



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

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE
REGULATIONS APPLICABLE TO PORTABLE DIESEL ENGINES AND
DIESEL ENGINES USED IN OFF-ROAD AND ON-ROAD VEHICLES**

Public Hearing Date: January 28, 2010
Agenda Item Numbers: 10-1-2

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State of California
AIR RESOURCES BOARD

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I. GENERAL DISCUSSION

This Final Statement of Reasons (FSOR) provides an update to the Staff Report: Initial Statement of Reasons for Proposed Amendments (Staff Report). The Staff Report was released to the public on December 10, 2009 and is incorporated by reference herein. This FSOR identifies and explains the modifications that were made to the original proposal as a result of public comment and staff analysis after the Staff Report was issued. The FSOR also summarizes written and oral comments the Board received on the proposed regulatory text during the formal rulemaking process and the ARB's responses to those comments.

I.a Description of Board Action

At its January 28, 2010 hearing, the Air Resources Board (ARB or Board) adopted resolution 10-2 approving the amendments to the following regulations:

1. The Regulation for the Statewide Portable Equipment Registration Program (PERP Regulation);
2. The Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines (Portable Engine ATCM);
3. The Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road Vehicle Regulation); and
4. The Regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Vehicles (On-Road Vehicle Regulation).

In this rulemaking, staff proposed the following changes:

1. Provide an operating extension for certain uncertified portable engines in small and medium fleets. Approximately half of the uncertified engines that were required to be put out of service by December 31, 2009 will now be able to operate until December 31, 2010 upon selection by their owners.

2. Revise the applicability of the regulations for water well drilling rigs. Both engines on two-engine water well drilling rigs will now be subject to the requirements of the Off-Road Vehicle Regulation.
3. Change the permit and registration eligibility requirements for some portable engines. Engines certified to the marine and on-highway emission standards may be registered in the Statewide PERP when operated in an eligible manner.
4. Streamline the recordkeeping and reporting requirements. The recordkeeping and reporting requirements have been reduced for all certified engines and engines owned by rental businesses.
5. Incorporated miscellaneous minor wording changes that will provide additional clarity to the PERP Regulation and Portable Engine ATCM.

These amendments were initiated by the publication of the Notice of Public Hearing to Consider the Adoption of Proposed Amendments to the Regulations Applicable to Portable Diesel Engines and Diesel Engines Used in Off-Road and On-Road Vehicles (45-Day Notice) on December 10, 2009. Written comments were received during the 45-day public comment period, which closed on January 28, 2010, the date of the public hearing. ARB also received written and oral comments made by local regulatory agencies, affected businesses, and the public on the day of the public hearing.

In response to comments received during the 45-day comment period, ARB staff presented to the Board members an issue regarding permit eligibility of certified engines that do not meet the current tier, and agreed to work with the local districts and stakeholders on a possible modification to the Portable Engine ATCM to resolve it. In addition, based on public testimony at the hearing, the Board directed staff to make the following three additional modifications to the regulations:

1. Give the uncertified engine operating extension to owners of larger fleets;
2. Further revise the recordkeeping and reporting requirements for rental engines to include only necessary information; and
3. Potentially change the applicability of the regulations to snow blowing equipment, if the evaluation by ARB staff shows this to be necessary.

I.b Modifications to the Original Proposed Regulations

On January 28, 2010, the Board adopted resolution 10-2 which included amendments to the four regulations. As part of this action, the Board directed staff to address certain issues, and make appropriate changes consistent with the changes proposed in the original 45-day notice package. Staff addressed these issues and, on March 15, 2010, sent out a notice proposing additional amendments to the PERP Regulation and Portable Engine ATCM consistent with the Board's direction for public comment for a period of 15 days. These additional amendments will provide the same extension for uncertified engines to all owners of portable engines, regardless of fleet size.

Summary of Proposed Modifications

In the first 15-day Notice, ARB made the following modifications to the text of the regulations:

1. Modified section 2456(f)(11) of the Statewide PERP Regulation to remove the fleet size restriction for the operating extension of registered uncertified spark-ignition engines.]
2. Modified section 93116.3(b)(1)(C) of the Portable Engine ATCM to remove the fleet size restriction for the operating extension of permitted or registered uncertified diesel-fueled engines.

I.c Bifurcation of the Rulemaking

The Executive Officer determined it was necessary to bifurcate approval of the regulations so that the final regulations with the most critical elements will become legally effective as expeditiously as possible. The first submittal for approval contains critical elements including the operating extension for non-certified engines, the changes to the regulations regarding water well drilling rigs, allowing for the continued operation of certified on-highway engines in portable applications, allowing certified marine engines used on vessels to register in PERP, and other changes necessary to result in stand-alone regulations when approved.

Summary of Amendments Included in the First Submittal

Below is a list of the regulatory sections that ARB is requesting approval for in this first submittal.

Title 13, California Code Of Regulations, sections 2025(c)(12) to (14), 2449(b), 2449(c)(60), 2449(c)(61), 2449(c)(62), 2449(c)(63), 2449(e)(16), 2449(g)(1), 2449(g)(1)(B), 2449.3(b)(2)(C), 2452(c), 2452(ww) to (bbb), 2453(g), 2456(f), 2456(f)(2), 2456(f)(10), 2456(f)(11), 2456(i), 2458(j) to (l), 2460(b)(1), 2460(b)(3), 2460(b)(5) 2461(c) 2461(d), 2461(e), 2461(g), 2461(j), 2461(k), Table 2 and Table 3 in section 2461, and 2462(a).

Title 13, California Code Of Regulations, sections 93116.1(b)(8) to (10), 93116.2(a)(19), 93116.3(b)(1)(A), and 93116.3(b)(1)(C)

All of these provisions above are included in the Final Regulation Orders submitted with this rulemaking package. The following is a description of the amendments being submitted for approval in this first submittal.

1. Provide a limited operating extension to spark-ignition engines registered in PERP and in-use portable diesel engines. This affects sections 2456(f)(10), 2456(f)(11), 2460(b)(1), and 2462(a) of the PERP Regulation and sections 93116.2(a)(19), 93116.3(b)(1)(A), and 93116.3(b)(1)(C) of the Portable Engine ATCM.

2. Revise the applicability of the regulations to engines on two-engine water well drilling rigs. This affects sections 2452(zz), 2453(g), 2456(i), and 2458(l) of the PERP Regulation, and 93116.1(b)(10) of the Portable Engine ATCM, and all of the amended sections of the Off-Road and On-Road Vehicle Regulations.
3. Allow for the continued operation of permitted or registered on-highway certified diesel engines beyond January 1, 2010. This affects section 93116.3(b)(1)(A) of the Portable Engine ATCM.
4. Allow certified engines on marine vessels to register in PERP. This affects sections 2452(c) and 2456(f)(2) of the PERP Regulation
5. Delete obsolete definitions in sections 2452(ww), (xx) and (aaa) of the PERP Regulation so that the section numbering will be consistent with the added definition of “water well drilling rig” in section 2452(zz).
6. Delete the vendor report in section 2458(j) which was deemed unnecessary so that the section numbering will be consistent with the new provision for water well drilling rigs in section 2458(l).
7. Delete section 2461(k), which has become obsolete, including Table 2 of the PERP Regulation because this section makes reference to definitions in 2452(ww) and (xx) which are being deleted in this submittal.
8. Because Table 3 will now be Table 2, all sub-sections of 2460 and 2461 with a reference to the fee table are also included for consistency.

The second submittal will include amendments listed in the first 45-day public notice which consist mainly of changes intended to improve clarity of the PERP Regulation and Portable Engine ATCM, and also amendments that will be made available for public comment by a second 15-day notice, consistent with the Board direction mentioned previously. The amended sections to be submitted in the second submittal are clearly noted in the Final Regulation Orders included with this submittal.

This FSOR includes only comments directed towards the amendments listed in the initial 45-day notice and the first 15-day notice. A separate FSOR document identifying the remaining amendments and including comments made during the second 15-day notice will be issued subsequently. ARB plans to submit the second submittal with these additional amendments, as part of the current rulemaking, on or before December 9, 2010.

I.d Fiscal Impact of Proposed Changes

The Board has determined that this regulatory action will result in temporary cost savings to some State agencies, will have no impact on federal funding to the State, and will have some temporary cost savings to local government agencies. The temporary savings are due to the delay in replacing certain uncertified portable engines by one year, which will affect the latter half of fiscal year 2009/2010 and the first half of fiscal year 2010/2011.

ARB staff originally estimated that the fiscal impact of the one year extension for uncertified engines to affected local government agencies was a temporary delay in costs of approximately \$10.3 million. With the modification to include all fleets, 35 additional local agencies will qualify for the extension. Therefore, the delay in costs for local government agencies is now approximately \$11 million.

ARB staff originally estimated that the fiscal impact of the one year extension for uncertified engines to affected State government agencies was a temporary delay in costs of about \$228,000. With the modification to include all fleets, one additional State agency will qualify for the extension. Therefore, the delay in costs for State government agencies is now approximately \$339,000.

I.e Consideration of Alternatives

Alternatives to this regulatory action were considered in the Staff Report, in accordance with Government Code section 11346.2. After responding to the comments received, ARB concludes that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the amendments adopted by the Board.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

II.a Written Comments Received During the 45-Day Public Comment Period

The Board received several written comments during the formal 45-day comment period. The 45-day public comment period was open from December 10, 2009 to January 28, 2010. Persons submitting written comments during the public comment period are listed in Table 1. Following the list are summaries of each comment as well as agency responses. Each response includes an explanation of either any changes made or the reasons for making no change.

Table 1
List of Individuals & Businesses Submitting Written Comments
During the 45-Day Public Comment Period

Commenter Reference Code	Name & Affiliation	Date of Comment
BOB	Bob Private Citizen San Diego, California	12-11-09
HCAT	Wood, Jeff Hawthorne Caterpillar San Diego, California	12-18-09
BAES	Bandera, Cara BAE Systems SDRS San Diego, California	1-05-10
CRI	Boyd, Charles Cinerep International, Inc. Chatsworth, California	1-05-10
WFUS	Hassebrock, Robert Weatherford U.S., L.P. Santa Paula, California	1-06-10
NWS	Thomas, James Nabors Well Services Co. Bakersfield, California	1-07-10
BJSC	Van Allen, Doug BJ Services Company USA Bakersfield, California	1-08-10
EAI	Danforth, Miles Evergreen Arborists, Inc. Woodland, California	1-13-10
LASTELIC	Lastelic, John Private Citizen Location Unknown	1-14-10

Commenter Reference Code	Name & Affiliation	Date of Comment
CRS	Mangold, Grace John Johnson The CAT Rental Store Stockton, California	1-18-10
MANN	Mann, David Private Citizen Location Unknown	1-18-10
MCAQMD	Brown, Christopher Mendocino County AQMD Ukiah, California	1-19-10
WALLACE	Wallace, Arleen Private Citizen Location Unknown	1-20-10
MAHAN	Mahan, Kevin Private Citizen Location Unknown	1-20-10
SCEC	Lany, Karl SCEC Air Quality Specialists Orange, California	1-21-10
ARA	Graboski, Michael, Ph.D. McClelland, John, Ph.D., V.P., Gov. Affairs American Rental Association Washington, D.C.	1-22-10
TFI	Gaines, Bill, Chairman Transfer Flow, Inc. Chico, California	1-25-10
MBAPCD	Stedman, Richard Monterey Bay Unified APCD Monterey, California	1-26-10
GU	Venerable, Randall Generators Unlimited Brisbane, California	1-26-10
SLOAPCD	Allen, Larry San Luis Obispo APCD San Luis Obispo, California	1-26-10
CGA	Mortenson, J. Michael California Groundwater Association Santa Rosa, California	1-27-10
CIAQC	Lewis, Michael Construction Industry Air Quality Coalition West Covina, California	1-27-10
GCTWD	Segarra, Anthony Gary C. Tanko Well Drilling, Inc. Location Unknown	1-27-10

Committer Reference Code	Name & Affiliation	Date of Comment
STEVE	K., Steve Private Citizen Location Unknown	1-27-10
CCIMA	Harper, Adam Cal. Construction & Industrial Materials Assoc. Sacramento, California	1-27-10
MC	McNally, James Manson Construction Long Beach, California	1-27-10

Comment 1:

Several private citizens requested that the agency abandon or severely curtail the regulation of diesel engines. (BOB, LASTELIC, MANN, WALLACE, MAHAN, STEVE)

Agency Response:

The ARB is committed to protecting public health from the harmful effects of Air Pollution. In 1998, California identified diesel exhaust particulate matter (PM) as a toxic air contaminant based on its potential to cause cancer, premature death, and other health problems. Diesel engines also contribute to California's fine particulate matter (PM 2.5) air quality problems. Those most vulnerable are children whose lungs are still developing and the elderly who may have other serious health problems. Based on year 2005 emissions in California, diesel PM contributes each year to approximately 3,500 premature deaths and thousands of hospital admissions, asthma attacks and other respiratory symptoms, and lost workdays. Overall, diesel engine emissions are responsible for the majority of California's known cancer risk from outdoor air pollutants. These regulations for diesel engines are necessary to reduce the public's exposure to toxic diesel PM. As part of the rulemaking process, the Board is required to consider the cost of the regulation that is designed to reduce emissions and protect public health.

Comment 2:

An industry representative requested that ARB create a web-based reporting system for portable equipment to reduce the cost of paperwork. This representative also requested an online fleet average emission calculator. (HCAT)

Agency Response:

Staff agrees with the value of electronic reporting tools. Currently, there is a fleet average emission calculator on our website. An online system is in development which will allow companies to register equipment, submit reports, and perform fleet calculations. ARB staff expects this system to be available within two years.

Comment 3:

Two industry representatives requested that changes be made to the PERP Regulation requirements for engines operating in State Territorial Waters (STW) to make them less burdensome to industry. Specifically, they recommended that the district notification requirement should be reduced or removed. (BAES, MC)

Agency Response:

This comment is outside the scope of the proposed amendments. No changes to the requirements for engines operating in the STW are being proposed at this time. However, ARB staff believes that this issue is best handled at the local district level in order to mitigate any potential emissions impacts.

Comment 4:

An industry representative stated that the compliance dates in the Portable Engine ATCM should be made to align with the requirements of the In-Use Off-Road Vehicle Regulation. Specifically, non-certified engines should be allowed the compliance deadlines of 2013 or 2015, depending on fleet size. (CRI)

Agency Response:

We recognize that similar engines are used in the two programs. However, there is a major difference in the timing of the rules that have been adopted for the two programs. The Statewide PERP Regulation was established in 1997 as an alternative program to the local permitting requirements of portable engines. Since the beginning of the program, there was a requirement that all registered Tier 0 engines had to be upgraded by January 1, 2010. This time period allowed businesses a minimum of 13 years of useful life to recover the cost of the equipment. However, due to economic conditions, the Board is allowing for a one-year extension of certain non-certified portable engines. In order to preserve emission reductions and protect public health, we have not proposed further relaxing the compliance date.

Comment 5:

Owners of larger fleets want the same operating extension for uncertified engines as was proposed for owners of smaller fleets. (WFUS, NWS, BJSC, CRS, CIAQC, CCIMA)

Agency Response:

At the hearing, the Board directed staff to grant the same operating extension for uncertified engines to all owners of portable engines.

Comment 6:

The amendment to allow certified on-highway engines to remain in service should have been made sooner because our company spent significant amounts of money to replace these on-highway engines already. (NWS, BJSC)

Agency Response:

As part of considering regulatory amendments, we evaluated the impact the change would have on affected businesses. This is an important element of our evaluation. We did not make this single change earlier due to the small number of engines affected, which would not justify the resources required for a regulatory effort. However, once ARB began amending other sections of the regulation it became effective to include this action as part of our overall regulatory effort. The change to allow on-highway certified engines used in portable applications to continue to remain in service was made after carefully considering both the costs and benefits of the proposed action and was developed as expeditiously as possible.

Comment 7:

ARB and the local districts should either thoroughly inspect all registered engines or focus inspections on older engines in order to verify that the uncertified engines that are not allowed to operate have been removed from service. (NWS, CRS)

Agency Response:

This comment is related to the ongoing implementation and enforcement of the regulation and not specifically to the proposed amendments. However, we agree that enforcement is an important part of the effectiveness of the program. In the last few years, additional funding has allowed the local air districts to enhance their activities and many illegally-operating engines have been identified.

Comment 8:

The amendments to the recordkeeping and reporting requirements contained in the PERP Regulation are still too burdensome, especially for rental companies. These requirements should be further revised to be less costly, or they should be completely removed. (BJSC, CRS, SCEC, CIAQC)

Agency Response:

At the hearing, the Board directed staff to evaluate the current recordkeeping and reporting requirements for rental equipment and make further amendments as necessary. We are currently developing proposed changes that will be subject to a subsequent 15-day public comment period.

Comment 9:

The PERP regulation should be revised to allow registrations to be issued electronically and accessed over the internet. (SCEC)

Agency Response:

An online system is currently under development which will allow companies to register equipment, submit annual reports, and perform fleet calculations. ARB staff expects this system to be available within two years.

Comment 10:

A few representatives from the wood chipping and water well drilling industries expressed support of the proposed amendments and urged the Board to adopt them. (EAI, CGA, GCTWD)

Agency Response:

Thank you for your support.

Comment 11:

A representative from a local air district does not want the vendor sales reporting requirement to be removed from the PERP Regulation. The commenter believes the information can be useful in finding those operators who are not in compliance with the requirement to have a permit or registration. (MCAQMD)

Agency Response:

The PERP Regulation is intended to only contain requirements for portable equipment registered in the program. It was not intended to regulate the sales of new equipment. In an effort to clarify the intent of the regulation, it was decided to remove this provision. If a mechanism is desired to track the sales of equipment for which a permit may potentially be required, then a vendor notification requirement should be established in the rules and regulations that require those mandatory permits.

Comment 12:

The language of the proposed amendment to section 2453(i)(3) of the PERP Regulation is not clear. (ARA)

Agency Response:

ARB staff made changes to the strikeout underline notation of this section which were published with the 15-day notice on March 15, 2010. These notation changes should clarify the proposed language.

Comment 13:

It is unclear what rental companies must provide in order to satisfy the requirement that “a written copy of applicable requirements” must be provided to the customer as part of the rental agreement per section 2458(b) of the PERP Regulation. (ARA)

Agency Response:

This comment is related to the ongoing implementation and enforcement of the regulation and not specifically to the proposed amendments. However, ARB staff has stated previously that a copy of the registration documents including the operating conditions would be sufficient to comply with this requirement. ARB staff plans to conduct additional outreach to improve awareness.

Comment 14:

Many of the items such as material throughput and specific location that are currently required to be tracked for recordkeeping are not known to the rental company. (ARA)

Agency Response:

ARB staff added certain criteria with these amendments, such as tracking specific location, in order to make it possible to determine compliance with the requirements of the applicable regulations. The rental equipment owners should make it part of the rental agreement that this information is required to be kept by the operator. However, as part of the modifications directed by the Board at the January 28, 2010 hearing, ARB staff will be evaluating the recordkeeping and reporting requirements for rental equipment and will be proposing further amendments as necessary. Any proposed changes will be subject to a subsequent 15-day comment period.

Comment 15:

Equipment used by a Provider of Essential Public Services (PEPS) but owned by the rental company should not be subject to the reporting requirements of section 2458(g) of the PERP Regulation. (ARA)

Agency Response:

ARB staff will consider this change as part of the modification directed by the Board. Any proposed changes will be subject to a subsequent 15-day comment period.

Comment 16:

There should be a refund available for rental companies who pay full inspection fees but then later qualify for the “multiple engine inspection fee discount.” (ARA)

Agency Response:

This is an implementation issue and is not related to the proposed amendments. This topic is specifically addressed in our Frequently Asked Questions (FAQ) document on our website. It states the following: “Inspection fees are required to be paid with the initial application and renewal. Because this multiple-engine discount has to be chosen in advance, registrants should give careful consideration to selecting this option as being able to comply with this provision will take significant planning on their part. Because the intent to participate in a multiple inspection discount must be chosen upfront per section 2460(b)(7) of the PERP Regulation, we are not able to issue a refund in situations where industry later elects to alter its inspection planning and/or schedule.”

Comment 17:

If the operator of rental equipment is in violation of any requirement in either the PERP Regulation or the Portable ATCM, then the owner of the equipment should not be held liable. (ARA)

Agency Response:

Rental equipment owners are required to give written notification of all the PERP regulation requirements to their customers. If an operator is then in violation of any of these requirements, the enforcement will be handled on a case-by-case basis by the local air district or ARB enforcement staff taking into consideration the specific circumstances to determine the responsible parties.

Comment 18:

The Retrofit Verification process should be revised to allow diesel particulate filters (DPFs) that have been verified for on-road engines to be automatically extended to off-road, portable, and stationary engines without additional testing. (TFI)

Agency Response:

This comment is outside the scope of the proposed amendments. The Retrofit Verification Program is not part of the regulations being amended by this action. However, ARB staff is available to discuss this matter further with the commenter.

Comment 19:

The portable ATCM should be revised to allow the retrofit of non-certified portable engines with DPFs instead of the current requirement to have them replaced or removed from service by January 1, 2010. (TFI)

Agency Response:

The Portable Engine ATCM does not allow retrofits of portable non-certified engines so that they may operate beyond January 1, 2010. During the development of the Portable Engine ATCM, it was the consensus among stakeholders that engine replacement, and not retrofit, was the best course of action for these non-certified engines. It should also be noted that most of the portable engines discussed in the comment letter are used at agricultural sources, and these engines are not subject to the regulations being amended with this action.

Comment 20:

Representatives from two local air districts do not want the Portable Engine ATCM to restrict the ability of the local air district's to issue permits for certified diesel-fueled engines that do not meet the current emission tier level. (MBAPCD, SLOAPCD)

Agency Response:

At the hearing, ARB staff proposed to work with the local air districts and stakeholders regarding this situation and make additional amendments if necessary. Proposed amendments will be available for public review in a subsequent 15-day comment period.

Comment 21:

An industry representative stated that ARB should re-evaluate the regulations applicable to portable engines with consideration to the recent economic recession, and relax the requirements to be less burdensome on businesses. (GU)

Agency Response:

ARB performs an economic analysis with each new regulation and regulation amendment. The proposed amendments will provide an operating extension for many engines which will result in economic relief for businesses that own these engines. A consideration of the current economic recession was an important factor in developing the proposed changes.

II.b Written Comments Received on the Day of the ARB Public Hearing

Written comments were also accepted by ARB at the time of the ARB Public Hearing (January 28, 2010). These written comments are also considered to be 45-day public comments. Individuals, businesses, and organizations submitting written comments at the public hearing are listed in Table 2. Following the list are summaries of each comment as well as agency responses. Each response includes an explanation of either any changes made or the reasons for making no change.

Table 2
List of Individuals & Businesses Submitting Written Comments on the Day of the ARB Public Hearing

Commenter Reference Code	Name & Affiliation	Date of Comment
RCRC	Pitto, Mary Regional Council of Rural Counties Sacramento, California	1-28-10
SCCA	Davis, William Southern California Contractors Association Los Angeles, California	1-28-10
CGA	Mortensen, Michael California Groundwater Association Santa Rosa, California	1-28-10

Comment 1:

A representative from local government requested that ARB revise the applicability of the regulations for snow blowing equipment. This type of equipment faces many of the same issues as two-engine cranes, street sweepers, and water well drilling rigs. Therefore, snow blowers should be similarly exempted from the Portable Engine ATCM as was done for those types of equipment. (RCRC)

Agency Response:

At the hearing, the Board directed staff to evaluate this situation and make additional amendments if necessary. Any proposed amendments will be available for public review in a subsequent 15-day comment period.

Comment 2:

Owners of larger fleets should get the same operating extension for uncertified engines as proposed for those fleets with 25 or fewer engines. (SCCA)

Agency Response:

Please see the agency response to Comment 5 submitted during the 45-day comment period.

Comment 3:

The recordkeeping and reporting requirements contained in the PERP Regulation are too burdensome for all industry. These requirements should be completely removed. (SCCA)

Agency Response:

Recordkeeping and reporting are needed in order to determine compliance with the requirements of the applicable regulations, so they cannot simply be removed. However, as part of the modifications directed by the Board at the January 28, 2010 hearing, ARB staff will be evaluating the recordkeeping and reporting requirements for rental equipment and will be proposing further amendments as necessary. Any proposed amendments will be available for public review in a subsequent 15-day comment period.

Comment 4:

Although this representative from industry had submitted written comments during the 45-day period, he passed along additional comments from two members in his association that supported the amendments regarding water well drilling rigs. (CGA)

Agency Response:

Thank you for your support.

II.c Oral Comments Provided During the ARB Public Hearing

The general public presented comments to the Board during the ARB Public Hearing held on January 28, 2010, in Sacramento, California. Persons that made oral statements on the proposed amendments are listed in Table 3. Following the list are summaries of each comment as well as agency responses. Each response includes an explanation of either any changes made, or the reasons for making no change.

**Table 3
List of Individuals & Businesses Providing Oral Comments
During the ARB Public Hearing**

Commenter Reference Code	Name & Affiliation	Written Comments Provided
TFI	Gaines, Bill Transfer Flow, Inc.	Yes
CAPCOA	Zeldin, Mel California Air Pollution Control Officers Assoc.	No
SCAQMD	Wallerstein, Barry South Coast AQMD	No
ARA	Graboski, Michael American Rental Association	Yes
RCRC	Pitto, Mary Regional Council of Rural Counties	Yes
BJSC	Van Allen, Doug BJ Services Company	Yes
NWS	Thomas, James Nabors Well Services Co.	Yes
SCEC	Lany, Karl SCEC Air Quality Specialists	Yes
SCCA	Davis, William Southern California Contractors Assoc.	Yes
CGA	Mortensen, Michael California Groundwater Association	Yes
DWD	Fulton, Arthur Diamond Well Drilling	No
CIAQC	Lewis, Michael Construction Industry Air Quality Coalition	Yes
WATSON	Watson, Scott Private Citizen	No
BCP	Weiss, Fitz Berkeley Concrete Pumping	No

Comment 1:

Various representatives from industry and local regulatory agencies provided oral testimony that repeated the same objections, concerns, and recommendations that were stated in their submitted written comments. (TFI, ARA, RCRC, BJSC, NWS, SCEC, SCCA, CGA, CIAQC)

Agency Response:

Because the oral testimony was duplicative of the written comments submitted by these persons, no additional response is contained here. Refer to agency responses to written comments as follows:

Commenter Reference Code	Previously Submitted Comment Number	Time Submitted
TFI	18 and 19	45-day period
ARA	12 through 16	45-day period
RCRC	1	ARB public hearing
BJSC	5, 6, and 8	45-day period
NWS	5, 6, and 7	45-day period
SCEC	8 and 9	45-day period
SCCA	2 and 3	ARB public hearing
CGA	10	45-day period
CGA	4	ARB public hearing
CIAQC	5 and 8	45-day period

Comment 2:

The Portable Engine ATCM should not restrict the local air district's ability to issue permits for certified diesel-fueled engines that do not meet the current emission tier level. (CAPCOA)

Agency Response:

Please see the agency response to Comment 20 submitted during the 45-day comment period.

Comment 3:

The Portable Engine ATCM should contain a prohibition of sale provision to prevent unpermitted Tier 1 and Tier 2 engines from being sold to unsuspecting buyers in California by unscrupulous vendors. (CAPCOA)

Agency Response:

This comment is outside the scope of the proposed amendments. No requirements for the sale of portable engines are being proposed at this time. There has been and will continue to be outreach efforts to inform stakeholders about the requirements of the regulations.

Comment 4:

A representative from a local air district expressed his support of the proposed amendments and urged the Board to adopt them. (SCAQMD)

Agency Response:

Thank you for your support.

Comment 5:

A representative from the water well drilling industry expressed his support of the proposed amendments and urged the Board to adopt them. (DWD)

Agency Response:

Thank you for your support.

Comment 6:

A person expressed concern about the selection process for members of the Scientific Review Panel. (WATSON)

Agency Response:

This comment is outside the scope of the proposed amendments. No additional response is required.

Comment 7:

A representative from industry expressed concern that the proposed extension for uncertified engines is only proposed for engines that were permitted or registered as of December 31, 2009. His engines are currently operating under a compliance agreement, and would not be eligible for the extension. (BCP)

Agency Response:

The compliance agreement issued by the district includes criteria for operation and replacement of the engines. The local district has the enforcement discretion to let him operate under his current compliance agreement for as long as the district deems to be appropriate, which may be in line with the extension time period.

II.d Written Comments Received During the 15-Day Public Comment Period

Written comments from the general public were also accepted by ARB during the 15-day public comment period following the issuance of the 15-Day Notice. The modified regulations were released for public comment on March 15, 2010. The public comment period remained open until the close of business on March 30, 2010. Persons that commented on the modified PERP Regulation or Portable Engine ATCM regulation by submitting written comments are listed in Table 4. Following the list are summaries of each comment as well as agency responses. Each response includes an explanation of either any changes made or the reasons for making no change.

Table 4
List of Individuals & Businesses Submitting Written Comments
During the 15-Day Public Comment Period

Commenter Reference Code	Name & Affiliation	Date of Comment
CASTILLA	Castilla, Carlos Private Citizen Location Unknown	3-16-10
CPBO	McClure, Laurie Concrete Pumping Business Owner Location Unknown	3-23-10
CIAQC	Lewis, Michael Construction Industry Air Quality Coalition West Covina, California	3-25-10
SBO	Kenyon, Stan Small Business Owner San Rafael, California	3-30-10
MWDSC	Bell, Janet Metropolitan Water District of Southern Los Angeles, California	3-30-10

Comment 1:

A private citizen stated that these amendments will put him and many others like him out of business, which will result in them going on government welfare. A business owner stated that the ARB regulations are too burdensome and have a negative economic impact on his business. (CASTILLA, SBO)

Agency Response:

The objective of the amendments is to provide temporary economic relief for operators of non-certified portable engines after considering public comment as well as considering other factors including costs and emissions. Please see the agency response to the Comment 21 submitted during the 45-day comment period.

Comment 2:

This business owner was displeased with the fact that Tier 1 and Tier 2 certified engines are no longer eligible for permits or registration. (CPBO)

Agency Response:

Please see the agency response to Comment 20 submitted during the 45-day comment period.

Comment 3:

A representative from industry stated the same objections, concerns, and recommendations that were stated in their previous written comments submitted during the 45-day comment period and oral comments made at the hearing. (CIAQC)

Agency Response:

Please see the agency responses to Comments 5 and 8 submitted during the 45-day comment period.

Comment 4:

The amendment to the recordkeeping requirements to include more tracking of specific location is contrary to the goal of streamlining the regulation and reducing the regulatory burden on portable equipment owners. (MWDSC)

Agency Response:

This comment is outside the scope of the modifications included in the 15-day notice. No additional changes to the requirements for recordkeeping are being proposed with that notice. It should be noted that the commenter is not subject to this recordkeeping requirement as a Provider of Essential Public Services (PEPS). The tracking of specific location is necessary for the enforcement of the requirement that portable equipment shall not reside at a location for more than 12 consecutive months.

Comment 5:

The PERP regulation should be amended to allow equipment to be operated during the lag time from when an electronic notification is sent to the equipment owner that the equipment has been registered, and when the registration documents are received in the mail by the owner. (MWDSC)

Agency Response:

This comment is outside the scope of the modifications included in the 15-day notice. No additional changes to the requirements for electronic notification of registration are being proposed with that notice. This issue concerns the implementation of the online registration system currently under development. ARB staff will conduct outreach and training for all users of this system once it is ready.