contracts should it decide to do so.

No change.

Comment

"BRAVO!
I'm glad that someone is looking at improving safety at the dunes. While I am not that frequent of a visitor (3-4 times a year) I feel that this area is becoming more and more crowded each time." *Kevin Perez*

"Other regulations about speed and endangerment are long overdue as well. People drive way to fast on the beach." *Kevin Perez*

Department's Response to Comment

No response needed.

Comment

"Friends of Oceano Dunes is deeply concerned by the apparent necessity to develop new rules in an effort to address political pressures. None of these new revisions would have necessarily prevented the known fatalities or serious injuries.

Friends of Oceano Dunes thinks an educational and certification program similar to the Oregon online program would be beneficial. See www.rideatvoregon.org for more details.

State Parks has done a fantastic job of reaching out to the people, who recreate over the years, but we feel an increased presence by Park Rangers and an increase in direct hands on communication would be beneficial.

Friends of Oceano Dunes believes that the ODSVRA needs more Rangers to enforce the current laws, not more laws for the few Rangers who enforce them. We encourage an increase in Rangers, notifications, educational material and we are willing to assist in meeting these needs.” *Jim Suty*

The commenter suggested more education and more Rangers for enforcement of existing laws. She offered assistance with education. *Ginger Schenk* (paraphrased from public hearing testimony)

Department's Response to Comment

The Department agrees that education and an increased presence by Rangers are important aspects of public safety. The authorized staffing levels for both education and law enforcement have recently increased at Oceano Dunes SVRA. The Department appreciates the assistance of volunteers in educating visitors. The proposed revisions would provide an additional tool for Rangers to use in situations where education fails.

No change.

Comment

“It seems on the surface to be a good thing, but most likely the largest impact will be with public relations to appear to the public that you are doing something to reduce the deaths and injuries.” *Nell Langford*

“Am I to understand that your revisions will allow you to enforce what you are not enforcing because you don't have it written in the code?

Your revision adds enforcement for this:

1. unsafe operation of vehicles
2. unsafe operation of vehicles that endangers kids
3. unsafe operation of vehicles by kids

The addition of the above three items appears to me to be "non-substantive", since you should not need to revise the code to do the above.” *Nell Langford*

Department's Response to Comment

As specified in the Initial Statement of Reasons, the proposed revisions would allow Rangers to take appropriate action before the behavior rises to the level of reckless driving or child endangerment.

No change.

Comment

"I am unable to attend this hearing. I request my comments become part of the record. I prefer complete removal of vehicles from Oceano Beach and Nipomo Dunes but for now I am in favor of these proposed new rules----they will reduce the 350 annual accidents & injuries." *William Denneen*

Department's Response to Comment

No response needed.

Comment

"RE: Proposals to safe conduct rules for ATV's, etc. @ the Dunes. I agree with some of the proposed safety changes and suggest these others also.

1. Please add no riding after dark, certainly no later that 10:00PM and no earlier that sunrise, or 8:00AM.
2. Please add restrictions as to the number of off-road vehicles that can be on the Dunes.
3. Provide restrictive lanes for one-way traffic North-South on the beach itself;
4. And allow a lane for horses and pedestrians so that there is not a mix of both moving traffic and walkers/runners and horses." *Sherry Kennedy*

Department's Response to Comment

Park staff monitors attendance and closes the park to entry when park capacity is reached. The other issues do not directly relate to the proposed revisions. The Department will consider these suggestions for future action.

No change.

Comment

"Perhaps the biggest concern for safety in the Oceano Recreational Vehicle Park is SAFETY.

I would be horrified to find out that the users of the park are not instructed as to safety, use, speed limits, danger zones, no fly zones, etc.

Families want a pleasant experience and may not report incidences of unruly activity by vehicle operators.

Without policing, there will be an "in your face" attitude of some users. Those are the operators that need to be identified. I suggest, if it isn't done already, license plates to identify every vehicle using the dunes.

Operators must be insured, be licensed, carry operator' license while using vehicle.

Tighten up the rules so that all must follow safe conduct." *James Mass*

Department's Response to Comment

The Department agrees that law enforcement is one important aspect of public safety. The authorized staffing levels for both education and law enforcement have recently increased at Oceano Dunes SVRA. The proposed revisions would provide an additional tool for Rangers to use in situations where education fails.

Existing statute requires either a license plate or an OHV identification sticker for vehicles operated at Oceano Dunes SVRA. The Vehicle Code requires insurance for vehicles licensed for highway use. A driver's license is not required to operate a vehicle off-highway, however, persons with a suspended or revoked driving privilege may not operate a vehicle on or off-highway.

No change.

Comment

The commenter opposes the proposed revisions because there are enough rules, she feels the proposed revisions won't help, and they are too broad and open to interpretation. *Ginger Schenk* (paraphrased from public hearing testimony)

The commenter feels the proposed revisions regarding speed and children are too arbitrary and are not in the interest of individual rights. He feels they would be a misuse of authority. He is concerned that parents should decide what their child can safely do. *David Ekbohm* (paraphrased from public hearing testimony)

Department's Response to Comment

In the active and dynamic environment of vehicular recreation on the sand dunes at Oceano Dunes SVRA , it is not possible to anticipate, describe, and regulate every possible situation which may arise that places individuals in danger. Professionally trained law enforcement officers are frequently called upon to use their discretion in determining when to take legal action to prevent crimes and protect persons and property from harm. This proposed regulation is analogous to California Vehicle Code section 22350, which applies to vehicular operation on a highway:

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

The proposed regulation requires the same discretion from officers in determining when vehicles are being operated in an unsafe manner as CVC 22350, but applies to the off-highway environment of Oceano Dunes SVRA.

No change.

Comment

The commenter has only seen one situation where he felt the Ranger misused their authority. He feels the Rangers do a good job and the park is better than other OHV parks around the country. *Randy Jordon* (paraphrased from public hearing testimony)

Department's Response to Comment

No response needed.

Comment

The commenter generally supports the park, but feels proposed regulations are too far reaching and would limit personal independence and freedom. He supports education. *Kevin Rice* (paraphrased from public hearing testimony)

Department's Response to Comment

The Department agrees that education is one important aspect of public safety. Authorized staffing levels for both education and law enforcement have recently increased at Oceano Dunes SVRA. The proposed revisions would provide an additional tool for Rangers to use in situations where education fails.

No change.

Comment

"I am for these more stringent regulations. I hope the beach will remain a place safe for children & the wildlife. Off road vehicles come last and should always be restricted to a manageable area." *Stephanie Painter*

Department's Response to Comment

No response needed.

Proposed Revision:

" § 4609. ~~Pismo~~Oceano Dunes State Vehicular Recreation Area."

~~(a) Unless provided for in these provisions, all of the provisions of the California Vehicle Code apply to Pismo Dunes State Vehicular Recreation Area, CVC21113.~~

~~(b) Vehicles.~~

~~(a) All vehicles shall be registered under the provisions of the California Vehicle Code, Sections 4000 or 38010 and may operate as follows:"~~

Comment

Shouldn't that state "shall operate as follows"? *Bruce Brazil*

Department's Response to Comment

Clarify by revising as follows:

" § 4609. ~~Pismo~~Oceano Dunes State Vehicular Recreation Area."

~~(a) Unless provided for in these provisions, all of the provisions of the California Vehicle Code apply to Pismo Dunes State Vehicular Recreation Area, CVC21113.~~

~~(b) Vehicles.~~

~~(a) All vehicles shall be registered under the provisions of the California Vehicle Code, Sections 4000 or 38010 and may operate only as follows:"~~

Comment

"However, what you list as "non-substantive" appears to me to be substantive. Your revision deletes enforcement for this:
The California Vehicle Code.

It specifically deletes this provision:

"Unless provided for in these provisions, all of the provisions of the California

Vehicle Code apply to PDSVRA, CVC2113."

How is it that deleting the California Vehicle Code, with all its safety provisions (that are not provided in OHV's provisions) make the ODSVRA safer?

So have I read it correctly that the California Code of Regulations is being changed to delete some of the requirements of the California Vehicle Code in the ODSVRA?

Which requirements?

Would you please provide me with a complete list of all the safety requirements in the California Vehicle Code that will no longer be applicable in the ODSVRA?"

Nell Langford

Department's Response to Comment

The language to be removed regarding the California Vehicle Code is redundant to CVC 38001 and 14CCR 4350. Removing it would not change the applicability of the Vehicle Code. The applicable provisions of the Vehicle Code will continue to apply as they do now.

Government Code section 11349.1(a)(6) and 1CCR 12 allows regulations to duplicate existing statute and regulation only under specific circumstances. The Department considers this duplication to be unnecessary.

No change.

Proposed Revision:

(1) The boundaries of ~~such~~ vehicle use shall be designated by the District Superintendent as shown on a map posted at the unit.

(2) The towing by a vehicle of any object other than another vehicle or trailer is prohibited.

(3) All Off-Highway Vehicles registered under California Vehicle Code Section 38010 or other vehicles primarily operated for Off-Highway Vehicle activities shall be equipped with a whip, which is any pole, rod or antenna, that is securely mounted on the vehicle and which extends at least eight (8) feet from the surface of the ground when the vehicle is stopped. When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags. At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches and be attached within ten (10) inches of the top of the whip. Flags may be of pennant, triangle, square, or rectangular shape. Club or other flags may be mounted below the safety flag or on a second whip.

(4) When a vehicle is operated in the dunes area, which is that land area extending from the first line of sand dunes inland outside Pismo Dunes Natural Preserve, the vehicle shall have additional equipment as follows:

(A) Each vehicle, except ~~two, three and four wheeled cycles~~ motorcycles and all-terrain vehicles (ATVs) shall be equipped with adequate roll bars or roof

structure of sufficient strength to support the weight of the vehicle and shall have a secure seat and seat belt for the vehicle operator and each passenger. Seat belts shall be as specified in the California Vehicle Code.

Comment

"We Support." *Jim Suty*

Department's Response to Comment

No response needed.

Proposed Revision:

(B) Each vehicle shall be equipped with a whip as described in section 4609(a)(3).

Comment

"I think whips on all vehicles in the dunes is a good idea and would add to the awareness of safety that some visitors lack." *Kevin Perez*

"We Support." *Jim Suty*

"It seems that steps are being taken to make pismo/oceano a safer place than it already is. Personally, I think that flags on every vehicle going into the dunes is a great idea. Just because a vehicle is street legal does not mean it's going to be easier to see at the top of a dune, and a flag would go a long ways in making things a lot safer." *Tony Holland*

"I support the issue with flags on street legal vehicles on the dunes." *Susan Testa*

"SUPPORT

Your Dunes supports this change according to its intent to improve visibility of vehicles using the dune area.

This change would burden users with minor cost, and will also eliminate immediate recreational opportunity when users' vehicles are not so equipped.

Lost opportunity is important to consider with regulatory changes, however, Your Dunes believes the burden versus benefit of this change to be justifiable and acceptable." *Kevin P. Rice*

"I firmly believe that the safety of the dunes will be increased with ALL vehicles having Flags.

I have been riding the dunes with my Polaris RZR every week for over a year and the close calls I have had has been with myself and unflaged Trucks. Both of us were not at fault but I could not see him.” *John S. Pecpignot*

The commenter agrees with the whip requirement. *Grant Fraysier* (paraphrased from public hearing testimony)

Department's Response to Comment

No response needed.

Comment

The commenter agrees with the whip requirement. She would like to see them on all vehicles, including volunteer vehicles, ambulance and Rangers. *Anne Steele* (paraphrased from public hearing testimony)

Department's Response to Comment

All vehicles would be expected to comply with whip requirement except for emergency vehicles responding from outside the area to an emergency call.

No change.

Comment

The commenter agrees with the whip requirement. He is concerned about being able to buy hardware to attach the whip. *David Ekborn* (paraphrased from public hearing testimony)

Department's Response to Comment

The proposed whip requirement would be consistent with the whip requirements for other dune areas in California. Whips and mounting hardware are readily available from off-highway vehicle accessory vendors.

No change.

Comment

The commenter agrees with flag requirement. He suggests a different color flag on vehicles operated by children. *Randy Jordon* (paraphrased from public hearing testimony)

Department's Response to Comment

Specifying a different color flag for children would introduce issues with availability and consistency with other dune areas. The Department will consider and discuss this suggestion with other agencies for possible future action.

No change.

Proposed Revision:

(b) No person shall operate any vehicle at a greater speed or in any other manner than is safe or prudent having regard for weather, visibility, traffic conditions, presence of pedestrians, and the nature of the terrain on which the vehicle is being operated, and in no event at a speed or in a manner which endangers the safety of persons or property.

Comment

"We do not support as written due to ambiguity and potential misuse which could cause permanent harm to the sport." *Jim Suty*

"OPPOSE AS WRITTEN (OVERLY BROAD)

Your Dunes supports the stated purpose of this change, "to prohibit unsafe vehicle operation that endangers the safety of persons or property but does not rise to the level of reckless operation..."

Your Dunes absolutely stands by the intent of this change where the safety of other persons or property is endangered.

However, outdoor recreation is a personal endeavor that bestows unique opportunity and freedom of spirit not available in urban life. Your Dunes strongly opposes broad regulation that impinges on personal free spirit and opportunity where vehicle operation does not rise to the level of reckless and where other persons or property is not endangered.

There exists extremely wide discrepancies of perception among juristic individuals in regards to what might be considered "unsafe". Further, third parties are ill-equipped to make conclusions about an unfamiliar person's abilities, which this proposed change does not address.

Short of recklessness, Your Dunes believes it is in the best interest of the public and individuals to be free to ascertain their own personal risk management where other persons or property is not endangered.

Your Dunes proposes amendment of this proposed change to reduce the scope to when other persons or property are present:

Lines 44-48. "(b) No person shall operate any vehicle in the presence of other persons or property at a greater speed or in any other manner than is safe or prudent having regard for weather, visibility, traffic conditions, ~~presence of pedestrians,~~ and the nature of the terrain on which the vehicle is being operated, and in no event at a speed or in a manner which endangers the safety of persons or property."

Department's Response to Comment

In the active and dynamic environment of vehicular recreation on the sand dunes at Oceano Dunes SVRA, it is not possible to anticipate, describe, and regulate every possible situation which may arise that places individuals in danger. Professionally trained law enforcement officers are frequently called upon to use their discretion in determining when to take legal action to prevent crimes and protect persons and property from harm. This proposed regulation is analogous to California Vehicle Code section 22350, which applies to vehicular operation on a highway:

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

The proposed regulation requires the same discretion from officers in determining when vehicles are being operated in an unsafe manner as CVC 22350, but applies to the off-highway environment of Oceano Dunes SVRA.

No change.

Proposed Revision:

(c) No person shall operate a vehicle in a manner which endangers the health or safety of any person under the age of eighteen.

Comment

There is a discrepancy between the Notice of Proposed Rulemaking and the Proposed Revisions. The Proposed Revisions does not state "any passenger or occupant". *Bruce Brazil*

Department's Response to Comment

Clarify by revising as follows:

(c) No person shall operate a vehicle in a manner which endangers the health or safety of any occupant under the age of eighteen.

Comment

"We do not support as written due to ambiguity and potential misuse which could cause permanent harm to the sport." *Jim Suty*

"STRONGLY OPPOSE AS WRITTEN (AMBIGUOUS)

Your Dunes strongly supports the stated purpose of this change, "to prohibit vehicle operation that endangers a child under the age of eighteen years." However, there exists a wide disparity of beliefs and perceptions among any group of reasonable and juristic persons.

Your Dunes feels strongly that this proposed change, as worded, does not permit reasonable persons to confidently ascertain the boundary of compliance. Your Dunes believes that this ambiguity would lead to vastly inconsistent enforcement, adjudication and/or conviction, and that it is widely subject to future interpretation. Your Dunes suggests amendment of this proposed change (like or similar to) as follows:

Lines 50-51. "(c) No person shall operate a vehicle in a manner which poses a clear and present danger to endangers the health or safety of any person under the age of eighteen." *Kevin P. Rice*

Department's Response to Comment

In the active and dynamic environment of vehicular recreation on the sand dunes at Oceano, it is not possible to anticipate, describe, and regulate every possible situation which may arise that places individuals in danger. Professionally trained law enforcement officers are frequently called upon to use their discretion in determining when to take legal action to prevent crimes and protect persons and property from harm. This proposed regulation is analogous to California Vehicle Code section 22350, which applies to vehicular operation on a highway:

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

The proposed regulation requires the same discretion from officers in determining when vehicles are being operated in an unsafe manner as CVC 22350, but applies to the off-highway environment of Oceano Dunes SVRA.

No change.

Proposed revision:

“(d) No person shall allow any person under the age of eighteen to operate a vehicle in a situation where his or her health may be in danger as a result of the operation of the vehicle.”

Comment

“The simple operation of a motor vehicle “may” constitute a situation of potential danger. I have personally experienced physical harm when operating an OHV in what I would consider a safe manner.” *Bruce Brazil*

Department's Response to Comment

Clarify by revising as follows:

(d) No person shall allow any person under the age of eighteen to operate a vehicle in a situation where his or her health is endangered as a result of the operation of the vehicle.

Comment

The Vehicle Code allows for some unsupervised persons under the age of 18 to operate a motor vehicle on public highways. The same provisions of the law should apply to vehicle use at Oceano Dunes. *Bruce Brazil*

Department's Response to Comment

There are provisions of the California Vehicle Code that assign liability to parents of juveniles under 18, such as CVC 14607 (Parent allowing unlicensed child to operate a vehicle on the highways) and CVC 21212 (Helmet on bicycle, nonmotorized scooter, skateboard, or skates).

No change.

Comment

“We do not support as written due to ambiguity and potential misuse which could cause permanent harm to the sport.” *Jim Suty*

“STRONGLY OPPOSE AS WRITTEN (AMBIGUOUS)”

Your Dunes strongly supports the stated purpose of this change, "to prohibit allowing a child under the age of eighteen years to operate a vehicle in a situation where the child would be endangered." However, there exists a wide

disparity of beliefs and perceptions among any group of reasonable and juristic persons.

Your Dunes feels strongly that this proposed change, as worded, does not permit reasonable persons to confidently ascertain the boundary of compliance. Your Dunes believes that this ambiguity would lead to vastly inconsistent enforcement, adjudication and/or conviction, and that it is widely subject to future interpretation.

Your Dunes suggests amendment of this proposed change (like or similar to) as follows:

Lines 53-55. "(d) No person shall allow any person under the age of eighteen to operate a vehicle in a situation which poses a clear and present danger to ~~where his or her health may be in danger~~ as a result of the operation of the vehicle." Kevin P. Rice

Department's Response to Comment

In the active and dynamic environment of vehicular recreation on the sand dunes at Oceano Dunes SVRA, it is not possible to anticipate, describe, and regulate every possible situation which may arise that places individuals in danger. Professionally trained law enforcement officers are frequently called upon to use their discretion in determining when to take legal action to prevent crimes and protect persons and property from harm. This proposed regulation is analogous to California Vehicle Code section 22350, which applies to vehicular operation on a highway:

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

The proposed regulation requires the same discretion from officers in determining when vehicles are being operated in an unsafe manner as CVC 22350, but applies to the off-highway environment of Oceano Dunes SVRA.

No change.

Comment

"I do not agree with keeping people under 18 from operating vehicles. It is the responsibility of the guardian to make sure that children are on a proper vehicle for them to drive, but it should not be barred from them entirely as it's stated in the proposed revisions (part 53)." *Tony Holland*

"Regarding the Oceano Dunes public comment, the legal driving age in this state is 16.

If they can drive a car and kill people on the freeway, they should be able to drive on the Dunes.

Do we really have the time and money for this?" *Dianne M. McGrail*

Department's Response to Comment

The proposed revision would not prohibit operation by persons under the age of 18 when it is done in a safe manner. The Department agrees that the parent or guardian has a responsibility for the safety of their minor children. The proposed revisions would allow Rangers to cite parents under appropriate circumstances when the parent allows the child to be endangered.

No change.

Comment

"It's the other issue regarding the safety of minors that I question. Of course I want to take any precautions possible to make the dunes safe for children as well as adults. The problem that I have is that this seems like a vague issue. Aren't parents already mandated to take every effort possible to assure that their children are safe? Aren't there already safety rules out there? There will always be parents that don't follow basic safety precautions and that can't be prevented."
Susan Testa

Department's Response to Comment

As specified in the Initial Statement of Reasons, the proposed revisions would allow Rangers to take appropriate action before the behavior rises to the level of reckless driving or child endangerment. While the Department may be unable to prevent parents from allowing their children to operate without basic safety precautions, we hope to reduce injuries by taking appropriate action to correct the unsafe behavior before injuries occur.

No change.

INITIAL STATEMENT OF REASONS:

"Page 2. The proposed revisions would address these safety concerns at Ocean Dunes SVRA by prohibiting specified unsafe vehicle operations, allowing Rangers to issue a citation when appropriate."

Comment

What code would be used in the citation? There are no proposed changes to the California Vehicle Code or California Penal Code. *Bruce Brazil*

Department's Response to Comment

The regulation being revised, 14 CCR 4609, is citable.

Unrelated Comments:

A variety of comments were provided that do not directly relate to the proposed regulation revisions. While these comments cannot be addressed in this regulation process, the Department always welcomes public input and will review these comments and consider them for future action.

Proposed Revisions to 14 CCR 4609
15 Day Public Comment Period
11/24/2009-12/8/2009
Response to Comments

Proposed Revision:

~~“(a) All vehicles shall be registered under the provisions of the California Vehicle Code, Sections 4000 or 38010 and may be operated only as follows:”~~

Proposed Revision:

“(b) No person shall operate any vehicle at a greater speed or in any other manner than is safe or prudent having regard for weather, visibility, traffic conditions, presence of pedestrians, and the nature of the terrain on which the vehicle is being operated, and in no event at a speed or in a manner which endangers the health or safety of persons or property.”

Proposed Revision:

“(c) No person shall operate a vehicle in a manner which endangers the health or safety of any ~~person~~ occupant under the age of eighteen.”

Comment

“add: which endangers the health and safter of **any person, place, or thing.**”
James Mass

Department's Response to Comment

The Department feels that the suggested change would unnecessarily and excessively broaden the application of the regulation. The proposal would duplicate protections in California Vehicle Code (CVC) 38319 which prohibits malicious or unnecessary damage to land, wildlife, habitat or vegetation, and CVC 38318 which prohibits damaging signs.

No Change.

Proposed Revision:

“(d) No person shall allow any person under the age of eighteen to operate a vehicle in a situation where his or her health or safety ~~may be in danger is endangered~~ as a result of the operation of the vehicle.”

Comment

“...the change in the language in Paragraph D wherein the words "may be in danger" are eliminated appears to have the opposite effect of the prior intent of the change ie: Rangers are unable to issue citations when appropriate for dangerous behavior until after an unfortunate event.” *Randy Jordan*

Department's Response to Comment

This change was the result of public comment that the word “may” was so broad that it could be applied to even safe OHV operation. The Department feels that the new terminology, “is endangered,” allows officers to take action when the child is in danger, but before an injury occurs.

Unrelated Comments:

A variety of comments were provided that do not directly relate to the proposed regulation revisions. While these comments cannot be addressed in this regulation process, the Department always welcomes public input and will review these comments and consider them for future action.