American Rental Association

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Comments by the American Rental Association on the Adoption of Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program (PERP)

By

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Introduction:

The American Rental Association (ARA) represents approximately 4,800 member companies in all 50 states and Canada that are engaged in renting equipment, tools, and party and event goods and services to their customers. We appreciate the opportunity to provide our comments to the members of the Air Resources Board (ARB) on the proposed amendments to the Portable Equipment Registration Program (PERP). Rental transactions are typically carried out using a rent-to-rent contract where the rental company maintains the ownership of the equipment. This is in contrast to rent-to-own and leasing arrangements that usually involve the transfer of ownership. The rental business is a service business that is highly competitive with many firms competing for the public's business. As a result of this competition among rental firms, the equipment that is offered for rent is relatively new and very well maintained. The rent-to-rent business model provides the background for ARA's comments on the amendments to PERP.

Recommended Action:

ARA represents approximately 543 stores in California that rent approximately 6,000 pieces of portable equipment equipped with diesel and LSI engines to contractors and individuals. Of these, approximately 165 are small businesses with single store operations. We are strongly opposed to this proposed action as currently structured because it provides no demonstrable diesel particulate emissions benefits while imposing new substantial costs on businesses already participating in the PERP program. Furthermore, if ARB staff believes the major program benefits will come from enforcement action against illegal engines and equipment units and not this specific regulatory action, ARA questions the purpose of this proposal.

We recommend that the Board instruct staff to modify this proposal to produce quantified emission benefits that meet the conventional measures of cost effectiveness associated with emissions reductions.

Background Comments:

ARA members were surveyed with regard to fleet characteristics primarily for the mobile diesel rule making. The survey also requested information on the portable diesel fleet. The survey respondents reported the existence of 4,033 pieces of portable diesel equipment with engines over 50 brake horsepower (bhp). Of this equipment, 96 percent was purchased new and 4 percent was purchased used. The same respondents reported the existence of 18,000 pieces of diesel mobile equipment over 25 bhp, of which about 97 percent was purchased new. We estimate that the total rental fleet held by ARA members in California could include 5,550 pieces of portable diesel equipment over 50 bhp and 25,500 pieces of diesel mobile equipment over 25 bhp. The ARA survey did not address LSI portable equipment; thus the number of units possessed by ARA members is likely to be somewhat understated.

The distribution of diesel engines in the portable equipment fleet is: 90 percent between 50 and 99 bhp, 8 percent between 100 and 174 bhp, and 2 percent between 175 and 750 bhp. The average equipment age is estimated to be 42 months. The age and power distributions for portable and mobile equipment are similar.

Approximately 70 percent of the rental fleet sample consisted of new purchased air compressors, generators and lighting equipment with diesel engines less than 100 bhp. The same categories represent 82 percent of the fleet regardless of bhp rating and newness. Essentially no drilling, crushing, screening and conveying equipment was found to exist in the fleet.

Many engines in the rental fleet are sold into the secondary market with intact emission warranties. The optimal replacement age of equipment involves both net income from rental and salvage value. Rental companies generally maintain their equipment and do not tamper with engines because properly functioning equipment brings the most rental revenue and the highest resale value.

ARA represents both larger chains and independent rental businesses. The ARA survey found that there is little difference in the age of the fleets across businesses. This is most likely because of the competitive nature of the rental business.

The rental business model tends to replace equipment in such a fashion that a uniform distribution of engine ages exists in a typical business. For the 42-month average age, this would suggest that the oldest portable equipment purchased new is approximately 7 years old, and the typical fleet turnover is 14 percent per year. Individual businesses may of course, make block purchases, increase equipment acquisitions in favorable business times and delay replacements in unfavorable business times. By 2010, essentially all portable diesel equipment should be Tier 2 or newer, and most LSI equipment should be compliant with the 2004 emission standards.

Because the rental business model drives ARA rental companies to have newer equipment that provides low emissions, we do not see the need for any regulatory requirements beyond self-enforcement via reporting. Vigorous enforcement of ARA member rental companies will provide no substantial emissions benefits.

ARB staff estimates that the cost of record keeping is $400 per unit in addition to the annual mandatory inspection cost of $115 per unit. For ARA members, the annual cost is thus estimated to be $2.86 MM. Staff did not consider lost rental revenue associated with scheduled inspections, which could more than double the annual cost for rental companies. Staff also projected significant savings as a result of the program due to relief from local permit requirements. With the exception of the South Coast airshed, such savings for ARA members seems unlikely.

General Comments:

The purpose of this regulation should be to provide a cost effective and quantified emissions reduction relative to the existing PERP rule. The Initial Statement of Reasons (ISOR) executive summary (Section F page vii) states that the emissions benefits of this regulation cannot be quantified and that most emissions reductions would come from catching illegal portable equipment and bringing that equipment into compliance.

- If an inspection program can provide no quantifiable benefit, how is it justified? The Board should instruct staff to quantify the benefits of an inspection program before imposing mandatory fees on equipment owners.

- The regulation mandates self-enforcement at a considerable cost through record keeping and reporting. With self-enforcement, there should be no need to inspect each piece of Certified Equipment or equipment fitted with a Certified VDECS. Through reporting, ARB and the Districts can ascertain if appropriate warranties provided by the manufacturer are active, proving the emissions performance.

- For non-Certified equipment and equipment units, inspection and emissions testing are legitimate.

- If the ARB deems mandatory inspection of every piece of equipment and every equipment unit necessary, the ARB should ensure that the fees are appropriate and specifically related to the cost of inspection only. The CAPCOA estimate requires duplicative effort since much of the "inspection" is related to checking of data that must be reported to the State as a part of self-enforcement. Furthermore, because most engines that are registered in the program are certified, no emissions test is required and the need for inspection becomes less clear.

- 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.

- 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.

- Staff should consider more creative and less manpower intensive ways of auditing equipment. One could envision 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. These would be read remotely by a laptop computer interfaced to a chip reader. The enforcement officer could immediately know the registration and other details, if they exist, by communicating with ARB's database.

- While no benefits of the program can be quantified, the costs to businesses are quantified. The ISOR estimates the cost to small businesses to be $35.4 MM over 5 years. How can ARB justify this cost for an aggregate benefit that cannot be quantified?

Comments Related to Article 5 Portable Engine and Equipment Registration:

Section 2452 Definitions:

There is no definition for an "inspection". Without a definition, it is not possible to determine whether the fee per inspection is consistent with the inspection activity.

(kk) Rental Business:

Does definition (kk) imply that Rental Businesses must register portable equipment? If so, this would seemingly be inconsistent with the voluntary nature of the program.

Section 2453 Application Process:

(g)(4) and (g)(5) Minimum Information:

ARB appears to leave the responsibility of deciding what data collection is necessary to satisfy the Agency up to the purchaser. Rental companies do not generally have technical staff conversant in the regulatory and technical aspects of emissions from engines. 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. The purchasers' interest is in acquiring equipment that serves a specific use that is not related to any emission requirements of the state.

Section 2456 Engine Requirements:

(c) Less than 50 bhp:

Based upon previous regulatory action, ARA believed that the PERP regulation applied specifically to 50 and over bhp equipment. Why does the proposed regulation address less than 50 bhp equipment?

(d)(3) Illegal Fuel:

Rental companies should not be liable if a renter illegally fuels a rented registered piece of equipment.

(d)(5) Smoke:

Rental companies should not be held liable for the operation by a renter of a registered piece of rental equipment in such a fashion as to violate the smoke rule.

(d)(6) Not to Exceed Emission Limits:

Rental companies should not be held liable for the operation by a renter of a registered piece of rental equipment in such a fashion as to violate the emission limits.

Section 2457 Registered Equipment Units:

(a) Not to Exceed Emission Limits:

Rental companies should not be held liable for the operation by a renter of a registered rental equipment unit in such a fashion as to violate the emission limits.

(a) Following Applicable Requirements:

Rental companies should not be held liable for the operation by a renter of a registered rental equipment unit in such a fashion as to violate the other applicable requirements of this section.

2458 Record Keeping and Reporting:

(b) Rental Business Requirements:

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.

Because ARB requires acknowledgement by the renter of specific requirements under this regulation, 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.

(b)(4) Location of Use:

The rental company cannot be held liable for misinformation regarding equipment location supplied by any renter.

2459 Notification:

(a) Why was "renter" struck from this paragraph? This 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 units is not the responsibility of the rental company.

(a) and (e):

The requirements of these seem to be in conflict. Please clarify the requirement.

2460 Inspection and Testing:

(e) Emission Testing of Certified Engines:

It seems that there is no requirement to actually emission test a certified engine. If an engine is a certified engine that is within its useful emissions life or is fitted with a VDECS unit under warranty, why must it be inspected at all? The emissions durability is the responsibility of the engine or emission control manufacturer and not the owner as long as the equipment has been maintained appropriately to preserve the warranty. The general information portion of the inspection is all reported directly to ARB. It appears that the purpose of inspection is to find fraud. But, the main source of fraud is engines in use that are both unregistered and without local permit. It is not in the economic interest of a rental company equipment owner to let equipment degrade, as this will lessen rental income. 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.

2461 Fees:

Any fee charged for inspection should cover the cost associated with that inspection function only. Local districts should not fund enforcement programs related to catching non-registered equipment through funds collected for inspection. The fee schedule is based upon the CAPCOA proposal that is, in theory, related to district average costs for a suite of inspection activities. Under this regulation, many of the inspection activities related to data and reporting are duplicative under the state reporting requirements. Further, since much equipment in the State is certified, there is no emission test requirement. The State should provide an independently developed proposal for inspection fees that provides a quantifiable emission reduction within its own guidelines for cost effectiveness for pollutant reduction.

Missing Requirement:

This regulatory action should incorporate matters of enforcement related to unregistered engines. The cost should not be assigned to compliant businesses that register their equipment.