

TITLES 13 AND 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE REGULATIONS APPLICABLE TO PORTABLE DIESEL ENGINES AND DIESEL ENGINES USED IN OFF-ROAD AND ON-ROAD VEHICLES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Statewide Portable Equipment Registration Program (PERP) Regulation, the Airborne Toxic Control Measure for Diesel-Fueled Portable Engines (Portable Engine ATCM), the Regulation for In-Use Off-Road Diesel-Fueled Vehicles (Off-Road Regulation), and the Regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Vehicles (On-Road Regulation).

DATE: January 28, 2010
TIME: 9:00 a.m.
PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 28, 2010, and may continue at 8:30 a.m., January 29, 2010. This item may not be considered until January 29, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before January 28, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), article 5, sections 2451, 2452, 2453, 2456, 2458, 2460, 2461 and 2462, the Statewide Portable Equipment Registration Program. Proposed amendments to title 17, CCR, sections 93116.1, 93116.2 and 93116.3, the Airborne Toxic Control Measure for Diesel-Fueled Portable Engines. Proposed amendments to title 13, CCR, section 2449, the regulation for In-Use Off-Road Diesel-Fueled Vehicles. Proposed amendments to title 13, CCR, section 2025, the regulation for In-Use On-Road Diesel-Fueled Vehicles.

Background:

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. Under these 1995 statutes, the Board approved a Statewide Regulation establishing the Portable Equipment Registration Program (PERP) on March 27, 1997, and it became effective on September 17, 1997. The Board approved amendments to the Statewide PERP Regulation on

December 11, 1998, February 26, 2004, June 22, 2006, March 22, 2007, and December 11, 2008. 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 strict eligibility requirements 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. 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 Portable Engine ATCM requires that all diesel engines operating pursuant to a permit or registration in California must be certified to an off-road emission standard contained in 40 CFR Part 89 as of January 1, 2010, except for those engines designated as emergency use or low use. This requirement was first established in 1997 as part of PERP, giving businesses a maximum of 13 years to plan for the replacement or retirement of the older, uncertified engines.

In 2004, this requirement was moved from the PERP regulation to the Portable Engine ATCM so that it would apply to all diesel engines statewide, not just those registered in PERP. The PERP Regulation maintains a similar requirement for older spark-ignition engines to be put out of service by the same date. The owners of older spark-ignition engines have the option of seeking permits with the local districts in lieu of complying with the January 1, 2010 deadline in PERP.

In recent months, numerous members of the regulated community and the local air districts have expressed concerns about the requirement to replace all uncertified portable engines by January 1, 2010. In response, ARB staff is proposing to allow smaller companies the ability to phase-in compliance by deferring a limited number of uncertified engines until January 1, 2011. This phased-in approach is consistent with other ARB diesel rules and provides some relief to over 90 percent of the companies that currently have uncertified engines, yet retains over 70 percent of the emissions benefits of the rule expected in 2010.

In addition, members of the California Groundwater Association expressed concern that the replacement of older deck engines on existing two-engine water well drilling rigs is either technologically infeasible or severely cost prohibitive, which would force these rigs out of service without replacement. Because engine replacement on these drilling rigs is often not possible, the only option available to the operators of these vehicles is to retire them or to purchase a new drilling rig. A new drilling rig can cost several hundred thousand dollars. This would severely impact the water well drilling industry and their ability to drill new water wells in the State. These issues are very similar to the issues with two-engine cranes, which were addressed in previous amendments that the Board approved in December 2008. As such, ARB staff is proposing to add two-engine water well drilling rigs to the Off-Road Regulation consistent with other similar types of vehicles.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

On January 28, 2010, staff will present to the Board amendments to the PERP Regulation, the Portable Engine ATCM, the Off-Road Regulation, and the On-Road Regulation. These proposed amendments would extend the deadline for replacing older engines for smaller companies, provide for the eligibility of certain types of engines, and modify the PERP recordkeeping and reporting requirements. These amendments will also subject two-engine water well drilling rigs to the Off-Road Regulation, and exempt them from the Portable Engine ATCM and On-Road Regulation. ARB staff is also proposing some minor revisions that are intended to provide additional clarity and enforceability to the implementation of the Statewide PERP Regulation.

The proposed amendments would allow certain engines to obtain permits or registrations that would not otherwise qualify, and would also provide limited relief for the affected industry relative to the replacement, recordkeeping, reporting, and registration of complying engines. Following is a more detailed description of the proposed amendments.

Statewide PERP Regulation

Spark-ignition Engine Replacement Extension

ARB staff proposes to allow owners of small fleets to designate some of their currently registered spark-ignition engines to operate for one additional year beyond the current date. Under this proposal, owners with 25 or fewer total portable engines would be able to continue operating either one registered spark-ignition engine of any size or up to five registered engines not to exceed a combined total of 500 brake horsepower (bhp) until December 31, 2010. The owners of these fleets will have to submit a written request to designate which registered engines they wish to continue operating under this proposed regulatory amendment. If the fleet owner uses the one year extension for one large spark-ignition engine or up to five registered spark-ignition engines, they will not also get an additional extension for compression-ignition engines that they may own as proposed in the Portable Engine ATCM. However, the five engines designated to operate for an additional year can be a mix of spark-ignition and compression-ignition engines.

Marine and On-Highway Engines

ARB staff proposes to allow engines that are certified to the on-highway emission standards contained in 40 CFR part 86 and engines that are certified to marine emission standards contained in 40 CFR part 94 and 40 CFR part 1042 to be eligible for registration in PERP if such engines otherwise meet all other Statewide PERP Regulation requirements. In the case of auxiliary marine certified engines operated on vessels, these engines will be subject to the Commercial Harbor Craft ATCM, even if registered in PERP.

Water Well Drilling Rigs

ARB staff proposes to add a definition for two-engine water well drilling rigs as those owned by companies with a specific water well drilling contractors license. The deck engine of these rigs will remain eligible for PERP, but staff proposes to clarify that the engine will be subject to the Off-Road Regulation, not the Portable Engine ATCM. If registered in PERP, the deck engine will still be subject to district inspection requirements and applicable fees as listed in the PERP regulation.

Recordkeeping and Reporting

ARB staff proposes to reduce the amount of recordkeeping for registered certified engines which are not subject to any emission limitations. Staff also proposes to remove the annual reporting requirement for these certified engines. Engines and equipment units with emission limitations will continue to have daily recordkeeping and annual reporting requirements of the applicable operational data. Staff proposes to require that the specific location and date is recorded on a regular basis for certified engines, and each time it is moved for non-certified engines and equipment units. This is necessary to improve the enforceability of the requirement that registered portable engines and equipment units do not reside in one location for more than 12 consecutive months.

Vendor Sales Report

ARB staff proposes to remove the vendor sales reporting requirement from the Statewide PERP Regulation.

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 Statewide PERP Regulation.

Portable Engine ATCM

Diesel Engine Replacement Extension

ARB staff proposes to allow owners of small fleets to designate certain diesel engines to operate for one additional year beyond the current date. Under this proposal, owners of 25 or fewer total portable engines would be able to choose either one diesel engine of any size or up to five diesel engines not to exceed a combined total of 500 bhp to operate until December 31, 2010. These engines would have to be currently registered in PERP or permitted by a local air district. These fleet owners will have to submit a written request to designate which engines they wish to continue operating under this proposed regulatory amendment.

Water Well Drilling Rigs

ARB staff proposes to define water well drilling rigs as those owned by companies with a specific water well drilling contractors license. The deck engines on two-engine rigs

will be exempt from the Portable Engine ATCM, as they will be subject to the Off-Road Regulation.

On-Highway Engines

ARB staff proposes to allow engines that are certified to the on-highway emission standards contained in 40 CFR part 86 and used in portable applications to operate beyond January 1, 2010. Many operators are using certified on-highway engines in non-motive, portable applications. This amendment will allow these engines to operate beyond the current replacement deadline. When these on-highway engines become part of the portable fleet, they be subject to the fleet emission standards contained in the Portable Engine ATCM.

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.

Off-Road Regulation

Water Well Drilling Rigs

ARB staff proposes to define water well drilling rigs as those owned by companies with a specific water well drilling contractors license. Both engines on two-engine rigs will be subject to the Off-Road Regulation. No special provisions will be added for these drilling rigs. The reporting date for water well drilling rigs will also be extended to allow time for the drilling rigs that were previously not subject to this regulation.

On-Road Regulation

Water Well Drilling Rigs

ARB staff proposes to exempt two-engine water well drilling rigs from the On-Road Regulation, but will be subject to the Off-Road Regulation.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the Statewide PERP Regulation. To date, the United States Environmental Protection Agency 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).

There are no federal regulations comparable to the proposed regulation to reduce emissions of diesel particulate matter and oxides of nitrogen from in-use on-road diesel vehicles that operate in California. Similarly, there are also no federal regulations comparable to California's in-use off-road vehicle regulation.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB 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: Initial Statement of Reasons for the Proposed Amendments to the Regulations Applicable to Portable Diesel Engines and Diesel Engines Used in Off-Road and On-Road Vehicles.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on the 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 January 28, 2010.

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 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 Joseph Gormley, Air Resources Engineer, Rule Evaluation Section, at (916) 322-5616.

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 and 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 ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/perp2010/perp2010.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 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 Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost to State or local agencies. However, the proposed regulatory action will create savings to some State and local agencies, as described below.

Non-Certified Engine Extension

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. 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 a savings of \$66 million over the next one year. The savings created are from the one-year extension for replacing older engines as required by the Portable Engine ATCM and a reduction of reporting requirements.

The alternative to the proposed extension for older engines is to keep the existing deadline of January 1, 2010. The average cost of an engine replacement is approximately \$175 per horsepower. Approximately 4,400 older engines with a total of about 1,050,000 horsepower are subject to the current requirement to be replaced by January 1, 2010. Approximately 80 engines with a cumulative size of 15,000 bhp are on two-engine water well drilling rigs; therefore the total amount affected is reduced to 1,035,000 bhp. The cost to replace all these engines would be about \$181 million. With the current proposal, approximately 2,000 engines owned by 1,130 companies and public agencies with a combined horsepower of approximately 375,000 will be eligible to operate for an additional year. The cost to replace these engines would be approximately \$66 million, therefore resulting in a savings for small business and public agencies of that amount for one year. The true cost savings will be less, however, because it is not expected that all the eligible engines will utilize the extension in this proposal.

Staff estimates that 210 local agencies will be affected by the proposed amendments. The total potential economic savings for local agencies is estimated by ARB staff to be \$10.3 million.

Staff estimates that three State agencies will be affected by the proposed amendments. The total potential economic savings for State agencies is estimated by ARB staff to be \$220,000.

Staff estimates that nine federal agencies will be affected by the proposed amendments. The total potential economic savings for federal agencies is estimated by ARB staff to be \$510,000.

Water Well Drilling Rigs

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB staff estimates that the economic impact of the proposed amendments to affected businesses is \$13 million. The savings are from moving the two-engine water well drilling rigs into the Off-Road Regulation which does not have requirements until 2013 for medium fleets and 2015 for small fleets. Currently, there are only 80 of these engines registered in PERP, although some estimates put the total at over 400 throughout the State. The savings are due to the delay of the requirement to replace or retrofit older engines until either 2013 or 2015. There are no economic impacts to public agencies as a result of this amendment.

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 economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would 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 regulations 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 regulation, 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

Interested members of the public may also present comments orally or in writing at the meeting and may be submitted by postal mail or by electronic submittal before the

meeting. To be considered by the Board, written comments, not physically submitted at the meeting, must be received **no later than 12:00 noon, January 27, 2010**, 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>

Please note that under the California Public Records Act (Gov. Code, § 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 20 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, 39650, 39658, 39659, 39665, 39666, 39667, 39674, 39675, 40000, 41511, 41752, 41753, 41754, 41755, 42400, 42400.1, 42400.2, 42402.2, 42410, 43000, 43000.5, 43013, 43016, 43018, 43023, and 43600. This action is proposed to implement, interpret, or make specific Health and Safety Code sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 40000, 41511, 41750, 41751, 41752, 41753, 41754, 41755, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, and 43600.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

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 and 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidade especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la officina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: December 1, 2009

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.