

State of California
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

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

Public Hearing Date: **November 16, 2017**
Agenda Item No.: **17-11-6**
Addendum Prepared: **September 21, 2018**

I. GENERAL

A. Background

On August 10, 2018, the California Air Resources Board (ARB or Board) submitted the Final Statement of Reasons (FSOR) for the rulemaking action entitled “Amendments to the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater (Portable Engine ATCM) - and to the Statewide Portable Equipment Registration Program Regulation (PERP),” to the Office of Administrative Law (OAL) for its review and approval.

In the course of its review, OAL noted that several non-substantial modifications were required to correct errors. These modifications, described below, clarify and do not materially alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the amendments as adopted by CARB and approved by OAL. (See Cal. Code Regs., tit. 1, § 40.)

B. Non-Substantial Modifications

The following non-substantial modifications were made to the Portable Engine ATCM regulation order:

- An error in section 93116.3(c)(2)(B) was corrected to reference section 93116.3(c)(2), as it was incorrectly written as 9311.6.3(c)(2).
- In the text of section 93116.3(c)(2) that is being stricken in these amendments, the existing word “local” was erroneously omitted from the language shown as stricken. “Local” was added back into to the language being removed to accurately reflect what is published in the California Code of Regulations (CCR).
- In section 93116.4(a)(3) (also stricken in these amendments), “85-%” was incorrectly written as “85-percent”. This was corrected to accurately reflect what is published in the CCR.
- In Section 93116.3(b)(3) and Section 93116.3(e)(2), language was added to make explicit that fleets or persons may not be retroactively

penalized for prior legal use or sale of engines that will no longer be permitted to use or sell as a result of this regulation. This is a restatement of existing law.

- “Effective January 1, 2012,” was removed from section 93116.4(c) because the date has passed and all requirements will be in effect on the effective date of the amendments.

The following non-substantial modifications were made to the PERP regulation order:

- In section 2452(q), “unit” was corrected to “units” to accurately reflect what is published in the CCR.
- In section 2452(w), “Maximum Rated Horsepower (brake horsepower (bhp))” was corrected to include “or emission label”, reflecting the proposed amendments in the Portable Engine ATCM.
- In section 2453(m)(5)(E), “~~engine~~” was removed from subsections 2. and 4., as it was previously removed in the 15-day modifications, released February 21, 2018.
- “Than” was removed from the stricken language in section 2456(f)(11) to accurately reflect what is published in the CCR.
- “Division” was removed from the stricken language in section 2456(f)(11)(C) to accurately reflect what is published in the CCR.
- In section 2461(c), “and to districts” was removed. The proposed text was withdrawn from adoption because it was not properly marked as proposed text when the amendments were made available for public comment.
- In section 2461.1, the fee *for Renewal, non-TSE* was removed and the *Penalty fee for late renewal payments, non-TSE* updated to \$225330.00 to accurately reflect Staff’s intended modifications and to accurately reflect what is published in the CCR.
- In section 2461.1, the fee for *Placard* was inserted and stricken. This was an erroneous omission, with staff’s intention to remove the *Placard* fee with these amendments.

C. Update to the information in the Initial Statement of Reasons

The list of References in Appendix I to the Initial Statement of Reasons is updated to remove Reference 2, a notation to “Guzzetta, Michael, Branch Chief, Enforcement Division, California Air Resources Board, December 2016.” Similarly, the reference to this citation, on page 8 of Appendix I, is deleted. This citation was inadvertently included and does not reference a document.

D. Modifications to the Original Summary and Response to Comments and Final Statement of Reasons

The following comments were received but not responded to.

Comment: We have serious reservations about the Ambient Air Quality Standard (AAQS) protection provisions being added for extreme non-attainment areas. Trying to make an accurate assessment of air quality impact once active construction has commenced is going to be disruptive, impossible to enforce and not likely to produce a responsible party. Requiring notice whenever 2500HP of equipment is present on a job site during will be difficult if not impossible to determine. Air Districts can collect this data and calculate the impacts during the CEQA process. (CIAQC)

Agency Response: Section 2455(a)(1)(D) of this provision requires the responsible official to submit the Final CEQA Document and Notice of Determination. If the Final CEQA Document was prepared using the complete inventory of diesel engines that will be located simultaneously on site for a project, we anticipate only a cursory review would be needed, as discussed in the Staff Report, Ambient Air Quality Standard Protection Discussion, Appendix F. This provision is intended to focus on projects where the ambient air quality impact analysis (AQIA) and the CEQA documents differ. There is no evidence in the record to show work will be stopped while the district performs the Air Quality Impact Assessment (AQIA), and the commenter does not provide any documentation substantiating this claim. As discussed in Appendix F, pages 7-8, it is expected that in most instances only a cursory review will be required. If the impacts are not assessed in the CEQA analysis for the construction project, the local district can perform an AQIA.

Comment: Staff should include a definition of the term “Most Stringent” in both the ATCM and the PERP Regulation. (ARA)

Agency Response: A definition for “Most Stringent” is not needed to implement the ATCM requirements. The ordinary meaning of “most stringent” applies, which refers to the most stringent of the applicable standards in the federal or California emission standards for nonroad engines that are identified in the regulatory text.