

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO THE AIRBORNE TOXIC CONTROL MEASURE FOR DIESEL PARTICULATE MATTER FROM PORTABLE ENGINES RATED AT 50 HORSEPOWER AND GREATER - AND TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM REGULATION

Sections Affected:

Adoption of amendments to California Code of Regulations, title 17, sections 93116, 93116.1, 93116.2, 93116.3, 93116.4, and 93116.5, which are the Portable Engine Airborne Toxic Control Measure (Portable Engine ATCM or ATCM). Adoption of amendments to California Code of Regulations, title 13, chapter 9, article 5, sections 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, and 2465, which are the Portable Equipment Registration Program (PERP) Regulation.

Background:

Since 1995, existing State law (California Health and Safety Code (HSC) §§ 41750 through 41755) has required the California Air Resources Board (CARB or Board) to administer a uniform statewide program for the voluntary registration and regulation of portable engines and equipment units in California, and provided CARB authority to collect fees to cover administration and enforcement of the program (HSC § 47152). In 1997, CARB adopted the PERP Regulation, which defined the equipment allowed to register in PERP, set operational limits for registered equipment, established registration procedures, and set registration fees.

Absent this uniform statewide program, portable equipment owners would be subject to requirements to obtain permits from each air district in which the engine or equipment unit was to operate, potentially leading to multiple permits for one piece of equipment. The existing PERP Regulation provides an alternative to district permits for owners that operate in multiple air districts.

Under PERP, only engines meeting the most current federal tier of emission standards for new off-road engines are eligible for initial engine registration, with certain exceptions. The existing PERP Regulation defines the equipment eligible to register in PERP, sets operational limits for registered equipment, and establishes registration procedures. Because local air pollution control and air quality management districts (districts or local air districts) enforce PERP registration requirements, a portion of the fees are distributed to the local air districts for these enforcement activities.

CARB adopted the Portable Engine ATCM in 2004 as part of a broad initiative, called the Diesel Risk Reduction Plan, to control diesel particulate emissions

from many diesel engines and equipment to protect public health. The existing ATCM prohibits operating older portable engines that emit higher levels of air pollutants than newer engines, sets strict engine eligibility for portable engines registering in PERP, limits districts to permitting only engines certified to meet federal emission standards and requires all fleets to meet prescriptive emission standards.

Because PERP was in place when the Portable Engine ATCM was adopted, the ATCM was implemented by CARB through PERP for engines registered in the program. The local air districts implement the ATCM requirements for engines subject to district permits. Changes proposed to the ATCM will be reflected in the PERP Regulation, where applicable, to maintain consistency in the two regulations. As a result, all regulated portable engines are affected by the changes proposed here regardless whether they are registered in PERP or permitted by the air districts.

The Portable Engine ATCM is technology forcing, and during development in 2004, staff assumed fleets would naturally purchase new engines on a regular replacement schedule that would enable the fleets to meet progressively more stringent average emission rates, and any remaining non-compliant engines could be retrofit with Verified Diesel Emission Control Strategies (VDECS) to meet the emission requirements.

The amendments became necessary because not all of the assumptions staff made when the regulations were originally adopted were borne out over time. Verified diesel emission control strategies have not become available for most portable applications; engines meeting the most current federal standards for new engines, referred to as Tier 4, became available much later and at a much higher cost than anticipated; and the federal engine performance standard for Tier 4 engines allows more emissions than previously anticipated. As a result, the regulation was becoming financially and technologically infeasible for many operators as it became more stringent, and the benefits it was intended to produce would not be captured. The amendments remedied this situation by introducing needed flexibilities in order to ensure that the regulation ultimately can capture the emission reductions previously projected, while accounting for industry conditions.

Description of Regulatory Action:

At its November 16, 2017, public hearing, the Board approved for adoption the proposed amendments to the ATCM and the PERP Regulation. The Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code

section 11346.8. The Executive Officer adopted the regulation after addressing all appropriate modifications.

The amendments to the ATCM restructured the rule to improve implementation and enforcement of the regulatory requirements. They provide for a realistic path to achieve emission reductions equivalent to those previously expected, in light of the pace of technological development.

The amendments to the PERP Regulation were also necessary to support the changes to the ATCM, maintain consistency between regulatory requirements and registration practices, and to improve program implementation. Overall, the approved amendments ensure the emissions reductions envisioned by the ATCM will be achieved, both by giving fleets time to make the necessary investments, and by increasing the enforceability of the emission reduction requirements.

The following is a summary of major amendments to the ATCM:

- Revising fleet emission control strategies for fleets by establishing small and large fleet categories based on each fleet's total horsepower. Compliance for small fleets was simplified while the large fleets were given compliance pathways.
- Allowing low-use and emergency-use engines to operate 200 hours per year and exempt these engines from the revised emission control strategies.
- Adding three new provisions and revising a current provision that will benefit fleets that took the initiative to reduce emissions prior to, or beyond, the requirements in the adopted amendments.
- Adding a provision that will prohibit the sale of engines that are not compliant with the ATCM requirements.
- Adding a requirement for sellers of portable engines to provide a written disclosure of the applicability of the Portable Engine ATCM.
- Revising the recordkeeping and reporting requirements to align with the adopted emission control strategies and incentives.
- Adding recordkeeping for the additional scenarios for fleets using electrification, which is necessary to make those scenarios enforceable.

The following is a summary of major amendments to the PERP Regulation:

- Revising the list of engines or equipment units that are not eligible to be registered in the program to clarify the applicability of the PERP Regulation.
- Adding provisions for the registration of auxiliary engines on two-engine vehicles that are subject to the Regulation for In-Use Off-Road Diesel Fueled fleets.

- Adding an enforcement mechanism to the existing requirement that the emissions from registered portable engines shall not interfere with the attainment or maintenance of any California or federal Ambient Air Quality Standard.
- Revising the provision where district permits are preempted by statewide registration and also revising the list of circumstances where district permits are not preempted.
- Revising the exemption for engines brought into California during an emergency event to limit the emergency event exemption to only certified engines and those engines will only be considered registered for one year.
- Revising the provisions regarding the processing of registration applications to improve functionality.
- Adding a provision that would allow CARB to issue (as expeditiously as possible) a temporary registration for the cleanest engines available.
- Restricting applications for change of ownership from being accepted within six months prior to the phase-out dates in the Portable Engine ATCM.
- Revising certain recordkeeping and reporting requirements based on practical concerns from industry and to enhance the emission inventory for portable engines.
- Revised the provision that allows registrants to pay a discounted fee if they arrange to have multiple engines inspected at one time.
- Increasing the fees charged for both registration and inspection. Fees will no longer be due upon application submittal, but may be submitted upon receipt of an invoice, or by future processes developed to improve program efficiency.

Comparable Federal Regulations:

Particulate matter from diesel engines was declared a toxic air contaminant by the Air Resources Board in 1998. Since then, CARB adopted many diesel fleet regulations to reduce California's exposure to diesel PM. The Portable Engine ATCM was adopted in 2004 to reduce toxic diesel PM emissions from portable engines. The PERP Regulation was adopted to provide an alternative to local district permitting. There are no comparable federal regulations.

Additional Changes to the Regulations from the Initial Proposal:

Pursuant to Government Code section 11346.8, ARB conducted a 15-day supplemental comment period on changes to the initially proposed amendments, in addition to those adopted by the Board in November 2017. They further the overall objectives and benefits of the proposal. The following summarizes the substantive modifications. Additional non-substantive changes were made to correct typographical or grammatical errors, change numbering or formatting, and to improve clarity.

- In section 93116.2(a) of the ATCM, a definition was added for the term “this ATCM”. This term has replaced the phrase “these Regulations” that was previously used, and the definition clarifies that the term includes all sections of the Portable Engine ATCM.
- In section 93116.3(c)(1) of the ATCM, language was added to clarify that engines using the phase-out schedule compliance option may not be operated on the actual dates listed in the schedule. This will allow the ARB and the local air districts to set an expiration date of December 31st of the appropriate year on their permits and registrations.
- In section 2452 of the PERP Regulation, one definition has been modified. The term “Engine Failure” has been changed to the term “Equipment Failure”. The definition of “Engine Failure” pertained only to the engine and its related components. The definition of “Equipment Failure” includes the engine as well as the associated equipment that the engine powers. This modification will allow the regulated community to use the provisions in Sections 2453(c) and 2453(m) when there is a failure of the associated equipment that necessitates its removal from service.
- In section 2453(o) of the PERP Regulation, the dates in the table for Tier 3 engines have been adjusted one year earlier. It is clearly stated in the Initial Statement of Reasons (ISOR or Staff Report) that the dates in this table are supposed to be 6 months prior to the corresponding dates in the phase-out schedule in the ATCM. These dates were listed incorrectly in the proposed draft, and this adjustment corrects that typographical error.
- In section 2455(a) of the PERP Regulation, language was added to specify that the notification described in this section is triggered when the engines are simultaneously located at a project site. This clarifies that notification is not triggered based on the cumulative horsepower brought on and off the site over the life of the project.

Staff also included additional non-substantive change to the PERP Regulation:

- Section 2456(e): Deleted the sentence “In that event, the engine shall comply with the applicable daily and annual emission limits contained in section 2456 (f)(6) of this article.” Sub-section (f)(6) and the emission limits it set were deleted in the proposed amendments. As such, this sentence should also have been shown as deleted. It was inadvertently retained due to a drafting error. Because this sentence references a section that has been deleted, omitting it clarifies the regulations and does not materially alter any rights, responsibilities, conditions, or prescriptions contained in the original text.

These modifications do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Initial Statement of Reasons because the modifications consist primarily of definition and provision clarifications that do not alter the compliance responses, so no additional environmental analysis or recirculation of the analysis is required.

Consistency with Existing State Regulations:

The California Air Resources Board received comments that some aspects of how compliance is determined are not the same as for other regulatory programs developed by the Board. This does not create any inconsistency with other State regulations, where those regulations apply to different sources of air pollution. These regulations are not inconsistent or incompatible with existing State regulations.