

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE
REGULATION FOR THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION
PROGRAM

Public Hearing Date: February 26, 2004
Public Availability of Modified Text Date: May 13, 2004
Deadline for Public Comment: June 1, 2004

At a public hearing on February 26, 2004, the Air Resources Board (the "Board" or ARB) approved the adoption of proposed amendments to the Regulation for the Statewide Portable Equipment Registration Program (Statewide Regulation or Statewide Program). The Statewide Regulation is contained in sections 2459-2466, article 5, title 13 of the California Code of Regulations (CCR). The proposed amendments to the Statewide Regulation are described in detail in the Staff Report: Initial Statement of Reasons (ISOR), which was released to the public on January 9, 2004, and can be accessed at <http://www.arb.ca.gov/regact/portreg/portreg.htm>.

At the hearing, staff presented and the Board approved the proposed amendments with modifications to the originally proposed language in response to comments received during the public comment period that began on January 9, 2004. The text of the modified regulatory language is attached as Attachment 1. The originally proposed language is shown in underline and deletions are shown in ~~strikeout~~. Double underline denotes additions since the Initial Statement of Reasons (ISOR) publication date. ~~Double strikeout~~ denotes deletions since the ISOR publication date.

At the hearing, the Board also directed staff to work with the California Air Pollution Control Officer's Association (CAPCOA) and other affected parties to establish a uniform statewide district fee schedule for the recovery of the reasonable cost of enforcement of the Statewide Regulation. The work with CAPCOA and affected parties is ongoing and is not part of the proposed modifications for public comment at this time; however, the proposed modifications to establish a uniform fee schedule will be made available for public comment at a later date.

The following is a summary of the modifications and staff's rationale for making them:

- A. Staff modified section 2451(c)(5)(C) to provide flexibility for the use of generators registered in the Statewide Program to supply power to the grid if they are used to maintain grid stability during emergency or unforeseen events.
- B. The proposed amended language in section 2451(c)(5)(E) was modified and moved to section 2456(j). The modification allows registered engines (certified and

uncertified engines) to be used with equipment that is ineligible for the Statewide Program provided that the engines were registered in the Statewide Program prior to the effective date of the amended Statewide Regulation. Engines registering in the Statewide Program after the effective date of the amended Statewide Regulation, and used with ineligible equipment will be required to meet United States Environmental Protection Agency (U.S. EPA) and ARB non-road engine emission standards. Staff has determined that a small number of engines (less than 40 engines) will operate under this provision and will result in minimal air quality impacts.

- C. Section 2451(d) was added to clarify that the owner or operator of any engine or equipment unit that loses its eligibility in the Statewide Program will have 90 days after notification by ARB to apply to the appropriate district for a permit to operate. Operation can continue under the Statewide Program until the district takes final action on the application.
- D. The “Note” at the end of section 2451(b)(2) describes the federal Clean Air Act preemption that does not allow states, including California, from establishing emission standards related to the control of emissions for new engines rated less than 175 horsepower and used in farm and construction operations. Because it does not represent a requirement in the Statewide Regulation and is only intended to provide background information, the “Note” has been deleted. With the deletion of the “Note,” the definitions contained in section 2452 for “construction equipment,” “farm equipment,” and “primarily used” are not used elsewhere in the Statewide Regulation and have also been deleted.
- E. Staff added definitions in sections 2452(i) and (t) for “Existing Program Participant” and “New Program Participant,” respectively.
- F. The definition of “Portable” contained in section 2452(y) was modified to clarify that the period the engine or equipment is maintained at a storage facility should not be included in the residency time determination at a facility or stationary source.
- G. The definition for “Resident Engine” contained in section 2452(gg) was modified to improve clarity of the Statewide Regulation by providing examples of acceptable documentation to demonstrate residency of an engine operating in California.
- H. Section 2453(e) was modified to allow additional time (180 days, instead of 90 days) for ARB staff to process applications received after the effective date of the amended Statewide Regulation. This provision expires on December 31, 2005, after which it reverts back to the 90 days processing time limit. This provision is intended to allow ARB staff additional time, if necessary, to process the large number of applications expected once the amendments become effective.

- I. Section 2456(d)(5) was modified to allow engines manufactured under the flexibility provisions pursuant to title 40, Code of Federal Regulations, part 89 or title 13 of the CCR to register in the Statewide Program. This provision is intended to provide consistency with the federal non-road regulations.
- J. Section 2458(b)(6)(A) was added to improve enforceability by requiring engines registering in the Statewide Program on or after the effective date of the amended Statewide Regulation, and subject to daily fuel consumption limits to install and track the fuel consumption with fuel flow meters.
- K. Section 2458(b)(6)(B) was modified to clarify that engines registered in the Statewide Program prior to the effective date of the amended Statewide Regulation, and subject to daily fuel consumption limits can continue to use their existing methods to track fuel consumption.
- L. Additional language was added to section 2461(c), which will require new program participants, until December 31, 2005, to pay an additional \$100 registration fee for each engine registered in the Statewide Program. This fee is intended to cover additional temporary resources for processing applications and for additional public outreach to educate owners and operators of portable engines of the various regulatory requirements. On or after January 1, 2006, the additional \$100 registration fee will be rescinded. In addition, the language clarifies that the increase in registration fees will not apply to applicants who have lost permit exemptions from the districts or as a result of legislative actions.
- M. To provide additional flexibility to program participants, language was added to section 2462(a) to allow program participants to select either a three-year or a five-year registration and renewal schedule. Table 2 in section 2461 was modified to reflect the fees associated with a 5-year registration or renewal schedule.
- N. Staff made minor non-substantive modifications throughout the Statewide Regulation to provide additional clarity and improved enforceability. These amendments include correcting formatting and grammatical errors, and other non-substantive administrative changes.

With this notice, the modified regulation is being made available for public comment prior to the final action by the Board's Executive Officer.

Attached to this notice is Board Resolution 04-08 (Attachment 2), which approves the Regulatory action.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt amendments to sections 2459-2466, title 13, CCR, after making them available to the public for comment for a period of at least 15 days, provided the Executive Officer consider such written comments as may be submitted during this period, make such modifications as may be appropriate in light of the comments received, and present the regulation to the Board for further consideration if warranted.

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

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: portreg@listserv.arb.ca.gov.

Facsimile submissions are to be transmitted to: (916) 322-3928.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by the end of the last day for supplemental comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulations and additional information made available by this notice will be considered by the Executive Officer.

Attachments