



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

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE
EMISSION INVENTORY CRITERIA AND GUIDELINES REPORT AND
REGULATION FOR THE AIR TOXICS “HOT SPOTS” PROGRAM**

Public Hearing Date: November 16, 2006
Agenda Item: 06-10-6

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State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking,
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PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE “HOT SPOTS” GUIDELINES REGULATION

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I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), "Proposed Amendments to the AB 2588 Emission Inventory Criteria and Guidelines Report," released September 29, 2006, is incorporated by reference herein.

The Air Toxics "Hot Spots" Information and Assessment Act (AB 2588, 1987, Connelly) was enacted in September 1987, and requires stationary sources to report the types and quantities of certain substances their facilities routinely release into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, and to notify nearby residents of significant risks. The Emission Inventory Criteria and Guidelines Report (including appendices), incorporated by reference in title 17, CCR, section 93300.5 (collectively referred to as the "Guidelines Regulation" or "The Emission Inventory Criteria and Guidelines Report and Regulation") provides direction and criteria to facilities on how to compile and submit air toxics emission data required by AB 2588.

The proposed amendments and modifications to the Guidelines Regulation include:

- General reporting requirements for diesel engines;
- Reporting requirements for some agricultural diesel engines beginning in 2012;
- Reporting requirements for stationary emergency standby diesel engines that will be retrofitted, replaced, or removed from service at a hospital building subject to the Alquist Hospital Facilities Seismic Safety Act of 1983, beginning in 2012;
- Reporting requirements for diesel engines less than or equal to 50 horsepower, and portable diesel engines of any size, beginning in 2010.

The Board approved staff's proposed amendments to the Guidelines Regulation, including 15-day changes to staff's recommendations. There are no additional documents incorporated by reference which were not in the staff's initial Staff Report, released September 29, 2006.

The Board has determined that this regulatory action will result in a mandate to some local agencies and school districts. However, the Board finds that these costs are not reimbursable pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, and will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code. This is because the districts have the authority to levy fees sufficient to pay for the mandated Program (H&SC section 44380). These fees are intended to recover the costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the proposed amendments. Furthermore, other public agencies such as publicly owned treatment works or correctional facilities that are impacted by the proposed amendments are authorized to levy service charges to cover the costs associated with the mandated Program.

The Board finds that no alternatives to the proposed amendments to the Guidelines Regulation exist that are more effective regarding small businesses. This is because most small businesses are not likely to own more than one diesel engine, are not likely to be subject to the proposed amendments, and adverse economic impacts due to the proposed amendments are not anticipated for small businesses. In the case of a small business owning more than one engine, it would be unlikely for the facility to have a significant risk, adverse economic impacts due to the proposed amendments are not anticipated, and ARB staff is not aware of any business that exists in California that could fall into this category where the impacts are significant.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board. This is because most private persons are not likely to own more than one diesel engine, are not likely to be subject to the proposed amendments, and adverse economic impacts due to the proposed amendments are not anticipated for private persons.

A. Consideration of Alternatives

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

B. Error Correction in the Staff Report

On page D-6 of Appendix D of the staff report, a correction was made as follows:

Lower-Risk Facilities	Cost per Facility	Total Costs
District determines risk is not significant, 495 facilities comply with proposed amendments	\$500 <u>\$0</u>	\$141,000 <u>\$0</u>
495 facilities pay State and district fees for low-risk facility	\$335	\$165,825

This correction was a minor error in a single table, and does not affect the overall cost analysis. The total cost in the table was correct, as were all of the other cost calculations.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Board received several written and oral comments from stakeholders regarding the proposed amendments during the 45-day public comment period. A list of commenters is provided in the next section. Following the list is a summary of each objection or recommendation made regarding the proposed action, together with an explanation of how the proposed action has been revised to accommodate the objection or recommendation, or the reasons for making no change. There was only one additional comment during the supplemental 15-day public comment period ending on April 13, 2007. All of the public comment letters are available at:

<http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=hotspot06> .

During the public hearing, Tom Umenhofer (Western States Petroleum Association) and Barry Wallerstein (South Coast Air Quality Management District) provided public testimony in support of the proposed amendments, while Mary Kay Faryan (Navy, U.S. Department of Defense) was in opposition. Mary Jane Foley (Southern California Alliance of POTWs), Stephanie Cheng (Bay Area Clean Water Agencies), Frank Caponi (Los Angeles County Sanitation District), and Sharon Rubalcava (Motion Picture Association of America) also provided testimony, and they were neutral as to the proposed amendments.

A. Comments Received During the 45-day Public Comment Period and Board Hearing

<u>Name / Abbreviation</u>	<u>Commenter</u>
AIR	Air Issues and Regulation Committee of the Bay Area Clean Water Agencies
BCAQMD	Butte County Air Quality Management District
CAPA	California Attractions and Parks Association

CCC (et. al.)	California Chamber of Commerce, California Independent Oil Marketers Association, Chemical Industry Council of California, California League of Food Processors, California Business Properties Association, Industrial Environmental Association, California Grain & Feed Association, California Warehouse Association, California Seed Association, California Healthcare Institute, Western States Petroleum Association, American Chemistry Council, Western Plant Health Association, California Forestry Association, California Manufacturers & Technology Association, and California Grocers Association
CCEEB CCM	California Council for Environmental and Economic Balance California Citrus Mutual, California Grape and Tree Fruit League, California Cotton Ginners and Growers Associations, and Nisei Farmers League
CHA	California Hospital Association
DoD	Department of Defense (Navy), Randal Friedman, R. Trevino, Mary Kay Faryan
LACo	Los Angeles County Sanitation Districts
LM	Lockheed Martin Aeronautics Company
Margie Gee	Public citizen
MPAA	Motion Picture Association of America
MWD	Metropolitan Water District of Southern California
SCAP	Southern California Alliance of Publicly Owned Treatment Works
TriTAC	California Association of Sanitation Agencies (CASA), California Water Environment Association (CWEA), and League of California Cities
WSPA	Western States Petroleum Association

Applicability

1. **Comment:** A facility should not be required to report emissions from small and portable diesel engines unless the district has good cause to expect that the facility may pose a significant risk. [CAPA, CCEEB, MPAA]

Agency Response: ARB agrees. Sections XI.C.(2) and (3) of The Emission Inventory Criteria and Guidelines Report have been modified to reflect the suggested language.

2. **Comment:** Portable diesel engines should not be subject to “Hot Spots” until 2010. [AIR, CAPA, CCC, CCEEB, CCM, LACo, MPAA, MWD, SCAP, TriTAC, WSPA]

Agency Response: ARB agrees. Section XI.C.(c) of The Emission Inventory Criteria and Guidelines Report has been modified to delay reporting of diesel engine emissions until 2010, which aligns “Hot Spots” reporting for portable engines with the first phase of risk reduction under the portable diesel engine ATCM (Title 17, CCR sections 93116 - 93116.5). Beginning in 2010, diesel engines are required to be reported if the district determines there is good cause to expect that the engines at the facility have the potential to pose a significant risk.

3. **Comment:** Engines less than 50 horsepower should be exempt from “Hot Spots.” [DoD, CCM]

Agency Response: Because this is a risk-based program, there is no provision under “Hot Spots” to exempt equipment based on size. The only exemptions are for some types of pesticide use, certain de minimis levels of listed toxics from some classes of facilities, motor vehicles, and facilities that are low-risk. Reporting requirements can be delayed for certain types of equipment in response to various other program needs, including aligning with other control measures, but exemptions for specified equipment have not been incorporated under “Hot Spots.” There are some exempted uses for janitorial services, and office supplies used by employees at a facility (Section VIII.D. of the Guidelines Regulation), but these activities are different than small diesel engines used as part of regular operations at a facility.

The proposed amendments to the Guidelines Regulation state that emissions from small (50 horsepower or less) diesel engines are not required to be reported unless the district has good cause to expect that the engines are likely to pose a significant risk. This provision is a reasonable compromise which relieves most small engine owners/operators from reporting requirements, while continuing to evaluate facilities that operate large numbers of small engines that may impact public health.

4. Comment: Military tactical support equipment (TSE) is exempt from emission limits and should therefore be exempt from “Hot Spots.” ARB should recommend that “Districts shall not require any risk reduction...”, rather than “Districts *should not*...” [DoD]

Agency Response: ARB agrees that emission limits on TSE are not allowed under H&SC section 41754. However, ARB believes that there is a clear distinction between emission limits on TSE, and risk reduction requirements imposed on the overall facility (not necessarily the TSE), which are required under H&SC section 44391. For example, emissions from TSE, combined with emissions from other activities at the facility, may result in unacceptable risk. The very narrow language of H&SC section 41754 cannot be read to prohibit ARB from imposing risk reduction requirements on those other activities if the overall risk is unacceptable. In addition, H&SC section 41754 does not preclude the military base from reporting emissions subject to “Hot Spots,” evaluating the risk from those emissions, notifying the public of any significant risks from the facility, and taking reasonable actions to reduce the risk from TSE, as well as other risks at the facility.

Although TSE are exempt from emission limits, several new “Hot Spots” provisions will apply to TSE, and are included here for clarity. Portable diesel engines, including TSE, are not subject to AB 2588 until 2010 (see comment 2, section XI.C(2)(c)). Beginning in 2010, emissions from portable diesel engines will only be required to be reported if the equipment is likely to pose a significant risk.

ARB and district staff have concluded that military bases will be able to initially report only the most basic information related to TSE, like the total number of TSE, and the total operating hours or fuel usage. If the risk from TSE is low, the district will approve the inventory, and no additional data will be required to be reported. If TSE operations are likely to pose a significant risk, more refined emission estimates or activity data may be required. The Board directed ARB staff to ensure that reporting requirements for TSE should only be as detailed as necessary in order to compile an inventory and to assess the risk. Military bases should remain subject to “Hot Spots,” including the public right to know provision of AB 2588 for TSE, but our goal is to minimize reporting requirements for TSE whenever possible.

5. Comment: ARB should provide prescriptive guidance to districts on what they can seek regarding information from portable diesel engines, including military tactical support equipment. [DoD]

Agency Response: In response to the military's concerns about new, burdensome reporting requirements for TSE, Chairman Sawyer directed ARB staff to ensure that emissions reporting, if required, would be reasonable, and not onerous. The district has the discretion to determine whether an activity is subject to "Hot Spots" reporting; and if subject to "Hot Spots," the district may request information necessary to adequately evaluate risk. Discussions have begun with the CAPCOA Toxics and Risk Managers Committee regarding a streamlined process for emissions reporting for portable engines that may be subject to "Hot Spots" beginning in 2010.

6. Comment: Emissions from small (50 horsepower or less) diesel engines that are at least 500 feet from the nearest fenceline should be excluded from "Hot Spots." [WSPA]

Agency Response: ARB is not in a position to determine whether the emissions and associated risk from small engines at an arbitrary distance are going to pose a significant risk. However, we anticipate that districts will generally find that a small number of small engines over 500 feet from the facility's fenceline will not likely pose a significant risk, and not be subject to reporting. In the unlikely event that a facility operates a larger number of engines approximately 500 feet from receptors, there could be health impacts. Therefore, the district should retain the ability to evaluate emissions from any emission source at a facility in order to protect public health.

7. Comment: The portable engine ATCM alleviates the need to include portable engines in "Hot Spots." [CCC]

Agency Response: The portable diesel engine ATCM is not sufficient to protect the public from exposure to emissions from portable engines in all cases. The ATCM imposes *emission* and reporting requirements; it does not require *risk* reporting, evaluation, and reduction. As a result, even after complete implementation of the ATCM, there may remain unacceptable residual risk to the public. Therefore, it is necessary to evaluate those emissions that occur at facilities that attract large numbers of engines, or a large number of operating hours, to ensure that residual risk is properly evaluated consistent with AB 2588 so that public health is protected.

8. Comment: ARB should exempt fire pumps subject to NFPA requirements from "Hot Spots." [LM, WSPA]

Agency Response: The proposed amendments require reporting for fire pumps at facilities subject to "Hot Spots" if the facility operates any number of diesel engines (including fire pumps) for more than 20 hours per year combined total at the facility. Fire pumps generally are tested for 30 minutes each week (for a total of 26 hours per year), plus some additional hours at least once per year, for a total of approximately 30 hours per year. Although fire pumps received additional maintenance and testing hours under the stationary diesel engine ATCM to accommodate this testing schedule, it is still necessary to ensure that public health is protected by evaluating the risk at the entire facility. Therefore, no exemption is warranted.

However, risk reduction for direct-drive fire pumps subject to NFPA (as well as stationary diesel engines at nuclear power plants and military tactical support equipment), may not be feasible and cost-effective. If the district determines that any of these sources pose a significant risk, the district has the option to require alternative risk reduction requirements, as described and recommended in the staff report. This could include an alternate risk reduction schedule.

9. Comment: Delay applicability for stationary emergency standby diesel engines that will be retrofitted, replaced, or removed from service at a hospital building subject to the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983. [CHA]

Agency Response: ARB agrees. Section XI.A. has been amended to delay applicability until after 2011. The intent of this new provision is to allow a hospital with a stationary emergency standby diesel engine already slated for replacement (or retrofit, or removal from service) concurrent with the hospital building seismic retrofit requirements, to delay “Hot Spots” reporting for that engine. This will allow the hospital sufficient time to complete the seismic upgrade of the hospital building concurrent with the replacement of the diesel engine. If the hospital does not identify the engine to be replaced, retrofitted, or removed from service, the engine is subject to “Hot Spots” reporting similar to other facilities with diesel engines in that district. This reporting delay is only for the diesel engines being replaced, retrofitted, or removed from service concurrent with seismic upgrades, and not the rest of the activities at the hospital subject to “Hot Spots.”

10. Comment: “Hot Spots” should not be applicable in federal waters (i.e. Outer Continental Shelf (OCS) oil and gas production platforms). [WSPA]

Agency Response: While 40 CFR Part 55 (Outer Continental Shelf Air Regulations) and the authorizing statute, section 328(a)(1) of the Clean Air Act, are specifically for the purpose of attaining and maintaining federal and state ambient air quality standards and to comply with the provisions of part C of title 1 of the CAA (Prevention of Significant Deterioration), the “Hot Spots” Program is intended to eliminate significant risk. Therefore, existing regulations of OCS platforms do not necessarily achieve the objectives of the “Hot Spots” Program, so exempting OCS platforms would not achieve the objectives of AB 2588.

Since the inception of the “Hot Spots” Program, more than twenty offshore oil and gas platforms have been reported pursuant to “Hot Spots.” Because “Hot Spots” is risk-based, facilities in federal waters are usually exempt from any additional requirements after an initial facility evaluation reveals that there is no significant risk. This is because the distance from the facility to any receptor is large, and risks usually drop dramatically with increasing distance from a receptor. Facilities in the OCS that may pose a significant risk should remain subject to “Hot Spots” requirements in order to achieve the objectives of AB 2588.

11. Comment: Ship emissions, diesel equipment on ships, and portable equipment used to service ships should not be subject to “Hot Spots.” [WSPA]

Agency Response: Ship emissions are generally not reported under “Hot Spots.” However, diesel equipment on ships and portable equipment used to service ships would likely be subject to “Hot Spots,” provided the local district determines that the routine and predictable emissions occur at a location that meets the definition of “facility.” No special exemption is warranted for this type of equipment.

12. Comment: The regulation should clarify that emissions occurring at leased premises not under the control of a facility operator should not be included in a facility’s emission inventory. The routine use of rented or leased portable equipment should be considered “routine and predictable” only if the equipment is used in the same manner on a regular basis at the facility, and the facility operator can reasonably estimate the emissions resulting from such recurring operations. [CAPA, CCEEB, MPAA]

Agency Response:

Routine and predictable emissions at a facility subject to AB 2588 may be required to be reported by the operator, regardless of whether the emissions occur at a location at a facility

that is being leased, or the equipment itself is leased or rented, or the operator has control of the facility. Title 17, CCR section 90701(j) refers to HSC section 44307 for the definition of "operator." HSC section 44307 defines operator as "the person who owns or operates a facility or part of a facility." (emphasis added) Clearly, this imposes requirements on the owner or operator regardless of control. While a third party company may not own all or a part of the facility, it does operate it. Therefore, a third party company leasing or renting equipment subject to AB 2588 ("Hot Spots") must comply therewith. This of course, does not alleviate the facility owner's obligation to comply with "Hot Spots."

We believe that imposition of the obligations under "Hot Spots" on either the owner or the operator is consistent with the language of AB 2588 and furthers the purposes of AB 2588, including but not limited to, increasing the availability of data on toxic chemical releases into the air, effectively implementing control strategies, and ascertaining health risks. Districts have already begun evaluating stationary diesel engine emissions at facilities subject to AB 2588.

Portable diesel engine emissions are not required to be reported until 2010, and only if the engines at the facility are likely to pose a significant risk. Because the facility owner may not have direct control over the equipment operating at the facility, the district and ARB will work with stakeholders to establish a reasonable process for facilities to determine how that information should be compiled and submitted.

Major motion picture and television studios present a unique situation in Southern California. Sound stages and movie lots at the major motion picture and television production studios are frequently leased for short periods of time by independent production companies. Depending on the nature of the production, the independent production company may need to bring in portable diesel equipment, such as generators for lighting. The nature of the production and need for portable equipment is determined by the independent production company. While the movie studio locations may be leased on a routine basis, the actual activities being performed under these circumstances is often unique, and may be difficult to predict or quantify. In contrast to the production of movies or television pilots, television series often have larger or longer term projects which could have routine and predictable emissions that may be subject to "Hot Spots" reporting. For these reasons, "Hot Spots" reporting requirements should not be absolutely waived for those emissions occurring at leased premises not under the control of a facility operator.

13. Comment: All emissions at agricultural facilities that spray pesticides should be exempt from "Hot Spots," as described in Health and Safety Code section 44324. [BCAQMD]

Agency Response: Since 1988, ARB has construed the pesticide exemption (H&SC section 44324) narrowly to mean that the emissions related to the use of pesticides as economic poisons are exempt from reporting, and the emissions from the rest of the facility are subject to "Hot Spots" reporting requirements. ARB is not able to exempt a class of facilities that is not already exempted in the statute. Pesticides will continue to be regulated by the Department of Pesticide Regulation. Only the pesticide emissions from agricultural facilities are exempt from AB 2588. To find otherwise would allow facilities to wholly circumvent the "Hot Spots" Act simply by periodically spraying a can of commercial insecticide and would defeat the very purposes of "Hot Spots."

Routine and Predictable

14. Comment: ARB should more clearly define what constitutes routine and predictable emissions subject to reporting under "Hot Spots" for portable diesel engines for local air districts. [AIR, DoD, CCEEB, CCM, LACo, MPPA, MWD, SCAP, TriTAC, WSPA]

Agency Response: When a term used in a statute is undefined, courts first examine the actual language of the statute and apply the ordinary, everyday meaning of the words, unless the statute specifically designates a special meaning. If the meaning of the word is without ambiguity, doubt, or uncertainty, then the language controls. If the meaning of the word is not clear, the Court must refer to the legislative history. If the legislative history does not indicate a clear meaning, then the Court should apply “reason, practicality and common sense to the language. If possible, the words should be interpreted to make them workable and reasonable, in accord with common sense and justice, and to avoid an absurd result.” (*People ex rel. Lockyer v. Tri-Union Seafoods, LLC* (2006) 2006 WL 1544384, 66.)

The Proposed Amendments to the Emission Inventory Criteria and Guidelines Report (EICGR) define “routine and predictable” as to be “...determined by the district, and means all of the regular operations at the facility. Emergency or catastrophic releases at a facility are not ‘routine and predictable’ and are not included in a facility’s emission inventory.” However, as the Amendments to the EICGR do not define “all of the regular operations at the facility,” we must import “a plain and commonsense meaning” (*MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083.) or an “ordinary, everyday meaning” (*Irvine Valley College Academic Senate v. Board of Trustees of South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 1489) to this phrase.

In enacting AB 2588, the Legislature intended the public to be made aware (notified) of significant risks, and that those risks be reduced. However, taking into consideration “reason, practicality and common sense,” it would seem absurd for the Legislature to intend all minutiae be reported.

Merriam-Webster’s Online Dictionary defines “routine” as a regular course of procedure; habitual or mechanical performance of an established procedure.¹ Similarly, MSN Encarta defines “routine” as usual or standard: regular or standard and not out of the ordinary... repetitive: boringly predictable, monotonous, and unchanging.² Cambridge Advanced Learner’s Dictionary defines “routine” as regular or ordinary.³

MSN Encarta defines “predictable” as happening as expected: happening or turning out in the way that might have been expected or predicted or seldom unexpected: rarely or never behaving or happening in an unusual or unexpected way.⁴ Cambridge Advanced Learner’s Dictionary defines “predictable” as “Something which is predictable happens in a way or at a time which you know about before it happens.”⁵

“Routine and predictable” in the context of “Hot Spots” requires an individualized, fact-based analysis, which the districts are better suited to accomplish. During the public hearing, the Board directed ARB staff to allow the local air district to retain discretion to determine what constitutes routine and predictable emissions subject to “Hot Spots” reporting. Comments received from industry regarding redefining routine and predictable with respect to “core functions,” “similar activities,” “non-construction activities,” and “annual or long-term activities” is not health protective in all cases, and will not be included in modifications to the proposed amendments as they do not satisfy the intent of AB 2588.

⁶ <http://www.m-w.com/dictionary/routine>

⁷ http://encarta.msn.com/dictionary_1861706285/routine.html

⁸ <http://dictionary.cambridge.org/define.asp?key=68814&dict=CALD>

⁹ http://encarta.msn.com/dictionary_/predictable.html

¹⁰ <http://dictionary.cambridge.org/define.asp?key=62326&dict=CALD>

A specific application, emission, or use may be “routine and predictable” in one situation, but it may not be in another situation. For example, although most construction projects probably do not pose a significant risk to the public, ARB staff is not in a position to say that all construction activities do not pose a risk and should be exempt from “Hot Spots” reporting. This is also the case for small diesel engines. Although most small diesel engines are not likely to pose a risk, ARB staff is not in a position to say that there is never a case where small diesel engines could pose a risk. This is left up to district discretion as to which types of emissions and activities should be included in a facility inventory. The districts have been implementing the “Hot Spots” Program for 16 years, including making the determination of what constitutes routine and predictable. ARB is not proposing changes to this process.

15. Comment: Only emissions resulting in quantifiable emissions that occur annually during regular operations should be included as part of routine and predictable emissions. [DoD, SCAP, WSPA]

Agency Response: “Regularly” does not necessarily mean “fixed schedule,” but refers to acts that “are being ‘regularly’ performed within the context of the particular business. (B.L. Key, Inc. v. Utah State Tax Com'n 934 P.2d 1164, 1166 (Utah App.,1997).) Therefore, as discussed in comment 14, the emissions required to be reported should be based on an individualized, fact-based analysis, which the districts are better suited to accomplish.

Additionally, commenters would like to limit the types of activities that are required to be reported to the district. However, arbitrarily limiting “routine and predictable” emissions to those which occur annually may result in the improper circumvention of the statute and regulations. For example, limiting emissions to what occurs annually could entice a facility to delay activities that could pose a significant risk to every 13 months. This unintended consequence could lead to large emissions not being included in risk assessments, and the information not being made available to the public, as required under statute.

Districts are likely to only focus on annual emissions that occur during the regular activities at the facility, similar to what the commenters requested. However, because the district is in the best position to ascertain whether non-annual emissions are significant, the Board directed ARB staff to retain the current practice of district discretion with respect to what emissions should be included in an emission inventory. Adding “annual” to the definition of routine and predictable has been rejected. Adding “regular operations” does not improve the clarity of the regulations since, as discussed above, “routine” includes a regular course of procedure.

16. Comment: Unique diesel engine applications should not include remediation operations (site clean-up). [WSPA]

Agency Response: ARB is not in a position to apply a one-size fits all determination as to whether a particular activity should be included under “Hot Spots,” particularly for activities that can last several years in duration. The district should make a determination on a case-by-case basis.

Other Changes

17. Comment: The regulation should clarify that individual facilities should have the option to conduct facility-specific risk assessments. [AIR, CAPA, CCEEB, CCM, LACo, MPAA, MWD, SCAP, Tri-TAC]

Agency Response: ARB agrees. Section XI.E.(2) of The Emission Inventory Criteria and Guidelines Report has been amended to make it clear that “the operator may submit an updated health risk assessment to the district.”

18. Comment: Biodiesel emissions should be treated the same as diesel PM. [WSPA]

Agency Response: Information regarding the health effects of diesel particulate matter is available that allows for the application of the cancer potency factor for diesel PM to diesel-fueled engines. However, much less information is available regarding the associated risk from biodiesel emissions. This means until more is known about the risk from engines using biodiesel, the speciated components must be quantified to determine the risk.

As a matter of policy, ARB has determined that emissions from an engine using more than 1% diesel fuel must be considered to be diesel PM, and that 99% to 100% biodiesel is considered biodiesel fuel. As described in the staff report, unblended (99%) biodiesel emissions are speciated for toxics (like benzene and formaldehyde). The cancer potency is used for engines using more than 1% diesel fuel, like B20 (20% biodiesel, 80% diesel fuel). No change in ARB policy is warranted until more information is available.

19. Comment: Substances without a source test method should not be included in the regulation until a source test method is available. [WSPA]

Agency Response: ARB has provided guidance to districts that, for substances that cannot be quantified, emissions reporting should not be required until a source test method is available. However, the district could require the facility to estimate emissions using other available methods (mass-balance, good engineering judgment, etc.). This has occurred throughout the “Hot Spots” Program when tools have not been available for accurately quantifying emissions. Use of alternative measures for estimating emissions, in the absence of a source test method, is the best available means for determining emissions and therefore risk. This technique effectuates the intent of the “Hot Spots” public notification and risk reduction requirements. In these cases, the district and the facility either work together to estimate emissions, or delay reporting until more information or an analytical method is available. No change to this process is warranted.

20. Comment: ARB should delay implementation of the proposed amendments and convene a public workshop with CAPCOA members and the public so that operators can better understand how to comply with the amendments. [WSPA, CCM]

Agency Response: The proposed amendments were first discussed with stakeholders in 2002, with initial draft concepts discussed at three workshops in 2003 during the development of the stationary diesel engine air toxic control measure (ATCM). Following the adoption of the ATCM, the proposed amendments were refined over three years with input from districts and stakeholders, including three well-attended public workshops in 2006, and numerous meetings with stakeholders.

Because a delay for portable equipment has been added as part of modifications to the amendments, ARB staff believes adequate time is available for facilities with portable diesel engines to discuss implementation questions with the districts during the next 3 years. An additional public workshop to discuss implementation of the amendments could be scheduled if there is sufficient interest. Furthermore, ARB believes the amendments are sufficiently clear to advise operators how to comply.

21. Comment: Grouped notification should not be limited to diesel engine-only facilities. A grouped public notification should be an option for any facility that operates diesel engines and must conduct public notification because of their diesel engine emissions. [WSPA]

Agency Response: This comment refers to language contained in an earlier draft version of the proposed amendments. This language was deleted during the regulatory development process and was not included in the amendments presented to the Board.

22. Comment: Simplify the definition of stationary diesel engine to state that a stationary engine is designed to stay in one location, or remains in one location. [AIR, LACo, MWD, SCAP, TriTAC]

Agency Response: ARB agrees that the definition was not clear. Section X.(30) of The Emission Inventory Criteria and Guidelines Report has been amended to reflect this comment. [DoD]

23. Comment: ARB should replace the word “should” with “shall” in the staff report and regulation to state that the districts shall consider an alternative risk reduction requirement. [DoD]

Agency Response: The staff report states that “ARB recommends that districts adopt alternate risk reduction requirements” (page 5 of the staff report), and “ARB staff believes it is appropriate for districts to provide special consideration for these sources when determining risk reduction requirements under “Hot Spots” by establishing alternate risk reduction requirements” (page 55 of the staff report). The staff report does not mention the words “should” or “shall” in this context. During the public hearing, the Board affirmed staff’s position that TSE is not subject to emission limits, which was a main concern of the commenter.

24. Comment: Jet fuel should not be included in the definition of diesel engine. [WSPA]

Agency Response: The Guidelines Regulation does not mention jet fuel in any definition, nor does it specify which fuels should be used in equipment subject to AB 2588 reporting. The thrust of regulating risk from diesel engines is that emissions resulting from the combustion of fuel therein could result in unacceptable risk levels to public health. The ARB is not aware of any data indicating that the combustion of jet fuel in diesel engines does not cause a risk to public health. Moreover, the stationary diesel engine ATCM does not permit jet fuel to be used in stationary diesel engines. As a result, excluding jet fuel from the definition of diesel engine is not warranted.

25. Comment: Are airports subject to AB 2588? [Margie Gee]

Agency Response: An airport may be subject to AB 2588 if it meets the definition of “facility,” and emits greater than 10 tons per year of organic gasses, nitrogen oxides, sulfur oxides, or particulate matter. However, emissions from aircraft, cars, and trucks are not subject to AB 2588, even though these sources likely represent the majority of emissions from airports. The sources that may be subject to AB 2588 include the operation of stationary and portable diesel engines, boilers, and emissions resulting from refueling at airports.

26. Comment: Is ARB responsible for emissions from airports, and does ARB monitor emissions from Burbank airport? How do I find emissions information and how it relates to air quality standards? Do emissions from airports cause asthma? Burbank airport is due to

present itself at a State Variance hearing soon. Is anyone from ARB assigned to attend this hearing? [Margie Gee]

Agency Response: This comment is not directly related to the proposed amendments, but the following information is provided as follows:

The ARB and the local air districts are responsible for some emissions that occur at airports. The United States Environmental Protection Agency is responsible for emissions from aircraft. Both ARB and the South Coast Air Quality Management District monitor air toxics near Burbank Airport. Emissions from Burbank Airport impact regional air quality in the South Coast air basin because the airplanes and other equipment at the airport emit hydrocarbons and oxides of nitrogen that react to form smog.

ARB maintains a network of air monitoring stations in California that regularly record air pollution levels. Air quality data is available to the public here: <http://www.arb.ca.gov/aqd/aqdpag.htm>. Although air toxics levels near Burbank airport are still too high, benzene levels at ARB's toxics monitor at West Palm Avenue in Burbank have dropped roughly 80% since 1989, despite an increase in air traffic and vehicular miles traveled by cars and trucks.

The emissions data collected from facilities subject to the AB 2588 "Hot Spots" Program provides the public with information about the estimated cancer and non-cancer health risks from facilities subject to AB 2588. Emissions attributed to activities at airports, like diesel particulate matter emissions from trucks and stationary engines, have been shown to exacerbate asthma in some individuals.

The ARB staff does not attend State Variance hearings. This comment is outside the scope of the proposed amendments being considered.

A. Miscellaneous Clarifications

The following comments were received from district staff and are provided here for completeness and clarity.

- a. Section XI.B. states that a facility is subject to the proposed amendments if it meets certain criteria. The ARB staff would like to clarify that the district may determine that the facility is a diesel engine-only facility, such that only the diesel engine, and not the rest of the facility, is subject to the "Hot Spots" Program.
- b. Section XI.D. states that a diesel engine-only facility is eligible for modified requirements. The ARB staff would like to clarify that this is at district discretion. If the district does not identify a facility as "diesel engine-only," the facility is subject to the requirements in sections I through X in the Guidelines Regulation for core facilities.
- c. Section XI.E.(1) states that a facility that increases their emissions is subject to new reporting requirements. The ARB staff would like to clarify that providing additional information to the district is at district discretion, and may not be required by the district. Only significant increases in emissions, as determined by the district, are likely to trigger additional reporting.

**B. Comments Received During the Supplemental 15-Day Public Comment Period
(March 20, 2007, to April 13, 2007)**

1. Comment: Facilities subject to California Health and Safety Code (HSC) section 44324 should be exempt from AB 2588 because the agricultural facility employs economic poisons (pesticides). [BCAQMD]

Agency Response: This comment does not relate to the 15-day changes, so a response is not required. (Government Code section 11346.8 (c).) However, ARB continues to narrowly construe HSC section 44324 to mean that while the pesticide emissions are not subject to AB 2588, the facility is subject to AB 2588 if it meets the applicability criteria in the AB 2588 Emission Inventory Criteria and Guidelines Report. Please see comment 13 for a more complete response.