

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE
STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM REGULATION
AND THE AIRBORNE TOXIC CONTROL MEASURE FOR DIESEL-FUELED
PORTABLE ENGINES**

Public Hearing Date: March 22, 2007
Public Availability Date: June 29, 2007
Deadline for Public Comment: July 16, 2007

At a March 22, 2007 public hearing, the Air Resources Board (ARB/Board) approved proposed amendments to the Statewide Portable Equipment Registration Program (PERP) Regulation and the Airborne Toxic Control Measure for Diesel-fueled Portable Engines (Portable Engine ATCM). The Statewide Regulation is contained in sections 2450-2465, article 5, title 13, California Code of Regulations (CCR). The Portable Engine ATCM is contained in sections 93116-93116.5, title 17, CCR. The proposed amendments to both regulations are described in detail in the Staff Report: Initial Statement of Reasons (ISOR), which was released to the public on February 2, 2007.

At the hearing, the Board adopted Resolution 07-9, in which it approved the proposed amendments with modifications to the regulations originally proposed in the ISOR. These modifications were proposed by staff at the hearing in response to comments received during the public comment period that began on February 2, 2007. Attachments A and B of Resolution 07-9 contain the amendments as originally proposed, and Attachment C contains the modifications staff suggested at the hearing. The Resolution and its attachments are available at the following ARB internet site: <http://www.arb.ca.gov/regact/2007/perp07/perp07.htm>. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified regulatory language available for a supplemental comment period of 15 days.

Subsequent to the hearing, ARB staff identified additional conforming modifications that are appropriate to make the amended regulations work as effectively as possible. The text of the modified regulatory language for the PERP regulation now being proposed is attached as Attachment 1 to this notice. The text of the modified regulatory language for the Portable Engine ATCM now being proposed is attached as Attachment 2. The originally proposed amendments are shown in underline for additions and ~~strikeout~~ for deletions. All modifications since the Initial Statement of Reasons (ISOR) publication date – both those contained in Attachment C to the Resolution and staff's additional conforming modifications – are shown in double underline to denote additions and ~~double-strikeout~~ to denote deletions.

The following is a summary of the modifications to the PERP regulation and staff's rationale for proposing them:

- A. Staff removed section 2451(d) of the regulation. The provision originally stated that if there is a loss of PERP eligibility, an owner must apply for a district permit within 90 days and that they may continue to operate under their PERP registration until the district grants or denies a permit. This language was intended to provide a smooth mechanism for transitioning to a district permit if registration was lost due to the new eligibility requirements added in 2004. ARB staff made this post-hearing change because we believe that the time for these units to transition to district permitting has now passed, so there is no longer the need for this mechanism. In addition, some operators could potentially use this provision to claim that they may legally continue to operate after being found in violation of the PERP regulation.
- B. Staff modified section 2453(f) of the PERP regulation to clarify that operating conditions are to be kept onsite with the registered engine or equipment unit. This should facilitate compliance and enforcement activities in the field.
- C. Staff added subsection 2456(d)(10) to the PERP regulation. This provision requires the removal from service by January 1, 2010 of any registered spark-ignition engine that does not meet a certified nonroad standard or the emission standards listed in Table 1 of the PERP regulation. This requirement was inadvertently deleted with the previous amendments adopted in June of 2006. This restoration will ensure the emission reductions from the replacement or retirement of many older high-emitting gasoline engines.
- D. Staff revised section 2458(f) of the PERP regulation to make the annual reporting requirement for rental equipment units contain quarterly and annual summaries of material throughput, instead of operating hours. This change to remove operating hours from the annual reports for rental equipment units is consistent with the previously amended recordkeeping requirements in sections 2458(a) and (b) which require only material throughput tracking for daily recordkeeping for all equipment units.
- E. Staff added subsection 2458(a)(4) to the PERP regulation to specify that throughput is to be measured at the initial loading point of the equipment unit. This requirement would only be applicable to rock crushing and screening plants, and would make it much easier to determine compliance with throughput limits as stated on the registration.
- F. Staff modified section 2460(b)(3) to prohibit operators from choosing to have engine inspections billed at an hourly rate rather than the regular flat fee, even if the engine is integrated with an equipment unit that has hourly-rate inspection fees. Engine inspection fees are a flat fee of \$345 paid upon initial application submittal or upon renewal. Staff made this post-hearing change because it would be infeasible to give the operators a choice of a different type of inspection

fee after registration has been issued. If the operators were allowed to choose a different type of inspection fee after paying the regular inspection fee upfront, it would result in having to refund the difference between the flat fee initially paid and the resulting fee based on the time it took for inspection. All engine inspection fees shall be paid upfront, and redistributed back to the districts. Having the engine inspection fees paid upfront does not preclude the district inspector from conducting both the engine and equipment unit inspection at the same time. The district would just have to make sure that the hourly rate billed to the source was only for the time spent inspecting the equipment unit only.

- G. Staff made a post-hearing modification to section 2462(a) to be consistent with the registration expiration date for engines specified in new subsection 2456(d)(10) and also section 93116(b)(1)(A) of the Portable Engine ATCM.

The following is a summary of the modifications to the Portable Engine ATCM and staff's rationale for proposing them:

Staff modified section 93116.3(b)(7) to consolidate and simplify the eligibility provisions of both 93116.3(b)(7) and 93116.3(b)(8). Because of this consolidation, staff removed section 93116.3(b)(8) of the Portable Engine ATCM. Any section in either the PERP Regulation or the Portable Engine ATCM that referenced both of these sections was revised to remove 93116.3(b)(8). These sections originally provided compliance flexibility to engine owners and operators when there was a tier change. The owners or operators would be allowed to register previous tier engines for six months after a tier change if they could show documentation regarding ordering/purchasing/taking possession of the engine. These provisions took effect on December 27, 2006, are very complicated, and have been extremely difficult for owners and operators to understand. Staff has also spent a significant amount of time assisting applicants in complying with these provisions. Because both the public and ARB staff have found the implementation of these provisions to be unduly burdensome, staff made these post-hearing changes to simplify these provisions by removing the complicated documentation requirements. This preserves the intent of the compliance flexibility by allowing previous tier engines to register for a period of 6 months immediately after an emission standard change.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt amendments to sections 2450-2465, article 5, title 13, CCR and sections 93116-93116.5, title 17, CCR after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile as follows:

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>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the three forms described above and received by ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

Attachments