

# **Final Statement of Reasons for Rulemaking**

Including Summary of Comments and Agency Responses

## **PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATION FOR THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM**

Public Hearing Date: June 22, 2006

Agenda Item Number: 06-6-2

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State of California  
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking,  
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**I. GENERAL**

On June 22, 2006, the Air Resources Board (ARB or Board) conducted a public hearing to consider amendments to the Regulation for the Statewide Portable Equipment Registration Program (Statewide Regulation). The proposed amendments are designed to improve the enforceability and clarity of the regulation and affect about 30,000 pieces of portable equipment.

Staff proposed in this rulemaking to address and make changes to the district inspections fees, recordkeeping and reporting requirements, and notification requirements. For most of the portable equipment in the program, staff proposed to increase the district inspection fees to \$40 per year for engines and up to \$116 for equipment units. Separate fee increases were proposed for military tactical support units (TSE). The proposed amendments also require owner/operators to identify a home district where the equipment resides most of the time; mount a placard on the registered portable equipment that identifies it as registered; install an hour-meter or equivalent device to track use; keep onsite records to track operation or process throughput; and submit an annual report summarizing equipment use throughout the year. The proposed amendments also require districts to submit an annual report summarizing the district inspections.

At the June 22, 2006, hearing, the Board adopted the proposed amendments. This Final Statement of Reasons (FSOR) summarizes the written and oral comments received during the 45-day comment period preceding the June 22, 2006, public hearing and at the hearing itself. This FSOR contains the ARB staff's responses to those comments.

**Fiscal Impacts**

The Board has determined that this major regulatory action will result in minor costs and/or savings impacts to some State agencies, no impact on federal funding to the

State, and some costs to local agencies or school districts, that are not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, and title 2 of the Government Code, as discussed below or other non-discretionary savings to local agencies.

The increased costs are from the increase in district inspection fees, increased recordkeeping and reporting requirements, costs to install hour meters, and costs for obtaining placards. ARB staff estimates that the total economic impact of the proposed amendments to the Statewide Regulation to affected private businesses and public (local, State, and federal) agencies is \$54.2 million over its lifetime (\$50.5 million for private businesses and \$3.7 million for public agencies). Because this is a voluntary program, public agencies and private businesses that do not wish to participate in the Portable Equipment Registration Program (PERP) may obtain permits from the districts.

Staff estimates that 181 local agencies will be affected by the proposed amendments. The total economic cost for local agencies to comply with the amendments to the Statewide Regulation is estimated by ARB staff to be \$2.9 million.

Staff estimates that eight State agencies will be affected by the amendments. The total economic cost for State agencies to comply with the amendments to the Statewide Regulation is estimated by ARB staff to be \$53,000.

Staff estimates that 50 federal agencies will be affected by the amendments. The total economic cost for federal agencies to comply with the amendments to the Statewide Regulation is estimated by ARB staff to be \$780,000.

The Executive Officer has made an initial determination that the regulatory action will have minimal statewide adverse economic impacts directly affecting businesses. The Executive Officer has also assessed that the regulatory action will have minimal statewide adverse economic impacts directly affecting the ability of California businesses to compete with businesses in other states or representative private persons.

The Executive Officer has determined, pursuant to title 1, CCR, section 4, that the amendments to the Statewide Regulation will affect small businesses. The total economic impact to small businesses would be \$35.4 million dollars. The total economic impact to all businesses would be \$50.5 million dollars.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the regulatory action will not affect the creation or elimination of jobs within California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of economic impacts of the proposed regulatory action can be found in the Initial Statement or Reasons (ISOR).

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the amended reporting requirements that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The amendments to the Statewide Regulation will continue to have a beneficial effect on the California business climate by eliminating the need for duplicative permits, allowing increased flexibility, and lowering overall costs compared to obtaining and maintaining multiple district permits.

### **Consideration of Alternatives**

The Board has further determined that there are no alternatives available that would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

At a February 2004 Board hearing at which the Board was considering an earlier set of amendments to the Statewide Regulation, the California Air Pollution Control Officers Association (CAPCOA) raised a number of concerns related to the enforceability of the Statewide Regulation. CAPCOA represents the local air pollution control districts and air quality management districts, the agencies responsible for the enforcement of the Statewide Regulation. The Board directed staff to work with CAPCOA and affected industries to resolve these concerns. CAPCOA formed a consensus-building group to develop and consider a number of alternatives that could be used to resolve the concerns. The group, which did not include ARB, was a representation of interested affected industries. The group, chaired by CAPCOA, developed and considered several alternative proposed amendments to the Statewide Regulation. After extensive discussions and negotiations among the represented affected parties, the group presented ARB with a proposal that represented a negotiated resolution to the concerns that CAPCOA had raised at the February 2004 Board hearing.

Using the CAPCOA consensus-based proposal as a starting point for discussions with affected industry and other stakeholders, ARB developed proposed amendments to the Statewide Regulation. Staff believes that the amendments to the Statewide Regulation being adopted in this rulemaking reflect full consideration by the CAPCOA consensus building group of the available alternatives that could offer improved flexibility for affected industries and increased enforceability of the Statewide Regulation.

### **Effective Date**

On December 7, 2006, the Board adopted emergency amendments that revise the registration and registration fee requirements in the regulation for the Statewide Program. These emergency amendments were approved by the Office of Administrative Law on December 27, 2006, and they were filed with the Secretary of State on the same day. In accordance with Government Code section 11346.1, they

became effective December 27, 2006 for a period not exceeding 120 days (ending April 26, 2007).

Since the amendments covered by this FSOR do not reflect the emergency amendments, ARB is designating April 27, 2007 as the date the amendments in this rulemaking will become effective. ARB is initiating a fully-noticed rulemaking to permanently implement the emergency amendments, with various modifications. The Proposed Regulation Order in that rulemaking will show the amendments as changes to the regulation for the Statewide Program as amended in the rulemaking covered by this FSOR. ARB intends to have those new amendments also become effective April 27, 2007, either as resubmitted emergency amendments or as amendments adopted in a fully noticed rulemaking.

## **II. CHANGES WITHOUT REGULATORY EFFECT**

The following non-substantial or solely grammatical modifications to the regulatory text were made after the hearing. The changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

Article and section titles were changed to bold font to track the text in Barclays California Code of Regulations.

In section 2452, Definitions, quotation marks were added around each of the terms being defined so that the text will be clearer in Barclays California Code of Regulations.

Clerical edits were made to Section 2455 (general requirements) (a) to delete an “a”. Clerical edits were made to Section 2455 (c) to change the reference from 2452 (ef) to 2452 (fi) and a grammatical edit was made to Section 2455 (c) to change “a” to “an”.

A clerical edit was made to Section 2456 (engine requirements) (d)(7) to change the reference from (5) to (6)(E) and from (6) to (6)(F). In addition, a clerical change was made to Section 2456 (d)(8) to change the reference from (3) to (6)(C).

In Table 1 of section 2456, the font of the column headings was changed to track the current text in Barclays California Code of Regulations.

A change was made to Section 2458(f) to remove the word “portable” that was shown with both a strike-through and underline.

A change was made to Section 2459(d) to remove the underline on the words “electronic mail.”

A clerical edit was made to Table 1 (Spark-ignition Engine Requirements) to delete “or Control Technology” from the title of the table.

In Section 2460 (b)(5), a grammatical change was made to delete the word “to”.

A clerical edit was made to Section 2461 (fees) (d) to change the reference from Section 2460(b)(6) to Section 2460(b)(7).

A clerical edit was made to Table 2 (Fees for Statewide Registration Program) to abbreviate tactical support equipment to TSE.

In section 2463, the capitalization of the section heading was corrected.

In section 2464(a), a period was added at the end of the subsection heading.

### **III. SUMMARY OF COMMENTS AND AGENCY RESPONSES**

The Board received written and oral comments during the 45-day comment period and at the June 22, 2006, hearing. A list of commenters is set forth below, identifying the date and form of all comments that were submitted in a timely manner.

<u>Abbreviation</u>	<u>Commenter</u>
ACAPCD	Amador County Air Pollution Control District Mr. Jim Harris Oral Testimony: June 22, 2006
ALA	American Lung Association Ms. Colleen Callahan Oral Testimony: June 22, 2006
AM	Assembly Member Honorable Dave Jones Oral Testimony: June 22, 2006
ARA	American Rental Association Dr. John W. McClelland, Ph.D. Dr. Michael S. Graboski, Ph.D. Written/Oral Testimony: June 22, 2006
ATA	Air Transport Association Mr. Timothy Pohle, Assistant General Counsel Environmental Affairs Written Testimony: June 21, 2006

CAPCOA	California Air Pollution Control Officers Association Mr. Terry Dressler Oral Testimony: June 22, 2006
CCEEB	California Council for Environmental and Economic Balance Mr. John Grattan Oral Testimony: June 22, 2006
CDCR	California Department of Corrections and Rehabilitation Mr. Ben Sanacore Written Testimony: May 31, 2006
CIAQC	Construction Industry Air Quality Coalition Mr. Michael W. Lewis, Senior Vice-President Written/Oral Testimony: May 18, 2006
DOD	Department of Defense Major Jeremy Jungreis Oral Testimony: June 22, 2006
EMA	Engine Manufacturers Association Mr. Timothy A. French Written Testimony: June 20, 2006
LACSD	County Sanitation Districts of Los Angeles County Mr. Frank R. Caponi, P.E. Written Testimony: May 12, 2006
SCAQMD	South Coast Air Quality Management District Mr. Barry Wallerstein Oral Testimony: June 22, 2006
SCCA	Southern California Contractors Association, Inc. Mr. William Davis Oral Testimony: June 22, 2006
SDAPCD	San Diego Air Pollution Control District Mr. Dick Smith Oral Testimony: June 22, 2006

SJVUAPCD	San Joaquin Valley Unified Air Pollution Control District Mr. Rick McVaigh Oral Testimony: June 22, 2006
SLOAPCD	San Luis Obispo Air Pollution Control District Mr. Larry Allen Oral Testimony: June 22, 2006
SMAQMD	Sacramento Metro Air Quality Management District Mr. David Grose Oral Testimony: June 22, 2006
NAVY	Department of the Navy Mr. Rene Trevino Written Testimony: May 19, 2006
NSAPCD	Northern Sonoma Air Pollution Control District/CAPCOA Ms. Barbara Lee Written Testimony: June 22, 2006
NWSC	Nabors Well Services Company Mr. James Thomas Oral Testimony: June 22, 2006
WSPAA	Western States Petroleum Association Associates Mr. Tom Umenhofer Oral Testimony: June 22, 2006

Many of the 41 commenters supported the amendments to the Statewide Portable Equipment Registration Program. Set forth below is a summary of each objection or recommendation made regarding the proposed action with the agency response. The specific comments from each organization are summarized according to subject area.

1. Comment: Several commenters expressed their support of the proposed amendments urged the Board to adopt them. (AM, CAPCOA, SCAQMD, SJVUAPCD, SDAQMD, SLOAPCD, ACAPCD, WSPAA, SMAQMD, ALA, CCEEB, NWSC, CAPCOA, NSAPCD)

Agency Response: Thank you for the support. No response is required.

2. Comment: Several commenters expressed their opposition to revising the proposed amendments to provide for an additional amnesty period to allow non-compliant

portable equipment to enter into PERP. (AM, SCAQMD, SLOAPCD, WSPAA, SMAQMD, NWSC)

Agency Response: Thank you for the support. No response is required.

3. Comment: ARB should create a pathway for contractors with non-compliant portable equipment to enter into PERP. The current proposal is too punitive for half of the engines in the State to be illegal and have to be replaced in the time frame called out in the adopted September 2004 regulation. The contractors should have to pay a fine and agree to install a retrofit device on the equipment. (CIAQC, SCCA, CDCR)

Agency Response: The regulation has been opened several times before to allow engines into the program and ample opportunity has been allotted to register non-compliant engines. The number of engines that have been registered in the previous amnesty periods has been minimal. A level playing field needs to be created with those that have been paying registration fees since the beginning of PERP. Owners of engines that do not qualify for PERP will need to work with the district to bring the engine into compliance and obtain a district permit. No retrofit devices are currently verified by CARB for portable equipment.

4. Comment: There are certain segments of the industry that will never be able to comply with this regulation, such as companies that purchase engines from outside the United States. This equipment is not allowed to obtain a permit at the district level. It also appears that there is confusion as to what pieces of equipment fall under the three different categories of the regulation. (SCCA)

Agency Response: Compliant engines from both the U.S. and elsewhere are available for installation for portable equipment. After purchasing this equipment, owners have the option of either registering the equipment in ARB's PERP or obtaining a permit from a district. ARB staff has contacted this particular commenter to resolve his confusion about the regulations that apply to the different types of equipment that he owns.

5. Comment: Additional outreach should be conducted. (SCCA, CIAQC, EMA)

Agency Response: ARB will work with SCCA, EMA, and other stakeholders to conduct an aggressive outreach program regarding these amendments to PERP. Individual meetings and workshops will be held to explain the changes that have been made to the regulation and answer any concerns that may arise. Furthermore, letters, brochures, and pamphlets will be mailed to owners of registered engines and to those who may potentially be interested in participating in the PERP.

6. Comment: ARB should clarify the process for resolving disagreements regarding jurisdiction issues between the district permitting program and ARB's voluntary PERP program. (DOD, ATA, Navy)

Agency Response: The amendments did not change any of the processes that were developed after the adoption of the September 2004 version of the regulation. We have a successful process in place for facilitating communication among ARB, the districts, and affected stakeholders. ARB staff will continue to work closely with districts and affected stakeholders to resolve issues where jurisdiction disagreements arise.

7. Comment: ARB should allow compliant engines that were ordered before the amnesty period ended, but delayed in delivery, to be allowed in PERP. It is suggested that this procedure be continued each time a new tier emission standard is phased in. ARB should also amend the PERP regulation so that its emission requirements are aligned with engine build dates. (EMA, ARA, Navy)

Agency Response: The amendments proposed in connection with the hearing notice and adopted by the Board on June 22, 2006 include a provision to allow compliant engines that were ordered before the amnesty period ended, but delayed in delivery, to be allowed in PERP. Aggressive outreach efforts will be conducted to avert this type of issue when new tier emission standards are phased-in in the future. In addition, ARB staff in conjunction with EMA and other affected stakeholders will investigate the issue of aligning emission requirements with engine build dates and may propose amendments at a future date.

8. Comment: The requirement to record usage meter readings at the beginning and end of each calendar week would impose unnecessary administrative burdens with no corresponding benefit. This burden should not be imposed unless and until a legitimate need for the information is needed. There should be flexibility in the start and stop day for weekly meter readings. (ATA)

Agency Response: Recordkeeping is an important part of the regulation. Currently, there is a lack of operational information to evaluate emissions and potential air quality impacts of portable equipment. Recordkeeping and reporting will become less costly and more simplified as standardized forms, web based tools, and standardized reporting formats are developed by the ARB staff in the near future. In addition, the regulation does provide flexibility in establishing weekly meter readings. ARB staff will work closely with applicants to determine appropriate recording periods.

9. Comment: ARB should clearly show Ground Support Equipment (GSE) is exempt from district permits if registered in PERP. (ATA)

Agency Response: Current amendments to the regulation will not change the process for determining eligibility into PERP. Any equipment that meets the definition of portable and complies with the requirements contained in the regulation qualifies for registration in PERP. Once registered in PERP, district programs and requirements do not apply.

10. Comment: ARB should provide demonstrable diesel particulate emissions benefits in the amendments. (ARA)

Agency Response: All diesel-fueled portable engines greater than 50 hp are subject to the air toxic control measure (ATCM) that the Board adopted in 2004 to reduce diesel PM emissions from this category of equipment. Through engine replacement and fleet averaging requirements, significant PM reductions are expected through the year 2020 and beyond.

11. Comment: The proposed amendments impose substantial costs on businesses that are already participating in the PERP. (ARA, CIAQC)

Agency Response: The increase in fees in the regulation was needed to more adequately cover the actual costs that the districts incur in enforcing PERP. ARB evaluated current enforcement information from the major districts in the State in order to arrive at the proposed inspection fees for the voluntary PERP. If businesses were to opt for a district permit, rather than a PERP registration, their resulting costs would be higher.

12. Comment: ARB staff should consider more creative and less manpower intensive ways of auditing equipment such as requiring a chip nameplate provided on all new equipment by the vendor and chips supplied by the State for equipment previously registered instead of a placard. (ARA)

Agency Response: Staff will evaluate emerging systems to track equipment use and location. After the first 3-year cycle of implementation of these amendments to the Statewide Regulation, staff will provide a progress report to the Board regarding additional modifications or enhancements that should be considered for PERP.

13. Comment: ARB should provide a standard electronic data sheet as a part of the registration process that satisfies the Agency's needs and that can be completed and certified by the vendor at the time of purchase. The vendor should be held responsible for providing equipment with engines that meet state regulatory requirements. (ARA)

Agency Response: Currently, ARB is overhauling the registration system to provide applicants with the ability to submit application information electronically. With respect to the vendor being held responsible for providing equipment with engines that meet state regulatory requirements, ARB does have an active enforcement program to assure that vendors sell only compliant engines. However, regulatory requirements may also depend in part on how the buyer utilizes the purchased engine (e.g. whether it is part of a stationary source), and vendors cannot be held accountable for a buyer's decision as to engine utility. Further, the timing of the application for registration is controlled by the buyer as well. A vendor may have sold an engine that, at the time of sale, met all program requirements for

registration. If the buyer, for whatever reason, elects not to register the engine until some subsequent point in time when the engine no longer meets program requirements for registration, it would not be reasonable to impose responsibility for the buyer's decision on the vendor.

14. Comment: It is unclear whether rental businesses must register portable equipment. If so, this would seemingly be inconsistent with the voluntary nature of the program. (ARA)

Agency Response: There is no requirement for rental businesses to register their portable equipment, as PERP is a voluntary program. A business may choose to register their portable equipment if they find it more advantageous than obtaining permits from multiple districts.

15. Comment: ARB should define an "inspection." Without a definition, it is not possible to determine whether the fee per inspection is consistent with the inspection activity. (ARA)

Agency Response: We believe that the districts, ARB, and U.S. EPA have a working definition of inspection. In addition to the time spent in the field observing portable equipment itself, an inspection includes identifying affected industries; performing public outreach to educate those affected; providing compliance assistance; performing field surveillance and pre-inspection preparation; conducting mutual settlement of violations and prosecution where necessary; conducting follow-up for sources failing to pay fees and/or fines; performing database entry and reporting work; and developing forms and reports.

16. Comment: It is not clear why the regulation addresses less than 50 brake-horsepower (bhp) equipment. (ARA)

Agency Response: Historically most districts have not required permits for engines that are less than 50 bhp thus registration was not necessary. However, nothing in the PERP would prohibit an owner from registering engines less than 50 bhp.

17. Comment: Rental companies should not be liable if a renter illegally fuels a rented registered piece of equipment. (ARA)

Agency Response: As required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. Once the renter is properly notified of the requirements, the renter becomes liable for proper operation of the equipment. However, each enforcement case is based on the individual circumstances.

18. Comment: Rental companies should not be held liable if a renter operates a registered piece of rental equipment in such a fashion as to violate the smoke rule. (ARA)

Agency Response: As required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. Once the renter is properly notified of the requirements, the renter becomes liable for proper operation of the equipment. However, each enforcement case is based on the individual circumstances.

19. Comment: Rental companies should not be held liable if a renter operates a registered piece of rental equipment in such a fashion as to violate the emission limits. (ARA)

Agency Response: As required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. Once the renter is properly notified of the requirements, the renter becomes liable for proper operation of the equipment. However, each enforcement case is based on the individual circumstances.

20. Comment: Rental companies should not be held liable if a renter operates a registered piece of rental equipment in such a fashion as to violate the other applicable requirements of section 2457(a). (ARA)

Agency Response: As required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. Once the renter is properly notified of the requirements, the renter becomes liable for proper operation of the equipment. However, each enforcement case is based on the individual circumstances.

21. Comment: ARB should provide, if it currently does not, a rental waiver form acceptable to ARB counsel for the renter to sign. Any notification requirements described in the waiver must be the responsibility of the renter and not the owner. (ARA)

Agency Response: As required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. Once properly notified, the renter is responsible for properly operating the equipment and notification requirements.

22. Comment: The rental company cannot be held liable for misinformation regarding equipment location supplied by any renter. (ARA)

Agency Response: The regulation requires that the rental company request from the renter the location of operation at the time the equipment is returned. The rental company is not responsible for false location information provided by the renter.

23. Comment: Under section 2459, it is not clear why “renter” was struck from

the paragraph. It implies that the rental company that is the “owner” of this equipment could be held liable for not notifying the appropriate agency regarding the location of an equipment unit for more than 5 days. The location or duration of rental of registered equipment is not the responsibility of the rental company. (ARA)

Agency Response: Section 2459 states that the owner or operator is responsible for notification. In the case of a rental unit, the operator would be responsible for notification.

24. Comment: In section 2459 subsections (a) and (e) seem to be in conflict. (ARA)

Agency Response: Section 2459(a) refers to the operation of an equipment unit, whereas section 2459(e) refers to the operation of registered engines.

25. Comment: It seems that there is no requirement to actually conduct an emission test of a certified engine. If any engine is a certified engine that is within its useful emissions life or is fitted with a retrofit device under warranty, it is not clear why it must be inspected at all. (ARA)

Agency Response: As stated in the regulation, initial or follow-up source testing of engines to verify compliance with the requirements of this regulation shall not be required for certified engines unless there is evidence of engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect engine emissions are identified. Inspections are a necessary requirement under the regulation to ensure that engines and equipment units are properly maintained, tampering has not occurred, and the owner is complying with the conditions listed on the registration certificate.

26. Comment: Any fee charged for inspection should cover the cost associated with that inspection only. The districts should not fund enforcement programs related to catching non-registered equipment through funds collected for inspection. Further, since most equipment in the State is certified, there is no emission test requirement. The State should provide an independently developed proposal for inspection fees that proves a quantifiable emission reduction within its own guidelines for cost effectiveness for pollutant reduction. (ARA)

Agency Response: Please see the agency response to Comment Number 15.

27. Comment: The regulation mandates self-enforcement at a considerable cost through recordkeeping and reporting. With self-enforcement, there should be no need to inspect each piece of certified equipment or equipment fitted with a retrofit device. Through reporting, ARB and the districts can ascertain if appropriate warranties provided by the manufacturer are active, proving the emissions performance. (ARA)

Agency Response: A proper enforcement program for all district regulated sources of air pollutants requires that all equipment be regularly inspected in-person by a district inspector to ensure compliance. Recordkeeping and reporting, and manufacturer warranties, are not a replacement for periodic district inspections.

28. Comment: The State should examine the cost-effectiveness of a random audit program to check compliance as compared to a mandatory inspection of all engines and equipment units. (ARA)

Agency Response: Portable equipment, by design, is moved frequently and typically subjected to harsh and varied operating conditions which can impact maintenance and repair and ultimately impact emissions. For these reasons, ARB and district staff believe periodic inspections are essential to ensure compliance with requirements of the PERP regulation and emission reductions are maintained. In addition, to minimize costs, mandatory inspections are required only once every three years.

29. Comment: Notification requirements should not apply to equipment units that change location within a facility, as moving equipment within a facility does not pose any new potential for a public nuisance. (LACSD, CDCR)

Agency Response: The amendments to the regulation allow owners or operators subject to the notification requirements to arrange with the district alternative notification requirements for equipment units on a case-by-case basis. Where a district determines that a public nuisance is not created by moving equipment within a facility, it has the option to waive notification requirements or arrange for less frequent notification.

30. Comment: It is not clear what is the construction industry's contributions to the air quality in California? (SCCA)

Agency Response: All portable engines greater than 50 hp are subject to the ATCM that the Board adopted in 2004 to reduce diesel PM emissions from this category of equipment. ARB staff estimates that portable engines emit 4 tons/day of diesel PM and 50 tons/day of oxides of nitrogen (NOx). It is estimated that construction activities are responsible for greater than 50 percent of emissions from portable equipment.

31. Comment: Can engines that are not certified, but have BACT, obtain a permit from the districts? (SCCA)

Agency Response: The requirements contained in the PERP regulation and ATCM represent BACT for portable engines. Districts can permit portable engines only if they satisfy the requirements contained in the ATCM.

32. Comment: Mr. Davis has requested a letter explaining the permitting process for European engines. (SCCA)

Agency Response: ARB staff is continuing to work with Mr. Davis clarifying the requirements and options for complying with multiple ARB regulations that pertain to his industry.

33. Comment: What was the purpose of the proposal to amend the regulation? (ARA)

Agency Response: At the February 2004 Board meeting, CAPCOA raised a number of concerns related to the enforceability of the Statewide Regulation. The Board directed staff to work with CAPCOA and a number of affected industries to resolve these concerns. Staff believes the proposed amendments represent a fair and equitable balance between flexibility for affected industries and increased enforceability of the Statewide Regulation.

34. Comment: If, as staff believes, most of the benefits will come from catching cheaters, a program should be implemented to capture those emission benefits. The cost should not be recovered from a registration and inspection program. The appropriate way to cover those costs is through the assessment of penalties on the violators. (ARA)

Agency Response: PERP is a voluntary program and has a beneficial effect on the California business climate by eliminating the need for duplicative permits, allowing increased flexibility, and lowering overall costs compared to obtaining and maintaining multiple district permits. In addition, please see the agency responses to Comments Number 15, 27, and 28.

35. Comment: What does the phrase "The written rental or lease agreement shall be kept onsite with the registered engine or equipment unit at all times" mean? Is the site the rental yard or the renter's project location? If the equipment is not rented and the rental yard is the site, there is no contract. The rental company has no way of causing the renter to always have his contract available if the project location is the site. This is a renter's responsibility. (ARA)

Agency Response: If there is no contract because the equipment is not rented, then the requirement to have an onsite rental contract is moot. Notwithstanding this, as required by the amendments to the regulation (section 2458(b)), rental companies must inform the renter of the requirements of this regulation. However, each enforcement case is based on the individual circumstances.

36. Comment: A program that randomly audits equipment funded through a reduced fee and fines could be much more cost effective than inspecting every piece while providing nearly identical emissions benefits. (ARA)

Agency Response: Please see the agency response to Comment Number 28.

37. Comment: LACSD proposed the following modification to section 2459 of the proposed amendments. (LACSD)

2459. Notification

(a) **If re-located after (effective date of amendments), and** except as listed in subsection (d) of this section, if a registered equipment unit will be **operated** at a **facility** for more than five days, the owner or operator of that registered equipment unit, shall notify the district in writing, in a format approved by the Executive Officer, within two working days of commencing operations in that district. If the registered equipment unit is to be moved to different **facilities** within the same district, the owner or operator shall be subject to the notification requirements above, unless the owner or operator and the district, by mutual agreement, arrange alternative notification requirements on a case-by-case basis. The notification shall include all of the following:

Agency Response: The wording proposed by the ARB staff is consistent with the terms and level of specificity that is used in inspection activities. In addition, as stated in the agency response to Comment Number 29, the amendments to the regulation allow owners or operators subject to the notification requirements to arrange with the district alternative notification requirements for equipment units on a case-by-case basis.

38. Comment: The Regulation should allow the flexibility for California Department of Corrections and Rehabilitation (CDCR) district permitted equipment to be qualified by PERP, allowing for reduced program costs. (CDCR)

Agency Response: Engines and equipment units permitted by a district automatically qualify for registration in PERP.

39. Comment: CDCR requests ARB to grant amnesty to CDCR's older engines that are not currently registered in PERP. As a public agency subject to spending scrutiny and limits, the cost of replacing useful, newer engines may be high. CDCR, as a non-competitive public agency, has not gained competitively, where applicable, for not registering these PERP qualified units previously. A PERP qualified unit may not have been registered out of a lack of knowledge or awareness. (CDCR)

Agency Response: ARB staff are currently working on additional amendments to the PERP regulation to allow additional engines to be registered. Staff will work closely with CDCR.

40. Comment: CDCR requests to be classified as a Provider of Essential Public Services (PEPS) entitled to the alternative notification requirements in section 2459, for its engines and equipment units. The CDCR provides criminal incarceration and

rehabilitation (public safety) services to the people of the State of California. CDCR's work environment is unique in the State and is multi-faceted. PERP qualified units may be used during emergencies (riots, mutual aid, etc) and by CDCR divisions that are routinely deployed in a number of different counties. Some facilities provide power, water, sewage treatment, food production, manufacturing, etc. to their own and other CDCR facilities. CDCR is involved in power generation for the utility grid. (CDCR)

Agency Response: CDCR's portable equipment that is used during emergencies is relieved of any notification requirements. To the extent that CDCR can demonstrate that it is a PEPS while operating during non-emergency situation, it can avail itself of the alternative notification requirements. Although CDCR certainly provides an essential public service through its social protection function, that is not the type of service contemplated by the definition. Many public agencies provide services protective of the public (e.g. flood control), that are not covered by this provision.

41. Comment: CDCR requests to receive relief on the inspection fees for its engines. Since CDCR is a public agency and has a limited budget, it should have lower inspection fees and would like to combine the inspections with other district inspections to lower costs. (CDCR)

Agency Response: The increase in fees in the regulation is needed to more adequately cover the actual costs that the districts incur in enforcing PERP. ARB evaluated current enforcement information from the major districts in the State in order to arrive at the proposed inspection fees for the voluntary PERP. If businesses were to opt for a district permit, rather than a PERP registration, their resulting costs would be higher. There are provisions in the proposed amendments that would allow owners of portable equipment to make appointments for inspections and to obtain multiple-engine discounts – both provisions reduce costs to government agencies and private businesses alike.