

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 TO ESTABLISH A
STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM

Public Hearing Date: March 27, 1997
Agenda Item No: 97-2-3

I. GENERAL

On February 7, 1997, the Air Resources Board (ARB or Board) issued a notice for public hearing to consider the adoption of the proposed Regulation to Establish a Statewide Portable Equipment Registration Program, sections 2450 - 2465, Title 13, California Code of Regulations (CCR). On that same date, the ARB also issued a two-volume Staff Report: Initial Statement of Reasons for Rulemaking. The two volumes were specifically entitled Volume I: Executive Summary, and Volume II: Technical Support Document. The two-volume Staff Report is incorporated by reference herein. Following a public hearing on March 27, 1997, and after consideration of the staff's recommendations and the public's written comments and testimony, the ARB approved the adoption of the proposed Regulation with modifications in Resolution 97-16. As required by Health and Safety Code section 41753, the Statewide Portable Equipment Registration Program (Statewide Registration Program), as approved for adoption, establishes uniform requirements for engines and associated equipment throughout the State, allowing portable engines and associated equipment that meet the requirements of the Statewide Registration Program to operate throughout California.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 2450 - 2465, Title 13, CCR, as approved, after making the modified regulatory language available for public comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider written comments as may be submitted during this period, make such modifications as may be appropriate, and present the Regulation to the Board for further consideration if he determines that this is warranted. After closing the 15-day comment period, the Executive Officer formally adopted the Regulation. A copy of the Executive Order adopting the Regulation is part of this rulemaking package.

The Notice of Public Availability of Modified Text was made available to the public on May 9, 1997, with a deadline for public comment of May 30, 1997. As set forth below, the following modifications were noticed. The comments received as a result of these modifications are summarized and responded to in Section II of this document.

Section 2450 was modified to clarify the scope of the Regulation's preemption of district authority to regulate portable engines and associated equipment.

Section 2451(b)(1) was modified to clarify that unconfined and confined abrasive blasting equipment are eligible for registration in the Statewide Registration Program.

Section 2451(c) was modified to expressly exclude portable engines and associated equipment that operate in the California Outer Continental Shelf and State Territorial Waters from eligibility to register in the Statewide Registration Program. The Board directed staff to further review the possibility of including engines and associated equipment located in State Territorial Waters in the Statewide Registration Program and report back to the Board with its findings within one year of the effective date of the Regulation.

Section 2451(d) was modified to clarify the conditions under which registration in the Statewide Registration Program becomes mandatory.

Section 2451(d)(2) was modified to allow owners of portable engines that have been mandated into the Statewide Registration Program to transfer existing district permit conditions for daily and annual emission limits in lieu of the daily and annual requirements of the Regulation. The district permit conditions may only be used when operating in the district where the original permit was issued.

Section 2453(g) was modified to require that the registration certificates be kept with the engines and associated equipment at all times and be accessible to the Executive Officer or district inspector upon request. The Board recognized that the registration certificate, which includes operating conditions specific to each engine or associated equipment unit, should be available at the time of inspection to ensure accurate and expedient verification of compliance.

Section 2455(d) was modified to set forth the circumstances when an owner or operator of registered portable associated equipment must notify the United States Environmental Protection Agency regarding operation at a location subject to the provisions of the Prevention of Significant Deterioration program.

Section 2456(d) was modified to clarify the requirements for registration and emission standards for portable engines less than 50 brake horsepower.

Sections 2456(f) and section 2458(a) were modified to clarify that if a portable engine obtains a temporary (18 month maximum) exemption, it would be relieved from daily and annual emission limits and recordkeeping and reporting requirements.

Section 2456(h) was modified to clarify when a compression-ignition engine may be exempted from the 4-degree injection timing retard requirement. The provision now states that an engine will be exempted if the timing retard requirement will potentially

cause engine damage or an exceedance of a pollutant standard.

Section 2456(i) was modified to clarify that for resident portable engines operating in the South Coast Air Quality Management District (SCAQMD), the owner or operator of such equipment may substitute SCAQMD daily emission limit permit conditions in lieu of the requirement limiting resident portable engines to 100 pounds per day per project.

Section 2456 (Table 2: Spark-ignition Engine Requirements) was modified to allow the Executive Officer to require carbon monoxide modeling for spark-ignition engines if emissions are expected to cause an exceedance of the ambient air quality standard for carbon monoxide.

Section 2457(b)(3)(D) was clarified to allow owners or operators of sand and gravel screening, rock crushing, and pavement crushing and recycling operations the alternative of electing to use either a fabric dust collection system or a wet suppression system.

The above-referenced notices and the two-volume Staff Report 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.

Pursuant to Government Code section 11346.9(a)(2), the ARB has determined that the Regulation does not directly impose a cost mandate on local air quality districts. Health and Safety Code section 41753(a) preempts local districts from further permitting and regulation of portable engines and equipment that register in the Statewide Registration Program. Thus, this regulatory action implementing section 41753(a) might result in local air pollution control districts incurring savings, as defined by the State Administrative Manual (see Notice of Availability of Modified Text, pages 2-3). Under the Statewide Registration Program, the ARB will likely assume regulation of a large quantity of equipment that had been previously regulated by the districts. As a result, districts could experience a decrease in revenues because the ARB will be registering and collecting fees from engine and associated equipment owners that had previously registered or had been permitted by the districts. Such a decrease in revenues is not reimbursable in that the Regulation does not mandate a new district program on a higher level of service in an existing program. Indeed, the effect of the Statewide Registration Program is just the opposite: it requires a reduction in service by the local districts. The districts will experience a corresponding reduction in workload offsetting such reduction in revenues because they will no longer be permitting these units. Moreover, they will continue to receive fees for enforcement of the Statewide Registration Program.

In considering the proposed Regulation and modifications, pursuant to Government Code section 11346.9(a)(4), the ARB has determined that no alternative considered by the agency would be more effective in carrying out the purposes for which regulatory action was proposed or would be as effective and less burdensome to affected private persons than the proposed action.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day public comment period preceding the public hearing, and during the 15-day public comment period that followed the public hearing. Oral testimony was received during the public hearing.

The following organizations and businesses submitted written comments during the 45-day comment period preceding the public hearing:

Kern County Air Pollution Control District
Gary Drilling Company
Feather River Air Quality Management District
Department of the Navy
Power Systems Associates
County Sanitation Districts of Los Angeles County
Granite Rock Company
Neal Gerber & Eisenberg
Bay Area Air Quality Management District
California Groundwater Association
San Diego County Air Pollution Control District
U.S. Environmental Protection Agency, Region IX
Associated Power, Incorporated
California Air Pollution Control Officers Association
Lake County Air Quality Management District
PS Enterprises
Santa Barbara County Air Pollution Control District
South Coast Air Quality Management District
California Mining Association
Engine Manufacturers Association
Ingersoll-Rand Company
NASA/Dryden Flight Research Center

Oral testimony and comments were received from the representatives of the following businesses and organizations at the public hearing held March 27, 1997:

Construction Industry Air Quality Coalition
Power Systems Associates
County Sanitation Districts of Los Angeles County
California Air Pollution Control Officers Association
South Coast Air Quality Management District
Department of Defense
Santa Barbara County Air Pollution Control District
NASA/Dryden Flight Research Center
PS Enterprises
Western States Petroleum Association

Engine Manufacturers Association
Gary Drilling Company
Lake County Air Quality Management District
BJ Services
Halliburton Energy Services

The following organizations and businesses submitted written comments prior to or during the 15-day comment period following the public hearing:

Gary Drilling Company
Pool California Energy Services, Inc.
Construction Industry Air Quality Coalition
Western States Petroleum Association

The majority of those that provided testimony at the public hearing supported the adoption of the proposed Regulation. A summary of the written and oral comments, and the agency responses are set forth below.

**Written Comments Received During the 45-Day Public Comment Period
(February 7 - March 26, 1997)**

Kern County Air Pollution Control District (February 12, 1997)

Comment: Implementation of the ARB's proposed Regulation could create adverse environmental impacts such as increases in carbon monoxide emissions or creation of an air toxics "hot spot" from the movement of a large number of diesel-fired engines to a relatively small geographic area.

Section III of the proposed Regulation does not address the requirements of the California Environmental Quality Act (CEQA). Does the ARB consider the Regulation exempt from CEQA?

Response: The ARB did not consider the proposed Regulation to be exempt from CEQA. The commentor appears to be referring to Section III of the Staff Report, Volume I, which provides a cursory description of the environmental impacts of the proposed Regulation. Section VI of Volume II of the Staff Report includes a full discussion of the air quality and environmental impacts of the proposed Regulation. Section VI subsection D (CEQA Considerations) provides a discussion of CEQA considerations specifically. As stated there, the ARB's discussion of environmental impacts functions as an environmental impact report or negative declaration under the ARB's Certified Regulatory Program. The ARB's Certified Regulatory Program has been approved by the Resources Agency [see Title 17, California Code of Regulations, sections 60005 to 60007, and Title 14, California Code of Regulations, section 15251(d)]. Both Volumes I and II of the Staff Report were made available to the public for review and comment during the 45-day public comment period.

In response to concerns of possible increases in carbon monoxide emissions, the Regulation contains a provision which requires that carbon monoxide modeling be performed at the request

of the Executive Officer to demonstrate compliance with ambient air quality standards. In order to minimize the creation of air toxics hotspots, the ARB staff is investigating, with the assistance of the California Air Pollution Control Officers Association enforcement and engineering managers committees, the use of standard operating conditions for registrations.

Gary Drilling Company (February 14, 1997)

Comment: Throughout the rule development process, the air districts agreed to maintain the frequency of portable equipment inspections at current levels (which by most accounts was between 0 and 20 percent annually). Now our local air district has told us they will inspect 100 percent of all portable equipment units annually, and wait until the Statewide Registration Program is in effect in order to collect the full \$75 per engine. Help us hold the air districts to their agreement rather than allow them to take out their frustrations about losing control authority on us.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections. Also, if it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry.

Feather River Air Quality Management District (March 5, 1997)

Comment: Section 2451(a) could be interpreted to require registration of equipment units associated with portable engines. To clarify that this is not the case, section 2451(a) could be modified as follows: "Except for (d) of this section, registration under this regulation is voluntary for owners and operators of portable engines."

Response: When section (a) is read with section (d), the Regulation specifies that registration is mandatory only for some engines. Registration of equipment units associated with portable engines is strictly voluntary.

Department of the Navy (March 19, 1997)

Comment: The Department of Defense supports the adoption of the Regulation. It will allow us to continue with our national defense mission consistent with basic requirements such as world-wide deployability, and allow our staff to concentrate on air quality improvements.

Power Systems Associates (March 19, 1997)

Comment 1: Newly-manufactured portable engines not required to meet a United States Environmental Protection Agency (U.S. EPA) or ARB standard (>750 brake horsepower until 2000; <100 brake horsepower until 1998) should not be subject to the proposed Regulation's

non-resident requirements and the 100 pounds-per-day limit. Non-resident requirements impose a 4-degree timing retard which relates back to modification of the design of the engine. The 100 pounds-per-day restriction will limit engines over 750 brake horsepower to operating less than four hours per day. A limit of four hours will make this equipment unrentable.

Newly-manufactured engines should be allowed to be register under the resident engine category of the proposed Regulation's Table 1.

In addition, new engines over 750 brake horsepower should be limited to no less than 12 hours of operation per day anywhere in the State, and new engines under 100 brake horsepower should have no hourly or daily limit since their emissions are already low. Placing restrictions on these engines will force owners to retain the engines for several more years and run them at higher emission rates.

Response: The Regulation has been modified to require that the operation of a new nonroad engine rated at 750 brake horsepower or greater for which a federal or California standard pursuant to CFR 40 Part 89 or Title 13 of the California Code of Regulations has not yet become effective, shall not exceed 12 hours of operation per day. For new nonroad engines rated at less than 100 brake horsepower, the 100 pounds per day nitrogen oxides limit for nonresident engines will not be modified because the majority of these engines can operate in excess of 12 hours per day based on a 100 pounds per day limit.

In response to the request to register new nonroad engines under the resident engine category: the requirements of Table 1 for non-resident engines are consistent with section 41754(a)(2)(A) of the Health and Safety Code which provides that the Statewide Registration Program shall preserve the most stringent requirements adopted by the districts, including Best Available Control Technology for non-resident engines. In addition, the ARB believes the 4-degree timing retard requirement for some new nonroad engines is consistent with the State's authority to regulate nonroad engines. As required by the federal Clean Air Act, the ARB will seek authorization from the U.S. EPA prior to enforcing the 4-degree timing retard requirement for new nonroad engines.

Comment 2: In order for owners to more effectively budget for the operation of portable engines and associated equipment, limit the number of reimbursable inspections per registered unit to no more than one statewide every six months. Rental equipment has a higher probability of moving to several districts annually, and is likely to be inspected more often than necessary unless there is a restriction.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, the staff must report its findings to the Board regarding, but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that districts are abusing their

right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections.

County Sanitation Districts of Los Angeles County (March 21, 1997)

Comment 1: The proposed Regulation prohibits portable engines or equipment units from registering in the Statewide Registration Program if they are subject to a Maximum Achievable Control Technology (MACT) requirement or a New Source Performance Standard (NSPS). ARB staff is aware that a MACT for portable engines is under consideration by the U.S. EPA, and if promulgated, would greatly disrupt the Statewide Registration Program. ARB staff has informed the commenter that the proposed Board Resolution that will be adopted at the March 27 hearing will likely contain a commitment to work with the U.S. EPA to find an administrative solution that would minimize disruption to the Statewide Registration Program if a MACT or NSPS is promulgated.

Response: Consistent with the adopted Board Resolution that contained the identified commitment, ARB staff will monitor any federal action that may affect the Statewide Registration Program, and work with the U.S. EPA and affected industry to resolve any issues or concerns that impact the Statewide Registration Program.

Comment 2: The ARB staff has also agreed to reconcile the Prevention of Significant Deterioration (PSD) language of the Regulation with the PSD language agreed to by the U.S. EPA and ARB staff.

Response: Changes addressing this request were in the modifications to the proposed Regulation that were made available at the Board Hearing and mailed to interested parties during the post-Board 15-day comment period.

Comment 3: Recently-amended South Coast Air Quality Management District (SCAQMD) Regulation XXX would require Title V operators to keep records and certify compliance of portable engines and equipment operating under a non-Title V permit or registration at a facility. The SCAQMD Regulation will have an impact on how the ARB's program is implemented in the South Coast, because the facility operator becomes an enforcement arm for the district, the ARB, and the U.S. EPA. This sets a dangerous precedent on how to do business in the South Coast and the rest of the State.

Response: ARB staff is working closely with the California Air Pollution Control Officers Association's Title V Subcommittee, of which the SCAQMD is an active participant. The Subcommittee is in the process of developing guidance for local districts to use in dealing with portable engines and associated equipment operating at Title V sources. Certification of compliance will be one of a number of issues addressed by the Subcommittee.

Granite Rock Company (March 21, 1997)

Comment 1: The proposed Regulation's requirement to duct particulate matter (PM) emissions through a fabric dust collector or a wet suppression system is unrealistic for sand and gravel screening, rock crushing, and pavement recycling and crushing operations.

Retrofitting portable crushers with baghouses or scrubbers would be technologically and economically prohibitive. Particulate matter control for units such as these can be readily achieved by the use of water sprays.

Response: It is not staff's intent to require venting PM emissions through a fabric dust collector or a wet suppression system. The Regulation has been modified to read: "...particulate matter emissions from each crusher shall be ducted through a fabric dust collector, or shall be equipped with a wet suppression system which maintains a minimum moisture content of 4 percent by weight...".

Comment 2: The requirement to cover conveyors is unrealistic and should be eliminated.

Response: The Regulation requires all conveyors to be covered unless the material being transferred does not produce any visible PM emissions. Visible emissions are easily controlled through the use of water sprays. This technology has proven to be very efficient and cost effective.

Comment 3: The proposed Regulation appears to be designed for a heavily-polluted air basin, and does not apply to the rest of California. The Board should add a second tier to the Statewide Registration Program to cover portable equipment used in air basins that do not have severe air quality problems.

Response: Requiring air basin-specific consideration for the operation of registered portable engines and equipment would undermine the requirement that a uniform statewide regulation be created. The enabling legislation requires that registered engines or equipment units be able to operate anywhere in California with one set of emission control requirements.

Neal Gerber & Eisenberg for the Engine Manufacturers Association (March 21, 1997)

Comment: The Engine Manufacturers Association has been involved in the workgroup process to craft and implement the ARB staff's proposed Regulation. The ARB staff has incorporated most of EMA's suggested revisions into the proposed Regulation and the accompanying Staff Report. The EMA appreciates the efforts of the ARB staff to ensure that all interested parties played an active role in the development of an effective emissions control program for portable engines and equipment. The EMA supports adoption of the revised Regulation.

Bay Area Air Quality Management District (March 24, 1997)

Comment 1: The last sentence in section 2451(d) is garbled, and should be fixed.

Response: We have redrafted section 2451(d) to make it more clear.

Comment 2: The California Air Pollution Control Officers Association's model rule for portable equipment proposed an inspection fee of \$75 for each identifiable piece of portable equipment. The Regulation defines "portable equipment unit" as all equipment associated with the engine. Thus, the district would only be able to charge a single fee of \$75 to inspect a rock crusher

consisting of a hopper, conveyer, screen, crusher, stockpile, and engine. This is not consistent with the model rule.

Response: Under the Statewide Registration Program, a typical rock crushing operation would be issued two registrations-- one for the portable engine, and the other for the associated equipment. Upon inspection, a district could charge \$75 for each registered unit inspected. Although this approach may not be consistent with the California Air Pollution Control Officers Association's model rule, the fees established in the Regulation represent the consensus of the Portable Equipment Registration Program Workgroup. The Workgroup is comprised of representatives from the ARB, U.S. EPA, air districts, and industry.

At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry. In contrast, if it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections.

Comment 3: Add the Bay Area Air Quality Management District's fees to Table V-2 in Volume II of the Staff Report.

Response: The fees established in the Statewide Registration Program represent the consensus of the Portable Equipment Registration Program Workgroup. The Workgroup membership included representatives from the air districts. The addition of the Bay Area's permit fees to Table V-2 of the Staff Report would not alter the fee schedule specified in the Regulation.

Comment 4: In Volume II, III-4 of the Staff Report, PM₁₀ should be defined as particulate matter smaller than or equal to 10 microns.

Response: We agree--PM₁₀ means particulate matter smaller than or equal to 10 microns.

Comment 5: In Volume II, III-8 under c., the first sentence is referring to total PM, not PM₁₀.

Response: We agree. The subsection should have been titled Emission Limit for Particulate Matter.

Comment 6: Compliance with the footnote in Volume II, III-13, Table III-2 (*which states: "For the purpose of compliance with this article, ppm_{dv} is parts per million NO_x as NO₂ @ 15 percent oxygen averaged over 15 consecutive minutes. Limits on ppm_{dv} are the approximate equivalent to the stated grams per brake horsepower hour limit based on assuming the engine is*

35 percent efficient.”) will make it more difficult for engines to demonstrate compliance since high peaks greatly influence the 15-minute average. Perhaps it would be better if the owner or operator complied with the applicable test requirements prescribed by the district doing the test.

Response: Health and Safety Code section 41753(a)(1) requires the ARB to establish uniform requirements statewide for portable engines and associated equipment. The 15-minute averaging time is a required step of the ARB’s Test Method 100, and the U.S. EPA’s Test Method 7E.

Comment 7: The district requires that a second test be performed after a tested engine has been found to be in violation. Can the district require that the second test be performed by the owner/operator?

Response: Yes. The Regulation provides that testing can be required, at the owner’s expense, where evidence of engine emissions problems are identified.

Comment 8: Table III-1 (Volume II) lists the requirements for qualifying as a resident engine. One of the listed requirements dictates that an application be filed prior to January 1, 2001. The requirement is not found in the Executive Summary (Volume I, II-3)

Response: The requirements for qualifying as a resident engine are discussed in detail in Volume II of the Staff Report (the Technical Support Document). Volume I (the Staff Report’s Executive Summary) provides a general summary of the program requirements and is not intended to cover in detail all components of the Statewide Registration Program.

Comment 9: It may be helpful in Volume I to cross-reference the applicable section in Volume II.

Response: Volume I is an Executive Summary and is intended as a free-standing volume. We felt it better not to reference sections in Volume I in case the reader did not have Volume II.

Comment 10: Tables 1 and 2, Appendix A, Volume II, should be written in a way that encourages the use of clean technologies.

Response: Tables 1 and 2 list the Statewide Registration Program’s eligibility requirements for engines of specific horsepower ranges. Within the text of the Regulation, we offer several incentives and alternatives which should encourage owners and operators of portable engines to use cleaner technologies. The overall goal of the Statewide Registration Program is to encourage owners and operators of portable engines to replace or modify their existing engines to meet new engine standards. Although all engines registered under the Statewide Registration Program will be required to meet new engine emission standards no later than January 1, 2010, incentives such as no emissions limits or recordkeeping and reporting requirements were added to the Regulation to promote the use of cleaner technologies.

California Groundwater Association (March 25, 1997)

Comment: The California Groundwater Association believes the proposed Regulation will

reduce costs to business and eliminate extra paperwork by multiple government agencies. We urge adoption of the Regulation by the Board, and request prompt approval by the Office of Administrative Law so the program can be initiated in the near future.

San Diego County Air Pollution Control District (March 25, 1997)

Comment 1: To ensure that air contaminant emissions from registered equipment units do not impact public health or cause a public nuisance, the ARB should make the following commitments to:

- review the emission control requirements every three years to ensure that emission control advancements are considered for new equipment;
- after one year, review the actual program costs and fee-change proposals to ensure that the ARB and the districts are being fully reimbursed by the equipment operators who are benefitting from the program;
- review, no less than every three years, the on-going compliance effectiveness of the program; and
- act promptly on requests for registration since delays will create enforcement difficulties in air basins.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry. In contrast, if it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections.

In response to reviewing emission control requirements and compliance effectiveness every three years, ARB staff will closely monitor progress in these areas on an ongoing basis. As necessary, ARB staff will propose amendments to the Regulation to ensure the Statewide Registration Program remains effective and encourages the use of lower emitting technologies.

Once the Statewide Registration Program is in effect, the ARB staff will make every effort to promptly process all valid registration applications.

Comment 2: Revise the wording of opening paragraph section 2451(d) to clarify that ARB registration is only mandatory for portable engines which are located in a district having a permit or registration program which establishes emission standards or emission limits which have been preempted by federal law.

Also, either the Regulation or the Staff Report should clarify that registration is not mandatory for engines that are permitted or registered under a district program.

Response: Changes clarifying the language of section 2451(d) are in the modifications to the proposed Regulation that were made available at the Board Hearing and mailed to interested parties during the post-Board 15-day comment period. In response to the second concern, the Regulation clearly states that the Statewide Registration Program would only be made mandatory where district authority was preempted by federal law. The preemption of district authority would include the district's inability to regulate or otherwise establish emission limits for certain portable engines.

Comment 3: A copy of the equipment certification should be maintained with the equipment to reduce the amount of time it would take for district staff to research the operating conditions.

Response: Modifications to the Regulation, proposed to the Board on March 27, 1997, include a change addressing this request. This change, and other modifications to the Regulation were mailed to interested parties during the post-Board 15-day comment period. Specifically, the Board modified the language of section 2453(g) to require that the registration certificate be kept on the immediate premises with the portable engine or equipment at all times and made accessible to the Executive Officer or districts upon request.

Comment 4: The Staff Report should clarify that districts are preempted by federal law from setting emission standards for nonroad engines, but are not preempted from requiring permits or registration, setting in-use operational controls, or requiring mitigation or offsets. However, districts are preempted from establishing such requirements by California law for emission units registered under the ARB program.

Response: Section 2450 states that portable engines and equipment units registered under the Statewide Registration Program may operate throughout California without authorization or permits from districts, and that districts are preempted from permitting, registering, or regulating portable engines and equipment units registered with the ARB. We do not believe further clarification is necessary.

U.S. Environmental Protection Agency (March 25, 1997)

Comment 1: The ARB's Statewide Registration Program is an innovative approach to regulating portable engines. However, the program's removal of the districts' authority to permit or otherwise regulate registered units raises federal concern. The U.S. EPA relies on the districts to implement many of the federal air requirements through district issuance of permits or prohibitory rules. The U.S. EPA is concerned that the ARB's Statewide Registration Program may cause owners and operators of portable equipment units to overlook their compliance obligations with respect to federal programs such as New Source Review (NSR), New Source Performance Standards (NSPS), Title V, and Maximum Achievable Control Technology (MACT).

Response: The proposed Regulation does not allow any engine or equipment unit that

qualifies as part of a stationary source or is subject to an applicable federal NSPS, MACT, or NESHAP to register in the ARB's registration program. Such engines or equipment units would remain subject to local district requirements.

Comment 2: The language in section 2451(c)(4) does not clearly exclude all sources potentially subject to federal regulation. Specifically, the U.S. EPA is concerned that the proposed rule does not clearly indicate that the eligibility criteria in 2451(c) must continue to apply once a portable equipment unit is registered.

Response: The exclusions of section 2451 continue to apply once a unit of portable equipment is registered. If at any time a unit of registered equipment meets any of the exclusions, its registration will be immediately revoked. District permitting requirements will then apply.

Comment 3: The proposed rule does not clearly exclude units that may not be part of an existing permitted stationary source, but may, when operating together with other portable equipment units, constitute a stationary source subject to permit requirements. Section 2451(c)(4) should be interpreted to also apply to units with aggregate emissions that would trigger district permit requirements.

Response: We will work with representatives from the U.S. EPA and districts to develop standard conditions of registration to address the U.S. EPA's concern. An example of such a condition could include a restriction on the number of equipment units operating at a given location so that cumulative emissions do not trigger major stationary source requirements.

Comment 4: The Board should adopt a commitment to develop a standard registration condition that incorporates all of section 2451(c), including section 2451(c)(4) as it applies to both individual and aggregated equipment units, as criteria for continuing eligibility in the Statewide Registration Program.

Response: We will work with representatives from the U.S. EPA and districts to develop standard conditions of registration to address the U.S. EPA's concern.

Comment 5: Stationary sources emitting more than 10 tons per year of any one hazardous air pollutant, or more than 25 tons per year of any aggregation of hazardous air pollutants, are considered major sources and are subject to Title V and section 112 of the Clean Air Act. Districts must retain the authority to regulate this class of sources. We suggest adding the following language to section 2451(c): "Any portable engine or equipment unit constituting or part of a major source of hazardous air pollutants, as defined in section 112(a)(1)."

Response: Consistent with the Regulation, we do not intend to register any source that will emit hazardous air pollutants.

Comment 6: Section 2451(c) should be revised to protect the federal Prevention of Significant Deterioration (PSD) requirements.

Response: Changes addressing this request are in the modifications to the proposed Regulation that were made available at the Board Hearing and mailed to interested parties during the post-Board 15-day comment period.

Comment 7: Portable equipment units are, by U.S. EPA definition, stationary sources that may trigger NSR requirements such as Lowest Achievable Emission Rates. The proposed rule establishes control technology requirements for four categories of portable equipment units, but does not preclude other types of portable equipment units from registering. To avoid registration of units subject to NSR requirements, the rule must clarify that these four categories are the only types of units eligible for registration under the Regulation, or provide the same level of control for other units eligible for registration.

Portable equipment units may also trigger State Implementation Plan (SIP) offset requirements. Regardless of the registration program's provisions, owners must obtain offsets if required by the SIP. The rule should not preclude the districts from requiring offsets if required by their regulations.

Response: The legislation does not preclude the ARB from registering units outside the four categories of portable equipment units. We will evaluate other equipment units on a case-by-case basis and establish Best Available Control Technology requirements consistent with California law. In addition, the proposed Regulation does not allow any engine or equipment unit that qualifies as part of a stationary source or is subject to an applicable federal NSPS, MACT, or NESHAP to register in the ARB's registration program. Such engines or equipment units would remain subject to local district requirements.

The 82 pounds PM₁₀ per day limit on each piece of registered portable equipment is intended to keep equipment below district offset requirement thresholds. In addition, where a registered portable equipment unit is operating at a stationary source under local district jurisdiction, the district may require offsets from the stationary source for the portable equipment operations.

Comment 8: Military turbines do not meet the definition of nonroad engines and should not be included in the registration program.

Response: State law requires that we include military Tactical Support Equipment (TSE) turbines in the Statewide Registration Program. Under the California Constitution, Article III, section 3.5, a state agency cannot, in itself, find a state law to be invalid because of a conflict with federal law unless an appellate court has addressed the issue.

Comment 9: Where the registration program is less stringent than the SIP, sources must still comply with SIP requirements. Sources must remain subject to the U.S. EPA's requirements such as Reasonably Available Control Technology (RACT).

Response: State law requires the ARB to amend the SIP as necessary to include the Statewide Registration Program and conform the SIP to its requirements.

Comment 10: The implementation of the Statewide Registration Program must be consistent with the federal Outer Continental Shelf program. Registration in the ARB's registration program does not relieve sources from their responsibilities of meeting more stringent federal requirements such as NSR and Title V.

Response: The Statewide Registration Program, as modified, prohibits the registration of portable engines and equipment units operated within the Outer Continental Shelf.

Associated Power, Inc. (March 26, 1997)

Comment 1: Current South Coast Air Quality Management District (SCAQMD) regulations require engines over 50 horsepower to operate under a permit. The Statewide Registration Program requires registration of engines 50 horsepower or greater. We would like the Statewide Registration Program's requirement to apply to engines greater than 50 horsepower.

Response: The Statewide Registration Program, with limited exceptions, is a voluntary program for any portable engine regardless of horsepower rating. It gives owners and operators of portable engines and equipment units the option of either registering with the ARB or obtaining permits from the local district. Where a district does not require a permit for a specific size of portable engine, the owner or operator is not required to obtain ARB registration to operate in that district.

Comment 2: Equipment operated in an area outside that controlled by a specific district was not required to have a permit. Will the Statewide Registration Program change that?

Response: The ARB's Statewide Registration Program will not change district permitting programs-- it offers an alternative to district permitting or registration programs for qualifying engines and equipment units. As stated in the previous response, the Statewide Registration Program is, for the most part, a voluntary program for any portable engine regardless of horsepower rating.

California Air Pollution Control Officers Association (March 26, 1997)

Comment 1: Operators of portable equipment should notify the affected district in advance of equipment operation to provide inspection staff time to schedule inspections.

Response: In discussion with the Portable Equipment Workgroup, it was concluded that pre-operation notification was not practical for many portable operations because of the frequency of movement of this equipment. A compromise was reached that would provide notification of operation to the districts for a source that intends to operate for more than five days in a given district. This approach is intended to ensure that owners or operators and districts are not overly burdened with notifications each time a piece of equipment is moved. The Regulation language also gives the districts the right to inspect engines and equipment at any time.

Comment 2: Operators should carry a copy of their operating conditions with them to improve compliance and support field enforcement efforts.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to modify the proposed language of the Regulation to require that the registration certificate with operating conditions be kept on the immediate premises with the portable engine or equipment at all times and made accessible to the Executive Officer or districts upon request.

Comment 3: The rule restricts the districts' ability to recover the costs of implementation and enforcement. The rule's enforcement fees may not be sufficient to cover the costs of enforcement as required by Health and Safety Code section 41752(d)(2). The Regulation should be reviewed after a set period of time, and CAPCOA's economic concerns evaluated based on actual implementation data.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry. In contrast, if it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections.

Comment 4: There should be a way to update the program's emission requirements to account for future changes in the National Ambient Air Quality Standards (NAAQS) for ozone and PM. If the U.S. EPA's proposed changes to the NAAQS are adopted, additional reductions from all sources, including ARB-registered engines and equipment units, may be necessary.

The certification of registered portable engines and equipment units should be reviewed if it is necessary for these units to make additional emission reductions for air basin attainment.

Response: Consistent with State law, ARB staff will continuously monitor the impact of the Statewide Registration Program. As necessary, staff will propose amendments to the Regulation to ensure attainment goals are not jeopardized. Advancements in control technologies, changes in State or federal law, and impacts on air basin attainment strategies are examples of events which may necessitate future changes in the Statewide Registration Program.

Comment 5: The ARB staff should periodically evaluate the Statewide Registration Program's effectiveness and requirements (including control technology, emission standards, and fees), and report those findings to the Board with recommendations for rule amendments as appropriate.

Response: Consistent with State law, ARB staff will continuously monitor the impact of the Statewide Registration Program. As necessary, staff will propose amendments to the Regulation to ensure attainment goals are not jeopardized. Advancements in control technologies, changes in State or federal law, and impacts on air basin attainment strategies are examples of events which

may necessitate future changes in the Statewide Registration Program.

Lake County Air Quality Management District (March 26, 1997)

Comment 1: The enabling legislation for the Regulation appears inconsistent with CEQA since it does not provide for a case-by-case, site-specific review. The program must presume that each specific equipment site has been, or will be, evaluated for air, water, soil, habitat, economics, and other considerations consistent with the law. However, the Staff Report concludes that the ARB does not have the resources to consider site-specific impacts.

Equipment certification should only be valid for locally-approved and authorized sites, and the documentation of that authorization should be posted and available on or near the subject equipment.

Response: The consideration of site-specific impacts is not feasible under the Statewide Registration Program. The ARB staff estimates that over 10,000 pieces of equipment will be registered. Each piece of equipment has the ability to move frequently to different locations on any given day. Further, requiring site-specific consideration for the operation of registered portable engines and equipment would undermine the requirement that a uniform statewide regulation be created. The enabling legislation requires that once registered, an engine or equipment unit would be able to operate anywhere in California under one set of emission control requirements.

The only feasible option for consideration of site-specific impacts is through district enforcement of the Statewide Registration Program. Health and Safety Code section 41700 provides districts with the authority to ensure that no person discharges air contaminants in such quantities as to cause injury, detriment, nuisance, or annoyance to the public. Districts will continue to have, as they presently do under district permitting programs, the ability to inspect ARB-registered equipment at each location, and where it can be verified that a nuisance or other threat to the public exists, order the cessation of operation at that location. In addition, the Regulation does not preempt counties or local jurisdictions from making land-use determinations or implementing other programs outside of the air district program that protect specific sites from undesirable impact.

Comment 2: Aggregates of more than one engine on the same site have the potential to exceed the ambient air quality standards and could presumably interfere with the maintenance or attainment of the standards. Violations of the Ambient Air Quality Standards (AAQS) have a considerable impact on a local district's regulatory program.

Place a limit of one certified engine unit which may be aggregated together as a portable source (system), which should also be certified, to preclude AAQS violations.

Response: It would be unreasonable to limit the operation of registered engines to one per location given the many factors that affect air quality at a single location. Portable engines currently operate throughout the State under district permit programs in many different configurations. The Statewide Registration Program will not change the operations of this

equipment.

Health and Safety Code section 41700 provides districts with the authority to ensure that no person discharges air contaminants in such quantities as to cause injury, detriment, nuisance, or annoyance to the public. Districts will have the ability to inspect ARB-registered equipment at each location, and where it can be verified that a nuisance or other threat to the public exists, order the cessation of operation at that location. In addition, the Regulation does not preempt counties or local jurisdictions from making land-use determinations or implementing other programs outside of the air district program that protect specific sites from undesirable impact.

Comment 3: A statewide certification cannot set a presumably health-protective emission rate or performance criteria without considering the material input characteristics and site-specific conditions to include background pollutant concentrations.

Response: Completed registration applications for equipment units will include all possible operating scenarios, including emission factors for all types of material processed. The issued registrations will include operating conditions that reflect this information.

Comment 4: The proposed equipment unit requirements are inferior to NSPS and appear inappropriate for processing materials which have a high nuisance potential or which contain hazardous or toxic components (for example, the 20 percent opacity standard should not be considered Best Available Control Technology for crushing and screening operations).

Response: Any engine or equipment unit subject to an NSPS is not eligible for registration under the Statewide Registration Program. Further, operations at a location where processing of materials has the potential to emit toxic air contaminants will not be allowed as a condition of registration.

Comment 5: The source must prove compliance with the program requirements using approved methods, certified observers, and maintain on-site records-- or provide the district with adequate compensation to recover the costs of compliance verification (including staff time, travel, and laboratory costs).

Response: The Statewide Registration Program requires the owner and operator of portable engines and equipment units to operate in compliance with the requirements in the Regulation. These requirements include, but are not limited to, maintaining daily and annual records which are available to the districts upon request, and to reimburse the districts for inspections at a cost of \$75 per inspection.

Comment 6: A copy of the equipment certification should be maintained with the equipment to reduce the amount of time it would take for district staff to research the operating conditions.

Response: At the Board Hearing on March 27, 1997, the Board amended the proposed Regulation [section 2453(g)] to require that the registration certificate be kept on the immediate premises with the portable engine or equipment at all times and made accessible to the Executive

Officer or districts upon request. This and all other amendments were mailed to interested parties during the post-Board 15-day comment period.

Comment 7: Five-day notification in advance of equipment operation should be provided to the district to allow inspection staff to evaluate the site location for special considerations.

Response: The Regulation requires that registered engines and equipment units that will operate in a district for more than five days notify the district two working days prior to coming into the district. More than two days advance notice is not practical for all portable engine or equipment unit operations (such as operators of rental equipment).

PS Enterprises (March 26, 1997)

Comment: The proposed Regulation unnecessarily restricts the use of clean fuel portable engines in California. The “seasonal use” provision of the proposed Regulation imposes a three-month limit on how long an engine can operate at any given location and still be considered a nonroad source. This limitation discourages the use of clean-fuel engines because they are only economical to use if the engine can be reused at the same location for a period of at least six months.

To prevent situations where an end user is simply trying to avoid stationary engines’ more stringent regulations, the ARB can require that the clean engines must be used in other applications for the remaining six months of the year.

We request that the ARB initiate development of a “clean portable engine incentives package” to be presented to the Board at the earliest practicable date.

Response: The Regulation as drafted does not impose a three-month limitation on operation for seasonal use of portable engines. Section 2452(v)(2)(c) defines a seasonal source as a stationary source that remains in a single location on a permanent basis and that operates at that location for three or more months each year. A portable engine that operates at a seasonal source for the full operating period of the seasonal source does not qualify as a nonroad engine.

At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. As part of this comprehensive report to the Board, staff will investigate the incorporation of incentives to promote use of cleaner fuel technologies.

Santa Barbara County Air Pollution Control District (March 26, 1997)

Comment 1: State Tidelands and Outer Continental Shelf sources should be excluded from the proposed Regulation.

Response: We have amended the proposed Regulation to exclude State Territorial Waters and Outer Continental Shelf sources from the Statewide Registration Program. However, at the March 27, 1997 Board Hearing, staff was directed, in consultation with affected local air pollution control districts and sources and U.S. EPA, evaluate the applicability of the Statewide Registration Program to portable engines that are operated in State Territorial Waters, and determine if it is appropriate to amend the Regulation to include such engines in the Statewide Registration Program.

Comment 2: The proposed Regulation should include additional monitoring requirements to ensure compliance with the Regulation and allow ARB and the districts to consider the Regulation's impact on the air quality of California.

Response: The legislation that requires the ARB to implement this program also requires that recordkeeping and reporting requirements be the minimum necessary to enforce the Regulation. Where emissions limits are applicable, the proposed Regulation requires that owners submit annual reports documenting engine and equipment activity summarized by quarter per district.

At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). Within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate.

Comment 3: Within one year, ARB should revisit the registration program to determine if additional requirements are necessary. In particular, ARB should review monitored data available at that time and determine: whether the Regulation should include either a daily or hourly emission limit for nitrogen oxides in order to ensure California's nitrogen dioxide standard is not violated, and whether the Regulation should include an annual project emission cap of 25 tons of ozone precursor emission in order to ensure that emissions from portable equipment do not interfere with the attainment of the federal and California ozone standards.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate.

South Coast Air Quality Management District (March 26, 1997)

Comment 1: The SCAQMD supports adoption of the Regulation. However, there are still concerns to be addressed. The most serious of these concerns is the impact of the proposed federal standards for PM and ozone. It is likely that additional control of portable engines and

equipment will be required for all regions to achieve attainment of these ambient standards. Consequently, the ARB staff should revisit this issue at the earliest practical date.

Response: Consistent with State law, ARB staff will continuously monitor the impact of the Statewide Registration Program. As necessary, staff will propose amendments to the Regulation to ensure attainment goals are not jeopardized. Advancements in control technologies, changes in State or federal law, and impacts on air basin attainment strategies are examples of events which may necessitate future changes in the Statewide Registration Program.

Comment 2: To save the districts money, all inspection fees should be paid to the ARB (as are all other fees). The ARB would then reimburse the districts for the inspections conducted.

Response: It makes more sense to have the inspecting district bill the source at the time of the inspection, since the inspector will also have to document the conditions and results of the inspection. In addition, having the ARB bill sources and reimburse districts would require unnecessary additional resources to carry out this task. Further, fees collected by the ARB would have to be increased to cover the costs of the additional resources.

Comment 3: The authorized inspection fees may not be sufficient for the district to recover its reasonable cost of enforcement.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry. In contrast, if it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections.

Comment 4: The registration or a facsimile that describes the equipment and any operating limitations should be maintained with the equipment (just as vehicle registration is required to be maintained with motor vehicles operated on public roads). This would allow an inspector to determine compliance at the time of the initial inspection.

Response: Modifications to the proposed Regulation includes a change addressing this request, and was mailed to interested parties during the post-Board 15-day comment period. Specifically, the Board modified the language of section 2453(g) to require that the registration certificate with operating conditions be kept on the immediate premises with the portable engine or equipment at all times and made accessible to the Executive Officer or districts upon request.

Comment 5: The proposal requires that the operator notify each district separately when they

expect to work for a significant period of time in that district. It would be more efficient for all involved if the notification process were centralized with the ARB. The ARB staff have already committed to providing access to information for the districts on the Internet. The notification of equipment location could be easily added. Operators would only need to have one point of contact (printed on the registration certificate), and districts would not be required to maintain separate notification databases.

Response: The Portable Equipment Workgroup considered having ARB maintain a centralized notification database. However, it was recommended that the notification be made directly to the district because many of the districts do not have Internet access.

California Mining Association (March 27, 1997)

Comment: The proposed Statewide Registration Program seems to be aimed at an air district with severe air quality concerns and, thus, not applicable to the rest of California. We request consideration of a broader system for registration of portable equipment that includes a second level, or tier, of registration to account for equipment operating in air districts with less severe air quality concerns.

Response: The Regulation provides portable equipment owners the opportunity to voluntarily participate in a statewide, uniform registration program. Developing a program with multiple tiers of requirements for different districts is inconsistent with the legislative requirement for a program that is uniform statewide.

Engine Manufacturers Association (March 27, 1997)

Comment: The Engine Manufacturers Association appreciates the fact that the ARB staff has incorporated most of EMA's suggested changes to the draft. The EMA supports the Board's adoption of the revised Regulation.

Ingersoll-Rand Company (March 27, 1997)

Comment 1: The ARB fails to recognize that Congress, the U.S. EPA, and the Courts have ruled that portable equipment units are mobile sources entirely preempted from regulation by the air districts. At a minimum, sources complying with the requirements of 40 CFR Part 89 should be left alone by the air districts. Once portable equipment meets the requirements of 40 CFR Part 89, this equipment should be subject only to registration with the ARB. No recordkeeping, notification, enforcement by the air districts, or any other requirements should apply.

Response: The federal Clean Air Act (CAA), as amended in 1990, effectively established two preemptions. It expressly preempted all states and local districts from adopting and enforcing emission standards and other requirements that affect emissions, as they apply to new nonroad engines under 175 horsepower used in farm and construction equipment and vehicles. With the exception of California, the CAA implicitly preempted the states and local districts from adopting and enforcing emission standards and other requirements that affect emissions for all other categories of nonroad engines that were not otherwise expressly preempted. The exception provided to California allows it to adopt its own regulations for these not-otherwisely-expressly-preempted nonroad engines, but requires California to obtain authorization from the U.S. EPA

prior to enforcing the provisions. The ARB intends to seek necessary authorization after final State approval of the Regulation.

The U.S. EPA has adopted rules interpreting the preemptions of the CAA, and has determined that the preemptions prohibit any standards and requirements that affect the design of engines. Thus, the U.S. EPA also made clear in its rules that the preemptions did not prohibit states and local districts from adopting and enforcing regulations directed at in-use operation of nonroad engines. The federal courts have upheld U.S. EPA's interpretation of this issue.

The enabling California legislation authorizing the Statewide Registration Program goes beyond the CAA as it applies to the local districts. It provides that equipment registered in the Statewide Registration Program is exempt from all district regulation, including operational controls and recordkeeping requirements. Districts may continue to regulate equipment units that are not registered in the Statewide Registration Program, consistent with federal law.

Comment 2: Because Congress and the U.S. EPA have determined that nonroad sources are mobile, all district authority over portable construction equipment should be removed. Consequently, all appeals under the Statewide Registration Program should fall under the authority of the ARB, not the air districts.

Response: The ARB has determined, in consultation with the U.S. EPA, that local districts retain the ability to permit and establish in-use operational controls for nonroad engines. Further, California law requires the districts to enforce the Statewide Registration Program in the same manner as a district rule or regulation.

Comment 3: The Regulation should clearly state that equipment in compliance with the requirements of 40 CFR Part 89, regardless of category, should not be subject to daily and annual emission limits, technology requirements, reformulated fuel requirements, recordkeeping and reporting requirements, or source testing and notification requirements.

Response: Section 2458(a) of the Regulation exempts portable engines that meet the applicable emissions standard as set forth in CFR 40 Part 89 from recordkeeping and reporting requirements. Section 2456(i) exempts portable engines that meet the applicable emissions standard as set forth in CFR 40 Part 89 from daily and annual emission limits. Section 2456(e) specifies that portable engines that meet the most stringent applicable emissions standard, as set forth in CFR 40 Part 89, in effect at the time an application is deemed complete do not need to comply with the technology requirements set forth in Table 1 and Table 2. The requirement that portable engines use fuels meeting the standards for California motor vehicle fuels is consistent with ARB's obligation to achieve attainment with the federal and State ambient air quality standards. As stated, the federal preemption does not apply to in-use operational controls, including fuel specification standards. In addition, notification and source testing requirements are established for portable engines to ensure the effectiveness and enforcement of the Regulation.

Comment 4: All rental portable equipment should be exempt from notification requirements, not just rental portable equipment rated at less than 200 horsepower. Equipment powered by engines

over 200 horsepower have the same problems tracking use as engines under 200 horsepower.

Response: Available portable engine inventories suggest that the majority of portable engines are smaller than 200 horsepower. Consequently, owners of rental engines will only be required to report on a relatively small number of engines. Notification to the district for engines larger than 200 horsepower is important because larger engines can have a more significant impact on air quality. Notification provides the district the opportunity to inspect these engines while they are in the district's jurisdiction.

Comment 5: Why are all portable engines required to use California reformulated fuel? The certification requirements of 40 CFR Part 89 are not based on the use of reformulated fuels. If a unit is in compliance with 40 CFR Part 89, it should not be subject to a reformulated fuel requirement.

Response: The federal preemption for nonroad engines does not apply to in-use operational controls, including fuel specification standards. The requirement that all engines (except TSE) use fuels meeting the standards for California motor vehicle fuels is consistent with ARB's obligation to achieve attainment of the federal and State ambient air quality standards.

NASA / Dryden Flight Research Center (March 27, 1997)

Comment: Revise the Regulation's definition of "tactical support equipment" to include equipment used by NASA for aircraft training and flight research.

Response: Portable equipment used for flight research does not qualify as tactical support or emergency equipment. The intent of the military exemption is to protect portable equipment that may be deployed by the armed forces for nation- or world-wide emergency response, national defense, or world crisis.

Oral Testimony given at the Public Hearing (March 27, 1997)

Mike Lewis, Construction Industry Air Quality Coalition

Comment 1: The Construction Industry Air Quality Coalition sponsored the legislation to create a statewide registration program, and we support the adoption of the ARB staff's proposed Regulation. However, the Regulation's BACT requirements are not appropriate or feasible for engines between 100 and 750 horsepower that are currently under district permit. The effect of that requirement will be to keep about 75 percent of the equipment in the South Coast Air Basin out of the Statewide Registration Program.

Response: Staff believes the vast majority of existing engines (e.g., resident engines-- those currently operating with district permits) can meet the technological requirements without expensive retrofit. BACT is only applied to non-resident engines, those new to California, or not previously operating under a district permit. This approach is consistent with present practice under State law.

Comment 2: Inspection fees charged by the districts should be limited to \$75 every six months.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that districts are abusing their right to collect fees for inspections, staff will recommend changes limiting the frequency and/or fees for inspections.

Bob Shepherd, Power Systems Associates

Comment 1: Under our current district permits, we are not required to retard the timing of any of our engines. To enter the Statewide Registration Program, we will be required to retard the timing on those same engines. This would drop the nitrogen oxides emissions by about 20 percent, but would also raise fuel consumption by 10 percent and increase particulate matter and hydrocarbon emissions by about 10 percent. It would also decrease horsepower by about 10 percent.

Amend section 2456(e)(5) to state “an owner may substitute district permit or registration BACT requirements in effect on or before the effective date of the regulation.”

Response: The Statewide Registration Program is principally a voluntary program, offered as an alternative to existing district registration or permit programs. The intent of the program is two-fold: to relieve sources that travel between districts from the burdens of multiple district registration and permitting programs and the coincidental costs related to multiple programs; and to adopt the most stringent emission control limits and requirements that are technically and economically feasible. Requirements of the Statewide Registration Program such as injection timing retard are part of the ARB’s effort to ensure that the State of California fulfills its obligation to achieve attainment of the federal and State ambient air quality standards. Injection timing retardation is an effective and economical means of reducing emissions of nitrogen oxides.

Comment 2: The Regulation requires retrofit of new engines, since brand-new engines are required to retard the timing. This is contrary to what the U.S. EPA states in section 209 of the Clean Air Act that “...modest retrofit requirements may be required after a reasonable amount of time.” Their example of “reasonable amount of time” is at the time of registration or rebuilding.

Response: The ARB disagrees with the commenter’s interpretation of the limitations imposed on California by the Clean Air Act Amendments of 1990. The CAA created a federal preemption that, in general, prevents states and districts from adopting emissions standards or other requirements for nonroad engines. However, recognizing the special circumstances confronting California, Congress allows California, upon receiving authorization from the U.S. EPA, to adopt standards and regulations for preempted equipment with the exception of new engines under 175 brake horsepower used in farm and construction operations. ARB staff will seek authorization from the U.S. EPA prior to enforcing the requirements for new nonroad engines contained in the Regulation that directly affect emission standards or other requirements related to

the control of emissions.

Comment 3: Inspection fees charged by the districts should be limited to \$75 every six months, and no more than one inspection per district.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that districts are abusing their right to collect fees for inspections, staff will recommend changes limiting the frequency and/or fees for inspections.

Frank Caponi, Los Angeles County Sanitation Districts

Comment: The Los Angeles County Sanitation Districts support the comments made by the previous two speakers (Mike Lewis and Bob Shepherd) regarding the infeasibility of the Regulation's BACT requirements.

There needs to be a strong partnership developed with the U.S. EPA so that the continued mixed signals from the U.S. EPA are not sent to the local districts. The ARB should take a leadership role in fostering this partnership, so that the goals of statewide uniformity in the treatment of portable engines and equipment can be realized.

Response: Regarding the commenter's support of BACT comments made by Bob Shepherd of Power Systems Associates, and Mike Lewis of the Construction Industry Air Quality Coalition, please see the staff responses to those comments on pages 25 and 26 of this document.

ARB staff will continue to work closely with the U.S. EPA and the districts to ensure that the Statewide Registration Program results in statewide uniformity.

Barbara Lee, California Air Pollution Control Officers Association

Comment 1: CAPCOA would like the Board Resolution amended to direct staff to review the rule by July 1998, and periodically thereafter. The National Ambient Air Quality Standards are changing, and those changes may impact this program. If the program is not reviewed, there may be unfair repercussions on sources outside this program.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. Consistent with State law, ARB staff will continuously monitor the impact of the

Statewide Registration Program. As necessary, staff will propose amendments to the Regulation to ensure attainment goals are not jeopardized. Advancements in control technologies, changes in State or federal law, and impacts on air basin attainment strategies are examples of events which may necessitate future changes in the Statewide Registration Program.

Comment 2: CAPCOA would like to present data to the Board within a year of implementation on the effectiveness of the program. The presentation would address fees, certification onsite, and notification provisions.

Response: The Board would welcome input from CAPCOA. In addition, as part of staff's efforts to fulfill the Board's directive to prepare a comprehensive report after one year of implementation, staff will assemble a workgroup consisting of representatives from affected industry, districts, and the U.S. EPA. The workgroup will identify issues, discuss implementation challenges, and develop recommendations. The workgroup's recommendations, and other information gathered and developed by staff, will be included in the report to the Board.

Jack Broadbent, South Coast Air Quality Management District

Comment 1: The registration certificate should be on-site with the equipment so that the inspector in the field can ensure compliance with the limitations set forth in the registration.

Response: Modifications to the proposed Regulation, proposed by the Board on March 27, 1997 includes a change addressing this request and was mailed to interested parties during the post-Board 15-day comment period. Specifically, the Board modified the language of section 2453(g) to require that the registration certificate be kept on the immediate premises with the portable engine or equipment at all times and made accessible to the Executive Officer or districts upon request.

Comment 2: The notification procedure to inform districts that portable equipment is coming into their jurisdiction should be centralized with ARB staff, and maintained on an Internet site.

Response: The Portable Equipment Workgroup considered having ARB maintain a centralized notification database. However, it was recommended that the notification be made directly to the district because many of the districts do not have Internet access.

Comment 3: The \$75 inspection fee may not be sufficient to cover the costs of an inspection. Also, the inspection fees should be collected by the ARB and redistributed back to the districts.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that the districts' ability to recover costs for enforcement is inadequate, staff will recommend changes to the fees based on

input from the districts and affected industry.

Regarding the ARB collection of inspection fees, it makes more sense for the district inspector to bill the source at the time of the inspection, since the inspector will also have to document the conditions and results of the inspection.

Comment 4: The program should be periodically reevaluated to account for changes in the air quality standards, as well as to ensure that the program takes advantage of advances in engine technologies.

Response: Consistent with State law, ARB staff will continuously monitor the impact of the Statewide Registration Program. As necessary, staff will propose amendments to the Regulation to ensure attainment goals are not jeopardized. Advancements in control technologies, changes in State or federal law, and impacts on air basin attainment strategies are examples of events which may necessitate future changes in the Statewide Registration Program.

Randal Friedman, Department of Defense

Comment: The U.S. EPA has suggested that it is not appropriate to treat the Department of Defense differently than other entities in California. The fact is, we are already treated differently - we have much higher standards for procurement of alternative fuel vehicles, and are the only major employer in California that has, as a condition of employment, a requirement to comply with the “smog check” program. The suggestion that we should be treated the same as everyone else doesn’t make sense, considering that we are held to rules others are not held to. We believe the California Legislature acted wisely when they provided an exemption in the program for tactical support equipment.

Doug Allard, Santa Barbara County Air Pollution Control District

The Santa Barbara County APCD supports the CAPCOA’s request to review the rule by July 1998, and periodically thereafter. The APCD also supports the staff amendments to the Regulation that defer the application of the Statewide Registration Program to offshore sources until more analysis can be done.

Comment 1: Unresetable hour meters should be used on each engine to record the hours of operation. This would allow the districts to have actual operating data to determine the impact each engine is having on air quality in each county.

Response: Although unresetable hour meters are an accurate means of tracking engine operations, the Portable Equipment Workgroup recommended that other methods of tracking operation may be just as accurate. The Regulation provides that nonresetable hour meters, or other methods approved by ARB may be used to track engine operations.

Comment 2: There should be a cap on emissions from multiple engines in the Regulation. Multiple engines could be used on the same project, resulting in a violation of the nitrogen oxides standard.

Response: The Regulation establishes an emissions cap of ten tons per year per district per engine for many of the engines registered under the Statewide Registration Program. Although portable engines meeting a State or federal offroad or nonroad standard will not have emissions caps, in cases where the district has specific concerns because there are multiple engines at a given location, the district can model the combined pollutant emissions (or ask the ARB for assistance to do so) to determine if there may be a violation of any ambient air quality standard. In such cases the district continues to have the authority under established law to prohibit unlawful use causing a threat to public health and welfare.

As part of the report to the Board within one year of the effective date of the Regulation, staff will investigate emission limits for the operation of portable engines and associated equipment to determine if there is a need for additional or more restrictive daily, hourly, or annual emission limits to ensure that emissions are not detrimental to human health and the environment. Such an investigation would include the effect of multiple engines or equipment operating in aggregate.

Comment 3: The inspection fee of \$75 is not sufficient to cover the cost of travel to a site, look at the certification, look at the conditions, inspect the engine, return to the office, and write up the report. Consequently, a lot of engines will not get inspected.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. If at the time of this comprehensive report it is found that districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry.

Dan Mullen, NASA/Dryden Flight Research Center

Comment: The Regulation should be amended to include research aircraft support equipment in the tactical support equipment exemption.

Response: Portable equipment used for flight research does not qualify as tactical support or emergency equipment. The intent of the military exemption is to protect equipment that may be deployed nation- or world-wide for emergency response, national defense, or world crisis by the U.S. military.

Edric Guise, PS Enterprises

Comment: A clean fuels incentive package should be included in the portable equipment registration program.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as

required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation as appropriate. As part of this comprehensive report to the Board, staff will investigate the incorporation of incentives to promote use of cleaner fuel technologies.

Catherine Reheis, Western States Petroleum Association

Comment: The Western States Petroleum Association would like to discuss the removal of the offshore sources from the program with the ARB staff and the Santa Barbara APCD. If the Board staff follow the recommendation to review the registration program one year after implementation, we would like the review and discussions to include the offshore sources issue.

Response: As part of the comprehensive report that will be done pursuant to the directive of the Board, staff will present the results of consultation with affected local air pollution control districts and sources and U.S. EPA, to evaluate the applicability of the Statewide Registration Program to portable engines that are operated in State Territorial Waters. In the report, staff will determine if it is necessary to amend the Regulation to include such engines in the Statewide Registration Program.

Glenn Keller, Engine Manufacturers Association

Comment: The EMA would like the ARB staff to reconsider BACT requirements such as intercooling and 4-degree retard. Engine manufacturers design engines with optimal settings to balance performance needs with low emissions. Readjusting the fuel injection timing will lower emissions of nitrogen oxides, but also increase particulate matter and smoke emissions. The pros and cons of the Regulation's BACT retrofit requirements should be more fully analyzed.

Response: Requirements of the Statewide Registration Program such as injection timing retard are part of the effort to ensure that the State of California fulfills its obligation to achieve attainment with the State and ambient federal ambient air quality standards. Injection timing retard is an effective and economical means of reducing emissions of nitrogen oxides and is commonly required by districts. For some specific engines, 4-degree retard is not appropriate because it could cause significant engine damage or result in a violation of particulate matter or visible emission requirements. In such cases, the Regulation allows ARB staff to waive or reduce the 4-degree retard requirement.

Terry Ellis, Gary Drilling Company

Comment: Some of the air districts have stated they will inspect every piece of equipment that comes into their district. Gary Drilling Company often moves equipment in and out of a district on a daily basis. We can not budget for equipment being charged \$75 per inspection every time it is moved in and out of a district.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year

of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that districts are abusing their right to collect fees for inspections, staff will recommend changes limiting the frequency and/or fees for inspections.

Ross Kauper, Lake County Air Quality Management District

Comment 1: Site-specific evaluations need to be made when a piece of equipment is brought on to a site. When several engines are assembled together, their combined emissions could cause a violation of the ambient air quality standards.

Response: The consideration of site-specific impacts is not feasible under the Statewide Registration Program. The ARB staff estimates that over 10,000 pieces of equipment will be registered. Each piece of equipment has the ability to move frequently to different locations on any given day. Further, requiring site-specific consideration for the operation of registered portable engines and equipment would undermine the requirement that a uniform statewide regulation be created. The enabling legislation requires that once registered, an engine or equipment unit would be able to operate anywhere in California under one set of emission control requirements.

The only feasible option for consideration of site-specific impacts is through district enforcement of the Statewide Registration Program. Health and Safety Code section 41700 provides districts with the authority to ensure that no person discharges air contaminants in such quantities as to cause injury, detriment, nuisance, or annoyance to the public. Districts will have the ability to inspect ARB-registered equipment at each location, and where it can be verified that a nuisance or other threat to the public exists, order the cessation of operation at that location. In addition, the Regulation does not preempt counties or local jurisdictions from making land-use determinations or implementing other programs outside of the air district program that protect specific sites from undesirable impact.

Comment 2: Emissions from associated equipment are dependent on the material being processed. The emission factors for the associated equipment-- a crusher, a screener, the conveyor belts, the stockpiles, the access road, the yards-- all contribute to the emissions from the temporary project. The rule does not take into account these emissions, which can result in violations of the air quality standards.

Response: The Regulation has specific requirements for portable equipment based on classifications, commencing in section 2457. Some of these requirements include: a provision that no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark as or darker than Ringlemann 1 or equivalent 20 percent opacity; and that all transfer points shall be ducted through a fabric or cartridge type filter dust collector, or shall be equipped with a wet suppression system maintaining a minimum moisture content of 4 percent by weight; and that particulate matter emissions from each crusher shall be ducted through a fabric dust collector, or shall be equipped with a wet suppression system which maintains a minimum moisture content of 4 percent by

weight; and others.

In addition, the Regulation establishes an emissions limit of 82 pounds per day of PM₁₀. In evaluating each application for registration, ARB staff will use emission factors specific to the material being processed and include all emission points for the operation.

Comment 3: If equipment is assembled into a significant project with several engines or pieces of associated equipment, a site-specific CEQA analysis should be made.

Response: The consideration of site-specific impacts is not feasible under the Statewide Registration Program. The ARB staff estimates that over 10,000 pieces of equipment will be registered. Each piece of equipment has the ability to move frequently to different locations on any given day. Further, requiring site-specific consideration for the operation of registered portable engines and equipment would undermine the requirement that a uniform statewide regulation be created. The enabling legislation requires that once registered, an engine or equipment unit would be able to operate anywhere in California under one set of emission control requirements.

The only feasible option for consideration of site-specific impacts is through district enforcement of the Statewide Registration Program. Health and Safety Code section 41700 provides districts with the authority to ensure that no person discharges air contaminants in such quantities as to cause injury, detriment, nuisance, or annoyance to the public. Districts will have the ability to inspect ARB-registered equipment at each location, and where it can be verified that a nuisance or other threat to the public exists, order the cessation of operation at that location. In addition, the Regulation does not preempt counties or local jurisdictions from making land-use determinations or implementing other programs outside of the air district program that protect specific sites from undesirable impact.

Comment 4: The program currently requires that operators notify the district if the portable operations will exceed five days. This notification can come after the operation is underway. Instead, the district should be notified in advance of operation so they can at least determine if the project location is an acceptable site for the activity.

Response: The Regulation requires that registered engines and equipment units that will operate in a district for more than five days notify the district two working days prior to coming into the district. More than two days advance notice is not practical for all portable engine or equipment unit operations (such as operators of rental equipment).

Doug Van Allen, BJ Services

Comment 1: Much of the oil field equipment we use onshore is also used offshore for short periods of time. This equipment should be included in the Statewide Registration Program so it can be permitted for use on- and offshore.

Response: As part of the comprehensive report that is to be submitted to the Board next year pursuant to its direction, staff will present the results of consultation with affected local air

pollution control districts and sources and U.S. EPA, regarding the applicability of the Statewide Registration Program to portable internal combustion engines that are operated in State Territorial Waters and a determination if it is necessary to amend the Regulation to include such engines in the Statewide Registration Program.

Comment 2: There is no incentive to replace an older high-emission engine with a new lower-emission engine that also has to be retarded because of the Regulation's BACT requirements. Instead of retrofitting a \$200,000 newer, cleaner-burning engine, we will keep running our older engines until 2010.

Response: The Regulation as drafted requires portable engines, regardless of whether new or existing, to be modified to meet a 4-degree retard requirement. The ARB staff believes that this requirement is both economically and technically feasible for most engines, and is very effective in reducing emissions of nitrogen oxides.

Although it is true that some new engines are lower emitting than older engines, many new engines, especially those manufactured before 1996, emit at the same or higher levels than many older engines. The requirement for 4-degree retard ensures that all engines registered under the Statewide Registration Program will reduce nitrogen oxides emissions to the maximum extent feasible.

Larry Miller, Halliburton Energy Services

Comment 1: Halliburton operates many engines rated at over 750 horsepower. In one of the applications, the engines run from 12 to 16 hours per day. Much of this time the engines are not running at maximum horsepower-- they are only running at 50 to 100 percent 3 or 4 hours per day. This should be considered in regards to the Regulation's 12-hour operating limit.

Response: The 12-hour limit was a compromise reached with industry in lieu of the 100 pounds per day limit. This compromise should allow responsible operation of larger engines.

Comment 2: The offshore exclusion in the Regulation will require Halliburton employees to be familiar with three sets of regulations when operating their equipment in the South Coast, Ventura, and Santa Barbara. It is difficult for the employees to remember which rules apply as they jump from one district to another. As soon as possible, the Regulation and the three district rules should be compiled into one rule for these employees.

Response: As part of the comprehensive report that will be done pursuant to the directive of the Board, staff will evaluate the potential impacts of offshore portable equipment in consultation with affected local air pollution control districts, sources, and the U.S. EPA, and make recommendations as to the applicability of the Statewide Registration Program to portable engines that are operated in State Territorial Waters. As part of the report, the staff will determine if it is necessary to amend the Regulation to include such engines in the Statewide Registration Program.

Written Comments Received During the 15-Day Public Comment Period (May 9-30, 1997)

Gary Drilling Company (* received April 14, 1997-- prior to the comment period)

Comment 1: The definition of portable equipment in the Regulation and Title II of the Clean Air Act makes no distinction between portable equipment used onshore or offshore. Offshore equipment performs many of the same functions onshore, and should be allowed in the Statewide Registration Program. The exclusion of offshore equipment from the Statewide Registration Program seems to be another attempt to demise the petroleum industry piece by piece.

Response: As part of the comprehensive report that will be done pursuant to the directive of the Board, staff will evaluate the potential impacts of offshore portable equipment in consultation with affected local air pollution control districts, sources, and the U.S. EPA, and make recommendations as to the applicability of the Statewide Registration Program to portable engines that are operated in State Territorial Waters. As part of the report, the staff will determine if it is necessary to amend the Regulation to include such engines in the Statewide Registration Program.

Comment 2: Allow industry to concentrate on emissions reductions rather than paperwork and other labor-intensive tasks that produce no air quality benefits.

Response: Recordkeeping and reporting requirements are necessary to ensure compliance with the requirements contained in the Regulation. Consistent with State law, the requirements for recordkeeping and reporting are the minimum necessary to provide sufficient emission inventory data and allow adequate enforcement of the Statewide Registration Program.

Comment 3: Since portable equipment operates in harsh conditions, requiring paper registration files to be kept at the worksite is not practical. A permanent tagging system for engine and equipment identification would allow inspectors to access the ARB's electronic database and verify registration information.

Response: With the exception of tactical support equipment, each unit of registered portable equipment will have a weather-durable registration sticker attached (made of material similar to the sticker material used for registered off road land vehicles). In addition to the attached registration sticker, a copy of the registration certificate must be maintained at the worksite. This will allow the district inspector to visually identify each unit of registered equipment, and ensure onsite compliance with operating conditions listed on the registration certificate.

Pool California Energy Services, Inc. (* received April 17, 1997-- prior to the comment period)

Comment 1: It is our understanding that the 12-hour limit on engines over 750 horsepower is a daily emission limitation that applies only in the South Coast Air Quality Management District.

Response: New nonroad engines rated at 750 brake horsepower or greater for which a federal or California standard has not yet become effective, shall not operate more than 12 hours per day in any district.

Comment 2: Most of the portable equipment used offshore is also used onshore. If offshore

portable equipment is excluded from the Statewide Registration Program, the same pieces of equipment will have to register with the ARB for onshore use and be permitted by the air districts for offshore use.

The offshore exclusion was not discussed during the public workshops or with the portable equipment workgroup. The Statewide Registration Program should include all portable equipment that meets the definition of portable equipment under Title II 40 CFR 89.2, which includes equipment used offshore.

Response: As part of the comprehensive report that will be done pursuant to the directive of the Board, staff will evaluate the potential impacts of offshore portable equipment in consultation with affected local air pollution control districts, sources, and the U.S. EPA, and make recommendations as to the applicability of the Statewide Registration Program to portable engines that are operated in State Territorial Waters. As part of the report, the staff will determine if it is necessary to amend the Regulation to include such engines in the Statewide Registration Program.

Comment 3: Section 2456(f) states that a portable engine owner or operator can obtain a temporary exemption from daily or annual emission limits by submitting a compliance plan to move to cleaner technologies. If this equipment were exempt from reporting and recordkeeping requirements, it would be an incentive for industry to move to cleaner technologies because it would reduce operating costs. Include an exemption from recordkeeping and reporting in the Regulation as an incentive for cleaner technologies.

Response: Under the Statewide Registration Program, portable engines that meet the emission requirements for new engines under CFR 40 part 89 or CCR Title 13 are exempt from daily or annual emission limits, and recordkeeping and reporting requirements [see the Regulation's section 2456(e) and (f), and section 2458(a)].

Comment 4: Portable equipment is operated in harsh environments where a paper permit will not survive. The portable equipment workgroup discussed the use of a sticker system on the engine for on-site identification.

Response: With the exception of tactical support equipment, each unit of registered portable equipment will have a weather-durable registration sticker attached (made of material similar to the sticker material used for registered off road land vehicles). In addition to the attached registration sticker, a copy of the registration certificate must be maintained at the worksite. This will allow the district inspector to visually identify each unit of registered equipment, and ensure onsite compliance with operating conditions listed on the registration certificate.

Construction Industry Air Quality Coalition (May 28, 1997)

Comment 1: It was CIAQC's understanding that BACT employed on portable equipment permitted with the local districts would suffice for the BACT requirements of the Statewide Registration Program. Because the BACT requirements of the Statewide Registration Program are not appropriate for many portable engines, they could serve as a disincentive for registration

in the Statewide Registration Program.

Response: Health and Safety Code section 41754 requires that the Regulation preserve the most stringent BACT requirements adopted by a district and in effect on January 1, 1995. In determining the appropriate emission limits or emission control technology requirements for classes and categories of portable equipment, the ARB may set different requirements for portable equipment that is defined by the Board as resident portable equipment. To the extent not in conflict with federal law, the ARB may consider technical and economic feasibility in establishing emission limits or control equipment requirements for any category or class of existing resident portable equipment, if all portable equipment in that category or class is required to be modified or replaced to meet BACT or the more stringent of a California or federal emission standard.

The Regulation requires that an engine meet a concentration limit (ppmv or g/bhp-hr), or employ turbocharging, aftercooling (intercooling), and 4-degree retarding. This approach allows an applicant the option of purchasing an engine which meets the emissions limits or complies with the technology requirements. The requirement for engine retarding is an effective technology for reducing emissions of nitrogen oxides.

Comment 2: The owner of a registered unit of portable equipment should not have to pay for an inspection more than once in six months unless a previous inspection revealed a violation of the operating conditions. A district could determine the results of the most recent inspection by accessing the ARB's electronic bulletin board, without the need to charge for another inspection.

Response: At the March 27, 1997 Board Hearing, the Board directed staff to evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health and Safety Code section 41752(d)(2). In addition, within one year of the effective date of the Regulation, staff is to report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the Regulation, as appropriate. If at the time of this comprehensive report it is found that districts are abusing their right to collect fees for inspections, staff may recommend changes limiting the frequency and/or fees for inspections. Also, if it is found that the districts' ability to recover costs for enforcement is not adequate, staff will recommend changes to the fees based on input from the districts and affected industry.

Comment 3: The Portable Equipment Workgroup should be reconvened shortly after the Statewide Registration Program is implemented to give the ARB staff the opportunity to hear first-hand from those using the program.

Response: As part of staff's efforts to fulfill the Board's mandate to prepare a comprehensive one year report, staff will reassemble the workgroup consisting of representatives from affected industry, districts, and U.S. EPA to consider the concerns raised at the Board Hearing. The workgroup will identify issues, discuss implementation challenges, and develop recommendations. Based on the workgroup's recommendations, staff will prepare a comprehensive report for submittal to the Board.

Western States Petroleum Association (May 30, 1997)

Comment 1: At the March 27, 1997 meeting of the Air Resources Board, the staff was directed to further evaluate the possibility of including portable engines and equipment located in State Territorial Waters in the Statewide Registration Program. It was WSPA's understanding that staff would also evaluate the possibility of including equipment located in the California Outer Continental Shelf as well. Is this true?

Excluding offshore portable equipment from the Statewide Registration Program diminishes the benefits of the program. Much of this equipment is also used onshore. By excluding the equipment from the program when it is being used offshore, operators will be required to register the same piece of equipment with the ARB for onshore use, and with the appropriate air district for offshore use. There does not appear to be a clear reason to make a distinction on "use" in determining if an onshore engine is "portable" when it performs the same function offshore.

Response: While the Board directed staff to investigate the possibility of including portable equipment operated in State Territorial Waters, they did not direct the inclusion of equipment operated in the Outer Continental Shelf. This equipment falls under federal authority, and ARB staff believes there are conflicts between California and federal law that would make their inclusion in the Statewide Registration Program difficult. Still, staff is amenable to discussing potential conflicts during the discussions of including portable equipment operated in State Territorial Waters.

Comment 2: Before the ARB staff reports back to the Board on the problems of implementing the Statewide Registration Program, the Portable Equipment Workgroup should be reconvened to help discuss the implementation problems and develop possible solutions.

Response: As part of staff's efforts to fulfill the Board's mandate to prepare a comprehensive one year report, staff will reassemble the workgroup consisting of representatives from affected industry, districts, and U.S. EPA to consider the concerns raised at the Board Hearing. The workgroup will identify issues, discuss implementation challenges, and develop recommendations. Based on the workgroup's recommendations, staff will prepare a comprehensive report for submittal to the Board.