

UPDATED INFORMATIVE DIGEST

2007 AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM (PERP) REGULATION AND THE AIRBORNE TOXIC CONTROL MEASURE (ATCM) FOR DIESEL-FUELED PORTABLE ENGINES

Sections Affected: Amendments to title 13, California Code of Regulations (CCR), article 5, sections 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461 and 2462 which is the Statewide Portable Equipment Registration Program. Amendments to title 17, California Code of Regulations (CCR), sections 93116, 93116.1, 93116.2 and 93116.3 and adoption of section 93116.3.1 which is the Airborne Toxic Control Measure for Diesel-Fueled Portable Engines.

Background: The Board adopted the Portable Engine ATCM in February 2004. Portable engines include a wide variety of engine types and uses. A portable engine may provide primary power to a piece of equipment or it may serve as an auxiliary engine.

The Legislature passed the portable equipment registration statutes in 1995. These statutes (HSC §§41750 et seq.) required ARB to create and maintain a program for the registration of engines and equipment that are operated at more than one location throughout the State. Per these 1995 statutes, the Board adopted a Statewide Regulation establishing the Portable Equipment Registration Program (PERP) on March 27, 1997, and it became effective on September 17, 1997. The Board has previously approved amendments to the PERP Regulation on December 11, 1998, February 26, 2004, and June 22, 2006. When an engine is registered in PERP, state law provides that the owner of that engine need not obtain local air district permits prior to operating. To be registered in PERP, however, the engine being registered must meet the most stringent emissions standards in effect at the time of application.

Most of the engines associated with portable equipment are diesel-fueled, making these engines also subject to the requirements of the Portable Engine ATCM. The Portable Engine ATCM covers all portable engines, not only those registered in PERP.

At its September 2006 meeting, the Board received public testimony concerning the inability to register older engines in the PERP. After January 1, 2006, the PERP Regulation only allowed engines to register that met the current nonroad emission standards in effect at the time of application submittal. Pursuant to the testimony, the Board directed staff to consider options and report back to the Board.

ARB staff, in consultation with affected industry and the local air districts, developed emergency amendments to the PERP Regulation and the Portable Engine ATCM. The Board approved these emergency amendments at its December 7, 2006 public hearing, and they were approved by the Office of Administrative Law (OAL) on

December 27, 2006. These emergency amendments were filed with the Secretary of State and were effective for a period of 120 days.

On March 22, 2007, staff presented to the Board amendments to the PERP Regulation and the Portable Engine ATCM. These amendments made permanent the emergency regulatory changes to PERP Regulation and the Portable Engine ATCM adopted by the Board on December 7, 2006. ARB staff also proposed some minor revisions that are intended to provide additional clarity and expediency to the implementation of the PERP Regulation.

On June 29, 2007, ARB staff sent out a notice of additional amendments to the PERP Regulation and Portable Engine ATCM for public comment for a period of 15 days. These additional amendments were also intended to provide additional clarity and expediency to the implementation of the PERP Regulation and Portable Engine ATCM.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The following amendments will allow certain engines to permit or register that would not otherwise qualify. They also provide regulatory relief for affected industry relative to the availability, sale, purchase, and registration of complying engines.

PERP Regulation

Resident Engines

ARB staff proposed a redefinition of what constitutes a resident engine in the PERP Regulation to include those Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality.

Tier 0 Spark-Ignition Engines

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.

Tier 1 and Tier 2 Diesel Engines

The amendments allow the registration in PERP of "resident" Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. After January 1, 2010, only the cleanest tier available will be allowed to register.

Recordkeeping and Reporting

ARB staff proposed the removal of the hour meter requirement for rental equipment units. These rental equipment units are already required to track daily throughput, which is adequate for determining compliance with daily emission limitations. The annual reporting requirement was also revised to only require reporting of throughput, instead of hours. The tracking of hours of operation for these units is redundant and places an undue burden on industry.

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 is only applicable to rock crushing and screening plants, and will make it much easier to determine compliance with throughput limits as stated on the registration

Registration and Inspection Fees

ARB staff proposed a requirement for collecting back registration and inspection fees for these Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. The proposed fee schedule favors owners and operators that act early. Fees are to be collected from either the year of purchase, or model year of the engine. Fees are higher for those owners or operators of Tier 1 engines if a Tier 2 standard was in effect at the time of purchase. The bulk of these back fees will be redirected to the districts for compliance programs. In addition to having to pay back fees, the owner or operator would also have to pay current registration fees that would be due.

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 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 will have to make sure that the hourly rate billed to the source was only for the time spent inspecting the equipment unit only.

Miscellaneous Amendments

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.

Staff modified 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

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 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.

ARB staff proposed the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the PERP Regulation.

Portable Engine ATCM

Tier 0 Engines

Tier 0 engines are those that are not certified to a California or federal nonroad emission standard. The proposed amendments to the Portable Engine ATCM will allow local air districts to permit Tier 0 engines at their discretion.

Tier 1 and Tier 2 Engines

The Portable Engine ATCM will only allow the permitting by the local air districts or registration in PERP of Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality. After January 1, 2010, only the cleanest tier available will be allowed to register or seek local air district permitting, as is required by the existing Portable Engine ATCM.

Compliance Flexibility

ARB staff proposed a provision in section 93116.3.1 in the Portable Engine ATCM that would provide compliance flexibility during those periods where it can be verified to ARB's Executive Officer that compliant engines are not sufficiently available.

Staff modified section 93116.3(b)(7) from the original proposed amendments 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) from the original proposed amendments 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. Staff made these changes to simplify these provisions by removing the 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.

Miscellaneous Amendments

ARB staff proposed the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the Portable Engine ATCM.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that are comparable to the PERP Regulation or the Portable Engine ATCM. However, in section 213 of the Clean Air Act, Congress directed the Administrator of the United States Environmental Protection Agency (U.S. EPA) to determine whether emissions from nonroad engines cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and safety, and if so, promulgate emission standards for the control of such engines. Engines used in portable equipment are a general category of nonroad engines. To date, the U.S. EPA has adopted emission standards for new spark-ignition nonroad engines at or below 19 kilowatts (25 horsepower) and compression-ignition nonroad engines at or above 37 kilowatts (50 horsepower). Concurrent with authorizing the U.S. EPA to adopt emission standards and other regulations for nonroad engines, Congress established a nonroad engine preemption prohibiting all states, including California, from adopting emission standards and other requirements related to the control of emissions from new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles.

In contrast to other states, however, the Clean Air Act permits California to request authorization from the U.S. EPA to adopt and enforce necessary emission standards and regulations for California for all nonroad engines not otherwise expressly preempted. To date, California has adopted several nonroad regulations, including emission standards for new spark-ignition engines at or below 19 kilowatts (25 horsepower) and compression-ignition engines at or above 37 kilowatts

(50 horsepower). Both regulations have received authorization from the U.S. EPA. The Statewide Regulation promotes consistency between the California and federal requirements and does not establish direct emission standards or other emission related requirements (which does not include in-use operational controls) for engines that are expressly preempted under the Clean Air Act's section 209(e)(1).