

Staff's Proposed Modifications to the

PROPOSED REGULATION ORDER

ESTABLISH A DISTRIBUTED GENERATION CERTIFICATION PROGRAM

Adopt new sections 94200-94214, in article 3, subchapter 8, chapter 1, division 3 of title 17, California Code of Regulations, to read as follows:

Article 3. Distributed Generation Certification Program

94200. **Purpose.**

These regulations implement the program mandated by Health and Safety Code section 41514.9 for certification of electrical generation technologies. After January 1, 2003, it will be unlawful to either:

- (a) manufacture any ~~Distributed Generation~~ DG Unit for sale, lease, use, or operation in the State of California, or
- (b) sell or lease, or offer for sale or lease any ~~Distributed Generation~~ DG Unit for use or operation in the State of California,

unless the ~~Distributed Generation~~ DG Unit is certified by the Air Resources Board pursuant to these regulations or is otherwise exempt from certification as hereinafter provided.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94201. **Applicability**

Any ~~Distributed Generation~~ DG Unit manufactured after January 1, 2003 for sale, lease, use, or operation in the State of California or any new ~~Distributed Generation~~ DG Unit sold or leased, or offered for sale or lease, for use or operation in the State of California after January 1, 2003 shall be certified by the Air Resources Board unless the ~~Distributed Generation~~ DG Unit:

- (a) does not emit an air contaminant when operated,
- (b) is registered under the Portable Engine and Equipment Registration Program (title 13, California Code of Regulations commencing at section 2450),

- (c) is used only when electrical or natural gas service fails or for emergency pumping of water for fire protection or flood relief, or
- (d) is not exempt from an air pollution control district or air quality management district's permitting requirements.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94202. **Definitions**

For the purposes of these regulations, the following definitions apply:

- (a) **Air Contaminant.** Shall have the same meaning as set forth in section 39013 of the Health and Safety Code.
- (b) **Air Pollution Control Equipment.** Equipment that eliminates, reduces, or controls the issuance of air emissions.
- (c) **Applicant.** A manufacturer or manufacturer's designated agent applying for certification of a DG Unit.
- (d) **ARB.** The California Air Resources Board.
- (e) **Combined Heat and Power.** A DG Unit that produces both electric power and process heat.
- (f) **Distributed Generation (DG) Unit.** Electrical generation technologies that produce electricity near the place of use.
- (g) **District.** Shall have the sSame meaning as set forth in part 3, commencing with section 40000 of the California Health and Safety Code.
- (h) **Electrical Generation Technology.** Reciprocating engines, external combustion engines, combustion turbines, photovoltaics, wind turbines, fuel cells or any combination thereof.
- (i) **Executive Officer.** The Executive Officer of the California Air Resources Board or his or her designee.
- (j) **Executive Order.** An order issued by the Executive Officer of the Air Resources Board certifying compliance of a DG Unit with the applicable requirements of this article.
- (k) **Zero Emission Technology.** Any technology that does not emit an air contaminant as defined in section 94202(a).

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94203. **Requirements.**

(a) On or after January 1, 2003, any DG Unit subject to this regulation must be certified pursuant to section 94204 to one of the following sets of emission standards.

- (1) DG Unit not integrated with combined heat and power,
- (2) DG Unit integrated with combined heat and power technology.

January 1, 2003 Emission Standards (lb/MW-hr)

Pollutant	DG Unit not Integrated with Combined Heat and Power (a)(1)	DG Unit Integrated With Combined Heat and Power (a)(2)
Oxides of Nitrogen (NO_x)	0.5	0.7
Carbon Monoxide (CO)	6.0	6.0
Volatile Organic Compounds (VOCs)	1.0	1.0
Particulate Matter (PM)	An emission limit corresponding to natural gas with fuel sulfur content of no more than 1 grain/100 scf	An emission limit corresponding to natural gas with fuel sulfur content of no more than 1 grain/100 scf

- (A) DG Units that use combined heat and power (~~CHP~~) may be certified to the emission standard in section (a)(2) above if the DG Units are sold with combined heat and power CHP technology integrated into a standardized package by the Applicant and the DG Units achieve a minimum efficiency of 60 percent (useful energy out/fuel in). The efficiency determination shall be based on 100 percent load.
- (B) DG Units that are sold with a zero emission technology integrated into a standardized package by the Applicant may have the electrical power output of the zero emission technology added to the electrical power output of the DG unit to meet the emission standards in (a)(1) and (a)(2) above.

- (b) On or after January 1, 2007, any DG Unit subject to this regulation must be certified pursuant to section 94204 to the following set of emission standards.

January 1, 2007 Emission Standards (lb/MW-hr)

Pollutant	Emission Standard
Oxides of Nitrogen (NO_x)	0.07
Carbon Monoxide (CO)	0.10
Volatile Organic Compounds (VOCs)	0.02
Particulate Matter (PM)	An emission limit corresponding to natural gas with fuel sulfur content of no more than 1 grain/100 scf

- (1) DG Units that use combined heat and power (~~CHP~~) may take a credit to meet the emission standard above. Credit shall be at the rate of one megawatt-hour (MW-hr) for each 3.4 million British Thermal Units (BTU's) of heat recovered. To take the credit, the following must apply:
- (A) DG Units are sold with combined heat and power ~~CHP~~ technology integrated into a standardized package by the Applicant; and
 - (B) DG Units achieve a minimum efficiency of 60 percent (useful energy out/fuel in) in the conversion of the energy in the fossil fuel to electricity and process heat, ~~and a minimum average efficiency of 75 percent in the conversion of the energy in the fossil fuel to electricity and process heat.~~ The efficiency determination shall be based on 100 percent load.
- (c) DG Units must meet the applicable emission standards for 15,000 hours of operation when operated and maintained according to the manufacturer's instructions.
- (d) By July 2005, the ARB staff must complete an electrical generation technology review to evaluate if the requirements in (b) and (c) above and section 94207 should be modified and report its findings to the Board.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94204. **Certification Procedure.**

- (a) Each application for certification and the fee as specified in section 94210 shall be submitted in a format approved by the Executive Officer and include, at a minimum, the following information:
 - (1) name of the Applicant, a contact person, mailing address (street and electronic), and telephone number;
 - (2) a description of the DG Unit and model number;
 - (3) maximum output rating (kilowatt);
 - (4) fuel type for which certification is being sought;
 - (5) type or description of any emission control equipment used;
 - (6) emissions test data, supporting calculations, quality control/assurance information, and all other information needed to demonstrate compliance with the requirements in sections 94203 (a) through (c).
- (b) Within 30 calendar days of receipt of an application, the Executive Officer shall inform the Applicant in writing if the application is complete or deficient. If deemed deficient, the Executive Officer shall identify the specific information required to make the application complete.
- (c) Within 60 calendar days of the application being deemed complete, the Executive Officer shall issue or deny certification.
- (d) Upon finding that a DG Unit meets the requirements of this article, the Executive Officer shall issue an Executive Order of Certification for the DG Unit. The Executive Officer shall provide a copy of the Executive Order of Certification to the Applicant.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94205. **Voluntary Certification.**

DG Units that do not emit air contaminants while operating may submit information requested in section 94204 (a)(1) through (3), and any information necessary to demonstrate that there are no emissions of air contaminants, to the Executive Officer for voluntary certification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94206. **Labeling Requirements.**

- (a) The Applicant shall affix a certification label on a visible location on each certified DG Unit.
- (b) The certification label must be of durable material and be permanently attached to the DG Unit.
- (c) The certification label must contain the year of the conforming emission standards, the fuel type used, and the number of the Executive Order of Certification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94207. **Testing.**

- (a) Sampling methodology used must conform to ARB testing procedures. Alternate or modified test methods must be submitted for approval by the Executive Officer.
 - (1) Testing shall be conducted in accordance with the following methods:

NO _x , CO, VOC and Oxygen:	ARB Test Method 100 (as adopted on July 28, 1997)
Gas Velocity and Flow Rate:	ARB Test Methods 1, 2, 3, and 4 (as adopted on July 1, 1999)
- (b) California Public Utility Commission (CPUC) quality natural gas shall be used for certification testing. Other fuels may be used upon approval by the Executive Officer.
- (c) Any additional control equipment or other devices that affect emissions shall be applied to the DG Unit and operated as marketed for the testing period.
- (d) Testing parameters.
 - (1) A minimum of three valid test runs must be conducted. Each test is to be run consecutively. Justification for invalid test runs must be included in the test report.

- (42) Testing commences after the DG Unit has reached stable operation.
- (23) Each run must be conducted for three power production loads: 50 percent of generator gross output, 75 percent of generator gross output, and 100 percent of generator gross output.
- (A) A load bank may be used to establish the load.
- (B) The DG Unit must be operated for a sufficient period of time to demonstrate stability in the emission reading at constant load and to ensure the collection of representative and quantifiable samples.
- ~~(C) A minimum of three valid test runs must be conducted. Each test is to be run consecutively. Justification for invalid test runs must be included in the test report.~~
- (34) Generator output (MW-hr), based on gross output, shall be measured during each valid test run. A calibrated electric meter shall be used for the measurements. The meter shall be calibrated according to the American National Standards Institute's Code for Electricity Metering (ANSI C12.1-as of 1995 July 9, 2001).
- (45) ~~For each valid test run, the results for each tested load shall be averaged according to the following weighting factors:~~

~~50 percent load results shall be given 20 percent weight;
75 percent load results shall be given 50 percent weight; and
100 percent load results shall be given 30 percent weight.~~

~~The results of the three valid runs shall be arithmetically averaged and the emission rate (in lb/MW-hr) shall be calculated.~~

The emission rate shall be expressed in lb/MW-hr and shall be calculated according to the following formula and weighting factors:

- (A) The results from the three valid test runs at 50 percent load shall be arithmetically averaged and multiplied by 0.2;
- (B) The results from the three valid test runs at 75 percent load shall be arithmetically averaged and multiplied by 0.5; and

(C) The results from the three valid test runs at 100 percent load shall be arithmetically averaged and multiplied by 0.3.

The results for (A), (B) and (C), above, shall be added together to calculate the certification emission rate.

- (56) Prior to commercial operation, each DG Unit shall be tested for NOx emissions at 100 percent load using a NOx analyzer that has been calibrated according to EPA CTM-022 (dated May, 1995) and approved by the Executive Officer. DG Units meeting the requirements of section 94203 (b) on or before January 1, 2003 will be exempt from this requirement.
- (67) Alternate testing parameters may be used upon approval by the Executive Officer.
- (78) Alternate testing parameters may be required by the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94208. **Recordkeeping.**

- (a) The Applicant must retain all information used for the certification application.
- (b) Upon request of the Executive Officer, the Applicant will submit information to the ARB on the number and location of certified DG Units that have been sold in California.
- (c) Upon request of the Executive Officer, the Applicant will submit to the ARB the serial numbers, emissions durability information, and information gathered in section 94207(d)(5) of certified DG Units sold in California.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94209. **Recertification.**

- (a) Certification is valid for four years except where the test results for the initial certification of the DG unit does not meet the requirements in section 94203 (b). The certification for these DG units shall be valid until January 1, 2007.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94210. **Fees.**

- (a) Fees shall be due and payable to the Executive Officer at the time an application is filed.
- (b) DG Units subject to these regulations will be assessed a fee of \$2500.00 for certification and/or recertification.
- (c) DG Units seeking voluntary certification through section 94205 will be exempt from fees for certification.
- (d) DG Units meeting the requirements of section 94203(b) on or before January 1, 2003 will be exempt from fees for certifying to the requirements in section 94203(a).

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94211. **Inspection.**

The Executive Officer, or an authorized representative of the Executive Officer, may periodically inspect manufacturers of DG Units for sale, lease, use or operation in California or, distributors, and retailers selling or leasing DG Units for use or operation in the state of California and conduct such tests as are deemed necessary to ensure compliance with these regulations. Failure of a manufacturer, distributor, or retailer to allow access for inspection purposes shall be grounds for suspension or revocation of certification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94212. **Denial, Suspension or Revocation of Certification.**

- (a) The Executive Officer for just cause may deny, suspend or revoke an Executive Order of Certification in any of the following circumstances:
 - (1) the Applicant has materially misrepresented the meaning, findings, effect or any other material aspect of the certification application, including submitting false or incomplete information in its application for certification regardless of the Applicant's personal knowledge of the falsity or incompleteness of the information;

- (2) the test data submitted by the Applicant to show compliance with this regulation have been found to be inaccurate or invalid; or
- (3) the certified unit has failed in-use to comply with the findings set forth in the Executive Order. For the purposes of this section, noncompliance with the certification may include, but is not limited to:
 - (A) a repeated failure to perform to the standards set forth in this article; or
 - (B) modification by the manufacturer of the DG Unit that results in an increase in emissions or changes the efficiency or operating conditions of such unit, without prior notice to and approval by the Executive Officer.
- (b) A manufacturer may be denied certification or subject to a suspension or revocation action pursuant to this section based upon the actions of an agent, employee, licensee, or other authorized representative.
- (c) The Executive Officer shall notify a manufacturer by certified mail of any action taken by the Executive Officer to deny, suspend or revoke any certification granted under this article. The notice shall set forth the reasons for and evidence supporting the action(s) taken. A suspension or revocation is effective upon receipt of the notification.
- (d) A manufacturer may request that the suspension or revocation be stayed pending a hearing under section 94213. In determining whether to grant the stay, the hearing officer shall consider the reasonable likelihood that the manufacturer will prevail on the merits of the appeal and the harm the manufacturer will likely suffer if the stay is not granted. The Executive Officer shall deny the stay if the adverse effects of the stay on the public health, safety, and welfare outweigh the harm to the manufacturer if the stay is not granted.
- (e) Once an Executive Order of Certification has been suspended pursuant to (a) above, the manufacturer must satisfy and correct all noted reasons for the suspension and submit a written report to the Executive Officer advising him or her of all such steps taken by the manufacturer before the Executive Officer will consider reinstating the certification.
- (f) After the Executive Officer suspends or revokes an Executive Order of Certification pursuant to this section and prior to commencement of a hearing under section 94213, if the manufacturer demonstrates to the Executive Officer satisfaction that the decision to suspend or revoke the

certification was based on erroneous information, the Executive Officer will reinstate the certification.

- (g) Nothing in this section shall prohibit the Executive Officer from taking any other action provided for by law for violations of the Health and Safety Code.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94213. **Appeals.**

Any manufacturer whose application or certification has been denied, suspended, or revoked may request a hearing to review the action as provided herein.

- (a) Hearing Procedure.

Except as provided for in section 94213(b) below, any appeal pursuant to this section 94213 shall be conducted in accordance with the Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions, Title 17 California Code of Regulations, Division 3. Chapter 1 Article 2, commencing with section 60055.1.

- (b) Review by written submission.

- (1) In lieu of the hearing procedure set forth in (a) above, a manufacturer may request that a review of the Executive Officer's decision be conducted by a hearing officer solely by written submission.
- (2) A manufacturer may request a review of the Executive Officer's decision to deny, suspend or revoke a certification no later than 20 days from the date of issuance of the notice of the denial, suspension, or revocation. Such request shall include, at a minimum, the following:
 - (A) name of the manufacturer, the name, address and telephone number of the person representing the manufacturer and a statement signed by a senior officer of the manufacturer warranting that the representative has full authority to bind the manufacturer as to all matters regarding the appeal;
 - (B) copy of the Executive Order granting certification and the written notification of denial;

- (C) a statement of facts and explanation of the issues to be raised setting forth the basis for challenging the denial, suspension, or revocation (conclusory allegations will not suffice) together with all documents relevant to those issues; and
 - (D) the signature of the representative named in (A) above.
- (3) Upon receipt of a request for review, the request shall be referred to the administrative hearing office of the state board for assignment of a hearing officer.
- (4) Within 15 days of appointment of a hearing officer:
- (A) ARB staff shall submit a written response to the manufacturer's submission and documents in support of the Executive Officer's action no later than 10 days after receipt of the manufacturer's submission;
 - (B) within 7 days of receipt of the ARB response, the manufacturer may submit one rebuttal statement which shall be limited to the issues raised in the ARB rebuttal;
 - (C) if the manufacturer submits a rebuttal, ARB staff may, within 7 days of receipt of the manufacturer's rebuttal, submit one rebuttal statement which shall be limited to the issues raised in the manufacturer's rebuttal; and
 - (D) the hearing officer shall receive all statements and documents and render a written decision. The hearing officer's decision shall be mailed to the manufacturer no later than 60 working days after the final deadline for submission of papers.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94214. **Penalties.**

In addition to suspension or revocation of certification as provided in section 94212, ARB may seek penalties under Health and Safety Code Division 26, Part 4., Chapter 4, Article 3 commencing with section 42400, for any violation of these regulations.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.