

State of California
AIR RESOURCES BOARD

Executive Order R-10-022

*Relating to the Regulations Applicable to Portable Diesel Engines and Diesel Engines
Used in Off-Road and On-Road Vehicles*

WHEREAS, on January 28, 2010, the Air Resources Board (ARB or Board) conducted a hearing to consider the adoption of proposed amendments to the Statewide Portable Equipment Registration Program (Statewide PERP) Regulation, the Airborne Toxic Control Measure for diesel-fueled portable engines (Portable Engine ATCM), and Diesel Engines Used in Off-Road and On-Road Diesel-Fueled Vehicles, as set forth in the Initial Statement of Reasons released to the public on December 10, 2009;

WHEREAS, following the public hearing, the Board adopted Resolution 10-2, in which the Board approved sections 2451, 2452, 2453, 2456, 2458, 2460, 2461 and 2462, the Statewide PERP, title 13, Cal. Code Regs., as set forth in Attachment A thereto, and the amendments to sections 93116.1, 93116.2 and 93116.3, the Portable Engine ATCM, title 17, Cal. Code Regs., as set forth in Attachment B thereto, and section 2449, the regulation for In-Use Off-Road Diesel-Fueled Vehicles, title 13, Cal. Code Regs., as set forth in Attachment C thereto, and amendments to section 2025, the regulation for In-Use On-Road Diesel-Fueled Vehicles, title 13, Cal. Code Regs., as set forth in Attachment D thereto;

WHEREAS, Resolution 10-2, directed the Executive to determine if additional conforming modifications to the regulations were appropriate; if no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulations, as set forth in Attachments A, B, C, and D thereto; if the Executive Officer determined that additional conforming modifications were appropriate, the Executive Officer shall adopt the modified regulations after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as that were submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that was warranted;

WHEREAS, on March 15, 2010, the modified regulations, reflecting the amendments approved by the Board and other changes made to best reflect the intent of the Board at the hearing, were made available for public comment for a period of 15-days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, Cal. Code Regs., section 44; and

WHEREAS, written comments were received during the 15-day comment period and those comments have been considered by the Executive Officer.

WHEREAS, the Executive Officer has deemed it is necessary to bifurcate the rulemaking file in order to get the regulation operative as soon as possible for the stakeholders that need the operating extension for certain engines that were supposed to be put out of service by January 1, 2010 and are not able to legally operate their engines until the extension is in effect;

WHEREAS, on August 27, 2010, the Executive Officer adopted the first part of the bifurcated Statewide PERP, Portable Engine ATCM, Diesel Engines Used in Off-Road and On-Road Diesel-Fueled Vehicles regulation, consisting of sections 2025, 2449, 2449.3, 2452, 2453, 2456, 2458, 2460, 2461 and 2462, title 13, Cal. Code Regs., and sections 93116.1, 93116.2, and 93116.3, title 17, Cal. Code Regs., which were appended to Executive Order R-10-016, and reflected modifications made during the initial comment period and the first 15-day comment periods;

WHEREAS, on October 19, 2010, the first part of the bifurcated regulation consisting of sections 2025, 2449, 2449.3, 2452, 2453, 2456, 2458, 2460, 2461 and 2462, title 13, Cal. Code Regs., and sections 93116.1, 93116.2, and 93116.3, title 17, Cal. Code Regs., was approved by the Office of Administrative Law, filed with the Secretary of State and entered into effect on the same day;

WHEREAS, in order to complete the amendments to the Statewide PERP, Portable Engine ATCM, Diesel Engines Used in Off-Road and On-Road Diesel-Fueled Vehicles regulation, on November 10, 2010, a second 15-day notice and modified regulations were made available for public comment for a period of 15 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 and Government Code section 11340.85;

WHEREAS, written comments were received during the Second 15-day comment period and those comments have been considered by the Executive Officer.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 10-2 are incorporated herein.

IT IS FURTHER ORDERED, that the amendments to sections 2451, 2452, 2453, 2456, 2457, 2458, and 2459, title 13, Cal. Code Regs., and sections 93116.1, 93116.2, and 93116.3, title 17, Cal. Code Regs., are adopted as set forth in Attachment 1 hereto.

Executed this 8th day of December 2010, at Sacramento, California.

/s/

James N. Goldstene
Executive Officer

Attachment