

TITLES 13 AND 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM (PERP) REGULATION AND THE AIRBORNE TOXIC CONTROL MEASURE (ATCM) FOR DIESEL-FUELED PORTABLE 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 Statewide Portable Equipment Registration Program (Statewide PERP) Regulation and the Airborne Toxic Control Measure for diesel-fueled portable engines (Portable Engine ATCM).

DATE: March 22, 2007

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., March 22, 2007, and may continue at 8:30 a.m., March 23, 2007. This item may not be considered until March 23, 2007. Please consult the agenda for the meeting, which will be available at least ten days before March 22, 2007, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), sections 2451, 2452, 2456, 2458, 2459, 2460, 2461, and 2462, which govern the Statewide Portable Equipment Registration Program. Proposed amendments to title 17, CCR, sections 93116.1, 93116.2 and 93116.3 and adoption of section 93116.3.1 which constitute the Airborne Toxic Control Measure for diesel-fueled portable engines.

Background

The Board adopted the Portable Engine ATCM in February 2004. Portable engines include a wide variety of engine types and uses. A portable engine may provide primary power to a piece of equipment or it may serve as an auxiliary engine.

The Legislature passed the portable equipment registration statutes in 1995. These statutes (Health and Safety Code §§41750 et seq.) required ARB to create and maintain a program for the registration of engines and equipment that are operated at more than one location throughout the State. Per these 1995 statutes, the Board adopted a regulation establishing Statewide PERP on March 27, 1997, and it became effective on September 17, 1997. The Board has since approved amendments to the Statewide PERP Regulation on December 11, 1998, February 26, 2004, and June 22, 2006. When an engine is registered in PERP, State law provides that the owner of that engine need not obtain local air district permits prior to operating. To be registered in PERP, however, the engine being registered must meet the most stringent emissions standards in effect at the time of application.

Most of the engines associated with portable equipment are diesel-fueled, making these engines also subject to the requirements of the Portable Engine ATCM. The Portable Engine ATCM covers all portable engines, not only those registered in PERP.

At its September 2006 meeting, the Board received public testimony concerning the inability to register older engines in the PERP. After January 1, 2006, the Statewide PERP Regulation only allowed registration of engines that met the current nonroad emission standards in effect at the time of application submittal. In response to the testimony, the Board directed staff to consider options and report back to the Board.

ARB staff, in consultation with affected industry and the local air districts, developed proposed emergency amendments to the Statewide PERP Regulation and the Portable Engine ATCM. The Board approved the emergency amendments at its December 7, 2006 public hearing, and they were approved by the Office of Administrative Law (OAL) on December 27, 2006. These emergency amendments have been filed with the Secretary of State and will be effective for a period not to exceed 120 days.

On March 22, 2007, staff will present to the Board amendments to the Statewide PERP Regulation and the Portable Engine ATCM. These proposed amendments would make permanent the emergency regulatory changes to Statewide PERP Regulation and the Portable Engine ATCM adopted by the Board on December 7, 2006. ARB staff is also proposing some minor revisions that are intended to provide additional clarity and expediency to the implementation of the Statewide PERP Regulation.

Description of the Proposed Regulatory Action

The following amendments are proposed in order to allow registration of certain engines that would not otherwise qualify. They would also provide regulatory relief for affected industry relative to the availability, sale, purchase, and registration of complying engines.

Statewide PERP Regulation

Resident Engines

ARB staff proposes a redefinition of what constitutes a resident engine in the Statewide PERP Regulation to include those Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality.

Tier 1 and Tier 2 Engines

The proposed amendments would allow the registration in PERP of "resident" Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. After January 1, 2010, only the cleanest tier available will be allowed to register.

Recordkeeping and Reporting

ARB staff proposes the removal of the hour meter requirement for rental equipment units. These rental equipment units are already required to track daily throughput, which is adequate for determining compliance with daily emission limitations. The tracking of hours of operation for these units is redundant and places an undue burden on industry.

Registration Fees

ARB staff proposes a requirement for collecting back registration and inspection fees for these Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. The proposed fee schedule would favor owners and operators that act early. Fees would be collected from either the year of purchase, or the model year of the engine. Fees would be higher for those owners or operators of Tier 1 engines if a Tier 2 standard was in effect at the time of purchase. The bulk of these back fees will be redirected to the districts for compliance programs. Under the proposal, in addition to having to pay back fees, the owner or operator would also have to pay current registration fees that would be due.

Miscellaneous Amendments

The staff is proposing to delete the requirement that placards be placed on military tactical support equipment (TSE). The placard requirement was added for all registered portable engines as part of the June 2006 amendments. However, the staff has determined that placards on military TSE are not effective given how this equipment is registered. In addition, ARB staff is proposing the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the Statewide PERP Regulation.

Portable Engine ATCM

Tier 0 Engines

Tier 0 engines are those that are not certified to a California or federal nonroad emission standard. The proposed amendments to the Portable Engine ATCM would allow local air districts to permit Tier 0 engines at their discretion.

Tier 1 and Tier 2 Engines

The Portable Engine ATCM would only allow the permitting by the local air districts or registration in PERP of Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality. After January 1, 2010, only the cleanest tier available will be allowed to register or seek local air district permitting, as is required by the existing Portable Engine ATCM.

Compliance Flexibility

ARB staff proposes provisions in the Portable Engine ATCM that would provide compliance flexibility during those periods where it can be verified to a local air district or ARB's Executive Officer that compliant engines are not sufficiently available.

Miscellaneous Amendments

ARB staff is proposing the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the Portable Engine ATCM.

COMPARABLE FEDERAL REGULATIONS

In section 213 of the federal Clean Air Act, Congress directed the Administrator of the United States Environmental Protection Agency (U.S. EPA) to determine whether emissions from nonroad engines cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and safety, and if so, promulgate emission standards for the control of such engines. Engines used in portable equipment are a general category of nonroad engines. To date, U.S. EPA has adopted emission standards for new spark-ignition nonroad engines at or below 19 kilowatts (25 horsepower) and compression-ignition nonroad engines at or above 37 kilowatts (50 horsepower). Concurrent with authorizing U.S. EPA to adopt emission standards and other regulations for nonroad engines, Congress established a nonroad engine preemption prohibiting all states, including California, from adopting emission standards and other requirements related to the control of emissions from new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles.

In contrast to other states, however, the Clean Air Act permits California to request authorization from the U.S. EPA to adopt and enforce necessary emission standards and regulations for California for all nonroad engines not otherwise expressly preempted. To date, California has adopted several nonroad engine regulations, including emission standards for new spark-ignition engines at or below 19 kilowatts (25 horsepower) and compression-ignition engines at or above 37 kilowatts (50 horsepower). Both regulations have received authorization from the U.S. EPA. The Statewide Regulation promotes consistency between the California and federal requirements and does not establish direct emission standards or other emission related requirements (not including in-use operational controls) for engines that are expressly preempted under Clean Air Act section 209(e)(1).

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report which contains the Initial Statement of Reasons (ISOR) for the proposed regulatory action, including a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the Statewide Portable Equipment Registration Program and the Air Toxic Control Measure for Diesel-Fueled Portable 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 ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 "I" Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on March 22, 2007.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified in this notice, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Michael Guzzetta, Manager of the Rule Evaluation Section at (916) 322-6025, or by email at mguzzett@arb.ca.gov, or Joseph Gormley, Air Resources Engineer, Rule Evaluation Section, at (916) 322-5616, or by email at jgormley@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 Alexa Malik, Regulations Coordinator at (916) 322-4011, or Amy Whiting, Regulations Coordinator at (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 <http://www.arb.ca.gov/regact/2007/perp07/perp07.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 will create costs or savings to state agencies but not in federal funding to the state, costs or mandate to local agencies and school districts whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, and title 2 of the Government Code, and other nondiscretionary cost or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The costs are from the collection of back registration and inspection fees that a private business or a local agency would have had to pay had been registered upon the operational startup of the engine. ARB staff estimates that the total economic impact of the proposed amendments to the Statewide Regulation to affected private businesses and public (local, State, and federal) agencies is \$6.6 million (6.1 million private and 0.5 public) over the next three years. The costs are due to the collection of back registration fees that the businesses would have had to pay had they properly registered the engine upon initial start up.

Staff estimates that 6 State agencies will be affected by the proposed amendments. The total economic cost for State agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$93,000.

Staff estimates that 8 federal agencies will be affected by the proposed amendments. The total economic cost for federal agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$42,000.

The alternative to paying these back fees is to replace the engine with a new engine that meets the current emission standards. The cost savings of these engines being registered instead of being replaced is significant. The average cost of a new engine is approximately \$25,000 (based on an estimated average size of 140 bhp). An estimated 10,000 older engines are expected to register in PERP over the next three years. Therefore, the cost to private businesses and public agencies to replace these engines could have been as high as \$250 million dollars. Consequently, the proposed action will result in substantially lower overall costs to businesses and public agencies.

Staff estimates that about 107 local agencies will be affected by the proposed amendments. The total economic cost for local agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$450,000.

The Executive Officer has made an initial determination that the proposed regulatory action will 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 will 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 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 will affect small businesses.

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.

The proposed amendments to the Statewide PERP Regulation will continue to have a beneficial effect on the California business climate by allowing for the continued operation of some small businesses.

Before taking final action on the proposed regulatory changes, 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 amendment is 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 at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, March 21, 2007**, and addressed to the following:

Postal mail: Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

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 ARB 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 sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41753, 41754, 41755, 43013, and 43018 of the Health and Safety Code. This regulatory action is proposed to implement, interpret, and make specific sections 39650, 39666, 41750, 41751, 41752, 41753, 41754 and 41755 of the Health and Safety Code.

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 Center, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: January 23, 2007