

State of California
AIR RESOURCES BOARD

**PROPOSED 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 REGULATIONS**

Resolution 17-44

November 16, 2017

Agenda Item No.: 17-11-6

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 39650, et seq., of the Health and Safety Code establishes the policy of the State to control emissions of toxic air contaminants, based on the best available scientific information, and directs the Board to establish airborne toxic control measures (ATCM);

WHEREAS, section 43013 of the Health and Safety Code directs the Board to adopt in-use performance standards and regulations for the control of air pollutants from off-road and nonvehicular engines;

WHEREAS, particulate emissions from diesel-fueled engines are toxic air contaminants, under California Code of Regulations, title 17, section 93000;

WHEREAS, in accordance with section 41750, et seq., of the Health and Safety Code, the Board has established, by regulation, a Statewide Portable Equipment Registration Program, California Code of Regulations, title 13, section 2450, et seq., (PERP Regulation), providing for the voluntary registration of portable engines and associated equipment, establishing emission limits and emission control requirements, and a fee schedule to cover the costs of administering and enforcing PERP, including a fee for the recovery of the cost of district enforcement activities, and outreach activities;

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the PERP Regulation;

WHEREAS, the Board adopted an Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater (Portable Engine ATCM), and approved the Resolution 04-7 on February 26, 2004;

WHEREAS, the Portable Engine ATCM is a technology-forcing regulation, and was designed to force the development of retrofit emissions control technologies and new engine technologies to meet regulatory requirements;

WHEREAS, CARB staff received comments raising concerns that the PERP Regulation and Portable Engine ATCM was not technologically or financially feasible in many instances because control technology had not developed as previously anticipated;

WHEREAS, CARB staff received comments raising concerns regarding the safety of engines equipped with required emission control devices that operate at high temperatures;

WHEREAS, CARB staff received comments from the staff at local air districts that raised concerns regarding the enforceability of the requirements of the Portable Engine ATCM and PERP Regulation;

WHEREAS, CARB staff conducted a comprehensive analysis in response to the comments received and concluded the PERP Regulation and Portable Engine ATCM as currently structured are not financially or technologically feasible for several reasons: some of the emission control technologies did not materialize as early as anticipated, the current federal engine performance standard for new off-road engines, called Tier 4, allows greater emissions than previously anticipated, and engines meeting the federal Tier 4 standard are physically larger and more costly than previous engines, precluding repowering some equipment with cleaner engines and imposing substantially increased costs compared to the estimates at the time the Portable Engine ATCM was adopted;

WHEREAS, the analysis conducted by CARB staff shows the PERP Regulations and Portable Engine ATCM would not produce public health benefits on the scale and timing intended because regulated entities will not be able to fully comply for the above reasons;

WHEREAS, to remedy these issues in the Portable Engine ATCM and PERP Regulation, CARB staff has proposed amendments to the Portable Engine (ATCM) and to the PERP Regulation, as set forth in Appendix A and Appendix B to the Initial State of Reasons released to the public on September 26, 2017;

WHEREAS, the amendments to the Portable Engine ATCM and PERP Regulation provide a realistic path to achieve emission reductions equivalent to those previously expected, in light of the pace of technological development;

WHEREAS, the amendments to the Portable Engine ATCM and the PERP Regulation were developed through discussions of draft versions made available to the public for review and comments at numerous public workshops, stakeholder workgroup meetings, and conference calls;

WHEREAS, with the information and comments received from the affected public, the staff has prepared a staff report (Initial Statement of Reasons), which presented the rationale for the proposed amendments to the Portable Engine ATCM and the PERP Regulation set forth in Attachments A and B hereto;

WHEREAS, the Initial Statement of Reasons, the proposed amendments to the Portable Engine ATCM and the PERP Regulation, and required supporting documents were made available as required by law for public review and comment 45 days prior to the public hearing to consider the proposed amendments to the PERP Program;

WHEREAS, the Board has considered the magnitude of the resultant air quality benefit and the potential effects of the proposed amendments to the Portable Engine ATCM and the PERP Regulation on the costs to businesses that use portable engines and associated equipment prior to adopting any emission limit or emission control requirement;

WHEREAS, the Board has considered the economic analyses in the Initial Statement of Reasons and the impact of the proposed regulatory action on the economy of the State;

WHEREAS, the PERP Regulation and Portable Equipment ATCM, as amended, are consistent with federal emission standards for new nonroad engines and is at least as protective of public health and welfare as those standards;

WHEREAS, California's geography, climate, population density, and high numbers of engines that contribute to some of the worst air quality in the nation are compelling and extraordinary conditions that can be addressed, in part, by programs to reduce emissions from portable equipment and engines;

WHEREAS, the PERP Regulation and Portable Engine ATCM, as amended, incorporate federal test procedures and provide adequate lead time for portable equipment owners and operators to comply with the emission standards to be consistent with Section 209 of the Clean Air Act;

WHEREAS, the California Environmental Quality Act and Board regulations require that a project which may have significant adverse environmental impacts may not be adopted as originally proposed if feasible alternatives or mitigation measures are available to substantially reduce or eliminate such identified impacts;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and the Board conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff determined that for the proposed amendments, the Board can rely on the environmental analyses prepared under its certified regulatory program included in the Staff Reports released in 2004, 2007 and 2009, and that its review of the record evidence shows that the amendments will not result in new significant adverse environmental impacts, as described in Appendix J of the Staff Report;

WHEREAS, the Board prepared an environmental analysis under its certified regulatory program for the proposed amendments, and circulated it as part of the Staff Report for 45 days; the EA concluded there is no substantial evidence to support a fair argument that the proposed amendments will result in any significant adverse impacts on the environment;

WHEREAS, no comments were received during the 45-day comment period that raise significant environmental issues associated with the proposal and no approval of written responses to environmental comments is required under California Code of Regulations, title 17, section 60007;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, the Board finds that:

The fleet average emission standards in the Portable Engine ATCM are financially and technologically unachievable and should be revised to make them both more feasible for engine owners and more enforceable by the Board and local air district staff;

The allowable hours for low-use engines should be increased to be consistent with other Board regulations;

Once an older engine has been designated as low-use or emergency-use, it should not be allowed to return to regular use unless it has exceeded the imposed operational restrictions and can comply with all applicable requirements for regular use of the Portable Engine ATCM;

All portable engines operating in California must be certified to an emission standard, not just those that have been permitted or registered;

Certain portable engines subject to other Board Regulations, engines that are used exclusively for emergency events, and engines approved for use at hazardous locations should be exempt from the Portable Engine ATCM;

Portable engines that have been operating within California prior to 2017 may be able to obtain Permits to Operate or Registrations as long as they comply with the requirements of the Portable Engine ATCM and PERP Regulation;

Owners of portable engines that take specific actions to reduce emissions from their fleet prior to or beyond the requirements of the Portable Engine ATCM should receive a benefit when demonstrating final compliance;

Certain portable engines should not be allowed to be sold within California after they become illegal to operate in the State;

A requirement for Disclosure of Applicability should be added to the Portable Engine ATCM to be consistent with other Board regulations;

Recordkeeping and reporting requirements in the Portable Engine ATCM and PERP Regulation should contain all the necessary information to enforce the requirements in both regulations;

Portable equipment operated as part of a stationary source as determined by the local air district should not be eligible for registration under the PERP Regulation, with certain limited exceptions;

Registration shall preempt local air district permits for portable equipment, except for specific locations and circumstances as specified in the PERP Regulation;

Auxiliary engines on two-engine vehicles that are subject to the Regulation for In-Use Off-Road Diesel Fueled fleets should be eligible for registration under the PERP Regulation;

Newly-produced portable engines approved for use at hazardous locations as set forth in the Code of Federal Regulations should be eligible for registration under the PERP Regulation until 2029;

The application process for registration under the PERP Regulation should be as efficient as possible and include an option to allow the cleanest engines available to operate with a temporary registration while the application is being processed;

Applications for ownership transfer of the registration under the PERP Regulation for engines that are about to become illegal to operate must not be accepted by the Board six months prior to the deadlines in the Portable Engine ATCM;

Engines brought into the State to operate during an Emergency Event should be certified to an emission standard and only allowed to operate without a permit or registration for one year, as allowing non-certified engines to operate without a permit or registration for an extended period of time such as during the recent drought caused economic hardship to California businesses;

Large projects of portable engines must not interfere with any Ambient Air Quality Standard, and the local district should have a mechanism to enforce this requirement specified in the PERP Regulation;

The fees collected under the PERP Regulation need to be increased to cover the actual cost of implementation of the program and inspections;

Owners of portable engines that fail to correctly pay the discounted inspection fees may be billed by the local district for the correct fee amount and may be prevented from using the discount in the future;

The home district listed on the registration under the PERP Regulation may need to be changed at a time other than renewal to avoid inspection conflicts;

The proposed amendments meet the statutory requirements that the Board may adopt and periodically revise and update the PERP Portable Equipment Registration Program Regulation as identified in section 41752 of the Health and Safety Code;

The proposed amendments meet the statutory requirements that the Board may adopt and periodically revise and update Airborne Toxic Control Measures as identified in section 39666 of the Health and Safety Code;

The proposed amendments were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

California's standards and other requirements relating to the control of emissions from nonroad vehicles and engines, including the PERP Regulation and Portable Engine ATCM as amended, are, in the aggregate, at least as protective of public health and welfare as applicable federal standards;

California needs the PERP Regulation and Portable Engine ATCM, as amended, to meet compelling and extraordinary conditions;

The PERP Regulation and Portable Engine ATCM, as amended, are consistent with Section 209 of the Clean Air Act;

The PERP Regulation and Portable Engine ATCM, as amended, that are consistent with federal standards for portable engines, do not raise new issues from those raised when U.S. EPA most recently determined they are authorized under Section 209(e) of the Clean Air Act;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of the Board, would be more effective at carrying out the purpose for which the regulation is proposed or

would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed amendments are consistent with the Board's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The potential environmental impacts of the proposed amendments are considered by the prior environmental analyses and findings prepared to comply with CEQA, the amendments will not result in any significant adverse environmental impacts, and are expected to have a positive impact on the enforceability of the overall regulatory program, and no revisions to the prior environmental analyses are required because substantial evidence in the records shows there are no changes that will result in new significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption the amendments as set forth in Attachments A and B.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by the Board's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulations, as set forth in Attachments A and B. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209(e)(2) of the Federal Clean Air Act, that the emission standards and other requirements related to the control of emissions adopted as part of the amendments to the regulations adopted herein are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions, and that the adopted

standards and accompanying enforcement procedures are consistent with the provisions of section 209 of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the U.S. Environmental Protection Agency with a request that it confirm that the regulations are within the scope of existing authorizations that have been granted pursuant to section 209(e)(2) of the Clean Air Act, or that it grant California new authorizations pursuant to section 209(e)(2) of the Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 17-44 as adopted by the California Air Resources Board.

Rana McReynolds, Clerk of the Board

Resolution 17-44

November 16, 2017

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Greater Than 50 Horsepower, title 17, California Code of Regulations, sections 93116*, 93116.1, 93116.2, 93116.3, 9116.3.1*, 93116.4 and 93116.5* as set forth in Appendix A to the Staff Report, issued September 26, 2017.

Attachment B: Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation, title 13, California Code of Regulations, sections 2450, 2451, 2452, 2453, 2455, 2456, 2457*, 2458, 2459, 2460, 2461, 2462, 2463*, 2464, and 2465* as set forth in Appendix B to the Staff Report, issued September 26, 2017.

*There are no changes proposed to these regulatory sections, but included to provide entirety of the Portable Engines ATCM and PERP Regulation for clarity and convenience.