

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATION TO ESTABLISH A DISTRIBUTED GENERATION CERTIFICATION PROGRAM AND A GUIDANCE FOR THE PERMITTING OF ELECTRICAL GENERATION TECHNOLOGIES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of a proposal to establish a distributed generation certification program and a proposed guidance for the permitting of electrical generation technologies by air pollution control and air quality management districts.

DATE: November 15, 2001

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Auditorium, Second Floor
1001 "I" Street
Sacramento, CA 95814

These items will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m. on Thursday, November 15, 2001, and may continue at 8:30 a.m., Friday, November 16, 2001. These items may not be considered until November 16, 2001. Please consult the agenda for the meeting, which will be available at least 10 days before November 15, 2001, and posted on the ARB website, to determine the day on which these items will be considered.

The facility is accessible to persons with disabilities. If accommodation is needed, please contact the ARB's Clerk of the Board by November 1, 2001, at (916) 322-5594, or Telecommunications Device for the Deaf (TDD) (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 94200-94214, in article 3, subchapter 8, chapter 1, division 3 of title 17, California Code of Regulations (CCR).

Background

The California Distributed Generation Certification Program (Program), was established in California law by Senate Bill (SB) 1298 (chapter 741, statutes of 2000). SB 1298 focuses on electrical generation that is near the place of use, and defines these sources as "distributed generation" (DG). Therefore, electrical generation technologies that are

subject to the proposed emission standards and certification program will be referred to hereafter as “Distributed Generation” or “DG” technologies in this notice.

The DG certification program created by SB 1298 is a new program and is codified in Health and Safety Code sections 41514.9 and 41514.10. This law requires the ARB to:

1. Adopt uniform emission standards for electrical generation technologies that are exempt from air pollution control or air quality management district (district) permit requirements;
2. establish a certification program for technologies subject to these standards; and
3. issue guidance to districts on the permitting or certification of electrical generation technologies subject to the district’s regulatory jurisdiction.

The adoption of the certification program and uniform emission standards for electrical generation technologies that are exempt from air districts’ permitting requirements is the subject of this rulemaking. The issuance of the guidance to the air districts on the permitting or certification of electrical generation technologies under their regulatory jurisdiction is a non-regulatory action.

SB 1298 mandates two levels of emissions standards for affected DG technologies. The law requires that the first set of standards become effective no later than January 1, 2003, and reflect the best performance achieved in practice by existing DG technologies that are exempt from district permitting requirements. The law also requires that, by the earliest practicable date, the final set of standards be made equivalent to the level determined by the ARB to be Best Available Control Technology (BACT) for permitted central station power plants in California. The emission standards must be expressed in pounds per megawatt hour (lbs/MW-hr) to reflect the efficiencies of various electrical generation technologies.

Description of the Proposed Regulatory Action

After January 1, 2003, new electrical generation units to be sold, leased or used in California, and that are exempt from district’s permit requirements, must be certified by the ARB to defined emission standards. The ARB staff will assist the manufacturers with determining exemption levels for each district. If a proposed unit is subject to the district’s permit requirements, it need not be certified by the ARB before it is sold, leased, or operated in that district. Equipment operating before January 1, 2003, will not be subject to the proposed standards.

The proposed regulatory action also includes labeling requirements, testing procedures, record keeping requirements, recertification requirements and payment of fees for technologies subject to the certification program. In accordance with Government Code sections 11345.3(c) and 11346.5(a)(11), the ARB’s Executive Officer has found that the record keeping and reporting requirements of the proposed regulation are necessary for the health, safety, and welfare of the people of the State.

Lastly, the proposed regulatory action provides for the denial, suspension or revocation of certificates and creates an administrative appeals process for review of denials, suspensions or revocations of certificates issued under the program. The types of technologies that will be subject to the emission standards include microturbines, reformer-based fuel cells, small reciprocating engines, external combustion engines, or any combination thereof.

Description of the Proposed Non-Regulatory Action

SB 1298 specifies that the guidelines address BACT determinations for electrical generation technologies and, by the earliest practical date, shall make the determinations equivalent to the level determined by the ARB to be BACT for permitted central station power plants in California.

Comparable Federal Regulations

The certification program to be considered is not required by federal law or regulation. There are no comparable federal regulations covering emissions from the use of DG technologies.

Existing State Regulations

The certification program to be considered is a new program. There are no directly related laws or regulations. Staff reviewed existing state regulations governing portable equipment operation (Portable Equipment Registration Program) to ensure there were no conflicting provisions.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared an initial statement of reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal. The ISOR is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Distributed Generation Certification Program." The ARB staff has also prepared a guidance document for the proposed non-regulatory action entitled, "Guidance for the Permitting for Electrical Generation Technologies."

Copies of the ISOR, the Guidance document, and the full text of the proposed regulation may be obtained from the Public Information Office, Air Resources Board, 1001 "I" Street, Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (November 15, 2001).

Upon its completion, the Final Statement of Reasons (FSOR) and the Guidance document 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 regulatory action may be directed to the designated agency contact persons: Kitty Martin, Manager of the Program Assistance Section, Project Assessment Branch, Stationary Source Division at (916) 322-3907 and Marcelle Surovik, Air Pollution Specialist, Stationary Source Division at (916) 327-2951. Inquiries concerning the substance of the non-regulatory guidance document may be directed to Grant Chin, Air Resources Engineer, Stationary Source Division at (916) 327-5602.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or 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.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

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/dg01/dg01.htm>. The Guidance document and all subsequent non-regulatory documents are available on the ARB Internet site at <http://www.arb.ca.gov/energy/dg/dg.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Executive Officer of the ARB concerning the cost or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The ARB's Executive Officer has determined that the proposed regulatory action will not create costs, as defined in Government Code section 11346.5(a)(6), to other state agencies.

The Executive Officer has also determined that the proposed regulatory action will not create costs or savings in federal funding to the State; costs or mandate to any school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code; or non-discretionary savings to state or local agencies.

The proposed regulatory action will not impose a mandate upon and create costs to local agencies. Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed

by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on manufacturers. The Executive Officer has initially assessed that the proposed regulatory action will have a minimal statewide adverse economic impact directly affecting businesses. The Executive Officer has also assessed that the proposed regulatory action will not have a statewide adverse economic impact directly affecting the ability of California businesses to compete with businesses in other states. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed certification program should have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed certification program can be found in the ISOR.

The Board's Executive Officer has also determined that the regulation will affect a few small businesses.

Before taking final action on the proposed regulatory action, the ARB 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 action is proposed or would be as effective and less burdensome to affected private persons or businesses 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 e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, November 14, 2001**, 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: dq01@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, November 14, 2001**.

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, November 14, 2001.**

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 REFERENCE

These regulatory and non-regulatory actions are proposed under the authority granted to the ARB in the Health and Safety Code sections 39600, 39601, 39605, 41514.9 and 41514.10. These actions are proposed to implement, interpret, or make specific, Health and Safety Code sections 41514.9 and 41514.10.

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 nonsubstantial or grammatical modifications. The ARB 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. Modifications may include, but are not limited to, modifying the RAFs for alternative fuel vehicles. 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, Environmental Services Center, 1001 "I" Street, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: September 18, 2001

"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."