06-6-2
June 22, 2006

Air Transport Association

June 21, 2006

BY ELECTRONIC SUBMISSION AND FACSIMILE

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814
Electronic submission: http://www.arb.ca.gov/lispub/comm/bclist.php
Facsimile: 916-322-3928

RE: Comments on Proposed Amendments to Statewide Portable Equipment Registration Program ("PERP")

To the Clerk of the Board:

I write on behalf of the Air Transport Association of America, Inc. (ATA)[1] in response to the California Air Resources Board's (ARB's) solicitation of comments on its Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program (Proposal).[2] ATA regularly comments on federal and state regulatory developments that may affect its member airlines, and appreciates this opportunity to present its views concerning the Proposal. ATA reserves the right to raise any additional regulatory, legal, or other issues at a later date.

The PERP program affects ATA members who own or operate portable engines, principally as ground support equipment (GSE) at California airports. As discussed in detail in previous comments to ARB in connection with other proposed regulations, GSE is a very diverse and highly specialized category of equipment that, as the Federal Aviation Administration (FAA) has recognized, plays a critical role in the National Airspace System. The various functions performed by GSE, including portable engines, affect the airlines' ability to move aircraft

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[1] ATA is the principal trade and service organization of the U.S. scheduled airline industry. The members of the Association are: ABX Air, Alaska Airlines, Aloha Airlines, American Airlines, ASTAR Air Cargo, ATA Airlines, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, FedEx Corporation, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; associate members are: Aerovías de México, Air Canada, Air Jamaica, and Mexicana de Aviación.

[2] *See* Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation, Appendix A (May 5, 2006) (available at http://www.arb.ca.gov/regact/perp06/isor.pdf).

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6

efficiently from the gate, through the runway queue, and into the National Airspace System on schedule. Accordingly, it is critical that any regulations that affect GSE do not risk impairing safety or functionality, create regulatory uncertainty or inconsistency across airports in California, or impose unnecessary compliance burdens.[3]

ATA previously submitted preliminary comments on the Proposal and hereby incorporates those comments herein by reference.[4] Since that time, in informal communications ARB staff have confirmed that ARB staff agrees with the interpretations of the amendment provisions addressed in ATA's Preliminary Comments. ATA would welcome more explicit and clear confirmatory language in the regulation itself or in ARB's written responses to public comments. However, as described below, ARB staff's confirmations regarding ATA's interpretations of the amendments, and ATA's understanding that ARB staff intends to reiterate most or all of these interpretations in its presentation to the Board on June 22, 2006, have largely allayed the concerns raised in ATA's Preliminary Comments, with the few exceptions identified below.

Recording Requirements

ATA continues to believe that the requirement to record usage meter readings "at the beginning and end of each calendar week" would impose unnecessary administrative burdens with no corresponding benefit. *See* Proposal, 13 CCR Section 2458(a)(2)(B). ATA understands that this information will be collected so that it is available for use should officials determine a use for the data in the future. While ATA understands ARB staff intends to propose elimination of the data collection requirement in the future should the data go unused, ATA believes this burden should not be imposed in the first instance unless and until a legitimate need for the information is identified.

In its Preliminary Comments, ATA also advocated a change in the wording of this provision to ensure that the timing of the requirement to record usage meter readings is interpreted in a manner sufficiently flexible to accommodate the reality of airport operations.

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[3] *See, e.g.*, Letter from Tim A. Pohle, ATA Assistant General Counsel – Environmental Affairs, to Kim Heroy-Rogalski, California Air Resources Board (Nov.15, 2005) at 2-3 ("Response to Request for Alternative Regulatory Proposals for ARB's Off-Road Diesel Equipment Measure") (available at www.arb.ca.gov/msprog/ordiesel/documents/ATA_Alt_Reg_Proposals_11_15_05.pdf). By providing these comments concerning ARB's proposed PERP amendments and continuing to participate in the rulemaking process, ATA does not waive its right to challenge ARB's authority to promulgate the program. ATA expressly reserves the right to challenge the PERP or any state or local law or regulation that purports to govern GSE, including on grounds of federal preemption under the Federal Aviation Act, Airline Deregulation Act, and the Clean Air Act.

[4] *See* Letter from Tim A. Pohle, Assistant General Counsel – Environmental Affairs, ATA, to Michael J. Tollstrup, Kitty Howard, and Wayne Sobieralski, ARB (Apr. 12, 2006) (copy attached hereto as Exhibit A) (hereinafter "Preliminary Comments").

See Preliminary Comments at 2-3. In discussions since then, ARB staff has confirmed to ATA that ARB interprets the language requiring recordings "at the beginning and end of each calendar week," to provide carriers needed flexibility to collect the data at a time during each week that is convenient for airport operations. With that confirmation of the meaning of the provision from ARB, ATA does not oppose that aspect of the recording requirement.

Standards for Determining Eligibility of Portable Engines for PERP Registration

As noted in ATA's Preliminary Comments, ARB has consistently confirmed that GSE operated at airports are eligible for registration under the existing PERP program, and that PERP-registered GSE are exempt from permitting requirements of local air Districts. This fundamental aspect of the PERP is critical to preserving the state-wide uniformity of the program and avoiding a patchwork of local requirements for GSE at different airports in the state, which would impose unnecessary administrative and compliance burdens, and result in unwarranted interference with the efficient functioning of the National Airspace System.[5] *See* Preliminary Comments at 3-4.

In informal communications after ATA filed its Preliminary Comments, ARB staff have confirmed ATA's understanding that nothing in the Proposal is intended to alter the jurisdictional scope of the PERP program, and that the amendments will not change ARB's long-standing policy, practice, and regulatory interpretation that portable engine GSE operated at airports is eligible for PERP registration and exempt from local District permitting requirements.

ATA understands ARB staff will reiterate this fundamental understanding of the jurisdictional scope of the PERP program in its presentation to the Board on June 22, 2006.

Exclusive ARB Authority to Determine PERP Eligibility

As ATA also noted in its Preliminary Comments, it is ATA's understanding that nothing in the Proposal is intended to grant local air Districts any authority to determine whether particular engines are PERP-eligible. ARB's exclusive authority to determine whether a portable engine is eligible for registration under the PERP, and therefore exempt from local District permitting requirements, is a critical element of the PERP program, necessary to achieve its purpose of state-wide uniform regulation and to avoid patchwork local GSE requirements that would unnecessarily impede the National Airspace System. *See* Preliminary Comments at 4-5.

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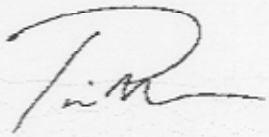
[5] Indeed, in establishing the PERP, the Legislature recognized the need for uniform, state-wide regulation as the primary purpose of the PERP. *See, e.g.*, Cal. Health & Safety Code, § 41750 (Deering 2006) ("Legislative findings and declarations") (recognizing that prior law allowed each district to impose "separate and sometimes inconsistent emission control requirements" and that "[a] uniform, voluntary system of statewide registration and regulation of portable equipment . . . is necessary to ensure consistent and reasonable regulation of that equipment without undue burden on the owners, operators, and manufacturers").

Again, since the filing of the Preliminary Comments, ARB staff have confirmed that this understanding is correct, and that ARB interprets the proposed amendments as preserving ARB's exclusive authority to determine PERP eligibility for all portable engines in the state. ATA understands ARB staff will also reiterate this understanding in its presentation to the Board on June 22, 2006.

CONCLUSION

ATA appreciates this opportunity for input. Please contact me at 202-626-4216 if you have any questions or would like additional information in connection with any of the points raised in these comments.

Sincerely,



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cc: Michael J. Tollstrup
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Air Transport Association

April 12, 2006

BY ELECTRONIC MAIL

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RE: Preliminary Comments on Proposed Amendments to Statewide Portable Equipment Registration Program ("PERP")

Dear Mr. Tollstrup, Ms. Howard & Mr. Sobieralski:

I write on behalf of the Air Transport Association of America, Inc. (ATA)[1] in response to the California Air Resources Board's (ARB's) solicitation of preliminary comments on its Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program (Proposal).[2] ATA regularly comments on federal and state regulatory developments that may affect its member airlines, and appreciates this opportunity to present its preliminary views concerning the draft amendments in advance of ARB's notice and solicitation of formal comments on the proposed rule. ATA reserves the right to raise any additional regulatory, legal, or other issues in its formal comments.

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[1] ATA is the principal trade and service organization of the U.S. scheduled airline industry. The members of the Association are: ABX Air, Alaska Airlines, Aloha Airlines, American Airlines, ASTAR Air Cargo, ATA Airlines, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, FedEx Corporation, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Polar Air Cargo, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; associate members are: Aerovías de México, Air Canada, Air Jamaica, and Mexicana de Aviación.

[2] The Proposal is available at www.arb.ca.gov/portable/perpact/draft/draft.pdf (posted March 27, 2006).

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The PERP program affects ATA members who own or operate portable engines, principally as ground support equipment (GSE) at California airports. As discussed in detail in previous comments to ARB in connection with other proposed regulations, GSE is a very diverse and highly specialized category of equipment that, as the Federal Aviation Administration (FAA) has recognized, plays a critical role in the National Airspace System. The various functions performed by GSE, including portable engines, affect the airlines' ability to move aircraft efficiently from the gate, through the runway queue, and into the National Airspace System on schedule. Accordingly, it is critical that any regulations that affect GSE do not risk impairing safety or functionality, create regulatory uncertainty or inconsistency across airports in California, or impose unnecessary compliance burdens.[3]

I. The Requirement to Record Usage Meter Readings "at the Beginning and End of Each Calendar Week" Would Impose Unnecessary Administrative Burdens With No Corresponding Benefit

Under the Proposal, recordings from an hour meter, fuel meter, or other device would be required "at the beginning and end of each calendar week" for units subject to ongoing operation "at multiple locations within a stationary source."[4] Units that change locations less frequently could, alternatively, record readings at the commencement and completion of operation at each location.[5] Portable engine GSE often are used in ongoing operations at multiple locations within an airport[6] and it is our understanding that they would therefore be subject to recording of usage meter readings "at the beginning and end of each calendar week."

As an initial matter, this burdensome weekly recording requirement would not alter emission levels and would yield no environmental benefit. In addition, ARB itself has no

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[3] *See e.g.*, Letter from Tim A. Pohle, ATA Assistant General Counsel – Environmental Affairs, to Kim Heroy-Rogalski, California Air Resources Board, Re: Response to Request for Alternative Regulatory Proposals for ARB's Off-Road Diesel Equipment Measure at 2-3 (November 15, 2005) (available at www.arb.ca.gov/msprog/ordiesel/documents/ATA_Alt_Reg_Proposals_11_15_05.pdf). By providing these preliminary comments and continuing to participate in the rulemaking process, ATA does not waive its right to challenge the rulemaking process or any final rule. ATA expressly reserves the right to challenge any state regulation that purports to govern GSE, including on grounds of federal preemption under the Federal Aviation Act, Airline Deregulation Act, and the Clean Air Act.

[4] *See* Proposal, 13 CCR Section 2458(a)(2)(B).

[5] *See id.* Section 2458(a)(2)(C).

[6] In the Proposal, "location" is defined as "any single site at a building, structure, facility, or installation." Proposal, 13 CCR Section 2452(r). The Proposal does not define "single site." In turn, a "stationary source" is defined in terms of any building, structure, facility or installation, which are defined to include all pollutant emitting activities that are under the same ownership or operation, belong to the same industrial grouping, and located on contiguous or adjacent properties. *See id.* Section 2452(oo).

analytical or other use for the information: while the weekly data would be required to be maintained at a central location for five years, they would not be submitted to ARB.[7] Instead, usage data would be submitted to ARB annually, and such annual reports would only break down the data into quarterly summaries that report fuel use or hours of operation for each unit.[8] The only context in which the data may be available to regulators is during an inspection. Given the acknowledgement that it is not being collected for analytical or other purposes, it thus appears this information could only serve as the basis for identifying violations of the weekly recording requirement.

Given that the weekly recordings do not produce any environmental benefit and do not appear to serve any legitimate administrative purpose, there is simply no reason to impose the substantial compliance and operational burdens on operators that would be associated with weekly recording of usage data. ATA respectfully suggests that changing the frequency of the proposed recording requirement of Section 2458(a)(2)(B) from weekly to yearly or quarterly would provide the same usage information to ARB, while eliminating unnecessary compliance burdens associated with operating PERP-registered GSE at multiple locations within an airport.

In addition to reducing the frequency of the recording requirement, the wording of the provision should be changed to accommodate the reality of airport operations. Portable engine GSE often are involved in operations that are active 24-hours per day, 7-days per week. The current language would require recordings "at the beginning and end of each calendar week." In the airport context, this could be interpreted as requiring GSE operators to interrupt operations and record usage data at some arbitrary time dictated by the calendar, such as Sunday at midnight for weekly readings.

For these reasons, ARB should change the proposed language from requiring recordings "at the beginning and end of each calendar week," to simply "annually" or "quarterly." This change would allow for regular recordings, while providing needed flexibility to collect the data at a convenient time for airport operations, rather than imposing an arbitrary interruption of operations dictated by the calendar.

II. ARB Should Confirm that Nothing in the Proposal is Intended to Alter the Eligibility of Portable Engines for PERP Registration

Under the existing PERP program, ARB has consistently confirmed that GSE operated at airports are eligible for registration under the program, and that PERP-registered GSE are exempt from permitting requirements of local air Districts. While the Proposal retains the

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[7] *See id.* Section 2458(a).

[8] *See id.*, 13 CCR Section 2458(e)(3).

existing language that makes clear that once registration is granted by the Executive Officer, District permits are generally preempted, the Proposal would add the following language:

> Under no circumstance shall a portable engine or equipment unit be operated under both statewide registration and a district permit at any specific location. Where both a district permit and statewide registration have been issued for a specific location, the district permit shall be valid and preempt the statewide registration for that location.[9]

From participation in ARB workshops and informal discussions with ARB staff, it is ATA's understanding that:

- this provision is only intended to make clear that portable engines permitted as part of a stationary source permit issued at the District level are governed by the applicable stationary source permit while operating at that location; and
- nothing in this provision, or any other proposed provision, is intended to alter the jurisdictional scope of the PERP program, or change ARB's long-standing policy, practice, and regulatory interpretation regarding the eligibility of GSE operated at airports for PERP registration.

In other words, it is ATA's understanding that, if the proposed amendments take effect, portable engines that have been considered eligible for state-wide PERP registration will continue to be eligible and PERP-registered engines will continue to be exempt from local District permitting requirements. Based on this understanding, the wording of Proposed 13 CCR Section 2453(*l*) is not problematic.

III. ARB Also Should Confirm that Under the Proposal the Executive Director of ARB Will Retain Sole Authority to Determine PERP Eligibility

The Proposal retains key language that makes clear that the ARB Executive Officer remains responsible for determining whether a portable engine or equipment unit is eligible for PERP registration.[10] However, in addition to the language discussed immediately above, the Proposal also adds new provisions that charge each local air District with performing mandatory compliance inspections of PERP-registered units.[11] Again, based on participation in workgroups

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[9] Proposal, 13 CCR Section 2453(*l*)

[10] *See, e.g.*, 13 CCR Section 2460(a) ("In determining if a portable engine or equipment unit is eligible for registration, the Executive Officer may inspect a portable engine or equipment unit and/or require a source test").

[11] *See* Proposal, 13 CCR Section 2460(b).

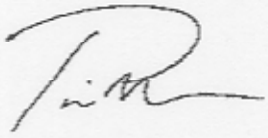
and informal contacts with ARB staff, our understanding is that neither of these provisions, and no other provision in the Proposal, is intended to grant local air Districts any authority to determine whether particular engines are PERP-eligible. ATA respectfully requests that ARB explicitly confirm that it retains the sole authority to determine whether a given piece of equipment is PERP-eligible.

CONCLUSION

A critical feature of the PERP program is that, consistent with current ARB regulations, practice and policy, GSE operating at airports must remain eligible for state-wide PERP registration, and local air Districts must not be granted the authority to subject PERP-registered airport GSE to individual local permitting requirements. Any change to the program that would change the eligibility status of GSE and/or allow a patchwork of local portable engine permitting requirements at various airports across California would impose unnecessary administrative and compliance burdens, and result in unwarranted interference with the efficient functioning of the National Airspace System. Accordingly, ATA would not support any change that may lead to inconsistent eligibility and enforcement criteria for different airports in the state. Assuming that ARB is able to confirm explicitly ATA's understandings discussed in detail in Sections II and III above, ATA does not object to the relevant language in the Proposal. However, for the reasons discussed in Section I above, ATA does respectfully suggest that ARB change the unnecessary and burdensome weekly recording requirement, to a yearly or quarterly requirement.

ATA appreciates this opportunity for public input at this early stage in the rulemaking development process. We look forward to continuing to participate in this process with respect to the proposed PERP amendments. Please contact me at 202-626-4216 if you have any questions or would like additional information in connection with any of the points raised in these preliminary comments, or if you would like to discuss any other aspect of ARB's proposed PERP amendments.

Sincerely,



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