

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE REGULATION FOR THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the proposed amendments to the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation).

DATE: February 26, 2004

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Central Valley Auditorium, Second Floor
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., February 26, 2004, and may continue at 8:30 a.m., February 27, 2004. This item may not be considered until February 27, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before February 26, 2004, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments of title 13, California Code of Regulations (CCR), article 5, sections 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, and repeal of 2466 which is the Statewide Portable Equipment Registration Program.

Background: The Statewide Regulation was approved by the Board on March 27, 1997 and became effective on September 17, 1997. The Board also approved amendments to the Statewide Regulation on December 11, 1998.

The Statewide Regulation establishes a uniform program to register portable engines and equipment units in California. Once registered in this voluntary program, owners or operators of portable engines and associated equipment units can operate throughout the State without having to obtain permits from individual air pollution control and air

quality management districts (districts). However, the districts play an important role in enforcing the requirements of the Statewide Regulation.

The current Statewide Regulation requires a phase-in of cleaner technologies that would result in the reduction and eventual elimination of high-emission engines. By January 1, 2010, any engine registered in the Statewide Portable Equipment Registration Program (Statewide Program) must be replaced or modified to meet California or federal nonroad emission standards (certified engines). Portable engines used on dredges must be retrofitted or replaced with certified engines by January 1, 2005.

Since 1997, ARB staff has received approximately 5,600 registration applications. Currently, the PERP program has about 14,500 portable engines, 1,500 associated equipment units, and another 5,200 pieces of military tactical support equipment (TSE) registered in the program.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The proposed amendments to the Statewide Regulation are summarized in the following major categories:

Applicability Section

The proposed amendments would not allow the use of engines registered under the Statewide Regulation for certain specified applications. These applications include using portable generators to feed the electrical grid; providing primary or supplemental power to a building, stationary source or stationary equipment; or using registered engines to supplement or otherwise power equipment or operations permitted by the districts. For these applications, district approval would be necessary. Portable engines used in maintenance and repair, and emergency operations would continue to be allowed to operate under the Statewide Regulation. In addition, the temporary use of portable generators in remote locations, where grid power is unavailable, may be allowed under the Statewide Regulation upon approval of the Executive Officer.

Previously Exempt and Unpermitted Engines

Of the 33,000 portable engines estimated to be operating in California, 15,500 engines are believed to be operating without permits or registrations. Currently, the Statewide Regulation allows only portable engines certified to California or federal nonroad emission standards (certified engines) to register in the Statewide Program. ARB staff is proposing to allow any portable engine operating in California before 2003, certified or not, to apply and obtain registration under the Statewide Regulation until December 31, 2005. After that time, only certified engines will be accepted into the Statewide Program. The purpose of the proposed amendment is to encourage owners and operators of portable engines operating in California to seek registration and ultimately bring their equipment into compliance with State regulatory requirements.

Without this proposed amendment, many owners/operators of portable equipment would not be able to obtain registration or permits from local districts.

Increase Program Fees

Pursuant to Health and Safety Code section 41752(d), the ARB has established a fee schedule to collect registration, renewal, and other fees under the Statewide Regulation to cover resources necessary to operate and maintain the Statewide Program. When first establishing the Statewide Regulation, staff significantly underestimated the resources necessary to operate and maintain the Statewide Program. Fees currently collected do not cover the State's cost to administer the Statewide Program. Because of the current budget crisis, the ARB can no longer subsidize the costs of running the Statewide Program.

Staff is proposing an increase in fees to cover the full cost of the Statewide Regulation. Among the fees propose to be increased are the initial application fee from \$90 to \$270 for a 3-year registration and renewal fee from \$90 to \$225 for a 3-year renewal.

Recordkeeping and Reporting

The proposed amendments would require owners/operators of engines who are subject to daily recordkeeping requirements to keep a log onsite with each unit to track operation of the engine. The retention time for maintaining the records would be extended from two years to five years. Also, the operators of engines that are subject to hour limitations would be required to install hour meters. Staff is also proposing to remove the requirement for the submittal of annual reports to ARB staff; however, owners would need to make those reports available to district and ARB staff upon request. In addition, operators of generators used to power a building or stationary source during an unforeseen interruption of electrical power would be required to record the location, date, and length of time the generator was operated.

Miscellaneous Amendments

ARB staff is proposing to modify, add, and delete terms in the definition section, delete outdated provisions, require non-operational engines to be made operational, clarify the process for the change of ownership of registered engines, and modify the requirements for identical replacements of engines. These changes are considered to be non-substantive and are intended to provide additional clarity and enforceability to the Statewide Regulation.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed amendments to the Statewide Regulation. *The Executive Summary* provides an overview of the proposed amendments to the Statewide Regulation. It contains a summary of the recommendations and a brief discussion of the environmental and economic impacts of the proposal. *The Technical Support Document* is a more detailed presentation of the technical aspects of the proposed amendments to the Statewide Regulation.

Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing which will begin on February 26, 2004.

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 web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Todd Wong, Manager of the Technology Assessment Section, at (916) 324-8031 or by email at twong@arb.arb.ca.gov or Winston Potts, Air Resources Engineer, PE, Technology Assessment Section, (916) 327-5600 or by e-mail at wpotts@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 Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. 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.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the ARB's Clerk of the Board at (916) 322-5594, or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

This notice, 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/portreg/portreg.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons, and businesses in reasonable compliance with the proposed amendments to the Statewide Regulation 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 result in neither costs nor savings impacts 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, and title 2 of the Government Code, as discussed below or other non-discretionary savings to local agencies.

The cost to local agencies primarily involves the increase in renewal and administrative fees for those agencies with portable engines and associated equipment units registered in the Statewide Program. The total economic cost to local agencies is estimated to be \$76,000. These costs are not reimbursable state mandated costs pursuant to part 7 (commencing with 17500), division 4, title 2 of the Government Code because most if not all, of these agencies are authorized to collect fees to recoup their cost under Section 17500 et seq. of the Government Code. The proposed amendments to the Statewide Regulation apply to all entities who operate portable engines and chose to register those engines in the Statewide Program, and, therefore, does not impose unique requirements on local government agencies.

The Executive Officer has determined that individual local air districts may incur permitting and enforcement costs as a result of implementing the proposed amendments to the Statewide Regulation. However, the costs incurred by the districts are not reimbursable state costs because of the districts' authority to recover permitting and enforcement costs through fees assessments authorized under Health and Safety Code sections 41512 and 42311. Also, the costs incurred by the district of inspecting registered engines are recoverable under section 2461(e), title 13, CCR.

The Executive Officer has determined that State agencies will incur a total economic impact of \$27,000. Given the current fiscal and economic conditions, the Executive Officer cannot determine with certainty whether State agencies will be able to absorb these additional costs within current or future budgets, but it is anticipated that the agencies will be able to absorb annualized costs of this magnitude.

In developing the regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. Summarized below are 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 will have minimal statewide adverse economic impacts directly affecting businesses. The Executive Officer has also assessed that the proposed regulatory

action will have minimal statewide adverse economic impacts directly affecting the ability of California businesses to compete with businesses in other states or representative private persons.

The Executive Officer has determined, pursuant to title 1, CCR, section 4, that the proposed amendments to the Statewide Regulation will affect small businesses. The total economic impact to small businesses would be \$1.1 million dollars. The total economic impact to all businesses would be \$1.57 million dollars. The increased costs are for those businesses that use portable engines in applications that would require permits from local districts, increased costs from the proposed increase in renewal fees, costs to register non-operational engines that have been made operational, costs for engines required to install hour meters, and costs for increased recordkeeping requirements.

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 California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A more detailed assessment of economic impact is found in the Staff Report.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the amended reporting requirements that 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 Regulation will continue to have a beneficial effect on the California business climate by eliminating the need for duplicative permits, allowing increased flexibility, and lowering overall costs compared to obtaining and maintaining multiple district permits.

Before taking final action on the proposed regulation, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency 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.

A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Initial Statement of Reasons.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, February 25, 2004**, and addressed to the following:

Postal mail is to be sent to:

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

Electronic mail is to be sent to: portreg@listserv.arb.ca.gov, and received at the ARB **no later than 12:00 noon, February 25, 2004**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, February 25, 2004**.

The Board requests but does not require 30 copies of any written submission. Also the ARB requests that written, facsimile, and e-mail 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 the authority granted to the ARB in Health and Safety Code sections 39600, 39601, 41752, 41753, 41754, 41755, 43013, and 43018. This action is proposed under the authority granted to the ARB in Health and Safety Code sections 41750, 41751, 41752, 41753, 41754, and 41755.

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 ARB 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 the event that such modifications are made, 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, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date:

"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 Web-site at www.arb.ca.gov.