

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 AND THE AIRBORNE TOXIC CONTROL MEASURE FOR DIESEL PARTICULATE MATTER FROM PORTABLE ENGINES

Public Hearing Date: March 22, 2007
Agenda Item Numbers: 07-3-3 & 07-3-4

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State of California
AIR RESOURCES BOARD

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I. GENERAL

On March 22, 2007, 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 PERP Regulation) and the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines (Portable Engine ATCM). The proposed amendments are designed to make permanent the emergency regulatory changes to the Statewide PERP Regulation and the Portable Engine ATCM adopted on December 7, 2006. In addition, these amendments will provide additional clarity and facilitate the implementation of the Statewide PERP Regulation and Portable Engine ATCM. These amendments will affect about 40,000 pieces of portable equipment.

Staff proposed in this rulemaking to address and make changes to the eligibility requirements for portable engines, recordkeeping and reporting requirements, and the registration fees for some engines. Certified engines that were previously ineligible for a district permit or PERP registration because they did not meet the most current emission standard in effect at the time of application will now be able to be registered with CARB or permitted with a district if they can demonstrate residency in California. Owners of non-certified engines may be able to obtain a district permit at the District's discretion if residency in California can be proven. Rental equipment units will only be required to track material throughput for daily recordkeeping and annual reporting requirements, instead of operating hours as in previous adopted versions of the Statewide PERP Regulation. For resident certified engines entering PERP that do not meet the current emission standard, back registration and inspection fees must be paid.

At the March 22, 2006, hearing, the Board adopted the proposed amendments along with additional amendments that were presented for a 15 day comment period after the hearing. This Final Statement of Reasons (FSOR) summarizes the written and oral comments received during the 45-day comment period preceding the March 22, 2007, public hearing, at the hearing itself, and during the 15-day comment period after the hearing. This FSOR contains the ARB staff's responses to those comments.

Fiscal Impacts

The Board has determined that this minor 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 due to the collection of back fees for some engines entering PERP. 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 \$6.6 million over its lifetime (\$6.05 million for private businesses and \$0.59 million for public agencies). Because this is a voluntary program, public agencies and private businesses that do not wish to participate in the PERP may obtain permits from the districts.

Staff estimates that 260 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 to be \$450,000.

Staff estimates that 15 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 to be \$93,000.

Staff estimates that 19 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 to be \$42,000.

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. In fact, the amendments will result in an economic benefit of approximately \$243.4 million compared to the previous version of the regulations.

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 \$4.3 million dollars. The total economic impact to all businesses would be \$6.1 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 the September 2006 Board hearing, the Board received public testimony concerning the inability to register older engine in PERP or permit them at the districts. Pursuant to this testimony, the Board directed staff to consider options and report back to the Board. ARB staff, in consultation with affected industry and the districts, developed emergency amendments to both the Statewide PERP Regulation and the Portable Engine ATCM.

Staff believes that these amendments to the Statewide PERP Regulation and the Portable Engine ATCM being adopted in this rulemaking reflect full consideration by both the affected industry and regulatory agencies of the available alternatives that could offer improved flexibility for affected industries regarding the Statewide PERP and district permitting programs.

Effective Date

On December 7, 2006 and again on March 22, 2007, the Board adopted emergency amendments that revise the registration and registration fee requirements in the regulation for the Statewide Program and the requirements in the Portable Engine ATCM. The first of these emergency amendments was 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. The emergency amendments that were adopted on March 22, 2007 were a re-adoption of the December 7, 2006 emergency amendments in order that there would not be a gap in regulatory authority since these proposed permanent amendments would not become

effective prior to the expiration of the emergency amendments adopted in December of 2006.

ARB initiated a fully-noticed rulemaking to permanently implement the emergency amendments, with various modifications. The Proposed Regulation Orders in that rulemaking will show the amendments as changes to the Statewide PERP Regulation and the Portable Engine ATCM as amended in the rulemaking covered by this FSOR. The current Emergency Portable Engine ATCM is due to expire on August 27, 2007; therefore, ARB staff intends to have the permanent amendments covered by this FSOR to become effective on or before August 27, 2007.

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.

In section 2460, Fees, the incorrect citation of Table 3 in subsection (k)(2) was changed to Table 2.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Board received written and oral comments during the 45-day comment period and at the March 22, 2007, 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>
ACPA	American Concrete Pumping Association Ms. Christi Collins Written Testimony: March 20, 2007 Oral Testimony: March 22, 2007
ARA	American Rental Association Dr. John W. McClelland, Ph.D. Dr. Michael S. Graboski, Ph.D. Written Testimony: March 20, 2007 Oral Testimony: March 22, 2007 Written Testimony: July 16, 2007
ARBI	ARB, Inc. Mr. Dan Dresser Oral Testimony: March 22, 2007

ATT	American Telephone & Telegraph Mr. Linus Farius Oral Testimony: March 22, 2007
BD	Mr. Bill Davis Written Testimony: March 21, 2007 Oral Testimony: March 22, 2007
BJS	BJ Services Co. Mr. Doug Van Allen Oral Testimony: March 22, 2007
CCEEB	California Council for Environmental and Economic Balance Mr. Allan Lind Written Testimony: March 19, 2007 Oral Testimony: March 22, 2007 Written Testimony: July 16, 2007
CCR	Cooper Crane & Rigging Mr. Howard Cooper Oral Testimony: March 22, 2007
CIAQC	Construction Industry Air Quality Coalition Mr. Jeb Stuart Mr. Michael Lewis Written Testimony: March 21, 2007 Oral Testimony: March 22, 2007
COA	Crane Owners Association Mr. Alvan Mangalindan Oral Testimony: March 22, 2007
CP	Conco Pumping Mr. Mike Cusak Written Testimony: March 21, 2007 Oral Testimony: March 22, 2007
CQC/PTS	California Quartz Crystals/Pat's Tree Service Mr. Patrick Hurley Written Testimony: March 22, 2007 Oral Testimony: March 22, 2007
CRA	California Rental Association Mr. Louis Davies Written Testimony: March 21, 2007

DK	Mr. Doug Korthof Oral Testimony: March 22, 2007
ECA	Engineering Contractors Association Ms. Lorena Fisher Written Testimony: February 21, 2007
EUCA	Engineering & Utility Contractors Association Ms. Tara Haas Written Testimony: March 21, 2007
MCAQMD	Mendocino County AQMD Mr. Chris Brown Written Testimony: July 2, 2007
NWS	Neighbors Well Services, Inc. Mr. James Thomas Oral Testimony: March 22, 2007
PAI	Putzmeister America, Inc. Mr. James Bury Mr. David Rudin Written Testimony: March 13, 2007 Oral Testimony: March 22, 2007
QPS	Quinn Power Systems Mr. Bob Shepherd Written Testimony: July 16, 2007
RA	Mr. Richard Aguilera Written Testimony: March 19, 2007
RM	Reed Manufacturing, LLC Mr. James Shea Written Testimony: March 20, 2007
RW	Mr. Robert Wilder Oral Testimony: March 22, 2007
SCAQMD	South Coast AQMD Mr. Danny Luong Oral Testimony: March 22, 2007
SCCA	Southern California Contractors Association Mr. Cash Benton Written Testimony: March 20, 2007

SCEC	SCEC Air Quality Specialists Mr. Karl Lany Written Testimony: July 16, 2007
SCR	Specialty Crane & Rigging Mr. Seth Hammond Oral Testimony: March 22, 2007
SR	Sierra Reaserch Mr. Allan Daly Written Testimony: March 21, 2007
SSDC	State Senator Honorable Dave Cox Written Testimony: March 21, 2007
UCCI	Underground Construction Co., Inc. Mr. Thomas Thornton Written Testimony: March 19, 2007

A few of the 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.

The comments below were received during the 45-day notice period or presented as oral testimony at the Board hearing on March 22, 2007.

1. Comment: Several commenters expressed their support of the proposed amendments and urged the Board to adopt them. (ATT, NWS, PAI, CCEEB, ARBI, BJS, SCR, SCAQMD)

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

2. Comment: ARB should re-open PERP registration to all previously unpermitted Tier 0 engines. Having to permit these engines in multiple districts is problematic. It is also a potential economic hardship if owners are forced to replace these engines. (ECA, UCCI, ACPA, RM, SCCA, CP, EUCA, CRA)

Agency Response: Tier 0 engines have been ineligible for registration in PERP and district permitting since January, 1, 2006. The regulation amendments for that change were adopted back in February of 2004. Tier 0 engines have much higher NOx and PM10 emissions than certified engines. Due to these significantly higher emissions, we believe that it is inappropriate to include these engines in a program that would allow them to operate on a statewide basis. Since diesel PM has been

identified as a toxic air contaminant, it has been the goal of the Board to minimize the toxic risk associated with exposure to these emissions. It should be noted that the Portable Engine ATCM does provide for the permitting of Tier 0 engines. Permitting at the district level allows the potential local impacts to be better evaluated.

3. Comment: ARB should allow Tier 0 engines to operate beyond January 1, 2010. Many of these engines have useful life expectancies beyond 2010, and to force their retirement places an economic burden on the affected industry. Forcing the replacement of Tier 0 engines would make aggregate product, roads, concrete, and other building material more expensive, which would adversely affect the economy overall. (ECA, RM, EUCA, CRA, CQC/PTS)

Agency Response: This comment does not pertain to these proposed amendments as there was no proposal in these amendments to change the provision regarding the retirement of non-certified engines in 2010. Notwithstanding, diesel PM has been identified as a toxic air contaminant. It is the goal of the Board to minimize the toxic risk associated with exposure to these emissions. Allowing older engines to continue to operate beyond 2010 is contrary to that goal.

The nonroad emissions standards took effect for portable engine starting in 1996. This means that by 2010, almost all Tier 0 engines will be at least 14 years old, and will be nearing the end of their useful life.

4. Comment: PERP should be reopened to register Tier 0 engines because sufficient notice of the previous amnesty was not provided to owners of portable engines. Approximately 80% of portable equipment owners have never been exposed to ARB or any sort of regulatory requirements. (BD, RA, RW, CIAQC)

Agency Response: The regulation has been previously opened three times before to allow engines into the program and ample opportunity has been allotted to register non-certified engines. Owners of engines that currently do not qualify for PERP will need to work with the district to bring the engine into compliance and obtain a district permit. However, if these older engines are replaced with certified engines, there is no need to obtain district permits.

We have already begun aggressive outreach activities which have included sending out almost 300,000 postcards to members of affected industry that may be subject to the requirements (using such databases as the State Contractor Licensing Board), dedicating resources to assist the public with questions and applications, and developing a specific informational website. Based on staff's estimates, ARB outreach has been more than 20% successful. ARB will continue to work with industry representative associations such as CIAQC, which has been

actively involved in PERP since the beginning, to inform all affected industry about all of the applicable requirements and permitting options.

5. Comment: ARB should not force the replacement of Tier 1 engines, but should establish a “clean up program” that would make these engines cleaner burning. Engine Manufacturers and CARB should perform research to develop a device that will allow older engines to comply with emission regulations. This would allow engines to stay in California rather than being shipped to Mexico or Canada. (ECA, CQC/PTS)

Agency Response: ARB staff has considered the alternatives, and requiring replacement of older engines and then reducing emissions of newer engines through retrofits is the most effective approach to reducing toxic risk from exposure to diesel PM emissions from portable engines. A clean up program would be very resource intensive to implement, and would still not be as effective as the current approach. The emission reductions from this replacement approach are faster and more farther reaching.

6. Comment: The wording in the regulation is unnecessarily complicated for the engine eligibility provisions and the compliance flexibility provisions for engines when there is an emission standard change. This is a great source of confusion, and ARB should take a more realistic approach to registering engines. (PAI, UCCI)

Agency Response: ARB staff has worked with the commenters to ensure a better understanding of the regulatory requirements. ARB staff is committed to working with applicants on application submittals and to achieve compliance with the regulations. ARB staff has addressed this issue in the 15 day changes.

7. Comment: The back registration and inspection fees for PERP are excessive, punitive, and unfair. These fees should be removed or reduced. (ACPA, RA, SCCA, ARA)

Agency Response: Those engines that would be registered in PERP that do not meet the current standard are required to pay the back registration and inspection fees. These fees would have been paid had the engine been properly registered when first put into service. As explained in the ISOR, these fees are necessary for several reasons including funding the increased compliance efforts of the local districts who are mandated by State law to assist in the enforcement of PERP. Furthermore, by not being registered, these engines have been operating at an economic advantage over those that have been in compliance. A level playing field needs to be created with those that have been paying registration fees since the beginning of PERP. The alternative to paying back fees would be to purchase a

new engine which meets the current standards, which is far more costly than paying the back fees that have been adopted.

8. Comment: Instead of the current replacement provisions and fleet averaging requirements, ARB should require that all engines be phased out upon 15 years of service or 7,500 hours, whichever comes first. (UCCI)

Agency Response: This type of phasing out of engines would result in slower engine replacement and consequently higher emissions than the current regulatory proposal. In order to achieve the goal of reducing toxic risk due to diesel PM emissions, engines need to be replaced and/or retrofitted on a more expedient schedule. Any delay would increase the public health risk associated with diesel PM emissions.

9. Comment: Any rule being implemented statewide should be pre-empted from district interference. Having both the state rule and the district rules is chaotic. (UCCI)

Agency Response: This is already the case for the Statewide Portable Equipment Registration Program. Once an engine or equipment unit is registered in PERP, district rules and regulations do not apply, except at locations where the PERP registration is not valid. The ATCM is also applicable statewide, but is implemented separately by the ARB or the district depending on which agency the operator holds permits or registrations. State law specifically allows local districts to adopt more restrictive regulations than the ATCM.

10. Comment: ARB should allow the registration in PERP of Tier 0 engines and non-resident previous Tier certified engines if used exclusively for emergency-use or designated as low-use. These emergency use engines typically operate less than 50 hours per year. Having these engines in PERP would provide unrestricted mobilization of equipment throughout the state in the event of an emergency. (CCEEB, ATT)

Agency Response: The PERP regulation does not preclude the use of engines for alleviating the threat to public health and safety during an emergency event. Nor does it preclude the use of registered engines to serve as backup power for telecommunications equipment. This second type of use should be readily performed by an existing fleet of registered engines, but if the need arises to increase the fleet of engines used for backup power, telecommunications companies have the option to rent equipment on a temporary basis as needed, or they should be required to purchase the newest, cleanest engines available.

11. Comment: The residency requirement for previous tier certified engines is very costly for small businesses. If there is not a sufficient quantity of used engines available in California, the owners of small businesses would be forced to buy new equipment with Tier 3 engines, which is very expensive. (ACPA, BD, SCCA)

Agency Response: It is the goal of ARB to reduce emissions from this category of engines by replacing older engines with newer ones and in the mean time only allowing the cleanest engines into the state. Allowing the registration of dirtier, out-of-state engines is directly contrary to this goal. Prior to these amendments, previous tier certified engines were not allowed to register at all. Allowing registration of previous tier resident engines is consistent with the goal stated above while providing industry with a reasonable mechanism for the purchase of used engines within the State.

12. Comment: If there are not sufficient quantities of Tier 4 engines available in the future, it will be difficult to comply with the fleet average requirements specified in the ATCM. Compliance flexibility, similar to those proposed for eligibility when engines are not available, should be provided for fleet standard compliance. (ARA)

Agency Response: The development of the fleet standards in the ATCM did take into account the emission standards for each size range, and are expected to be achieved by existing certified engines in 2013 (combination of Tiers 1, 2 and 3). The standards in 2017 and 2020 are expected to be achieved by a combination of newer engines meeting Tier 4 standards and previous-tier certified engines equipped with Level 3 technology. If the Level 3 technology is not readily available in a time frame conducive to compliance with the fleet standards, then the ARB will re-evaluate the emission standards set forth in the ATCM.

13. Comment: Having to wait up to 90 days for registration to be issued so that the equipment can be operated is a significant financial hardship. Engines should be able to be put into service immediately upon delivery. ARB should modify the regulation to alleviate this financial hardship. (ARA, SSDC)

Agency Response: In response to public testimony, the Board directed staff to work with the California Air Pollution Control Officers Association on a mutually acceptable procedure for allowing expedited registration. ARB staff has already initiated this effort with the commenters and CAPCOA. If regulatory changes are necessary, staff will propose appropriate amendments in a separate rulemaking.

14. Comment: The Statewide PERP regulation states in section 2458(b) that the owner of rental equipment shall provide the renter with a written copy of applicable requirements of the regulation, including recordkeeping and notification requirements. ARB staff has previously stated that providing a copy of the

registration satisfies this requirement. This should be clarified in the regulation. (ARA)

Agency Response: Since it is required in section 2453(f) that the registration be kept onsite with the registered engine or equipment unit, it follows that the owner of the rental business is therefore required to provide his/her customers with a copy of the registration. The requirement in 2458(b) was intended to ensure that the operator of the rental engine or equipment unit was not only aware of the registration requirements, but of other regulatory requirements that may pertain as well.

15. Comment: According to the Census Bureau, there are 234,000 construction companies in California. If only half of these owned one portable engine over 50 bhp, that is more than 109,000 engines that should already be in PERP. ARB must vastly increase its outreach efforts in order to reach all the potential owners of portable equipment. (BD)

Agency Response: It should be kept in mind that PERP is a voluntary program. ARB staff believes that there are many portable engines and equipment units that are operating under district rule exemptions, making registration unnecessary. However, ARB has started and will continue to conduct an aggressive outreach program regarding these amendments to PERP. Individual meetings and/or workshops will be held as necessary to explain the changes that have been made to the regulation and to 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. To date, nearly 300,000 post cards have been sent to a comprehensive list of contractors in California.

16. Comment: ARB Chairman Dr. Sawyer should appoint a construction industry task force to accurately measure the scope of the affected industries, consolidate all regulations impacting the construction industry, and develop meaningful emission reductions to benefit all Californians. (BD)

Agency Response: ARB staff has continuously worked closely with many representatives from industry in the development of PERP. Many regulatory agencies, not just concerning air quality, have environmental jurisdiction over the construction industry. To consolidate all agencies' regulations is not feasible.

17. Comment: Forcing Tier 0 and older certified engines out of state does not solve the problem of emissions, it just moves them. Shouldn't ARB try to control emissions from these engines, rather than just move them away? Moving emissions does not reduce the risk of global warming. (CP, ECA)

Agency Response: The purpose of PERP and the Portable Engine ATCM is to reduce the exposure of toxic diesel PM emissions to the residents of California. Greenhouse gas emissions from sources in California are being addressed pursuant to Assembly Bill 32. Environmental agencies in other jurisdictions have the option of adopting regulations to address emissions impacts in those areas.

18. Comment: ARB should allow the PERP registration of Tier 0 engines and non-resident non-current Tier certified engines on cranes. Furthermore, ARB should allow these engines to be exempt from replacement on January 1, 2010. (SR, CCR)

Agency Response: ARB staff understands that there are unique technical, cost, and logistical issues associated with the retrofit of cranes. We are currently evaluating these issues with a focus on equivalent emission reductions and are continuing our dialogue with the crane industry. We have committed to representatives of the crane industry that we would address the unique issues with cranes as part of the ARB staff's development of the regulation to reduce diesel emissions from existing heavy-duty onroad fleets.

19. Comment: ARB should allow the registration without any penalties for any engine that has historically been operating in a district that did not require permits for portable engines. Registration of such engines would be completely voluntary since the districts continue to consider these engines permit exempt. (SR, COA)

Agency Response: By penalties, it is assumed that the commenter is referring to back fees. Any previous certified engine may register in PERP, but will still have to pay back fees. If they wish to operate in a district where permits are required, then they have the options of paying the back fees to register in PERP, applying for a district permit, or purchasing newer clean equipment. They also have the option of staying in that district that does not require permits. Because of ARB's commitment to reduce the toxic risk associated with diesel PM emissions, we feel it is inappropriate to allow the operation of Tier 0 engines in PERP under these circumstances.

20. Comment: These regulations are a distraction from the real air pollution problems facing California, e.g. refinery and car emissions. If those sources are dealt with, then the emissions from construction equipment are not so significant. The construction industry should not be subject to these regulations. (DK)

Agency Response: The air pollution challenge facing California is complex and comes from many different sources. However, portable engines are a significant source of diesel PM emissions; much more than those from cars (which are

primarily gasoline-powered) and refineries. Even so, it is important to reduce hazardous emissions, such as particulate matter from diesel exhaust from every possible source in order to protect the health of the people of California. Furthermore, the districts and the Board are continually developing and implementing various regulatory programs that affect many industries and sources of air pollution.

The comments below were received during the 15-day notice period after the Board hearing.

21. Comment: The definition of rental business should be modified to mean businesses that have engines to rent whether or not they are registered in PERP. Also, the definition of resident engine should be restricted to only those engines that hold valid permits with a district. (MCAQMD)

Agency Response: There is no need to modify the definition of rental business in the PERP regulation to include those that do not have engines registered in PERP, as the regulation is only applicable to rental businesses with engines so registered. It was the intent of the residency provision to include both those engines with valid district permits originally issued prior to January 1, 2006 and those engines that have been operating without a permit; therefore, the definition will not be modified as suggested.

22. Comment: The requirement for rental businesses to provide customers with a copy of the applicable requirements is difficult to comply with. Attaching a copy of the operating conditions is not always sufficient since they might be outdated with the recent amendments to PERP. Attaching a copy of the entire regulation is also very impractical. Furthermore it is inconsistent that the districts can have their own interpretation of PERP requirements. ARB should amend the regulation to make this requirement easier and more consistent for rental businesses. (ARA)

Agency Response: All existing registrations will not be updated until the current renewal cycles are complete. All operating conditions will be updated with the new requirements upon renewal. Every registered company has to deal with this transition when regulatory changes are made. Including a copy of the most current regulation with a rental agreement is only one option in addressing the need to notify renters of all new applicable requirements. There are companies that chose to go through the new regulation and develop their own supplement to include with their agreements.

Although the enforcement of the PERP regulation is primarily handled by the districts, ARB has and will continue to work with the districts to ensure statewide consistency in application.

23. Comment: The requirement for rental businesses to provide annual reports of total process weight or throughput for rented equipment units is unreasonable because the rental company does not have access to this information. (ARA)

Agency Response: The operators of rental equipment units are required to maintain written records of daily throughput. The rental business must inform the customer of this requirement and all other applicable PERP requirements as part of the rental agreement. Copies of these throughput records can easily be handed over to the rental business so that the annual reports can be submitted.

24. Comment: The multiple inspection discount program is difficult for rental companies to participate in because it is not known in advance if multiple engines can be brought together for an inspection. There should be an option to get a refund if the rental company chooses to participate in the multiple engine discount inspection program at a later time. (ARA)

Agency Response: ARB is required to collect inspection fees upon initial application and/or renewal, and therefore registrants must select the multiple inspection discount option at that time. If this option is selected, the company/agency must have the ability to bring 4-9 (or 10+) engines together at the same location for an inspection. Registrants should give careful consideration to selecting this option as being able to comply with this provision will take significant planning on their part. If a company/agency is not sure that they will be able to do this, they should not select the multiple engine discount. Selecting the multiple engine inspection option at a later time and getting a rebate in fees is not possible.

25. Comment: The penalty fees charged for not paying rental fees when due is unfair since the due date is prior to the registration expiration date. (ARA)

Agency Response: The regulation clearly states in Table 3 what the fees are for paying renewal fees within 2 months prior to expiration date and also for paying them within 1 month prior to expiration date. Renewal fees are due prior to the expiration date because time is needed to process the renewal transaction and issue renewal registration documents prior to expiration.

26. Comment: It is punitive that the original fee for a placard is only \$5 while the fee for a replacement placard is \$30. (ARA)

Agency Response: The \$5 initial cost for the placard is for materials only. The administrative costs associated with issuing this placard are included in the fee paid for initial registration or renewal. The extra fees for a replacement placard cover the administrative cost of processing the replacement request (accounting, data

entry, document generation, mailing, etc.) and also for issuing a second identification sticker that has to be issued with the placard.

27. Comment: ARB has not yet made much progress with temporary registration which has been previously requested at the board hearing. (ARA)

Agency Response: See comment #13 and agency response. ARB staff is still working with CAPCOA and the affected industry on this issue.

28. Comment: The fleet average requirements in the ATCM will be impossible to comply with because individual engine emission standards are not consistent with the fleet standards. (ARA)

Agency Response: This issue has been raised previously by the same party. See comment #12 and agency response.

29. Comment: It is impractical and unreasonable to require that the written rental agreements be kept onsite with the rental unit at all times. Often times these agreements are simply not available as the rental transaction is initiated by phone or from locations hundreds of miles away from the jobsite. In addition, most rental agreements contain sensitive and confidential data that should not be viewed by competing entities. (SCEC, QPS)

Agency Response: This comment does not pertain to these proposed amendments as there was no proposal in these amendments to change the provision regarding the written rental agreement. However, ARB staff believes that when a rental piece of equipment is received by a renter, there is usually some form of written acknowledgement of the transaction at that time, even if the original order was not placed in person at the rental yard.

On a jobsite, the only people that would need to see the rental agreement are the operator and the district inspector. There is no need to display the rental agreement in plain view. It is possible to keep it in a folder or binder in the operator's vehicle. ARB staff does not agree that contact information is confidential; therefore, it is not inappropriate to disclose.

Having the written rental agreement onsite actually may protect the rental company from enforcement action in some instances if the operator is in violation of PERP requirements. The written rental agreement may be used as proof that the operator was made aware of the PERP requirements by the rental company when the operator took possession of the rental unit.

Furthermore, district enforcement staff needs to be able to verify in the field if the engine or equipment unit is being operated under the proper authority and/or if a change of ownership is needed. It is imperative that if a district inspector encounters an engine with a rental company's registration operating in the field that he/she be able to determine if the unit is being rented, or if it was sold to the operator and a change of ownership application needs to be filed. Change of ownership applications are required to be filed within 30 days after a unit has been purchased from a rental company.

30. Comment: The monthly sales transaction reports required by the PERP regulation may result in the sharing of confidential data with competitors. Also, this requirement was not in the draft regulatory language leading up to Board adoption. (SCEC, QPS)

Agency Response: This comment does not pertain to these proposed amendments as there was no proposal in these amendments to change the provision regarding the monthly sales transaction reports. This requirement was originally adopted by the Board in the amendments proposed on June 22, 2006. The implication made by the commenters that this requirement was not properly noticed, and is therefore an illegal requirement is completely false. This requirement was contained in the Staff report released on May 5, 2006, and there was ample opportunity for public comment before the Board hearing on June 22, 2006.

ARB staff understands that the sales price of equipment is considered confidential information by the commenters. ARB has procedures in place to protect confidential information as long as it is identified in advance by the submitter. The sales price, however, is not required to be submitted with these monthly sales transaction reports. ARB staff does not agree that engine information or customer information is considered confidential or "trade secrets". This information is needed to determine compliance with other applicable district permitting and/or PERP requirements.

31. Comment: Engines designated as low use or emergency use should be allowed into PERP regardless of tier level or residency. These engines are necessary for alleviating any threat of emergency to telecommunication networks. California's largest telecommunications provider already owns approximately 50 of these non-certified engines, which on average operate less than 20 hours per year. The cost to replace any Tier 0 engine not already registered is unreasonably high, considering that they are used very infrequently. These engines should be allowed to remain in PERP until January 1, 2020. (CCEEB)

Agency Response: This comment was submitted previously by the same party. See comment #10 and agency response. In discussions with representatives from

California's largest telecommunication provider, it was revealed that they have most of their engines registered in PERP already, but that they wanted to retain the ability to register older engines just in case they came across some that they were unaware of. ARB staff believes that registered companies have a responsibility to effectively manage their fleet in order to meet their business needs, and should dedicate sufficient resources to do so. ARB should not allow the registration of a Tier 0 engine because a company lost track of it in their fleet.

Tier 0 engines designated as exclusively emergency use or low use are all scheduled for replacement within 2 years of the Tier 4 emission standards taking effect, which is expected to start in 2011. California's largest telecommunication provider will incur the cost of replacement for all these engines at that time.