

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking Including
Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER A PROPOSED REGULATION FOR
EQUIPMENT AND PROCESS PRECERTIFICATION

Public Hearing Date: June 14, 1996
Agenda Item No: 96-5-1

I. GENERAL

The Staff Report entitled "Proposed Regulation for Equipment and Process Precertification" ("Staff Report"), released April 26, 1996 was made available for public inspection and is incorporated by reference herein. The Staff Report provides an extensive description of the rationale and necessity for the action proposed. The proposed action consisted of the adoption of new Title 17 California Code of Regulations ("CCR") § 91400. The new Title 17 CCR § 91400 incorporates by reference a document entitled "Criteria for Equipment and Process Precertification" (Criteria).

On June 14, 1996, the Air Resources Board (ARB or Board) conducted a public hearing at which it received written and oral comments on the regulatory proposal. At the conclusion of the public hearing, the Board approved the proposed regulatory action by adopting Resolution 96-35. Resolution 96-35 is attached hereto and incorporated by reference herein. As adopted, the regulation contains non-substantive changes from the originally proposed test. The additional language of new Title 17 CCR § 91400 was included to facilitate the user's obtaining a copy of the document incorporated by reference.

The Criteria was incorporated by reference into § 91400 due to the length (21 pages), the technical nature of portions of the Criteria, and the relatively limited segment of the public (applicants, district staff, and ARB staff) which the Criteria applies to. The ARB has historically incorporated certification procedures and test methods by reference. As stated in § 91400, the incorporated Criteria will be available directly from the ARB upon request. In addition, ARB staff plans to provide the Criteria to all applicants for precertification, plans to make the Criteria available from local air district offices throughout the state, and has already made the proposed Criteria available on the California Air Resources Board Information System electronic bulletin

board and on the Internet. The ARB believes that the incorporation by reference will make the material more available to those who need it, especially to small businesses, for whom subscribing to the Code of Regulations may be a significant expense. The ARB also believes that the incorporation by reference of the detailed Criteria will make Title 17 less cumbersome and easier to use for those who do not need the precertification process procedures and requirements.

The referred documents have been available from the ARB upon request pursuant to Title 13, CCR section 1902 and were available in the context of the subject rulemaking in the manner required by Government Code section 11346.7(a).

Pursuant to Government Code section 11246.9(a)(2), ARB has determined that this regulatory action will not result in a mandate to any local agency or school district.

Pursuant to Government Code section 11346.9(a)(4), ARB has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which regulatory action was proposed or would be as effective and less burdensome to affected private persons, than the actions taken by ARB.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period, and one oral received at the public hearing. During the 45-day comment period written comments were received from the California Environmental Business Council, the California Air Pollution Control Officers Association, the Engine Manufacturers Association, and the Deputy Secretary for Environmental Technology at Cal/EPA. At the public hearing oral comments were provided by Fulton Boiler Works, Incorporated. A majority of the commenters supported the staff's recommendation. A summary of the comments recommending changes to the proposed regulation and Criteria and the agency responses thereto are set forth below.

1. Comment: The Engine Manufacturers Association (EMA) expressed concern about requirements for independent testing. They proposed that the Criteria be amended to allow self-testing and self-certification for compression-ignition engines.

Agency Response: The proposed Criteria (Section X.c.) allows the Executive Officer to approve testing by someone other than independent testing companies. In addition, the Executive Officer can approve testing by an applicant or contractor which has a conflict of interest (Section X.d.) when appropriate. We believe that we have included the necessary flexibility into the draft regulation, while still fulfilling ARB's responsibility to precertifying the equipment.

2. Comment: EMA wanted requirements that the districts accept statewide precertifications.

Agency Response: California Health and Safety Code section 39620 does not give ARB the authority to mandate district acceptance of precertified equipment. We recognize that precertification relies on voluntary district acceptance, and ARB staff will encourage districts to implement permit programs which take advantage of the benefits of precertified equipment.

3. Comment: EMA expressed concerns that ARB adopted test methods are required and requested that the regulation list a specific test method as an approved method.

Agency Response: The regulation and Criteria give the Executive Officer the authority to allow the use of alternative test methods including ISO Method 8178 or other alternative test methods proposed by applicants for precertification (Section VII.c.). The regulation and Criteria does not adopt or approve specific methods. ARB and district testing staff input would be sought prior to approval of any alternative methods to ensure that methods proposed are appropriate and would satisfy regulatory requirements. Again, the Criteria was written to allow flexibility in this area.

4. Comment: EMA wanted ARB staff to utilize performance standards aligned with ARB & EPA non-road standards rather than prescriptive hardware requirements.

Agency Response: The regulation and Criteria do not specify the form of the precertification standards. Each applicant for precertification can propose standards as it deems appropriate. It is likely that precertification standards for each application will be closely related to the type of standards found in either local district, statewide, or federal regulations.