

DEPARTMENT OF PARKS AND RECREATION
Proposed Revision to California Code of Regulations Title 14, Division 3,
Chapter 6 § 4609

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS

Public Resources Code (PRC) 5003 allows the Department of Parks and Recreation (Department) to enact regulations "...for the government and administration of the property under its jurisdiction."

PRC 5008 requires the Department to "...protect the state park system and the state vehicular recreation area and trail system from damage and preserve the peace therein."

PRC 5090.32(b) gives the Off-Highway Motor Vehicle Recreation (OHMVR) Division the responsibility for management of the State Vehicular Recreation Areas.

PRC 5090.32(c) gives the OHMVR Division the responsibility to provide for law enforcement and appropriate public safety activities.

PRC 5090.35(a) states "The protection of public safety, the appropriate utilization of lands, and the conservation of land resources are of the highest priority in the management of the state vehicular recreation areas..."

The California Code of Regulations (CCR) Title 14, Division 3, contains the regulations that apply to units of the State Park System.

Oceano Dunes State Vehicular Recreation Area (SVRA) has over 1,000 acres of dunes and beach open to Off-Highway Vehicle (OHV) recreation. The riding area ranges from sea level at the beach to 200 feet above sea level at the top of the dunes.

Operating vehicles on dunes and beaches presents unique safety concerns, in part due to the limited visibility between vehicles. The dunes have steep "slip faces" on the leeward side. Drivers of vehicles being operated in the dunes are frequently unable to see nearby vehicles.

The current regulation requires a whip and flag for "Off-Highway Vehicles registered under California Vehicle Code Section 38010 or other vehicles primarily operated for Off-Highway Vehicle activities." The whip and flag improve the ability of vehicles to be seen. Highway vehicles are not required to have a whip and flag. These proposed revisions would require a whip and flag for all vehicles in the dunes. This requirement would be consistent with the regulations

for Dumont Dunes and Imperial Sand Dunes Recreation Area, which are popular areas managed by the Bureau of Land Management.

California State Park Rangers (Rangers) patrol Oceano Dunes SVRA on a daily basis to enhance public safety. As peace officers, Rangers have the authority to issue citations and make arrests. However, it is often more effective to use education and warnings to get park visitors to behave in a safe and responsible manner. When education doesn't work, the Rangers may issue citations and make arrests.

Rangers at Ocean Dunes SVRA sometimes observe irresponsible and unsafe vehicle operation that does not rise to the level of reckless operation as prohibited by California Vehicle Code (CVC) section 38316. Rangers educate visitors, but do not have the option to issue a citation when there is no law or regulation which is clearly being violated.

A similar situation exists regarding the safety of children. When driving irresponsibly puts a child at risk, a citation can only be issued if the risk is so severe that it meets the criteria for the crime of child endangerment as prohibited by California Penal Code (CPC) section 273a. When the driving behavior is irresponsible and unsafe but not criminal, the Rangers are limited to education. Parents who refuse to meet their responsibility to protect their children cannot be cited.

Rangers could wait until the driving behavior becomes so extreme that they meet the criteria for the CVC or CPC crimes, but dealing with the problem early can prevent injuries.

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.

The revisions would also make minor changes without regulatory effect to eliminate unnecessary language and simplify the regulations.

NECESSITY

The proposed regulations are needed to address specific public safety concerns in one unit of the State Park System.

MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations would only apply at Oceano Dunes SVRA and would not impose any mandates on agencies or organizations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing these revisions.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED SECTION OF THE REGULATIONS

The following provides the specific purpose and necessity for each proposed change in CCR Title 14, Division 3, Chapter 6, § 4609.

Proposed Change

Line 6. “§ 4609. ~~Pismo~~Oceano Dunes State Vehicular Recreation Area.”

Specific Purpose

Revised to correct the name of the state park unit to be consistent.

Necessity

The change is necessary to clarify the state park unit to which the regulation applies.

Proposed Change

Lines 8 – 10. “~~(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.~~”

Specific Purpose

To simplify the regulation, language that was covered by another regulation was removed.

Necessity

This statement was removed as it is redundant with 14 CCR 4350.

Proposed Change

Line 12. ~~(b) Vehicles.~~

Specific Purpose

To clarify the regulation, the subsection and subtitle were removed because they were unnecessary after deletion of subsection (a).

Necessity

Deleted as unnecessary.

Proposed Change

Lines 14-15. ~~“(a) All vehicles shall be registered under the provisions of the California Vehicle Code, Sections 4000 or 38010 and may operate as follows.”~~

Specific Purpose

To simplify the regulation, language that was covered by other regulation and statutes was removed. The subsection number was moved.

Necessity

The language removed was redundant with 14 CCR 4350 and California Vehicle Code (CVC) sections 4000 and 38010. The subsection number was moved to conform to regulatory standards.

Proposed Change

Line 17. ~~“such”~~

Specific Purpose

To simplify the regulation an unnecessary word was removed.

Necessity

The word was deleted as unnecessary.

Proposed Change

Line 36. ~~“(A) Each vehicle...)~~

Specific Purpose

Added “(A)” to distinguish existing subsection from new subsection “(B)”.

Necessity

To simplify proposed new language, the section was divided into subsections.

Proposed Change

Lines 36 - 37. "...except ~~two, three and four wheeled cycles~~ motorcycles and all-terrain vehicles (ATVs)..."

Specific Purpose

The terminology was corrected to reflect contemporary terminology.

Necessity

The obsolete terminology was unclear.

Proposed Change

Lines 41 - 42. "(B) Each vehicle shall be equipped with a whip as described in section 4609(3)."

Specific Purpose

Subsection (B) was added to require a whip on all vehicles in the dune area to improve visibility to other vehicles in an effort to reduce accidents.

Necessity

The whip increases visibility of vehicles in dune areas to reduce injuries due to accidents.

Proposed Change

Line 44. "(b)"

Specific Purpose

Subsection (b) was added to address specific safety concerns regarding vehicle operation.

Necessity

To keep regulation clear, another subsection number was needed.

Proposed Change

Lines 44 - 48. “(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.”

Specific Purpose

Subsection (b) was added to prohibit unsafe vehicle operation that endangers the safety of persons or property but does not rise to the level of reckless operation as defined in CVC section 38316.

Necessity

The proposed regulation is needed to address unsafe vehicle operation that is not addressed in existing statute or regulation.

Proposed Change

Lines 50 – 51. “(c) No person shall operate a vehicle in a manner which endangers the health or safety of any person under the age of eighteen.”

Specific Purpose

Subsection (c) was added to prohibit vehicle operation that endangers a child under the age of eighteen years.

Necessity

The proposed regulation is needed to address situations where a child is endangered by operation of a vehicle but the circumstances do not rise to the level of CPC 273(a), child endangerment.

Lines 53– 55. “(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.”

Specific Purpose

Subsection (d) was added to prohibit allowing a child under the age of eighteen years to operate a vehicle in a situation where the child would be endangered.

Necessity

The proposed regulation is needed to address situations where an adult allows a child to operate a vehicle in a manner or situation where the child would be endangered but the circumstances do not rise to the level of CPC 273(a), child endangerment.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The proposed regulation revisions would improve public safety at Oceano Dunes SVRA by allowing Rangers to cite for specified unsafe and irresponsible driving operation before such conduct rises to the level of a criminal act. The Department considered leaving the regulations unchanged, but rejected that option because it would be inconsistent with the mandates in the Public Resources Code for the Department to provide for appropriate law enforcement and public safety activities.

ALTERNATIVES TO PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

Proposed regulatory action is not expected to have any significant adverse economic impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulatory action is expected to reduce injuries in one unit of the State Park System. This may have a small economic benefit to businesses that benefit from OHV recreation at Oceano Dunes SVRA and may result in minor losses to businesses that provide services to the injured.

AVOIDANCE OF UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Federal regulations do not address the subject of the proposed regulatory action. There are no conflicts between the proposed regulations and any federal regulations.