PUBLIC MEETING AGENDA

June 22, 2006

9:00 a.m.

Agenda Items to be heard;

06-6-1: 06-6-2: 06-6-3:

06-6-4:

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ELECTRONIC BOARD BOOK

California Environmental Protection Agency

Air Resources Board

PUBLIC MEETING AGENDA

LOCATION:
South Coast Air Quality Management District Office
Auditorium
21865 Copley Drive
Diamond Bar, California 91765-4182

This facility is accessible by public transit. For transit information, call: (800) 743-3463, http://www.foothilltransit.org/ (This facility is accessible to persons with disabilities.)

June 22, 2006
9:00 a.m.

Item #

06-6-1: Report to the Board on a Health Update: Follow-Up to the Six Cities Study – Health Benefits of Reduction on Fine Particulate Matter

Investigators have published an extended follow-up of the Six Cities Study on the effects of fine particulate pollution on premature death. Investigators included an 8-year follow up with participants from the initial study. They again found the association between PM2.5 and increased premature death. However, since the levels of pollution have dropped significantly in several of the cities, the investigators also reported reduction in mortality rates in cities with pollution reductions. This reduction was found for deaths from cardiovascular and respiratory disease, but not from lung cancer. The investigators found that the largest drops in mortality rates were in cities with the greatest reduction in PM2.5. Even though the study was looking at long-term exposures, this finding suggests that relatively recent changes in exposure may provide health benefits.

06-6-2: Public Hearing to Consider the Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program

The amendments to the Regulation for ARB's voluntary Statewide Portable Equipment Registration Program (PERP) are being proposed to increase the enforceability of the regulation, ensure that local air pollution control and air quality management districts are adequately reimbursed for enforcement costs, and provide increased flexibility to owners and operators of portable equipment.

06-6-3: Public Hearing to Consider the Proposed Amendments to Regulation for the Availability of California Motor Vehicle Service Information

Staff will propose amendments to the service information regulation approved in 2001 and modified in 2004. The proposed amendments would primarily require heavy-duty engine manufacturers to make available emission-related tools and information to the aftermarket and service industries beginning with the 2013 model year. The amendments would clearly specify the types of tools to be made available as well as the software needed to perform engine diagnosis and recalibration. Other proposed modifications would clarify provisions for motor vehicle and engine manufacturers, limit heavy-duty transmission information requirements, and include/update several recommended practices and documents.

06-6-4: Public Hearing to Consider the Technical Amendments to the Motor Vehicle Evaporative and Exhaust Emissions Test Procedures

Staff will propose technical amendments to the California motor vehicle evaporative, refueling, and exhaust emissions test procedures. The proposed "streamlining" amendments reduce the evaporative emissions certification and in-use compliance testing burden on manufacturers. The amendments will not impact the stringency of the emission standards or procedures. Additional minor amendments address four-wheel drive dynamometer provisions and clarify vehicle labeling requirements.

OPPORTUNITY FOR MEMBERS OF THE BOARD TO COMMENT ON MATTERS OF INTEREST

Board members may identify matters they would like to have noticed for consideration at future meetings and comment on topics of interest; no formal action on these topics will be taken without further notice.

OPEN SESSION TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD ON SUBJECT MATTERS WITHIN THE JURISDICTION OF THE BOARD.

Although no formal Board action may be taken, the Board is allowing an opportunity to interested members of the public to address the Board on items of interest that are within the Board's jurisdiction, but that do not specifically appear on the agenda. Each person will be allowed a maximum of five minutes to ensure that everyone has a chance to speak.

TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO:
http://www.arb.ca.gov/lispub/comm/bclist.php

IF YOU HAVE ANY QUESTIONS,
PLEASE CONTACT THE CLERK OF THE BOARD
1001 I Street, 23rd Floor, Sacramento, CA 95814

(916) 322-5594
FAX: (916) 322-3928
ARB Homepage: www.arb.ca.gov

To request special accommodation or language needs, please contact the following:

- **For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services.**
- **If you are a person with limited English and would like to request interpreter services to be available at the Board meeting, please contact ARB's Bilingual Manager at 916-323-7053.**

THE AGENDA ITEMS LISTED ABOVE MAY BE CONSIDERED IN A DIFFERENT ORDER AT THE BOARD MEETING.

SMOKING IS NOT PERMITTED AT MEETINGS OF THE CALIFORNIA AIR RESOURCES BOARD

California Environmental Protection Agency

Air Resources Board

PUBLIC MEETING AGENDA

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LOCATION:
South Coast Air Quality Management District Office
Auditorium
21865 Copley Drive
Diamond Bar, California 91765-4182

This facility is accessible by public transit. For transit information, call (916) 321-BUSS, website: http://www.sacrt.com
(This facility is accessible to persons with disabilities.)

June 22, 2006
9:00 a.m.

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TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE REGULATION FOR THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the proposed amendments to the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation).

DATE: June 22, 2006

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 East Copley Drive
Diamond Bar, California 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 22, 2006, and may continue at 8:30 a.m., June 23, 2006. This item may not be considered until June 23, 2006. Please consult the agenda for the meeting, which will be available at least ten days before June 22, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916.323.4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916.323.7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments of title 13, California Code of Regulations (CCR), sections 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, and 2465, which is the Statewide Portable Equipment Registration Program.

Background: The Statewide Regulation establishes a uniform program to register portable engines and equipment units in California. Portable equipment is any piston-driven engine and/or equipment unit that is designed and capable of being carried and moved from one location to another and would remain at a single location for less than 12 consecutive months. Portable engines and equipment units are used for a variety of applications, such as pumps, ground support equipment at airports, military tactical support equipment, cranes, oil well drilling, servicing and work-over rigs, power

generators, dredging equipment, rock crushing and screening equipment, welding equipment, and compressors. Once registered in this voluntary program, owners and operators of portable engines and equipment units, such as portable aggregate crushing and screening plants that have particulate matter emissions not associated with a portable engine, can operate throughout the State without having to obtain permits from individual air pollution control and air quality management districts (districts) for a three year period.

The current Statewide Regulation requires a phase-in of cleaner technologies that would result in the reduction and eventual elimination of high-emission engines. By January 1, 2010, any engine registered in the Portable Equipment Registration Program (PERP) must be certified to the more stringent of California or federal nonroad emission standards. Currently, PERP has about 20,700 portable engines, 2,250 associated equipment units, and another 4,700 pieces of military tactical support equipment (TSE) registered in the program.

The Statewide Regulation was approved by the Board on March 27, 1997, and became operative on September 17, 1997. The Board also approved amendments to the Statewide Regulation on December 11, 1998, and February 26, 2004. At the February 2004 meeting, the California Air Pollution Control Officers Association (CAPCOA) raised a number of concerns related to the enforceability of the Statewide Regulation. The Board directed staff to work with CAPCOA and affected industry to resolve the concerns. ARB staff, in consultation with CAPCOA and affected industries, developed proposed amendments to the Statewide Regulation.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The following amendments are proposed in order to increase the accountability and enforceability of the Statewide Regulation, ensure that districts are reimbursed for enforcement costs, and provide a one-time limited application period for purchasers who experienced extended time lags between ordering and accepting delivery of portable equipment. As the program has grown and more equipment has been registered, the need for an effective enforcement program has become increasingly important to the overall effectiveness of the program. Additional funds are needed to cover the districts costs for enforcing the Statewide Regulation.

Home District Designation

The proposed amendments require owners of registered engines and equipment units to designate a home district. A home district is defined as the district in which the registered engine or equipment unit would reside most of the time. Owners currently holding valid registrations would be required within ninety days of the effective date of these proposed amendments to the Statewide Regulation to submit in writing to ARB a home district designation.

Hour Meters

The proposed amendments require that all registered engines have a functional, non-resettable hour meter or equivalent device installed on the engine. Owners and operators holding valid registrations would be required within six months of the effective date of these proposed amendments to the Statewide Regulation to install an hour meter or equivalent device and notify ARB in writing that the installation was completed. New applications would not be accepted unless an hour meter or equivalent device was installed on the portable engine.

Placards

The proposed amendments would require owners and operators of registered engines and equipment units to obtain a visible registration indicator (placard) that identifies the engine or equipment unit as being registered in the PERP. The estimated cost of the placard is $5.00 each. Payment for the placard would be required upon renewal for existing participants or at the time of initial registration for new applicants.

Recordkeeping and Reporting

The proposed amendments would require all owners and operators of registered engines and equipment units to maintain records onsite of hours of operation, process throughput, or other indicator of operation as approved by the Executive Officer. The records would have to be maintained for a minimum of five years and made available to the district or ARB upon request. The proposed amendments would require vendors selling new engines or equipment units in California to notify the buyer about this regulation and to submit to the Executive officer on a monthly basis the number of portable engines and equipment units sold for use in California including the name, address, contact information of the purchaser and the description of the engine or equipment unit including make, model and engine family name. Staff also proposes that owners and operators of registered engines and equipment units be required to submit annual reports to ARB. In addition, staff proposes requiring districts to submit an annual report summarizing the district inspections.

Notification Requirements

The proposed amendments would require owners and operators of registered equipment units, such as portable aggregate crushing and screening equipment, to notify the respective district when an equipment unit would be operated at a location for more than five days. Notification requirements for registered engines will not be required.

District Inspection Fee

The districts are responsible for enforcing the requirements of the Statewide Regulation. Pursuant to Health and Safety Code section 41752(d), ARB has established a fee schedule to cover resources necessary to operate, enforce, and maintain PERP.

ARB staff proposes increasing the district inspection fee for registered engines from $75.00 per inspection each year to $345.00 ($315.00 home district inspection fee and $30.00 general district inspection fee) every three years. In addition, staff proposes a multiple engine discount if owners make arrangements with the home district to inspect multiple engines at one time.

ARB staff proposes increasing the district inspection fee for equipment units from $75.00 per inspection to $98.00 per hour, not to exceed $500.00, plus a general district inspection fee of $75.00 every three years. For TSE, ARB staff proposes an annual general district inspection fee of $10.00 per TSE unit.

District Inspections

The proposed amendments would require that within 45 days after the initial issuance of a registration or renewal, the owner or operator must contact the district to arrange for an inspection of the registered engine or equipment unit. The inspection must be completed within one year of the initial registration or renewal. The time for the inspection must be mutually agreed upon in advance. If the inspection does not occur, the inspection must be rescheduled within 90 days. If a registered engine or equipment unit will be out of California for that year, the owner or operator must arrange for an inspection within 30 days upon return of the registered engine or equipment unit into California.

Recognition of Longer Lead Time for Some Engines

The Statewide Regulation requires engines that are registered after January 1, 2006, to meet the most stringent current certified engine standard. ARB staff recently became aware that some manufacturers and distributors required a longer lead time for certain engines than was originally anticipated. Recognizing this issue, ARB staff is proposing Statewide Regulation amendments to allow Tier 2 engines rated in the 175 to 750 brake horse power (bhp) range and Tier 1 engines rated greater than 750 bhp to be registered in PERP, provided the engine is in a new piece of equipment that was sold to the ultimate user between July 1, 2005, and December 31, 2005; a complete application and associated fees are received by the Executive Officer no later than November 1, 2006; and valid documentation of proof-of-purchase date of the above requirements is provided. This provision is intended to allow the registration of a limited number of new engines that, because of unexpectedly long lead times to order, manufacture, and deliver equipment, are no longer eligible for registration in PERP.

Miscellaneous Amendments

ARB staff is proposing to modify, add, and delete terms in the definitions section, delete outdated provisions, and strengthen the appeals process. These changes are generally nonsubstantive and are intended to provide additional clarity and enforceability to the Statewide Regulation.

COMPARABLE FEDERAL REGULATIONS

In section 213 of the federal Clean Air Act, Congress directed the Administrator of the United States Environmental Protection Agency (U.S. EPA) to determine whether emissions from nonroad engines cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and safety, and if so, promulgate emission standards for the control of such engines. Engines used in portable equipment are a general category of nonroad engines. To date, U.S. EPA has adopted emission standards for new spark-ignition nonroad engines at or below 19 kilowatts (25 horsepower) and compression-ignition nonroad engines at or above 37 kilowatts (50 horsepower). Concurrent with authorizing U.S. EPA to adopt emission standards and other regulations for nonroad engines, in section 209(e)(1) Congress established a nonroad engine preemption prohibiting all states, including California, from adopting emission standards and other requirements related to the control of emissions from new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles.

In contrast to other states, however, the Clean Air Act permits California to request authorization from U.S. EPA to adopt and enforce necessary emission standards and regulations for California for all nonroad engines not otherwise expressly preempted by section 209(e)(1). To date, California has adopted several nonroad regulations, including emission standards for new spark-ignition engines at or below 19 kilowatts (25 horsepower) and compression-ignition engines at or above 37 kilowatts (50 horsepower). Both regulations have received authorization from U.S. EPA.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary to the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing which will begin on June 22, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Kitty Howard, Manager of the Regulatory Assistance Section, at (916) 322-3984, or by email at khoward@arb.ca.gov or Chris Gallenstein, Air Pollution Specialist, Regulatory Assistance Section, (916) 324-8017, or by e-mail at cgallens@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at *http://www.arb.ca.gov/regact/perp06/perp06.htm*.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons, and businesses in reasonable compliance with the proposed amendments to the Statewide Regulation are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will result in minor costs and/or savings impacts to some State agencies, no impact on federal funding to the state, and some costs to local agencies or school districts that are not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, and title 2 of the Government Code, as discussed below or other non-discretionary savings to local agencies.

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

Staff estimates that 1,900 private businesses will be affected by the proposed amendments. The total economic cost for private businesses to comply with the proposed amendments to the Statewide Regulation is estimated by ARB staff to be $50.5 million.

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

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

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

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

The Executive Officer has determined, pursuant to title 1, CCR, section 4, that the proposed amendments to the Statewide Regulation will affect small businesses. The total economic impact to small businesses would be $35.4 million dollars over the five year period that the costs of the proposed amendments to the Statewide Regulation would be incurred.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed 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 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 proposed 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.

Before taking final action on the proposed regulation, the Board must determine 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 amendment is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, June 21, 2006**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic submittal : http://www.arb.ca.gov/lispub/comm/bclist.php **no later than 12:00 noon, June 21, 2006.**

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, June 21, 2006**.

The Board requests, but does not require, 30 copies of any written submission. Also the ARB requests that written, facsimile, and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in Health and Safety Code sections 39600, 39601, 41752, 41753, 41754, 41755, 43013, and 43018. This action is proposed under the authority granted to the ARB in Health and Safety Code sections 41750, 41751, 41752, 41753, 41754, and 41755.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 "I" Street, Visitors and Environmental Center, First Floor, Sacramento, California 95814, (916) 322-2990.

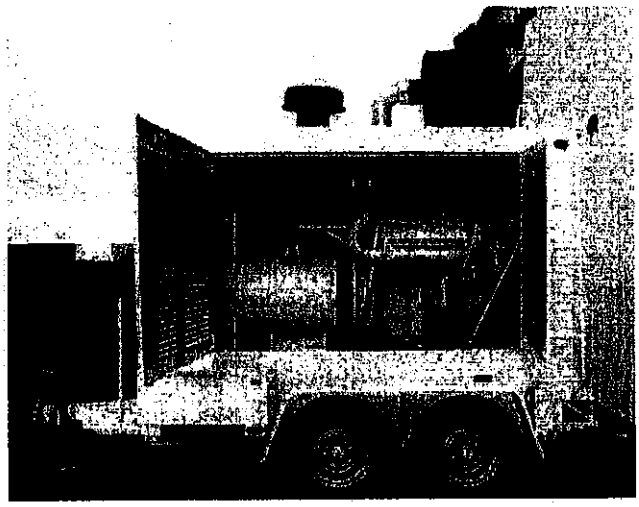
CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: April 25, 2006

California Environmental Protection Agency
AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS FOR THE PROPOSED AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM REGULATION



Stationary Source Division
Project Assessment Branch

Release Date: May 5, 2006

State of California
AIR RESOURCES BOARD

State of California
AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING

Public Hearing to Consider

Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation

To be considered by the Air Resources Board on June 22, 2006 at:

California Environmental Protection Agency
Headquarters Building
1001 "I" Street
Central Valley Auditorium
Sacramento, California

STATIONARY SOURCE DIVISION

Robert Fletcher, Chief
Robert D. Barham, Assistant Chief
Michael J. Tollstrup, Chief, Project Assessment Branch
Kitty Howard, Manager, Regulatory Assistance Section

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

State of California
AIR RESOURCES BOARD

PROPOSED AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM REGULATION

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Acknowledgements

This report was prepared with the assistance and support from the other divisions and offices of the Air Resources Board. In addition, we would like to acknowledge the assistance and cooperation that we have received from many individuals and organizations.

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Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation

Executive Summary

A. INTRODUCTION

This Executive Summary outlines the Air Resources Board staff's (staff) proposal to amend the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation) as adopted by the Air Resources Board (ARB or Board) on March 27, 1997, and amended on December 10, 1998, and February 26, 2004, for portable engines and equipment units.

This report comprises the Initial Statement of Reasons for the Proposed Amendments to the Statewide Regulation as required by the Administrative Procedures Act (Government Code 11340 et seq.). The Executive Summary of this report provides an overview of the proposed amendments to the Statewide Regulation, a summary of staff recommendations, and a brief discussion of the environmental and economic impacts resulting from the proposal. The following portion of the report provides a more detailed presentation of the technical aspects of the proposed amendments to the Statewide Regulation.

B. BACKGROUND

The Air Resources Board (ARB/Board) is authorized by the California Health and Safety Code (HSC) sections 41750 through 41755 to adopt a regulation to establish a uniform statewide program for the registration and regulation of portable engines. The Statewide Regulation was first adopted by the Board on March 27, 1997, and amended by the Board on December 11, 1998, and February 26, 2004. The Statewide Regulation establishes a program to register portable engines and equipment units in California. Once registered in this voluntary program, portable equipment units may operate throughout the State without having to obtain permits from the local air pollution control and air quality management districts (districts), providing industry with the flexibility to operate portable engines and equipment units under a uniform statewide registration program.

At the February 2004 Board meeting, the California Air Pollution Control Officers Association (CAPCOA) raised a number of concerns related to the enforceability of the Statewide Regulation. The Board directed staff to work with CAPCOA and a number of affected industries to resolve these concerns. CAPCOA in consultation with ARB and affected industries developed proposed amendments to the Statewide Regulation.

The proposed amendments include recommendations for an increase in district inspection fees, notification requirements, installation of hour meters, placard fees, and increased recordkeeping and reporting requirements. ARB staff used the CAPCOA proposal as a starting point for discussions with stakeholders and affected industry. The proposed amendments contained in staff's proposal are the result of extensive discussions and negotiations with affected parties.

Staff believes the proposed amendments represent a fair and equitable balance between flexibility for affected industries and increased enforceability of the Statewide Regulation.

C. PORTABLE EQUIPMENT AND CURRENT REGULATIONS

1. What is portable equipment?

Portable equipment is any piston-driven internal combustion engine and/or equipment unit that is designed and capable of being carried or moved from one location to another and would remain at a single location for less than 12 consecutive months. Unlike stationary engines and equipment, portable equipment may be moved to multiple locations throughout the State, where it may operate for several hours or several months. Portable engines and equipment units registered in the Portable Equipment Registration Program (PERP) are used for a variety of applications, such as pumps; military tactical support equipment (TSE); cranes; oil well drilling; servicing and work-over rigs; power generators; dredging equipment; rock crushing; and screening equipment; welding equipment; woodchippers; and compressors.

2. What types of businesses and public agencies use portable equipment?

Both private businesses and public agencies operate portable equipment registered in PERP. The types of businesses registering engines in PERP include motion picture studios; amusement parks; utilities; telecommunications; construction services; crushing, screening, and recycling services; industrial cleaning services; marine construction and dredging services; oil and gas operations; and rental services. Public agencies include schools and universities, county landfills, municipal utilities, wastewater treatment facilities, defense, and transportation agencies.

3. How is portable equipment regulated in California?

a. ARB/U.S. EPA off-road engines standards

Since January 1, 1996, new diesel fueled portable engines sold in California have been subject to ARB's Off-Road Compression Ignition emission standards. These standards are equivalent to the United States Environmental Protection Agency (U.S. EPA) emission standards for newly manufactured nonroad engines. (In California statutes, nonroad engines are referred to as off-road engines, therefore, these engines will be referred to as "off-road" in this report). The standards are tiered (i.e. Tier 1, 2, 3, and 4) with each set of standards phased in over several years based on the power rating of the engine and becoming progressively more stringent with each tier introduced.

Since January 1, 2001, newly-manufactured large (greater than 25 bhp) spark-ignition (LSI) engines sold in California have been subject to ARB's off-road LSI standards. The U.S. EPA also adopted federal standards that were equivalent to ARB standards, but also included a more stringent standard. Beginning in 2007, new LSI engines must meet a combined standard for oxides of nitrogen (NOx) and hydrocarbons (HC) of 2.0 grams per brake horsepower-hour (g/bhp-hr).

b. Airborne Toxic Control Measure for Diesel-Fueled Portable Engines

On February 26, 2004, the Air Resources Board adopted the Airborne Toxic Control Measure (ATCM) for Diesel-Fueled Portable Engines, which became effective on March 11, 2005. The ATCM requires that portable diesel-fueled engines that have not been permitted or registered prior to January 1, 2006, shall meet the most stringent of the federal or California emission standards for nonroad engines. This requirement was also incorporated into the Statewide regulation. Specifically, both regulations require that after January 1, 2006, engines rated from 175 to 750 brake horsepower (bhp) must meet Tier 3 standards and engines rated greater than 750 bhp must meet Tier 2 standards to be accepted into PERP.

c. Portable Equipment Unit Standards

Registered equipment units are required to meet emission limits (82 pounds per day of PM10 (particulate matter sized less than 10 microns) and 10 tons per year pollutant per district per year per equipment unit) as well as emission control requirement based on the type of equipment that has been registered in PERP.

d. Local Air District Permit Programs

Permit requirements vary from district to district depending on the state of the air quality in the district. While some districts exempt portable engines altogether, other districts may require portable engines to meet emission limits that are equivalent to Best Available Control Technology (BACT). For some districts, BACT for portable engines means that the engine is certified to ARB/U.S. EPA off-road emissions standards. Districts may also restrict the operating hours of portable engines to reduce air quality impacts to acceptable levels. An owner that operates portable equipment in multiple districts would be required to obtain a permit from each district, pay fees, and adhere to different sets of regulations as they move equipment among different districts.

e. Statewide Portable Equipment Registration Program

In lieu of obtaining multiple permits from individual districts, a portable equipment owner can register in PERP. Currently, portable equipment owners have registered over 27,700 engines and equipment units in PERP. Of this amount, there are over 20,700 engines registered which represent nearly half of the estimated statewide inventory of portable engines. Most of the engines are diesel-fueled engines. The Statewide Regulation was designed to promote the use of clean portable engines in California. By January 1, 2010, only engines certified to ARB/U.S. EPA off-road engine emission standards (Tier 1, 2, 3, or 4) can continue to operate under PERP (certified engines). This means that about one-third of the currently registered engines must be replaced with certified engines by that date.

D. PUBLIC PROCESS

In developing any regulation, the public, local districts, and affected industries play an important role in shaping the regulatory proposals. ARB staff has made extensive efforts to have an open process and provide ample opportunity for input by all parties.

To assist in developing the proposed amendments to the Statewide Regulation, staff convened a Portable Equipment workgroup. The workgroup included sixty representatives from local and state air quality agencies and affected industries such as oil services and well drilling, construction, water agencies, sanitation services, rental companies, the military, telecommunication companies, and utility companies.

On December 1, 2005, January 17, 2006, and February 24, 2006, ARB staff held public consultation meetings in Sacramento. Staff provided attendees with the option of participating in the meetings by audio teleconference or in person. Staff also conducted a number of additional conference calls and in-person stakeholder meetings to further discuss the proposed amendments.

ARB staff held public workshops on March 30, 2006, in Sacramento and on April 4, 2006, in Southern California at the South Coast Air Quality Management District to solicit comments from the public on the proposed amendments. The Sacramento workshop was also broadcast on the Internet for meeting participants that were unable to attend in person. In addition, broadcast viewers were able to submit comments and questions by email during the workshop so that staff could address their concerns or answer their questions.

Staff also used an e-mail list serve to notify interested parties of the meeting dates and the availability of information to be discussed at the meetings. In addition, a web site was developed where interested parties could download information such as meeting agendas and staff proposals, as well as providing links to other-related ARB websites. The website address is located at *http://www.arb.ca.gov/portable/perpact/perpact.htm*.

Staff participated in numerous individual meetings and conference calls with affected industries to address specific concerns. In addition, staff attended several meetings of the CAPCOA Engineering Managers Committee and the Enforcement Managers Committee to discuss and solicit comments on the proposed amendments to the Statewide Regulation.

Staff revised the proposed amendments to the Statewide Regulation in consideration of the comments received during the public process. Staff made every effort to consider all comments and recommendations received.

E. SUMMARY OF THE PROPOSED AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM REGULATION

The proposed amendments to the Statewide Regulation are summarized in the following major categories:

a. Home District Designation

The proposed amendments require owners of registered engines and equipment units to designate a home district. A home district would be the district in which the registered engine or equipment unit would reside most of the time. Owners currently holding valid registrations would be required within ninety days of the effective date of the Statewide Regulation to notify the ARB of their home district designation.

The designation of a home district will ensure that a single district is identified as responsible for conducting inspections. The designation will also ensure that this same district would be reimbursed for inspection activities.

b. Hour Meters

The proposed amendments require that all engines have a functional, non-resettable hour meter or equivalent device installed on the engine. Owners holding valid registrations would be required within six months of the effective date of the Statewide Regulation to install an hour meter or equivalent device and notify ARB in writing that the installation had been completed. New applications would not be accepted unless an hour meter or equivalent device had been installed on the portable engine.

The installation of hour meters is necessary to accurately demonstrate how many hours portable equipment is actually being used. At this time, limited data is available regarding how many hours an individual piece of equipment is operated. This operating data will provide more accurate information than is currently available for the evaluation of air quality impacts associated with the operation of portable equipment.

c. Placards

The proposed amendments would require owners and operators of registered engines and equipment units to obtain a placard that identifies the engine or equipment unit as being registered in the Statewide Program. The placard would be required to be mounted to the engine or equipment unit in a conspicuous place.

The placard would cost $5.00 each and would be required upon the first renewal for existing participants or at the time of initial registration for new applicants. A replacement placard would be required if the placard were damaged or lost. The replacement cost would be $30.00 each.

These placards will help reduce enforcement costs by making it easier for inspectors to identify registered equipment in the field. This will ensure that all registered equipment is identified and inspected on a regular basis.

d. Recordkeeping and Reporting

The proposed amendments would require all owners and operators of portable engines and equipment units that are not already doing so to keep records onsite to track operation or process throughput. The records would have to be maintained for a minimum of five years and made available to the district or ARB upon request.

Staff also propose that owners of registered engines and equipment units submit annual reports to ARB. In addition, staff propose to require districts to submit an annual report summarizing the district inspections.

These proposed requirements are necessary to determine how many hours a piece of equipment is operated and where it is located during operation.

e. Notification Requirements

The proposed amendments would require owners and operators of equipment units to notify the district when an equipment unit would be operated at a location for more than five days. Because of the transient nature of equipment units, the proposed notification requirements would ensure that districts are aware of equipment unit operations within their jurisdiction. ARB staff are also proposing to delete the notification requirements for portable engines.

f. District Inspections and Fees

The districts play a critical role in enforcing the requirements of the Statewide Regulation. Pursuant to Health and Safety Code section 41752(d), ARB has established a fee schedule to cover resources necessary to operate, enforce, and maintain PERP. The proposed amendments would require that within 45 days after the initial issuance of a registration or renewal, the owner or operator must contact the district to arrange for an inspection of the registered engine or equipment unit. The inspection must be completed within one year of the initial registration or renewal. The time for the inspection must be mutually agreed upon in advance. If the inspection does not occur, the inspection must be rescheduled within 90 days. If a registered engine or equipment unit will be out of California for that year, the owner or operator must arrange for an inspection within 30 days upon return of the registered engine or equipment unit into California.

ARB staff propose to increase the district inspection fee for registered engines from $75.00 per inspection per year to $345.00 ($315.00 home district inspection fee and $30.00 general district inspection fee) every three years. In addition, staff propose a multiple engine discount if owners make arrangements with the home district to inspect multiple engines at one time.

ARB staff propose to increase the district equipment unit inspection fee from $75.00 per inspection to $98.00 per hour, not to exceed $500.00, plus a general inspection fee of $75.00 every three years. For TSE, ARB staff propose an annual general district inspection fee of $10.00 per TSE unit.

g. Recognition of Longer Lead Times for Delivery of Some Engines

The Statewide Regulation requires engines that are registered after January 1, 2006, to meet the most stringent current certified engine standard. ARB staff recently became aware that some manufacturers and distributors required a longer lead time for certain types of engines and associated equipment than was originally anticipated. Recognizing this issue, ARB staff is proposing to amend the Statewide Regulation to allow

Tier 2 engines rated in the 175 to 750 brake horse power (bhp) range and Tier 1 engines rated greater than 750 bhp to be registered in PERP, provided all of the following are met: 1) the engine is in a new piece of equipment that was sold to the ultimate user between July 1, 2005, and December 31, 2005; 2) a complete application and associated fees are received by the Executive Officer no later than November 1, 2006; and 3) valid documentation of date of sale is provided.

h. Miscellaneous Amendments

ARB staff are proposing to modify, add, and delete terms in the definitions section, delete outdated provisions, and to strengthen the appeals process. These changes are generally non substantive and are intended to provide additional clarity and enforceability to the Statewide Regulation.

F. ENVIRONMENTAL AND ECONOMIC IMPACTS OF THE PROPOSED AMENDMENTS TO THE STATEWIDE REGULATION

1. What are the expected environmental impacts of the proposed amendments?

It is expected that the proposed amendments to the Statewide Regulation would likely result in reductions of NOx and diesel particulate matter (PM) emissions, however, the reductions cannot be quantified. These reductions cannot be quantified because the nature and extent of individual enforcement activities are difficult to predict. These reductions would occur due to increased enforcement activities to ensure that registered engines and equipment units are in compliance with the Statewide Regulation, particularly engine replacement requirements. The biggest benefit for air quality is expected to come from districts locating the thousands of engines and equipment units operating illegally without permits or registrations and bringing this equipment into compliance. All Californians would benefit, particularly those living in areas where the State and federal ambient air quality standards for ozone and PM are exceeded.

2. What are the economic impacts of the proposed amendments?

ARB staff estimates that the total economic impact of the proposed amendments to the Statewide Regulation to affected private businesses and public agencies is $54.2 million over its lifetime ($50.5 million for private businesses and $3.7 million for public agencies). The economic impact is due to increased district inspection fees, increased recordkeeping and reporting requirements, hour meter purchase and installation, and costs to obtain placards.

G. NEXT STEPS

Upon approval by the Board of the proposed amendments to the Statewide Regulation, ARB staff will continue to implement PERP and conduct outreach efforts with affected parties, industry associations, and governmental agencies. ARB staff will work with CAPCOA and affected parties to inform owners and operators of PERP registered equipment of the amendments to the Statewide Regulation. ARB staff will work with the districts to identify portable equipment owners that have not obtained permits or registration in PERP.

These owners will need to be brought into the regulatory process so that all portable engines and equipment units in the State are ultimately complying with applicable requirements.

H. RECOMMENDATION

The staff recommends that the Board approve the proposed amendments to the Statewide Regulation. The proposed amendments would retain the flexibility of operating registered engines and equipment units throughout the State without having to obtain multiple district permits. In addition, the amendments would provide clarity and provide for increased resources needed by the districts to effectively enforce the Statewide Regulation. The staff also recommends that after the first 3-year cycle of implementation of the proposed amendments to the Statewide Regulation, the staff provide a progress report to the Board regarding additional modifications or enhancements that should be considered for PERP.

State of California
AIR RESOURCES BOARD

I. INTRODUCTION

In this chapter, the ARB staff provides an overview of this report, discusses the purpose of the proposed amendments, and discusses the regulatory authority ARB has to adopt the proposed amendments. This chapter also provides background information on the Statewide Regulation, and discusses the outreach efforts of ARB staff in developing the proposed amendments.

A. OVERVIEW

This Report outlines ARB staff's proposed amendments (contained in Appendix A) to the Statewide Regulation. The Statewide Regulation was approved by the Board on March 27, 1997, and subsequently amended by the Board on December 11, 1998, and February 26, 2004. The Statewide Regulation establishes a voluntary program for the registration and regulation of portable engines and equipment units operating in California. Once registered in this voluntary program, portable engines and equipment units can operate throughout the State without having to obtain permits from the local air pollution control and air quality management districts (districts). However, the districts are responsible under State law for enforcing the requirements of the Statewide Regulation.

At the February 2004 Board meeting, CAPCOA raised a number of concerns related to the enforceability of the Statewide Regulation. The Board directed staff to work with CAPCOA and a number of affected industries to resolve these concerns. ARB staff used the CAPCOA proposal (contained in Appendix E) as a starting point for discussions with stakeholders and affected industry. The proposed amendments contained in staff's proposal are the result of extensive discussions and negotiations with affected parties. Staff believes the proposed amendments represent a fair and equitable balance between flexibility for affected industries and increased enforceability of the Statewide Regulation.

This report provides:

- A discussion of portable equipment use and existing regulatory programs for portable equipment;
- A summary of the proposed amendments to the Statewide Regulation;
- Environmental and economic impacts;
- The proposed amended Statewide Regulation (Appendix A); and
- Other supplemental information (Appendices B-F).

B. PURPOSE

The primary purpose of the proposed amendments to the Statewide Regulation is to retain the flexibility of operating portable engines and equipment units without having to obtain multiple district-issued permits and at the same time ensure the enforceability of the Statewide Regulation through increased inspections and district presence in the field. In addition, staff is proposing amendments to increase clarity and strengthen the appeals process.

C. REGULATORY AUTHORITY

California Health and Safety Code (HSC) sections 41750 through 41755 mandate that the ARB adopt a regulation to establish a uniform statewide program for the registration and regulation of portable engines. In developing these regulations, ARB is required to evaluate emissions, identify emission control technologies, hold public hearings, establish emission limits and control requirements, and develop a fee schedule to cover the costs to adopt and administer the program, including the cost of district enforcement.

HSC section 41752(e) specifies that the Board may periodically revise and update the registration regulations including, but not limited to, revising and updating a determination of best available control technology for portable engines. As stated earlier, the Board approved the Statewide Regulation on March 27, 1997, and amended it on December 11, 1998, and February 26, 2006.

In addition, HSC sections 39600 (General Powers) and 39601 (Standards, Definitions, Rules, and Measures) confers on ARB the general authority and obligation to adopt rules and measures necessary to execute the Board's powers and duties imposed by State law. The California Clean Air Act of 1988 granted ARB authority to adopt standards and regulations for off-road vehicles and equipment. (HSC sections 43013(b) and 43018).

The federal Clean Air Act Amendments (CAA) of 1990 gave the United States Environmental Protection Agency (U.S. EPA) authority to regulate new nonroad (off-road) engines. The amendments created a federal preemption that, in general, prevents states from adopting emissions standards or other requirements for nonroad engines [CAA, section 209(e)]. Portable engines are a subset of off-road engines. However, recognizing the special circumstances confronting California, Congress allows California, upon receiving authorization from the U.S. EPA, to adopt standards for preempted equipment with the exception of new engines less than 175 brake-horsepower (bhp) used in farm and construction operations.

D. PUBLIC PROCESS

In developing any regulations, the public, local districts, and affected industries play an important role in shaping the regulatory proposals. ARB staff has made extensive efforts to have an open process and provide ample opportunity for input by all parties.

To assist in developing the proposed amendments to the Statewide Regulation, staff convened a Portable Equipment workgroup. The workgroup included sixty representatives from local and state air quality agencies and affected industries such as oil services and

well drilling, construction, water agencies, sanitation services, rental companies, the military, telecommunication companies, and utility companies.

On December 1, 2005, January 17, 2006, and February 24, 2006, ARB staff held three public consultation meetings in Sacramento. Staff provided attendees with the option of participating in the meetings by audio teleconference or in person. Staff also conducted a number of additional conference calls and in-person stakeholder meetings to further discuss the proposed amendments.

ARB staff held public workshops on March 30, 2006, in Sacramento and on April 4, 2006, in Southern California at the South Coast Air Quality Management District to solicit comments from the public on the proposed amendments. The Sacramento workshop was also broadcast on the Internet for meeting participants that were unable to attend in person. In addition, broadcast viewers were able to submit comments and questions by email during the workshop so that staff could address their concerns or answer their questions.

Staff also used an e-mail list serve to notify interested parties of the meeting dates and the availability of information to be discussed at the meetings. In addition, a website was developed where interested parties could download information such as meeting agendas and staff proposals, as well as providing links to other-related ARB websites. The website address is located at *http://www.arb.ca.gov/portable/perpact/perpact.htm*.

Staff participated in numerous individual meetings and conference calls with affected industries to address specific concerns. In addition, staff attended several meetings of the CAPCOA Engineering Managers Committee and the Enforcement Managers Committee to discuss and solicit comments on the proposed amendments to the Statewide Regulation.

Staff revised the proposed amendments to the Statewide Regulation in consideration of the comments received during the public process. Staff made every effort to consider all comments and recommendations received.

II. PORTABLE EQUIPMENT USE AND EXISTING REGULATORY PROGRAMS

This chapter describes the uses of portable equipment (engines and equipment units) that are registered in PERP. In addition, this chapter describes the types of businesses that use portable equipment and the existing regulatory programs that currently impact portable engines used in California.

A. SUMMARY OF PORTABLE EQUIPMENT USE AND ACTIVITIES

Portable equipment is any piston-driven internal combustion engine and/or equipment unit that is designed and capable of being carried or moved from one location to another and would remain at a single location for less than 12 consecutive months. Unlike stationary engines or equipment, portable equipment may be moved to several locations throughout the State, where it may operate for several hours or several months. Portable engines and equipment units registered in PERP are used for a variety of applications, such as pumps, military tactical support equipment, cranes, oil well drilling, servicing and work-over rigs, power generators, dredging equipment, rock crushing and screening equipment, welding equipment, woodchippers, and compressors.

Both private businesses and public agencies operate portable equipment in California. Examples of businesses that use portable engines in their activities include motion picture studios; amusement parks; utilities; construction services; crushing, screening, and recycling services; industrial cleaning services; marine construction and dredging services; oil and gas companies; and rental services. Examples of public agencies that use portable engines include public schools and universities, local governments, county landfills, municipal utilities, wastewater treatment facilities, military installations, and the California Department of Transportation.

There is significant variation in the size as well as the way that portable engines are used. The size of engines can range from about 50 horsepower to greater than 3,000 horsepower. The average annual operating hours for portable diesel-fueled engines is about 450 hours per year. Due to the mobile nature of portable engines, the emissions typically would not occur in one location, but would be spread out over many locations over the course of a year. In addition, the actual operation of a specific engine can vary significantly from the average. For example, engines used only for emergency applications may operate less than 20 hours per year. Conversely, some portable activities can operate more than 2,000 hours per year. Finally, the engine's load varies, depending upon the application. The average load is typically 50 percent of maximum load. Similar to the variability in the hours of operations, an engine's load can vary significantly from application to application, from 25 percent to 80 percent of maximum load.

B. EXISTING REGULATORY PROGRAMS

This section describes the federal preemption that limits the authority of ARB and local districts to regulate portable engines. This section also describes specific federal, state, and local programs that currently impact portable engines used in California, including ARB/U.S. EPA emission standards for newly manufactured off-road engines, PERP, and the local air pollution control and air quality management district (district) permitting programs. All of these programs play a role in the efforts of ARB and the districts to attain

the State and federal ambient air quality standards, particularly the ozone and particulate matter standards. Consequently, the focus of the programs has been to reduce emissions of NOx and PM, and to a lesser extent reduce emissions of carbon monoxide (CO) and HC.

1. Federal Preemption

The federal Clean Air Act (CAA) Amendments of 1990 authorized U.S. EPA to regulate new nonroad engines. The amendments created a federal preemption that prevents states from adopting emission standards or other requirements for nonroad engines (CAA, section 209(e)). Portable engines are a subset of off-road engines. However, recognizing the special circumstances confronting California, Congress provided that the State of California, upon receiving authorization from the U.S. EPA, can adopt and enforce standards for most classes and categories of off-road engines. In California statutes, nonroad engines are referred to as off-road engines; therefore, these engines will be referred to as "off-road" in this report.

The federal preemption prevents all states, including California, from setting standards for regulating new off-road engines less than 175 hp that are used in farm and construction operations. However, states do maintain the authority to establish in-use restrictions such as limiting the hours of operation.

2. State and Federal New Engine Emission Standards

a. Compression-Ignition Engine Standards

Since January 1, 1996, new diesel fueled portable engines sold in California have been subject to ARB's Off-Road Compression Ignition emission standards (title 13, California Code of Regulations (CCR), sections 2320 et seq.), which are equivalent to the U.S. EPA emission standards for newly manufactured nonroad (off-road) engines (40 CFR, Part 89). The standards are tiered (i.e. Tier 1, 2, 3, and 4), with each set of standards phased in over several years based on the power rating of the engine and becoming progressively more stringent with each Tier introduced

b. Airborne Toxic Control Measure for Diesel-Fueled Portable Engines

On February 26, 2004, the Air Resources Board adopted the Airborne Toxic Control Measure (ATCM) for Diesel-Fueled Portable Engines, which became effective on March 11, 2005. The ATCM requires that portable diesel-fueled engines that have not been permitted or registered prior to January 1, 2006, shall meet the most stringent of the federal or California emission standards for off-road engines. This requirement was also incorporated into the PERP regulation. Specifically, both regulations require that after January 1, 2006, engines rated from 175 to 750 brake horsepower (bhp) must meet Tier 3 standards and engines rated greater than 750 bhp must meet Tier 2 standards to be accepted into PERP.

c. Spark-Ignition Engine Standards

As mentioned above, the CAA Amendments provided for ARB to adopt and enforce its own standards and regulations for off-road engines. Since January 1, 2001, newly-

manufactured large (greater than 25 bhp) spark-ignition (LSI) engines sold in California have been subject to ARB's off-road LSI engine standards (Title 13, CCR Sections 2410 et seq.). The standards are also tiered. The U.S. EPA also adopted federal standards (found in 40 CFR part 1048 (Control of Emissions From New, Large Nonroad Spark-ignition Engines)) that were equivalent to ARB standards, but also included a more stringent standard. Beginning in 2007, new LSI standards must meet a combined standard for NOx and HC of 2.0 grams per brake horsepower-hour (g/bhp-hr).

3. Statewide Portable Equipment Registration Program

In lieu of obtaining multiple permits from individual districts, a portable engine owner can register the engine in PERP. As of January 27, 2006, portable engine and equipment unit owners have registered an estimated 27,700 engines and equipment units in PERP. Of this amount, there are over 20,700 engines registered which represent nearly half of the estimated statewide inventory of portable engines. Of the 20,700 engines, approximately 20,000 are diesel fueled engines while the additional 700 engines are gasoline, natural gas, kerosene, methanol, or liquid petroleum gas-fueled engines.

There are also 2,250 equipment units registered in PERP. Of these equipment units, approximately 40 percent are used in rock crushing and screening units, 23 percent media blasting units, 14 percent wood chippers. The remaining units include tub grinders, rock drills, conveyors, and other miscellaneous units. In addition, there are over 4,700 military TSE registered in the program. Approximately 90 percent of tactical equipment units utilize diesel or JP-8 fueled engines.

The Statewide Regulation was designed to promote the use of clean portable engines in California. By January 1, 2010, only engines certified to ARB/U.S. EPA off-road engine emission standards (Tier 1, 2, or 3) can continue to operate in PERP. This means that any engines currently registered in the program that do not meet at least Tier 1 standards must be replaced with certified engines by that date.

4. Local District Permit Programs

Portable engines not registered in PERP may be subject to local district permitting requirements. District permit requirements will vary, depending on the attainment status in the district. Some districts have implemented registration programs specifically for portable engines and equipment units. Owners of portable engines in these districts can register engines with the district by demonstrating the engines meet specific emission rates. Some districts specifically exempt portable engines from permit requirements or have specific requirements for individual types of portable engines and/or equipment.

III. SUMMARY OF THE PROPOSED AMENDMENTS TO THE STATEWIDE REGULATION

This chapter is intended to meet the requirements of Government Code section 11343.2 by providing to the public a "plain English" discussion of the proposed amendments to the Statewide Regulation.

A. MODIFICATIONS TO THE STATEWIDE REGULATION

The Air Resources Board (ARB/Board) is authorized by the California Health and Safety Code (HSC) sections 41750 through 41755 to adopt a regulation to establish a uniform statewide program for the registration and regulation of portable engines. The Statewide Regulation was first adopted by the Board on March 27, 1997, and amended by the Board on December 11, 1998, and February 26, 2004. The Statewide Regulation establishes a program to register portable engines and equipment units in California. Once registered in this voluntary program, portable equipment units may operate throughout the State without having to obtain permits from the local air pollution control and air quality management districts (districts), providing industry with the flexibility to operate portable engines and equipment units under a uniform statewide registration program.

At the February 2004 Board meeting, CAPCOA raised a number of concerns related to the enforceability of the Statewide Regulation. The Board directed staff to work with CAPCOA and affected industries to resolve these concerns. CAPCOA in consultation with ARB and a number of affected industries developed proposed amendments to the Statewide Regulation. The proposed amendments include recommendations for an increase in district inspection fees, notification requirements, installation of hour meters, placard fees, and increased recordkeeping and reporting requirements. ARB staff used the CAPCOA proposal as a starting point for discussions with stakeholders and affected industry. The proposed amendments contained in staff's proposal are the result of extensive discussions and negotiations with affected parties. Staff believes the proposed amendments represent a fair and equitable balance between flexibility for affected industries and increased enforceability of the Statewide Regulation.

1. Home District Designation

The proposed amendments would require owners of portable engines and equipment units to designate a home district. A home district would be the district in which the portable engine or equipment unit would reside most of the time. The designation of a home district ensures that PERP registered engines and equipment are inspected on a periodic basis and facilitates equitable distribution of inspection fees. Owners currently holding valid registrations would be required within ninety days of the effective date of the Statewide Regulation to submit in writing to ARB their home district designation. The Executive Officer will designate a home district for any and all engines and equipment units if the existing registration participants fail to designate a home district.

A review would be conducted by ARB every three years at the time of registration renewal. Based on an averaging of the data for the three years the reports were submitted, the home district would be changed to another district if the portable engine or portable equipment unit showed that the engine or unit operated the largest percentage of the time in one

non-home district. The switch would only be required if the difference in the two largest percentages was five percent or more.

2. Hour Meters

The proposed amendments require that all registered engines have a functional, non-resettable hour meter or equivalent device installed on the engine. Owners and operators holding valid registrations would be required within six months of the effective date of the Statewide Regulation to install an hour meter or equivalent device and notify ARB in writing that the installation had been completed. Operating conditions would not be changed until renewal of the registration. New or renewal applications would not be accepted unless an hour meter or equivalent device had been installed on the registered engine. The proposed amendment would allow ARB staff and districts to track operation of portable engines and equipment throughout the State.

Most engines have an hour meter installed by the manufacturer for maintenance purposes. ARB staff estimated that there are approximately 4,400 engines registered in the Statewide Program that would need to have an hour meter or equivalent device installed.

3. Placards

The proposed amendments would require owners of portable engines and equipment units to obtain a visible registration indicator (placard) that identifies the engine or equipment unit as being registered in PERP. The placard would be required to be mounted to the registered engine or equipment unit in a conspicuous place. The placard would allow district inspectors to confirm from a distance that an engine had been registered in PERP. This proposed amendment would enhance the efficiency of the district inspection programs and reduce the costs to affected industries by minimizing the amount of time district staff spend looking for illegally operating engines and equipment. The placard would cost $5.00 each and would be required upon renewal for existing participants or at the time of initial registration for new applicants. A replacement placard would be required if the placard were damaged or lost. The replacement cost would be $30.00 each.

4. Recordkeeping and Reporting Requirements

The proposed amendments would require all owners and operators of registered engines and equipment units that are not doing so to keep records onsite to track hours or process throughput. The records would have to be maintained for a minimum of five years and made available to the district or ARB upon request.

For rental businesses and third-party rentals, the owner would be required to maintain records of each rental or lease transaction including the portable engine or equipment unit registration number, the hours of operation for the rental period, and the location of use (by district, county or specific location) that was reported to them by the entity renting the portable engine or portable equipment unit for the rental period.

The proposed amendments would require owners of registered engines and equipment units to submit an annual report to the Executive Officer by March 1 of each calendar year which would include the reporting year, the registration number, quarterly summaries for

each district or county of the total fuel use in gallons per quarter or hours of operation per quarter for registered engines, and quarterly summaries for each district or county of the total process throughput or process weight for equipment units.

The proposed amendments would require owners or operators of a registered engine and/or equipment unit owned by a Provider of Essential Public Service (PEPS) to submit an annual report to the Executive Officer by March 1 of each calendar year which would include the reporting year, the registration number, total hours of operation, and an estimate of the percentage of hours or fuel use for the three counties in which the registered engine or equipment operate the most.

The proposed amendments would require districts to submit a report to the Executive Officer by March 31 of each calendar which would include the number of portable equipment engines and equipment units inspected, the number of portable engines and equipment units found operating without district permits or a statewide registration, the number of registered engines and equipments units inspected and a summary of the inspections.

The proposed amendments would require vendors selling new engines or equipment units in California to notify the buyer about this regulation and to submit to the Executive Officer on a monthly basis the number of portable engines and equipment units sold for use in California including the name, address, contact information of the purchaser and the description of the engine or equipment unit including make, model and engine family name.

With this information, ARB staff and districts intend to track where new engines sold in the State are going, their intended use, and ultimately whether they are permitted or registered. One purpose of the proposed recordkeeping and reporting requirements is to determine the location and magnitude of the air pollution emissions from portable equipment that operated during the calendar year in each district. Accurate, long-term data that depicts where portable engines operated, and for how long, will assist ARB and local districts in determining if certain uses of portable engines present an undue significant risk to the health of receptors. Part of the mission of the local districts is to provide the public with accurate and timely information regarding the air pollution emission produced within each district. In order to be able to provide the public with such information, the districts must collect and compile it.

5. Notification Requirements

The proposed amendments would require owners and operators of registered equipment units to notify the district when the equipment unit would be operated at a location for more than five days. The owner or operator and the district, by mutual agreement, could arrange alternative notification requirements on a case-by-case basis.

Because of the transient nature of equipment units and the greater potential for creating a public nuisance and visible emission violations, the proposed notification requirements would ensure that districts are aware of equipment unit operations within their jurisdiction. ARB staff is also proposing to delete the notification requirements for portable engines.

6. District Inspections and Fees

The districts play a critical role in enforcing the requirements of the Statewide Regulation. California HSC Section 41755 (a) requires that districts enforce the Statewide Regulation in the same manner as a district rule or regulation. In addition, HSC Section 41752 (d)(a) provides that ARB include in the Statewide Regulation a uniform Statewide district fee schedule for the recovery of the reasonable costs of enforcement.

In addition to inspections, the District enforcement activities for registered portable equipment include identifying affected industries; performing public outreach to educate those affected; providing compliance assistance; performing field surveillance, pre-inspection preparation, inspection and enforcement; conducting mutual settlement of violations, and prosecution where necessary; follow-up for sources failing to pay fees and/or fines; database entry and reporting work; and developing forms and reports.

ARB staff proposes to increase the district inspection fee for portable engines and equipment units to cover the increase in costs associated with district inspections and reporting requirements. In addition, staff has provided provisions for multiple engine inspection fee discount, a fee for conducting inspections outside of normal work hours and arranged inspections once every three years. A detailed discussion of the increased program fees is presented in Appendix B.

Appendix F contains CAPCOA's original proposal for inspection fees for inspection of portable equipment. This proposal was the starting point in the development of the fee schedule that is contained in the proposed amendments. The fee schedule contained in the proposed amendments is the result of negotiations between CAPCOA and a group of affected stakeholders. The proposed inspection fees are designed to provide re-imbursement for inspections conducted by the Home District as well as, general inspections that are conducted when portable equipment is operating in districts other than the designated Home District. The proposed schedule also provides owners and operators of portable equipment with certainty regarding the fees that would be charged for registration and inspection of portable equipment.

Each district would be responsible to inspect all registered engines and equipment units for which the district has been designated as home district. Under the proposed amendments, the owner or operator is responsible to contact the home district within 45 days after the date of initial issuance or renewal of a registration, to arrange for an inspection. If the registered engine or equipment unit shall be operating in a district, other than the home district, the owner or operator may request the home district to arrange for an inspection by that other district. However, the inspection must be competed within one year of the initial registration or renewal date.

a. District Inspection Fees – Engines

Currently, districts may charge an annual fee of $75.00 for performing an inspection of an engine registered in the Statewide Program. This inspection fee was found to be inadequate to cover the district's cost for conducting an inspection and resulted in few inspections being conducted by the districts. ARB staff proposes to increase the fee from $75.00 per inspection annually to $345.00 ($315.00 home district inspection fee and

$30.00 general district inspection fee) every three years. This fee would be due at initial registration or upon renewal. ARB staff would annually disperse the home district inspection fees to the home district designated by the owner and would equally disperse the general district inspection fees to the 35 air districts. This provision would allow for districts to receive more adequate funding for conducting inspections and encourage the districts to conduct a greater number of inspections.

b. Multiple Engine Inspection Fee Discount

ARB staff proposes a multiple engine inspection fee discount if an owner or operator arranges to have multiple engines inspected at the same time by the home district. Inspections of four to nine engines would be eligible for a 25 percent discount and inspections of ten or more engines would be eligible for a 35 percent discount.

The owner or operator would be required to notify the district in writing within 45 days of initial registration or by January 30 of each year for renewals. The fee discount would be applied at the time of registration. This provision provides cost savings to the owners and operators of portable equipment and provides increased efficiency for district enforcement programs.

c. District Inspection Fees – Equipment Units

Currently, districts may charge $75.00 for performing an inspection of an equipment unit registered in the Statewide Program. As stated above, this inspection fee was found to be inadequate to cover the district's cost for conducting an inspection and resulted in a small number of inspections being conducted by the districts. Under the current proposal, the inspection fee for equipment is based on the time it takes to conduct the inspection multiplied by $98.00 per hour with a $500.00 maximum. In addition, a $75.00 general district inspection fee would be required to be paid during the initial registration and every 3 years upon renewal.

d. District Inspection Fees – Tactical Support Equipment (TSE)

Currently, districts may charge $75.00 once every calendar year for performing an inspection of a registered TSE unit. Under the current proposal, an additional $10.00 general district inspection fee would be required to be paid to the Executive Officer during the initial registration and annually thereafter.

e. District Off-hour Inspection Fee

The proposed amendments also contain a provision that if the registered engines can only be inspected outside of normal workday hours, the district may charge for the off-hour time at an additional cost of $50.00 per hour. The provision provides for more adequate reimbursement of additional expenses associated with district off-hour inspections.

f. Arranged District Inspections

The proposed amendments would require owners or operators to contact the home district within 45 days of initial registration or renewal to schedule an arranged inspection with the

home district. Inspections could be arranged to be in-field or non-field inspections. An in-field inspection is conducted at the location that the portable engine or equipment unit is operated under normal load and conditions. A non-field inspection is either conducted at a location that is mutually acceptable to the district and the owner or operator or where the engine or equipment unit is stored. A non-field does not require operation of the engine or equipment unit for purposes of the inspection.

For portable engines, each home district could conduct no more than 20 percent of the arranged inspections for that district as in-field inspections. The district would be required to conduct an arranged inspection once every three years. A district may inspect a registered engine or equipment unit in addition to the arranged inspection, but the district would not be able to charge the owner an inspection fee.

These proposed provisions would provide greater certainty to districts and owners regarding when inspections might be conducted. It also provides certainty as to where inspections would be conducted.

7. Recognition of Longer Lead Times for Delivery of Some Engines

The Statewide Regulation requires that portable diesel-fueled engines that have not been permitted or registered prior to January 1, 2006, meet the most strihgent of the federal or California emission standards for off-road engines.

Specifically, the off-road standards require that after January 1, 2006, 2006 model year engines rated from 175 to 750 brake horsepower (bhp) must meet Tier 3 standards and 2006 model year engines rated greater than 750 bhp must meet Tier 2 standards to be accepted into PERP.

Engines meeting the 2006 requirements are becoming more readily available. ARB staff recently became aware that some manufacturers and distributors required longer lead times for certain engines than was originally anticipated. Recognizing this issue, ARB staff is proposing to amend the Statewide Regulation to allow into PERP,
Tier 2 engines in the 175 to 750 bhp range and Tier 1 engines rated greater than 750 bhp under the following circumstances:

1. The engine is in a new piece of equipment that was sold to the ultimate user by the manufacturer or an authorized distributor between July 1, 2005, and December 31, 2005; and
2. A complete PERP application including all forms and applicable fees is received by the Executive Officer prior to November 1, 2006; and
3. The application contains valid documentation regarding the date of sale including, but not limited to, the date shown on the front of the cashed check, the date of the financial transaction, or the date shown on the engine purchase agreement between the ultimate user or engine packager, and the engine manufacturer or dealer/distributor.

ARB staff believe that this relief is necessary so as to not penalize the owners who ordered equipment in good faith well ahead of the necessary deadline, but did not receive the engines and/or equipment units in time to register them into PERP. Staff believes that the

number of engines that would meet the above criteria and qualify for registration would be less than 200 engines and the resulting emissions increase would be insignificant.

8. Miscellaneous

ARB staff is proposing to modify, add, and delete terms in the definitions section, delete outdated provisions, and to strengthen the appeals process. These changes are considered to be non-substantive and are intended to provide additional clarity and enforceability to the Statewide Regulation.

IV. ENVIRONMENTAL IMPACTS OF THE PROPOSED AMENDMENTS TO THE STATEWIDE REGULATION

This chapter describes the potential environmental impacts of the proposed amendments to the Statewide Regulation. Based on staff's analysis, the proposed amendments to the Statewide Regulation would not result in any adverse impacts.

A. LEGAL REQUIREMENTS APPLICABLE TO THE ENVIRONMENTAL IMPACT ANALYSIS

The California Environmental Quality Act (CEQA) and ARB policy require an analysis to determine the potential environmental impacts of proposed regulations. The Secretary of Resources, pursuant to Public Resources Code section 21080.5, has certified the ARB rulemaking process. Consequently, the CEQA environmental analysis requirements may be included in the Initial Statement of Reasons (ISOR) for this rulemaking. The ISOR serves as a functionally equivalent document of an initial study, a Negative Declaration, and an Environmental Impact Report. In addition, staff will respond, in the Final Statement of Reasons for the amended Statewide Regulation, to all significant environmental issues raised by the public during the public review period or at the Board public hearing.

Public Resources Code section 21159 requires that the environmental impact analysis conducted by ARB include the following:

- An analysis of reasonably foreseeable environmental impacts of the methods of compliance;
- An analysis of reasonably foreseeable feasible mitigation measures; and
- An analysis of reasonably foreseeable alternative means of compliance with the amended Statewide Regulation.

Regarding mitigation measures, CEQA requires an agency to identify and adopt feasible mitigation measures that would minimize any significant adverse environmental impacts described in the environmental analysis.

B. AIR QUALITY IMPACTS OF THE PROPOSED AMENDMENTS TO THE STATEWIDE REGULATION

The proposed amendments to the Statewide Regulation would likely result in reductions in NOx and diesel PM emissions. These reductions would occur because the Statewide Regulation mandates cleaner engines as a condition of registration and because of the funding of increased enforcement activities. All Californians would benefit, particularly those living in areas where the State and federal ambient air quality standards for ozone and particulate matter are exceeded. No adverse impacts have been identified by the ARB staff. ARB staff has not been advised of any adverse impacts by the public during any of the outreach efforts or workshops.

C. IMPACTS OF THE PROPOSED AMENDMENTS ON MEETING AMBIENT AIR QUALITY STANDARDS

HSC section 41754 requires that emissions from engines and equipment units registered in PERP shall not, in aggregate, interfere with the attainment or maintenance of the State and federal ambient air quality standards. PERP requires that engines meet the most stringent emission standards in effect at the time the application and requires that any engine registered after 2010 must be certified. The implementation of the current Statewide Regulation therefore will result in increased reductions of NOx, HC, and diesel PM emissions from registered engines now and in future years.

D. ANALYSIS OF REASONABLY FORESEEABLE ENVIRONMENTAL IMPACTS OF THE METHODS OF COMPLIANCE

As specified in Health and Safety Code section 41755, the districts have an important role in enforcing the requirements of the Statewide Regulation. If the Board approves the proposed amendments, the districts would be able to increase their enforcement efforts of the Statewide Regulation.

E. REASONABLY FORESEEABLE MITIGATION MEASURES

CEQA requires an agency to identify and adopt feasible mitigation measures that would minimize any significant adverse environmental impacts described in the environmental analysis. ARB staff has concluded that no significant adverse environmental impact would occur from adoption of, and compliance with, the proposed amendments to the Statewide Regulation. Therefore, no mitigation measures would be necessary.

F. REASONABLY FORESEEABLE ALTERNATIVE MEANS OF COMPLIANCE WITH THE PROPOSED AMENDMENTS

At the February 2004 Board meeting, CAPCOA raised a number of concerns related to the enforceability of PERP. The Board directed staff to work with CAPCOA and affected industries to resolve these concerns. ARB in consultation with CAPCOA and a number of affected industries developed proposed amendments to the Statewide Regulation. ARB staff has concluded that the proposed amendments provide the most effective and least burdensome approach to ensuring air quality continues to be protected, that ARB can continue to operate and maintain the program effectively.

G. ENVIRONMENTAL JUSTICE

ARB is committed to evaluating community impacts of proposed regulations including environmental justice concerns. Because some communities experience higher exposure to air pollutants, it is a priority of ARB to ensure that full protection is afforded to all Californians. The proposed amendments to the Statewide Regulation are not expected to result in significant negative impacts in any community. The proposed amendments to the Statewide Regulation would likely result in decreased emissions of NOx and diesel PM. These reductions would occur by increasing enforcement activities to ensure that affected engines and equipment units are in compliance with registration requirements, particularly engine replacement requirements.

The proposed amendments would further reduce emissions of NOx and PM to residents and off-site workers living or working near the operation of registered engines and equipment units.

V. ECONOMIC IMPACTS OF THE PROPOSED AMENDMENTS TO THE STATEWIDE REGULATION

This chapter discusses legal requirements that must be satisfied in analyzing the economic impacts of the proposed amendments to the Statewide Regulation and the methodology used to estimate cost impacts, and presents estimates of the economic impacts for the proposed amendments. The proposed amendments to the Statewide Regulation are not expected to change the overall beneficial impact on affected business and industry.

A. SUMMARY OF THE ECONOMIC IMPACTS

Staff estimates the total potential economic impact of the proposed amendments to the Statewide Regulation to affected businesses and governmental agencies is approximately $54.2 million. The total economic impact is attributable to increased cost to maintain records ($41.2 million); increased district engine inspection fees ($9.8 million); increased district equipment inspection fees ($1.9 million); increased district inspection fees for technical support equipment ($236,000); cost to obtain a placard ($194,000); cost to replace placards ($34,000); and the cost to install hour meters ($876,000). However, ARB staff expects there to remain an overall benefit for most businesses affected by the proposed amendments to the Statewide Regulation compared to having to obtain district permits (see Appendix C for more detail).

B. LEGAL REQUIREMENTS

Section 11346.3 of the Government Code requires state agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative regulation. The assessment shall include a consideration of the impact of the proposed regulation on California jobs, business expansion, elimination or creation, and the ability of California business to compete with businesses in other states.

Also, state agencies are required to estimate the cost or savings to any state or local agency and school district in accordance with instructions adopted by the Department of Finance. The estimate shall include any non-discretionary cost or savings to local agencies and the cost or savings in federal funding to the State.

Finally, HSC section 57005 requires ARB to perform an economic impact analysis of submitted alternatives to a proposed regulation before adopting any major regulation. A major regulation is defined as a regulation that will have a potential cost to California business enterprises in an amount exceeding ten million dollars in any single year. Because the estimated cost of the amendments to the Statewide Regulation does not exceed ten million dollars in a single year, the proposed amendments to the Statewide Regulation is not a major regulation.

C. METHODOLOGY FOR ESTIMATING COSTS ASSOCIATED WITH IMPLEMENTATION OF THE PROPOSED AMENDMENTS

This section provides the general methodology and assumptions used to estimate the costs associated with the amendments to the Statewide Regulation. ARB staff describes the

method used to estimate the number and types of engines and associated equipment subject to the proposed increased program fees. The basic methodology is also used to analyze the costs to private companies and governmental agencies. For determining the various costs for the life of the regulation, staff followed the instructions found in the State Administrative Manual, Section 6680 and utilized the annual cost multiplied out five years.

1. Analysis of the PERP Database

ARB staff conducted an analysis of the PERP database that existed on January 27, 2006 in order to evaluate the cost impacts from the proposed amendments to the Statewide Regulation for federal, state, local agencies and small businesses. Based on the analysis, staff determined that there are over 2,155 organizations with 27,705 engines or equipment units (units) registered in PERP. Of these organizations, staff estimates there are eight state agencies with 23 registered units (approximately .08 percent of the total), 181 local agencies with 1,236 registered units (approximately 4 percent of the total), 50 federal agencies with 4,874 registered units (approximately 17.5 percent of the total), and 1,916 private businesses with 21,572 registered units (approximately 78 percent of total). ARB staff used these percentages to determine the cost of the proposed amendments to the various organizations.

ARB staff also used a representative sample of businesses to determine the percentage of "small businesses." Based on this analysis, staff determined that 70 percent of all businesses currently in PERP are small businesses and own five or fewer units.

2. Initial and Recurring Costs

The cost evaluation considers both initial costs and ongoing annual costs. Initial costs were calculated for the estimated number of units that would have to purchase placards and hour meters. Ongoing annual costs were applied to the estimated number of units that would be subject to the proposed district inspection fees, assumed number of placards that would need to be replaced each year, and new recordkeeping costs.

D. BUSINESSES AFFECTED

Any business that owns or operates portable internal combustion engines and/or equipment units currently registered in PERP is affected by the proposed amendments. The affected businesses fall into different industry classifications. A list of the industries that may be impacted is provided in Table V-1.

Table V-1

Industries Affected by Statewide Registration Program	
SIC Code	Industry
1311	Crude petroleum and natural gas
1321	Natural gas liquids
1381	Drilling oil and gas wells
1382	Oil and gas exploration services
1389	Oil and gas field services, not elsewhere classified
1521	Single-family housing construction
1522	Residential construction, not elsewhere classified
1531	Operative builders
1541	Industrial buildings and warehouses
1542	Nonresidential construction, not elsewhere classified
1611	Highway and street construction
1622	Bridge, tunnel, and elevated highway
1623	Water, sewer, and utility lines
1629	Heavy construction, not elsewhere classified
1711	Plumbing, heating, air-conditioning
1771	Concrete work
1781	Water well drilling
1791	Structural steel erection
1794	Excavation work
1795	Wrecking and demolition work
4925	Gas production and/or distribution
4941	Water supply
4952	Sewerage systems
4953	Refuse systems
4959	Sanitary services, not elsewhere classified
4961	Steam and air-conditioning supply
4971	Irrigation systems
7349	Building maintenance services, not elsewhere classified
7353	Heavy construction engines and equipment units rental
7359	Equipment rental and leasing, not elsewhere classified
7519	Utility trailer rental
7812	Motion picture and video production
7819	Services allied to motion pictures
7996	Amusement parks
9711	National security

E. COST DUE TO NEW AND INCREASED FEES

The proposed amendments to the Statewide Regulation require increased district inspection fees for engines, equipment units, and TSE; purchase of a placard for engine or equipment unit; installation of hour meters; and revised recordkeeping requirements. The proposed fee schedule is found in Appendix B. Following is a discussion of the economic impacts associated with the proposed requirements for increased fees, recordkeeping, placards, and hour meters.

1. District Inspection Fees

Staff believes that the cost increases associated with the proposed amendments to the regulation are less than the costs associated with obtaining and maintaining multiple district permits. Staff surveyed the districts to determine permitting and renewal costs over a three-year period and compared it to the cost for registration and renewal in PERP. Based on the survey results, permitting and registration in multiple districts is greater than the cost from the increased fees from the proposed Statewide Regulation. In addition, the Statewide Regulation standardizes emission limits, monitoring, and recordkeeping requirements promote consistency throughout California for which portable equipment unit owners also realize a cost saving. Because PERP is a voluntary program, eligible businesses and government agencies that find it is not financially advantageous and administratively convenient may elect not to participate.

a. Inspection Fees - Engines

ARB staff estimated the total potential economic impact due to increased district inspection fees for the 20,733 non-TSE engines currently registered in PERP is $9.8 million dollars over five years.

Currently, districts may charge $75.00 for performing an inspection of an engine registered in the Statewide Program. This inspection fee was found to be inadequate to cover the district's cost for conducting an inspection and resulted in a small number of inspections being conducted by the districts. In this analysis, ARB staff assumed as a worst case scenario that no company paid inspection fees.

Under the current proposal, the inspection fee is $345.00 every 3 years paid upon initial registration or renewal. This inspection cost may be reduced if a company arranges to have multiple engines inspected at the same time. There is a 25 percent discount when four (4) to nine (9) engines are inspected together and a 35 percent discount when10 or more engines are inspected together. For this analysis, staff assumed that one-fourth of all engines that could receive the 25 percent discount would take advantage of this provision. Staff assumed that one-third of all engines that could take advantage of the 35 percent discount would do so.

Because engines are inspected once every three years, staff based the actual number of engines that would need to be inspected for years 2006 through 2008 on the number of engines currently scheduled to be renewed during these years and used an historic renewal rate of 75 percent. Staff added to this number an assumed increase of 2,500 engines that would be coming into the program during these years. For renewal years 2009 and 2010,

staff based the number of inspections needed on the 2006 and 2007 total renewals and assumed an additional 1,000 engines entering into the program during these years.

The proposal also contains a provision that if the engines can only be inspected outside of normal workday hours, the district may charge for the off-hour time at a cost $50.00 per hour. A survey by CAPCOA determined that the average time to inspect an engine was four hours. Staff assumed that three percent of all engines would be inspected outside of normal district workday hours and that it would take four hours to complete.

b. Inspection Fees - Equipment

Staff estimated the total potential economic impact due to increased district inspection fees for the 2,251 pieces of equipment in the program is about $1.9 million over five years.

Currently, districts may charge $75.00 for performing an inspection of an equipment unit registered in the Statewide Program. As stated above, this inspection fee was found to be inadequate to cover the district's cost for conducting an inspection and resulted in few inspections being conducted by the districts. In this analysis, ARB staff assumed as a worst case scenario that no company paid inspection fees. Under the current proposal, the inspection fee for equipment is based on the time it takes to conduct the inspection multiplied by $98.00 per hour with a $500.00 dollar maximum. In addition, a $75.00 fee per equipment unit is required to be paid during the initial registration and every 3 years upon renewal.

A survey by CAPCOA determined that the average time to inspect equipment units was approximately four hours. For this analysis, staff assumed that the cost to inspect each piece of equipment was $475.00 (approximately 4 hours plus the $75.00 fee).

Because equipment units are inspected once every three years, staff based the actual number of equipment units that would need to be inspected for years 2006 through 2008 on the number of equipment units currently scheduled to be renewed during these years and used an historic renewal rate of 75 percent. Staff added to this number an assumed increase of 250 equipment units that would be coming into the program during these years. For renewal years 2009 and 2010, staff based the number of inspections needed on the 2006 and 2007 total renewals and assumed an additional 250 equipment units entering into the program during these years.

c. District Inspection Fees – Tactical Support Equipment (TSE)

Staff estimated the total potential economic impact due to increased district inspection fees for the 4,721 pieces of TSE in the program is estimate to be about $236,000 over five years.

Currently, districts may charge $75.00 for performing an inspection of a TSE unit registered in the Statewide Program. In this analysis, ARB staff assumed as a worst case scenario that no TSE units were inspected. Under the current proposal, the inspection fee for TSE units is $10.00 per year per TSE unit. Currently, there are approximately 4,700 TSE units registered in the program.

This number of TSE units has changed very little over the course of PERP, therefore, staff assumed that the number of TSE units needing inspection will remain constant in the future years.

2. Recordkeeping Requirements

Staff estimated the total potential economic impact due to owners/operators having to maintain records for engines and/or equipment is estimated to be $41.2 million over five years.

Currently, approximately 7,888 PERP engines and equipment units are required to keep records. As proposed, the Statewide Regulation would require recordkeeping for all engines and equipment. Staff assumed an annual cost of $400 per engine/equipment unit for owners to record, maintain, and report to the district when required. ARB staff believes this is a conservative assumption since many companies already keep these records.

Staff based the number of engines and equipment units that would now need to have records kept for year 2006 on the number of engines and equipment units that currently do not keep records. For years 2007 through 2010 staff added to this number an assumed increase of 2,750 engines and equipment that would be coming into the program each year.

3. Placards

Staff estimated the total potential economic impact due to owners/operators having to purchase placards for the 27,705 engines and equipment units is estimate to be about $194,000 plus an additional $34,000 for placard replacements over five years.

Amendments to the regulation require that all new and existing engines and equipment units display a placard. Staff determined that a placard will cost $5.00 for each engine and equipment unit. Staff also assumed that in addition to the 27,705 existing engines and equipment units, approximately 2,750 new engines or equipment units will come into the program each year.

Staff reviewed the current replacement rate for PERP stickers and assumed that the number of placard replacements would be one-half the number of sticker replacements. Staff apportioned the number of placard replacements (225 placards replaced per year) based on engine population data. The cost to replace a placard will be equal to the current cost to replace a sticker ($30.00).

4. Hour Meters

Staff estimated the total potential economic impact due to owners/operators having to install hour meters is about $876,000 over five years.

Currently, most engines registered in the Statewide Program have hour meters installed. Staff determined that approximately 4,380 engines do not have hour meters. Staff apportioned this amount based on engine population data. Staff assumed the cost to purchase and install hour meters is $200. Staff assumed that after 2006 all engines will be equipped with hour meters.

F. POTENTIAL IMPACTS ON EMPLOYMENT

The proposed amendments to the Statewide Regulation are not expected to cause a noticeable change in California employment because most businesses will find that the requirements will not require significant additional staffing or expense.

G. POTENTIAL IMPACTS ON BUSINESS CREATION, ELIMINATION, OR EXPANSION

The majority of the increases costs would be borne by engine owners and government agencies, although some costs may be passed onto individuals from companies such as rental yards, and companies that contract directly with individuals. Overall, most affected private businesses and public agencies would be able to absorb the costs of the proposed regulation with no significant adverse impacts because most businesses will find that it is less expensive than obtaining multiple district permits. Because the proposed amendments to the Statewide Regulation would not significantly alter the profitability of most businesses, a noticeable change in employment, business creation, elimination, or expansion, and business competitiveness in California is not expected.

The proposed amendments to the Statewide Regulation maintain a benefit to California businesses due to the streamlined permitting process, standardized emissions limits, and lower overall cost compared to obtaining and maintaining multiple district permits.

H. POTENTIAL IMPACTS ON SMALL BUSINESSES

The total potential economic impact to small business is approximately $35.4 million dollars over five years. The cost impacts included a one-time cost to install an hour meter and obtain a placard, and annual ongoing costs from increased district inspection fees and costs to keep records and report to the ARB on an annual basis. (See Appendix C for more detail).

To determine the number of small businesses, staff relied on the following definition of small business. (As defined in Assembly Bill 2505 (Ch. 821, Statutes of 1998); the statute sets forth a simplified definition of small business that is utilized for State procurement activities):

> "Small Business" means an independently owned and operate business, which is not dominant in its field of operation, the principal of which is located in California, the offices of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees."

I. POTENTIAL IMPACTS ON PUBLIC AGENCIES

The total potential economic impact to state agencies is approximately $53,000 over five years. The total potential economic impact to local agencies is approximately $2.9 million dollars over five years. The cost impact includes increased district inspection fees, hour meter, placard and recordkeeping fees.

Appendix A

Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation

Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program

California Air Resources Board

Article 5 and sections 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465 of Title 13, California Code of Regulations

Article 5. Portable Engine and Equipment Registration

§ 2450. Purpose.

These regulations establish a statewide program for the registration and regulation of portable engines and engine-associated equipment (portable engines and equipment units) as defined herein. Portable engines and equipment units registered under the Air Resources Board program may operate throughout the State of California without authorization (except as specified herein) or permits from air quality management or air pollution control districts (districts). These regulations preempt districts from permitting, registering, or regulating portable engines and equipment units, including equipment necessary for the operation of a portable engine (e.g. fuel tanks), registered with the Executive Officer of the Air Resources Board except in the circumstances specified in the regulations.

NOTE: Authority cited: Section 39600, 39601, 41752, 41753, 41754, 41755, 43013(b), and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2451. Applicability.

(a) Registration under this regulation is voluntary for owners ~~and operators~~ of portable engines or equipment units.

(b) This regulation applies to portable engines and equipment units as defined in section 2452. Except as provided in paragraph (c) of this section, any portable engine or equipment unit may register under this regulation. Examples include, but are not limited to:

(1) portable equipment units driven solely by portable engines including confined and unconfined abrasive blasting, Portland concrete batch plants, sand and gravel screening, rock crushing, and unheated pavement recycling and crushing operations;

(2) consistent with section 209 (e) of the federal Clean Air Act, engines and associated equipment used in conjunction with the following types of portable operations: well drilling, service or work-over rigs; power generation, excluding cogeneration; pumps; compressors; diesel pile-driving hammers; welding; cranes; woodchippers; dredges; equipment necessary for the operation of portable engines and equipment units; and military tactical support equipment.

(c) The following are not eligible for registration under this program:

(1) any engine used to propel mobile equipment or a motor vehicle of any kind as defined in section 2452 (aa)(1)(A);
(2) any engine or equipment unit not meeting the definition of portable as defined in section 2452 (~~z~~dd) of this regulation;
(3) ~~any equipment unit and its associated~~ engines, equipment units, and associated engines determined by the Executive Officer to qualify as part of a stationary source permitted by a district;
(4) any ~~portable~~ engine or equipment unit subject to an applicable federal Maximum Achievable Control Technology standard, or National Emissions Standard for Hazardous Air Pollutants, or federal New Source Performance Standard, except for equipment units subject to 40 CFR Part 60 Subpart OOO (Standards of Performance for Nonmetallic Mineral Processing Plants);
(5) any ~~portable~~ engine or equipment unit operating within the boundaries of the California Outer Continental Shelf (OCS). [Note: This shall not prevent statewide registration of portable engines and equipment units already permitted by a district for operation in the OCS. Such statewide registration shall only be valid for operation onshore and in State Territorial Waters (STW).];
(6) any dredging operation in the Santa Barbara Harbor;
(7) any dredging unit owned by a single port authority, harbor district, or similar agency in control of a harbor, and operated only within the same harbor;
(8) generators used for power production into the grid, except to maintain grid stability during an emergency event or other unforeseen event that affects grid stability; and
(9) generators used to provide primary or supplemental power to a building, facility, stationary source, or stationary equipment, except during unforeseen interruptions of electrical power from the serving utility, maintenance and repair operations, electrical upgrade operations that do not exceed 60 calendar days, including startup, shutdown, and testing, operations where the voltage, frequency, or electrical current requirements can only be supplied by a portable generator, or remote operations where grid power is unavailable. ~~For interruptions of electrical power, the operation of a registered generator including startup, shutdown and testing shall not exceed the time of the actual interruption of power.~~

(d) The owner of ~~A~~ any engine or equipment unit that loses eligibility for registration under this program shall apply for a permit with a district within 90 days of being notified of loss of eligibility. Registration shall remain valid and operation may continue under this article until the district grants or denies ~~approval~~ a permit or a registration for the engine or equipment unit.

(e) In the event that the owner ~~or operator~~ of an ~~portable~~ engine or equipment unit elects not to register under this program, the ~~unregistered portable~~ engine or equipment unit shall be subject to district permitting requirements pursuant to district regulations.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2452. Definitions.

(a) **Air Contaminant** ~~means any discharge, release, or other propagation into the atmosphere which includes, but is not limited to, smoke, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.~~ shall have the same meaning as setout in section 39013 of the Health and Safety Code.

(b) **ARB** means the California Air Resources Board.

(c) **Certified Compression-Ignition Engine** means an engine meeting the nonroad engine emission standards for compression-ignition engines, as set forth in Title 13 of the California Code of Regulations or 40 CFR Part 89 in effect at the time of application.

(d) **Certified Spark-Ignition Engine** means an engine meeting the nonroad engine emission standards for spark-ignition engines, as set forth in Title 13 of the California Code of Regulations or 40 CFR Part 1048 in effect at the time of application.

(e) **Compression-Ignition (CI) Engine** means an internal combustion engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. Compression-ignition engines usually control fuel supply instead of using a throttle to regulate power.

(~~e~~f) **Corresponding Onshore District** means the district which has jurisdiction for the onshore area that is geographically closest to the engine or equipment unit.

(~~d~~g) **District** means an air pollution control district or air quality management district created or continued in existence pursuant to provisions of Part 3 (commencing with section 40000) of the California Health and Safety Code.

(~~e~~h) **Electrical Upgrade** means replacement or addition of electrical equipment and systems resulting in increased generation, transmission and/or distribution capacity.

(~~f~~i) **Emergency Event** means any situation arising from sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other acts of God, or other unforeseen events beyond the control of the portable engine or equipment unit operator, its officers, employees, and contractors that threatens public health and safety and that requires the immediate temporary operation of portable engines or equipment units to help alleviate the threat to public health and safety.

(~~g~~j) **Engine** means any piston driven internal combustion engine.

(~~h~~k) **Equipment Unit** means equipment that emits PM_{10} over and above that emitted from an associated ~~portable~~ engine.

(~~i~~l) **Executive Officer** means the Executive Officer of the California Air Resources Board or his/her designee.

(~~j~~) ~~**Existing Program Participant** means a company, public agency, or municipality with a unique name and mailing address that held registration prior to September 1, 2005~~.

(~~k~~m) **Hazardous Air Pollutant (HAP)** means any air contaminant that is listed pursuant to section 112(b) of the federal Clean Air Act.

(~~l~~n) **Home District** means the district designated by the responsible official as the district ~~of the portable engine or equipment unit~~ in which the ~~portable~~ registered engine or equipment unit resides most of the time. For registered engines or equipment units based out of California, the responsible official shall designate the home district based on where the registered engine or equipment unit is likely to be operated a majority of the time the registered engine or equipment unit is in California.

(~~m~~o) **Identical Replacement** means a substitution due to mechanical breakdown of a registered portable engine or equipment unit with another portable engine or equipment unit that has the same manufacturer, type, model number, manufacturer's maximum rated capacity, and rated brake horsepower; and is intended to perform the same or similar function as the original portable engine or equipment unit; and has equal or lower emissions expressed as mass per unit time; and meets the emission control technology requirements of sections 2455 through 2457 of this article.

(p) **In-field Inspection** means an inspection that is conducted at the location that the portable engine or equipment unit is operated under normal load and conditions.

(~~n~~q) **Location** means any single site at a building, structure, facility, or installation.

(~~o~~r) **Maximum Achievable Control Technology (MACT)** means any federal requirements promulgated as part of 40 CFR Parts 61 and 63.

(~~p~~s) **Maximum Rated Capacity** is the maximum throughput rating or volume capacity listed on the nameplate of the ~~portable~~ registered equipment unit as specified by the manufacturer.

(~~q~~t) **Maximum Rated Horsepower (brake horsepower (bhp)** is the maximum brake horsepower rating specified by the ~~portable~~ registered engine manufacturer and listed on the nameplate of the ~~portable~~ registered engine.

(~~r~~u) **Mechanical Breakdown** means any failure of an engine's electrical system or mechanical parts that necessitates the removal of the registered engine from service.

(~~s~~v) **Modification** means any physical change to, change in method of operation of, or an addition to ~~an existing portable~~ registered engine or equipment unit, which may cause or result in an increase in the amount of any air contaminant emitted or the issuance of air contaminants not previously emitted. Routine maintenance and/or repair shall not be considered a physical change. Unless previously limited by an enforceable registration condition, a change in the method of operation shall not include:

(1) an increase in the production rate, unless such increase will cause the maximum design capacity of the ~~portable~~ registered equipment unit to be exceeded;
(2) an increase in the hours of operation;
(3) a change of ownership; and
(4) the movement of a ~~portable~~ registered engine or equipment unit from one location to another.

(~~t~~w) **New Nonroad Engine** means a nonroad engine, the equitable or legal title to which has never been transferred to an ultimate purchaser. If the equitable or legal title to an engine is not transferred to an ultimate purchaser until after the engine is placed into service, then the engine will no longer be new after it is placed into service. A nonroad engine is placed into service when it is used for its functional purposes. The term "ultimate purchaser" means, with respect to a new nonroad engine, the first person who ~~in good faith~~ purchases ~~a new nonroad vehicle or~~ a new nonroad engine for purposes other than resale.

(~~u~~) ~~**New Program Participant** means a company, public agency, or municipality with a unique name and mailing address that did not hold registration prior to September 1, 2005.~~

(~~v~~x) **New Source Performance Standard (NSPS)** means any federal requirement promulgated as part of 40 CFR Part 60.

(~~w~~) ~~**Non-operational** means a portable engine or equipment unit that an owner or operator has demonstrated to the satisfaction of the Executive Officer as residing in California but not operating. A portable engine or equipment unit determined to be non-operational may not operate under the registration program.~~

(y) **Non-field Inspection** means an inspection that is either conducted at a location that is mutually acceptable to the district and the owner or operator or where the engine or equipment unit is stored and does not require operation of the engine or equipment unit for purposes of the inspection.

(~~x~~aa) **Nonroad Engine** means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any engine:

(A) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(B) in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(C) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An engine is not a nonroad engine if:

(A) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act; or

(B) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the federal Clean Air Act; or

(C) the engine otherwise included in paragraph (1)(C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (at least two years) and that operates at that single location approximately three (or more) months each year.

(~~y~~bb) **Outer Continental Shelf (OCS)** shall have the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.).

(cc) **Placard** means a visible indicator supplied by the Air Resources Board to indicate that an engine or equipment has been registered in the Portable Equipment Registration Program and is in addition to the registration identification device.

(~~z~~dd) **Portable** means designed and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. For the purposes of this regulation, dredge engines on a boat or barge are considered portable. The engine or equipment unit is not portable if any of the following are true:

(1) the engine or equipment unit or its replacement is attached to a foundation, or if not so attached, will reside at the same location for more than 12 consecutive months. The period during which the engine or equipment unit is maintained at a storage facility shall be excluded from the residency time determination. Any engine or equipment unit such as back-up or stand-by engines or equipment units, that replace engine(s) or equipment unit(s) at a

location, and is intended to perform the same or similar function as the engine(s) or equipment unit(s) being replaced, will be included in calculating the consecutive time period. In that case, the cumulative time of all engine(s) or equipment unit(s), including the time between the removal of the original engine(s) or equipment unit(s) and installation of the replacement engine(s) or equipment unit(s), will be counted toward the consecutive time period; or

(2) the engine or equipment unit remains or will reside at a location for less than 12 consecutive months if the engine or equipment unit is located at a seasonal source and operates during the full annual operating period of the seasonal source, where a seasonal source is a stationary source that remains in a single location on a permanent basis (at least two years) and that operates at that single location at least three months each year; or

(3) the engine or equipment unit is moved from one location to another in an attempt to circumvent the portable residence time requirements.

(~~aa~~ee)**Prevention of Significant Deterioration (PSD)** means any federal requirements contained in or promulgated pursuant to Part C of the federal Clean Air Act ~~as part of 40 CFR Part 52.~~

(~~bb~~ff) **Process** means any air-contaminant-emitting activity associated with the operation of a ~~portable~~ registered engine or equipment unit.

(~~cc~~gg)**Project, for the purposes of onshore operation,** means the use of one or more registered ~~portable~~ engines or equipment units operated under the same or common ownership or control to perform a single activity.

(~~dd~~hh)**Project, for the purposes of State Territorial Waters (STW),** means the use of one or more registered ~~portable~~ engines and equipment units operating under the same or common ownership or control to perform any and all activities needed to fulfill specified contract work that is performed in STW. For the purposes of this definition, a contract means verbal or written commitments covering all operations necessary to complete construction, exploration, maintenance, or other work. Multiple or consecutive contracts may be considered one project if they are intended to perform activities in the same general area, the same parties are involved in the contracts, or the time period specified in the contracts is determined by the Executive Officer to be sequential.

(ii) **Provider of Essential Public Service (PEPS)** means any privately-owned corporation or public agency that owns, operates, controls, or manages a line, plant, or system for the transportation of people or property, the transmission of telephone or telegraph messages, or the production, generation, transmission or furnishing of heat, light, water, power, or sanitation directly or indirectly to the public.

(~~ee~~jj) **Registration** means issuance of a certificate by the Executive Officer acknowledging expected compliance with the applicable requirements of this article, and the intent by the owner or operator to operate ~~said portable~~ the engine or equipment unit within the requirements established by this article. ~~as it pertains to portable engines and equipment units~~.

(~~ff~~kk) **Rental Business** means a business in which the principal use of its engines or equipment units is ~~to temporarily~~ the renting or leasing~~e~~ for profit of, ~~portable~~ registered engines or equipment units~~. to operators other than the owner(s) of the engine or equipment unit~~.

(~~gg~~ll) **Renter** means a person who rents and or operates ~~portable~~ registered engines or equipment units ~~from a rental business~~ not owned by that person.

(~~hh~~mm)**Resident Engine** means~~:~~ a portable engine that at the time of applying for registration, has a current, valid district permit or registration issued in accordance with local district requirements or lost a permit to operate exemption through a formal district action. Moving an engine from a district that provides a permit to operate exemption to a district that requires a permit to operate or registration does not qualify for consideration as a resident engine.

~~(1) a portable engine that at the time of applying for registration, has a current, valid district permit or registration issued in accordance with local district requirements, and an application for registration is submitted to the Executive Officer on or before December 31, 2005; or~~

~~(2) a portable engine that resided in the State of California at any time from July 1, 2003 to July 1, 2004 and an application for registration is submitted to the Executive Officer no later than December 31, 2005. The responsible official shall provide sufficient documentation to prove the portable engine's residency to the satisfaction of the Executive Officer. Examples of adequate documentation include but are not limited to: valid permits issued by a district, tax records, and usage or maintenance records.~~

(~~ii~~nn) **Responsible Official** ~~is the~~ refers to an individual employed ~~or otherwise retained~~ by ~~a~~ the company~~, public agency,~~ or ~~municipality that has~~ public agency with the authority to certify that the ~~portable~~ registered ~~equipment~~ engines or equipment units *under his/her jurisdiction* comply~~ies~~ with ~~all~~ applicable requirements of this ~~article~~ regulation. A company or public agency may have more than one Responsible Official.

(oo) **Spark-Ignition (SI) Engine** means an internal combustion engine with a spark plug (or other sparking device) with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark- ignition engines usually use a throttle instead of using fuel supply to control intake air flow to regulate power.

(~~jj~~pp) **State Territorial Waters (STW)** includes all of the following: an expanse of water that extends from the California coastline to 3 miles off-shore; a 3 mile wide belt around islands; and estuaries, rivers, and other inland waterways.

(qq) **Statewide Registration Program** means the program for registration of portable engines and equipment units set out in this article.

(~~kk~~rr) **Stationary Source** means any building, structure, facility or installation which emits any air contaminant directly or as a fugitive emission. "Building," "structure," "facility," or "installation" includes all pollutant emitting activities which:

(1) are under the same ownership or operation, or which are owned or operated by entities which are under common control;
(2) belong to the same industrial grouping either by virtue of falling within the same two-digit standard industrial classification code or by virtue of being part of a common industrial process, manufacturing process, or connected process involving a common raw material; and
(3) are located on one or more contiguous or adjacent properties.

[Note: For the purposes of this regulation a stationary source and nonroad engine are mutually exclusive.]

~~(ll) **Stick Test** means the process whereby a ruler or similar device is inserted perpendicular to the bottom of the fuel tank. From the wetted length of the ruler, the amount of fuel remaining in a tank of known dimensions can be calculated.~~

~~(mm~~ss) **Storage** means a warehouse, enclosed yard, or other area established for the primary purpose of maintaining ~~portable~~ registered engines or equipment units when not in operation.

~~(nn~~tt) **Tactical Support Equipment (TSE)** means equipment using a portable engine, including turbines, that meets military specifications, owned by the U.S. Department of Defense, the U.S. military services, or its allies, and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations. Examples include, but are not limited to, internal combustion engines associated with portable generators, aircraft start carts, heaters and lighting carts.

(uu) **Third-party Rental** means a non-rental business renting or leasing registered engines and/or equipment units to another party by written agreement.

(~~oo~~vv) **Transportable** means the same as portable.

(~~qq~~ww) **U.S. EPA** means the United States Environmental Protection Agency.

(xx) **Vendor** means a seller or supplier of portable engines or equipment units for use in California.

(~~pp~~yy) **Volatile Organic Compound (VOC)** means any compound containing at least one atom of carbon except for the following exempt compounds: acetone, ethane, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonates, methylene chloride (dichloromethane), methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane), HCFC-142b (chlorodifluoroethane), HCFC-124 (chlorotetrafluoroethane), HFC-23 (trifluoromethane), HFC-134 (tetrafluoroethane),

HFC-125 (pentafluoroethane), HFC-143a (trifluoroethane), HFC-152a (difluoroethane), cyclic, branched, or linear completely methylated siloxanes, the following classes of perfluorocarbons:

(1) cyclic, branched, or linear, completely fluorinated alkanes;
(2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
(3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
(4) sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine, acetone, ethane, and parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2453. Application Process.

(a) In order for an engine or equipment unit to be considered for registration by the Executive Officer, the engine or equipment unit must be portable as defined in section 2452 (~~z~~ dd) and meet all applicable requirements established in this article.

(b) For purposes of registration under this article, a~~n~~ ~~portable~~ engine and the equipment unit it serves are considered to be separate emissions units and require separate applications.

(c) For an identical replacement, an owner or operator of a registered portable engine or equipment unit is not required to complete a new application and may immediately operate the identical replacement. Except for TSE, the owner or operator shall notify the Executive Officer in writing within five calendar days of replacing the registered ~~portable~~ engine or equipment unit with an identical replacement. Notification shall include company name, responsible official, phone number, registration certificate number of the ~~portable~~ engine or equipment unit to be replaced; and make, model, rated brake horsepower, serial number of the identical replacement, description of the mechanical breakdown; and applicable fees as required in section 2461. Misrepresentation of ~~portable~~ engine or equipment unit information ~~and~~ or the failure to meet the requirements of this regulation shall be deemed a violation of this article. ~~subject the owner or operator to section 2465.~~

(d) The Executive Officer shall inform the applicant, in writing, if the application is complete or deficient, within 30 days of receipt of an application. If deemed deficient, the Executive Officer shall identify the specific information required to make the application complete.

(e) The Executive Officer shall issue or deny registration within 90 days of receipt of a complete application. ~~according to the following schedule:~~

~~(1) within 90 days of receipt of an application, for applications received on or before December 31, 2005, except for applications containing only resident engines or only resident engines and equipment units which shall be 180 days from the date of receipt; and~~

~~(2) within 90 days of receipt of an application, for applications received after December 31, 2005.~~

(f) Upon finding that an ~~portable~~ engine or equipment unit meets the requirements of this article, the Executive Officer shall issue a registration for the ~~portable~~ engine or equipment unit. The Executive Officer shall notify the applicant in writing that the ~~portable~~ engine or equipment unit has been registered. The notification shall include a registration certificate, any conditions to ensure compliance with ~~s~~State and federal requirements, and a registration identification device for each ~~registered portable~~ engine or equipment unit registered pursuant to this regulation. Except for TSE, the registration identification device shall be affixed on the ~~registered portable~~ engine or equipment unit at all times, and the registration certificate shall be kept on the immediate premises with the ~~portable~~ engine or equipment at all times and made accessible to the Executive Officer or district~~s~~ upon request. Failure to properly maintain the registration identification device shall be deemed a violation of this article.

(g) Except for TSE, each application for registration and the appropriate fee(s) as specified in section 2461, shall be submitted in a format approved by the Executive Officer and include, at a minimum, the following information:

(1) indication of ~~portable engine or equipment unit status (e.g., resident) and~~ general nature of business (e.g., rental business, etc.);

~~(2) indication of home district (optional);~~

(~~3~~2) the name of applicant, including mailing address and telephone number;

(~~4~~3) a brief description of typical ~~portable~~ engine or equipment-unit use;

(~~5~~4) detailed description, including ~~portable~~ engine or equipment-unit make, model, manufacture year (for portable engines only), rated brake horsepower, throughput, capacity, emission control equipment, and serial number;

(~~6~~5) necessary engineering data, emissions test data, or manufacturer's emissions data to demonstrate compliance with the requirements as specified in sections 2455, 2456, and 2457;

(~~7~~6) for resident engines, a copy of a current permit to operate or a registration certificate that was granted by a district or ~~other proof of California residency~~ as described in section 2452 (~~hh~~mm); and

(~~8~~7) the printed name and signature of the responsible official and date of the signature.

(h) For TSE, application for registration and the appropriate fee(s) as specified in section 2461, shall be submitted in a format approved by the Executive Officer and include, at a minimum, the following information:

(1) the name of applicant, including mailing address and telephone number;

(2) a brief description of typical ~~portable~~ engine or equipment-unit use;

(3) ~~portable~~ engine or equipment-unit description, including type and rated brake horsepower; and

(4) the printed name and signature of the responsible official and date of the signature.

(i) All registered engines and equipment units shall have a designated home district as defined in section 2452 (n) according to the following:

(1) Owners holding valid registration(s) prior to the effective date shall designate in writing to the Executive Officer a home district within 90 days of the effective date of this regulation. The Executive Officer shall designate the home district for any and all registered engines and equipment units for existing registration program participants that fail to designate a home district;

(2) a home district shall be designated on each application for initial registration of an engine or equipment unit; and

(3) except for registered engines or equipment units owned by a rental business or involved in a third part rental, if the engine or equipment unit, based on averaging of annual operation in each district from the three annual reports submitted during the 3 year registration cycle, operated the largest percentage of the time in a district other than the designated home district, the owner shall change the home district designation at the time of renewal. The change is not required if the difference between the home district operation percentage and the district with the largest operating percentage is 5 percent or less.

(ii) ~~Portable~~ Eengines or equipment units owned and operated for the primary purpose of rental by a rental business shall be identified as rental at the time of application for registration and shall be issued a registration specific to the rental business requirements of this article. ~~Portable engines or equipment units used primarily for purposes other than rental or not owned by a rental business shall not qualify for registration as a rental business.~~ *Misrepresentation of portable engine or equipment* unit use in an attempt to qualify under the rental business definition shall ~~subject the owner or operator to section 2465~~ be deemed a violation of this article.

~~(j) Applications must be filed with the Executive Officer to change all registered non-operational engines and equipment units to operational status no later than 90 days after the effective date of these regulations, or the registrations will be cancelled.~~

(k) New applications for non-operational engines or equipment units will not be accepted by the Executive Officer.

(l) Once registration is issued by the Executive Officer, district permits or registrations for ~~registered portable~~ engines or equipment units registered in the Statewide Registration Program are preempted by the statewide registration and are, therefore, considered null and void, except for the following circumstances where a district permit shall be required:

(1) ~~portable~~ engines or equipment units used in a project(s) operating in the OCS. The requirements of the district permit or registration apply to the

registered ~~portable~~ engine or equipment unit while operating at the project(s) in the OCS; or

(2) ~~portable~~ engines or equipment units used in a project(s) operating in both the OCS and STW. The requirements of the district permit or registration apply to the registered ~~portable~~ engine or equipment unit while operating at the project(s) in the OCS and STW; or

(3) at STW project(s) that trigger district emission offset thresholds; or

(4) at any specific location where statewide registration is not valid. The ~~portable~~ owner of the engine or equipment unit shall obtain a district permit or registration for the location(s) where the statewide registration is not valid; or

(5) ~~any~~ at any location where an engine or equipment unit that has been determined to cause a public nuisance as defined in Health and Safety Code Section 41700.

~~The~~ Under no circumstance shall a portable engine or equipment unit ~~shall not~~ be operated under both statewide registration and a district permit at any specific location. Where both a district permit for operation at a specific location and statewide registration have been issued for an engine or equipment unit, the terms of the district permit shall take precedence at that location until the permit is no longer valid.

(m) When ownership of a registered engine or equipment unit ~~has been purchased~~ changes, the new owner shall submit a change of ownership application. This application shall be filed within 30 days of the change of ownership. During the 30 day period the new owner is authorized to operate the registered engine or equipment unit. If an application is not received within 30 days, the engine or equipment may not operate and ~~T~~the existing registration is not valid for the new owner until the application has been filed and all applicable fees have been paid. Registration will be reissued to the new owner after a complete application has been approved by the Executive Officer.

(n) A placard shall be required for every engine or equipment unit registered in the Statewide Registration Program. The placard shall be affixed on the registered engine or equipment unit at all times so that it may be easily viewed from a distance. Placards shall be purchased at the time of the first renewal or at the time of initial registration, which ever occurs first. Failure to properly maintain the placard shall be deemed a violation of this article.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2454. Registration Process.

(a) The Executive Officer shall make registration data available to the districts via ~~(e.g., on~~ the Internet~~)~~.

(b) The Executive Officer may conduct an inspection of an ~~portable~~ engine or equipment unit and/or require a source test in order to verify compliance with the requirements of this article prior to issuance of registration.

(c) After obtaining registration in accordance with this article, ~~the~~ an owner or operator of the registered ~~portable~~ engines or equipment units:

(1) shall comply with all conditions set forth in the issued registration. Failure to comply with such conditions shall be deemed a violation of this article; and

(2) may operate within the boundaries of the State of California so long as such ~~portable~~ registered engines or equipment units comply with all applicable requirements of this article and any other applicable federal or ~~s~~State law.

(d) Districts shall provide the Executive Officer with written reports or electronic submittals via the Internet, describing any inspections and the nature and outcome of any violation of local, ~~s~~State or federal laws by the owner or operator of registered ~~portable~~ engines or equipment units. The Executive Officer ~~will provide~~ shall make available to all districts ~~with~~ such information via ~~(e.g., on~~ the Internet~~)~~.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2455. General Requirements.

(a) The emissions from ~~portable~~ engines or equipment units registered under this article shall not, in the aggregate, interfere with the attainment or maintenance of any California or federal ambient air quality standard~~s~~. The emissions from ~~any~~ one or more ~~portable~~ registered engines or equipment units, exclusive of background concentration, shall not cause an exceedance of any ambient air quality standard. This paragraph shall not be construed as requiring operators of ~~portable~~ registered engines or equipment units ~~operators~~ to provide emission offsets for a ~~portable~~ engines or equipment units registered under this article.

(b) ~~Portable~~ ~~e~~Engines or equipment units registered under this article shall comply with article 1, chapter 3, part 4, division 26 of the California Health and Safety Code, commencing with section 41700.

(c) Except for ~~portable~~ engines or equipment units permitted or registered by a district in which an emergency event occurs, a ~~portable~~ engine or equipment unit operated during an emergency event as defined in section 2452 (~~e~~f) of this article, is considered registered under the requirements of this article for the duration of the emergency event and is exempt from sections 2455, 2456, 2457, 2458, and 2459 of this article for the duration of the emergency event provided the owner or operator notifies the Executive Officer within 24 hours of commencing operation. The Executive Officer may for good cause refute that an emergency event under this provision exists. If the Executive Officer deems that an emergency event does not

exist, all operation of ~~portable~~ engines and equipment units covered by this provision shall cease operation immediately upon notification by the Executive Officer. Misrepresentation of an emergency event and failure to cease operation under notice of the Executive Officer ~~is~~ shall be deemed a violation of this article. ~~and may subject the owner or operator to section 2465 of this article.~~

(d) For the purposes of registration under this article, the owner or operator of a registered ~~portable~~ equipment unit must notify the U.S. EPA and comply with 40 CFR 52.21 if:

(1) the ~~portable~~ registered equipment unit operates at ~~a facility defined as~~ a major stationary source under 40 CFR 51.166 or 52.21, and

(A) the major stationary source ~~facility~~ is located within 10 kilometers of a Class I area; or

(B) the ~~portable~~ registered equipment unit, operating in conjunction with other registered ~~portable~~ equipment units, operates at the major stationary source and its operation would be defined as a major modification to the stationary source under 40 CFR 51.166 or 52.21; or

(2) the ~~portable~~ registered equipment unit, operating in conjunction with other registered ~~portable~~ equipment units, would be defined as a major stationary source, as defined under 40 CFR 51.166 or 52.21.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2456. Engine Requirements

(a) For TSE, no air contaminant shall be discharged from a registered engine or equipment unit into the atmosphere, other than uncombined water vapor, for a period or periods aggregating more than three minutes in any one hour which is as dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke designated as No. 2 on the Ringelmann Chart. No other requirements of this section are applicable to TSE.

(b) Registered ~~D~~diesel pile-driving hammers shall comply with the applicable provisions of section 41701.5 of the California Health and Safety Code and are otherwise exempt from further requirements of this section.

(c) To be registered in the Statewide Registration Program, a registered ~~portable~~ engine rated less than 50 brake horsepower shall be a certified engine, unless ~~comply with the most stringent requirements, if any, for its horsepower rating and year of manufacture set forth in 40 CFR Part 89 or Title 13, California Code of Regulations. If~~ no emission standards exist for that brake horsepower and year of manufacture, ~~at the time of registration~~, In that event, the engine shall comply with the applicable daily and annual emission limits contained in section 2456 ~~(g)~~ (d)(6) of this article.

No other requirements of this section are applicable to portable engines rated less than 50 brake horsepower.

(d) After January 1, 2006, ~~Portable~~ engines rated equal to, or greater than 50 bhp registered under this article shall:

(1) be certified compression-ignition engines or certified spark-ignition engines that meet the most stringent emissions standard in effect for the applicable horsepower range at the time the application is received. Spark-ignition engines that are not certified spark-ignition engines may be registered if they meet the emission standards in Table 1. This provision does not apply to certified compression-ignition engines built under the flexibility provisions for equipment and vehicle manufacturers, post manufacture marinizers, engines that qualify as resident engines, or changes of ownership. Notwithstanding the foregoing, until November 1, 2006, the requirement for a certified Tier 3 engine in the 175 to 750 bhp range and a certified Tier 2 engine for engines rated at greater than 750 bhp shall not apply to owners of new engines purchased on or after July 1, 2005, but before January 1, 2006, provided:

(A) the engine is in a new piece of equipment that was sold to the ultimate user by the manufacturer or an authorized distributor between July 1, 2005 and December 31, 2005 and is either a certified Tier 2 engine for engines in the 175 to 750 bhp range or a certified Tier 1 engine for engines rated at greater than 750 bhp; and

(B) a complete PERP application, including all forms and applicable fees, are received by the Executive Officer prior to November 1, 2006; and

(C) the application contains valid documentation of the date of sale as approved by the Executive Officer. Valid documentation of the date of sale includes, but is not limited to, the date shown on the front of the cashed check, the date of the financial transaction, or the date shown on the engine purchase agreement between the ultimate user or engine packager, and the engine manufacturer or dealer/distributor.

(2) meet all applicable requirements in Title 17 of the California Code of Regulations commencing with section 93116;

~~(1) comply with the applicable daily and annual emission limits contained in section 2456 (g) of this article;~~

(~~2~~3) use only fuels meeting the standards for California motor vehicle fuels as set forth in chapter 5, division 3, Title 13 of the California Code of Regulations, commencing with section 2250, or other fuels and/or additives that have been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines;

(~~3~~4) not exceed particulate matter emissions concentration of 0.1 grain per standard dry cubic feet corrected to 12 percent CO_2~~;~~. This provision does not apply to certified compression-ignition engines, certified spark-ignition engines, or any spark-ignition engine meeting Table 1 requirements;

(~~4~~5) not discharge air contaminants into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark as or darker than Ringelmann 1 or equivalent 20 percent opacity; and

(6) not exceed the following emission limits:

(A) 550 pounds per day per engine of carbon monoxide (CO);
(B) 150 pounds per day per engine of particulate matter less than 10 microns (PM_{10});
(C) for registered engines operating onshore, 10 tons for each-pollutant per district per year per engine for NOx, SOx, VOC, PM_{10}, and CO in nonattainment areas; and
(D) for registered engines operating within STW:

(1) the offset requirements of the corresponding onshore district apply. Authorization from the corresponding onshore district is required prior to operating within STW. If authorization is in the form of a current district permit, the terms and conditions of the district permit supersede the requirements of the statewide registration for the project, except that the most stringent of the technology and emission concentration limits required by the district permit or statewide registration are applicable. If the registered engine does not have a current district permit, the terms and conditions of the statewide registration apply, and the corresponding onshore district may require offsets pursuant to district rules and regulations. The requirement for district offsets shall not apply to the owner or operator of an engine(s) registered in the statewide registration program when the engine(s) is operated at a stationary source permitted by the district; and
(2) the corresponding onshore district may perform an ambient air quality impact analysis (AQIA) for the proposed project prior to granting authorization. The owner or operator of engine(s) registered in the statewide registration program shall be required, at the request of the district, to submit any information deemed by the district to be necessary for performing the AQIA. Statewide registration shall not be valid at any location where the AQIA demonstrates a potential violation of an ambient air quality standard.

(E) for registered engines operating in the South Coast Air Quality Management District (SCAQMD), 100 pounds nitrogen oxides (NOx) per project per day [An owner may substitute SCAQMD permit or registration limits in effect on or before September 17, 1997 (optional)];
(F) 100 pounds NOx per registered engine per day, except in SCAQMD where the limit is 100 pounds NOx per project per day.

(7) In lieu of (5) and (6) above, operation of a registered new nonroad engine rated at 750 brake horsepower or greater for which a federal or California standard pursuant to 40 CFR Part 89 or Title 13 of the California Code of Regulations has not yet become effective, shall not exceed 12 hours per day.
(8) For registered engines that operate in both STW and onshore, the 10 tons per district per year per engine limit in (3) above shall only apply onshore.

(9) For certified compression-ignition engines, certified spark-ignition engines, or any spark-ignition engine meeting Table 1 requirements, the daily and annual emission limitations in section 6 above shall not apply.

(5) ~~except for an engine that qualifies as a resident engine, and applications for change of ownership, applications filed on or before December 31, 2005, meet the most stringent emissions standard. After December 31, 2005, except for change of ownership, applications filed for new registration or identical replacement of a registered portable engine, meet the most stringent emissions standard. This provision in subsection (d)(5) does not apply to engines built under the flexibility provisions for equipment and vehicle manufacturers and post manufacture marinizers pursuant to 40 CFR part 89 or Title 13 of the California Code of Regulations;~~

(6) ~~afterJanuary 1, 2010, if rated 50 brake horsepower or above and not previously meeting a federal or California standard pursuant to 40 CFR Part 86, 40 CFR Part 89 or Title 13 of the California Code of Regulations meet the most stringent emissions standard (the registration for portable engines that previously did not meet the most stringent standards listed above shall expire on December 31, 2009, and the responsible official must reapply at this time and demonstrate compliance with the most stringent emissions standard). The requirements of this sub-section do not apply if the requirements of Title 13 of the California Code of Regulations Section 93116.3 are satisfied;~~

(7) ~~meet all applicable requirements in Title 13 of the California Code of Regulations Section 93116; and~~

(8) ~~for the purpose of sub-sections (d), (g), and (h), the most stringent emissions standard shall be the current emissions standard in effect at the time an application is received and set forth in Title 13 of the California Code of Regulations for that engine rating. If no emissions standard exists under the California Code of Regulations, then the current emissions standard set forth in 40 CFR Part 86 or 40 CFR Part 89 shall apply. If no standard exists under 40 CFR Part 86, or 40 CFR Part 89, then the current requirements of 40 CFR part 1048 or Table 1 for spark-ignition engines shall apply. Any engine meeting the most stringent emission standard, as defined above, is not subject to requirement (3) of sub-section (d).~~

~~(e) A registered portable engine owned and operated by a rental business and designated for use as a rental engine shall have operational and properly maintained non-resettable hour meters or fuel flow meters for purposes of complying with the requirements of section 2458.~~

(~~f~~ e) ~~Any~~ All registered ~~portable~~ engines ~~that is subject to an hours of operation limitation~~ shall be equipped with a functioning non-resettable hour meter, fuel meter or other operation tracking device approved by the Executive Officer. Engines registered prior to the effective date of this regulation, that are not equipped with a functional non-resettable hour meter, fuel meter or other operation tracking device shall install one and notify ARB in writing within 6 months of the effective date of this regulation.

~~(g) Registered portable engines shall not exceed the following emission limits:~~

~~(1) 550 pounds per day per engine of carbon monoxide (CO);~~

~~(2) 150 pounds per day per engine of particulate matter less than 10 microns (PM_{10});~~

~~(3) for registered portable engines operating onshore, 10 tons for each pollutant per district per year per engine for NOx, SOx, VOC, PM_{10}, and CO in nonattainment areas;~~

~~(4) for registered portable engines operating within STW:~~

~~(A) the offset requirements of the corresponding onshore district apply. Authorization from the corresponding onshore district is required prior to operating within STW. If authorization is in the form of a current district permit, the terms and conditions of the district permit supercede the requirements for the project, except that the most stringent of the technology and emission concentration limits required by the district permit or statewide registration are applicable. If the portable engine does not have a current district permit, the terms and conditions of the statewide registration apply, and the corresponding onshore district may require offsets pursuant to district rules and regulations. The requirement for district offsets shall not apply to the owner or operator of a state registered engine(s) when the engine(s) is operated at a stationary source permitted by the district; and~~

~~(B) the corresponding onshore district may perform an ambient air quality impact analysis (AQIA) for the proposed project prior to granting authorization. The owner or operator of state registered engine(s) shall be required, at the request of the district, to submit any information deemed by the district to be necessary for performing the AQIA. Statewide registration shall not be valid at any location where the AQIA demonstrates a potential violation of an ambient air quality standard.~~

~~(5) for engines operating in the South Coast Air Quality Management District (SCAQMD), 100 pounds nitrogen oxides (NOx) per project per day [An owner may substitute SCAQMD permit or registration limits in effect on or before September 17, 1997 (optional)];~~

~~(6) 100 pounds NOx per engine per day, except in SCAQMD where the limit is 100 pounds NOx per project per day; and~~

~~(7) in lieu of (5) and (6) above, operation of a new nonroad engine rated at 750 brake horsepower or greater for which a federal or California standard pursuant to 40 CFR Part 89 or Title 13 of the California Code of Regulations has not yet become effective, shall not exceed 12 hours per day;~~

~~(8) for engines that operate in both STW and onshore, the 10 tons per district per year per engine limit in (3) above shall only apply onshore; and~~

~~(9) A portable engine meeting an applicable emissions standard, as set forth in Title 13 of the California Code of Regulations, 40 CFR Part 86, 40 CFR Part 89, or for spark-ignition engines that meet either the standards set forth in 40 CFR part 1048 or the applicable emissions standard set forth in Table 1 of this regulation, is exempt from the daily and annual emission limits specified above.~~

~~(h) Portable engines operated on a dredge shall meet the most stringent emission standard by January 1, 2005.~~

(~~i~~f) Registered TSE is exempt from district New Source Review and Title V programs, including any offset requirements. Further, emissions from registered TSE shall not be included in Title V or New Source Review applicability determinations.

~~(j) Engines initially registering after September 1, 2005 that provide power to or that are mounted on the same trailer or skid with equipment that is ineligible for registration and subject to district permits, including but not limited to boilers, heaters, hot mix asphalt plants, and soil remediation units, shall meet a federal or California standard for newly manufactured nonroad engines pursuant to 40 CFR part 89 or Title 13 of the California Code of Regulations.~~

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

Table 1 Spark-ignition Engine Requirements*

Pollutant Emission Limits or Control Technology		
NOx**	**VOC****	**CO****
80 ppmdv NOx (1.5 g/bhp-hr)	240 ppmdv VOC (1.5 g/bhp-hr)	176 ppmdv CO (2.0 g/bhp-hr)

* These requirements are in addition to requirements of section 2455 and 2456.
** For the purpose of compliance with this article, ppmdv is parts per million @ 15 percent oxygen averaged over 15 consecutive minutes. Limits of ppmdv are the approximate equivalent to the stated grams per brake horsepower hour limit based on assuming the engine is 24.2 percent efficient.

§ 2457. Requirements for ~~Portable~~ Registered Equipment Units

(a) Emissions from a registered ~~portable~~ equipment unit, exclusive of emissions emitted directly from the associated portable engine, shall not exceed:

(1) 10 tons per year per district of PM_{10}; and
(2) 82 pounds per project per day of PM_{10}.
(3) For registered equipment units that operate within STW and onshore, emissions released while operating both in STW and onshore shall be included toward the 10 tons per year limit.

(b) ~~Portable~~ Registered equipment units shall also meet the following applicable requirements:

(1) Confined abrasive blasting operations:

(A) no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one

hour which is as dark as or darker than Ringelmann 1 or equivalent 20 percent opacity;

(B) the particulate matter emissions shall be controlled using a fabric or cartridge filter dust collector;

(C) as a part of application for registration, the applicant shall provide manufacturer's specifications or engineering data to demonstrate a minimum particulate matter control of 99 percent for the dust collection equipment;

(D) except for vent filters, each fabric dust collector shall be equipped with an operational pressure differential gauge to measure the pressure drop across the filters; and

(E) there shall be no visible emissions beyond the property line on which the equipment is being operated.

(2) Concrete batch plants:

(A) all dry material transfer points shall be ducted through a fabric or cartridge type filter dust collector, unless there are no visible emissions from the transfer point;

(B) all cement storage silos shall be equipped with fabric or cartridge type vent filters;

(C) the silo vent filters shall be maintained in proper operating condition;

(D) no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark as or darker than Ringelmann 1 or equivalent 20 percent opacity;

(E) open areas and all roads subject to vehicular traffic shall be paved, watered, or chemical palliatives applied to prevent fugitive emissions in excess of 20 percent opacity or Ringelmann 1;

(F) silo service hatches shall be dust-tight;

(G) as a part of application for registration, the applicant shall provide manufacturer's specifications or engineering data to demonstrate a minimum particulate matter control of 99 percent for the fabric dust collection equipment;

(H) except for vent filters, each fabric dust collector shall be equipped with an operational pressure differential gauge to measure the pressure drop across the filters;

(I) all aggregate transfer points shall be equipped with a wet suppression system to control fugitive particulate emissions unless there are no visible emissions;

(J) all conveyors shall be covered, unless the material being transferred results in no visible emissions;

(K) wet suppression shall be used on all stockpiled material to control fugitive particulate emissions, unless the stockpiled material results in no visible emissions; and

(L) there shall be no visible emissions beyond the property line on which the equipment is being operated.

(3) Sand and gravel screening, rock crushing, and pavement crushing and recycling operations:

(A) no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark as or darker than Ringelmann 1 or equivalent 20 percent opacity;

(B) there shall be no visible emissions beyond the property line on which the equipment is being operated;

(C) all transfer points shall be ducted through a fabric or cartridge type filter dust collector, or shall be equipped with a wet suppression system maintaining a minimum moisture content unless there are no visible emissions;

(D) particulate matter emissions from each crusher shall be ducted through a fabric dust collector, or shall be equipped with a wet suppression system which maintains a minimum moisture content to ensure there are no visible emissions;

(E) all conveyors shall be covered, unless the material being transferred results in no visible emissions;

(F) all stockpiled material shall be maintained at a minimum moisture content unless the stockpiled material results in no visible emissions;

(G) as a part of application for registration, the applicant shall provide manufacturer's specifications or engineering data to demonstrate a minimum particulate matter control of 99 percent for the fabric dust collection equipment;

(H) except for vent filters, each fabric dust collector shall be equipped with an operational pressure differential gauge to measure the pressure drop across the filters;

(I) open areas and all roads subject to vehicular traffic shall be paved, watered, or chemical palliatives applied to prevent fugitive emissions in excess of 20 percent opacity or Ringelmann 1; and

(J) if applicable, the operation shall comply with the requirements of 40 CFR Part 60 Subpart OOO.

(4) Unconfined abrasive blasting operations:

(A) no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark as or darker than Ringelmann 2 or equivalent 40 percent opacity;

(B) only California Air Resources Board-certified abrasive blasting material shall be used [Note: see Title 17, California Code of Regulations, section 92530 for certified abrasives.];

(C) the abrasive material shall not be reused;

(D) no air contaminant shall be released into the atmosphere which causes a public nuisance;

(E) all applicable requirements of Title 17 of California Code of Regulations shall also apply; and

(F) there shall be no visible emissions beyond the property line on which the equipment is being operated.

(5) Tub grinders and trommel screens:

(A) there shall be no visible emissions beyond the property line on which the equipment is being operated;

(B) no air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three minutes in any one hour which is as dark or darker than Ringelmann 1 or equivalent 20 percent opacity; and

(C) water suppression or chemical palliatives shall be used to control fugitive particulate emissions from the tub grinder whenever the tub grinder is in operation, unless there are no visible emissions.

(c) Registered ~~Portable~~ equipment units not described in section 2457(b) above, shall be subject to the most stringent district Best Available Control Technology (BACT) requirements in effect for that category of source at the time of application for registration.

(d) No change in equipment unit configuration, operating scenario, or number of transfer points from that set out in the registration for the equipment unit shall be made unless a complete application for modification has been filed and approved by the Executive Officer prior to operation.

(~~d~~e) Registration is not valid for any equipment unit operating at a location if by virtue of the activity to be performed hazardous air pollutants will be emitted (e.g., rock crushing plant operating in a serpentine quarry). [Note: The equipment unit would be subject to the requirements of the district in which the equipment unit is operated ~~located~~.]

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2458. Recordkeeping and Reporting.

~~(a) Any registered portable engine, except for engines operating in STW, that meets one of the following criteria is exempt from the requirements of this section, except for sub-sections (e) and (f):~~

~~(1) an applicable emissions standard as set forth in Title 13 of the California Code of Regulations, 40 CFR part 86, or 40 CFR Part 89; or~~

~~(2) for spark-ignition engines, the emissions standard set forth in 40 CFR part 1048 or set forth in Table 1 of section 2456.~~

(~~b~~a) Except for registered engines and equipment units owned by a rental business, used in a third-party rental, operated by a PEPS, ~~and~~ or TSE, the owner of a registered ~~portable~~ engine ~~subject to operational limitations~~, including engines otherwise preempted under section 209 (e) of the federal Clean Air Act, or ~~portable~~ registered equipment units shall maintain ~~daily~~ records ~~for each day~~ of operation of each registered ~~portable~~ engine and equipment unit. Recordkeeping for units not previously required to maintain records shall begin upon the effective date of the

regulation or January 1, 2007, which ever is later. For units not previously required to have an hour meter, fuel meter or other device approved by the Executive Officer, the owner or operator shall record hours of operation until the hour meter, fuel meter or other device approved by the Executive Officer has been installed. The ~~daily~~ records shall be maintained at a central place of business for five years, and made accessible to the Executive Officer or districts upon request. ~~Daily r~~Records shall be maintained in a format approved by the Executive Officer and include, at a minimum, all of the following:

(1) ~~portable~~ engine or equipment unit registration number;

(2) ~~month, day and year;~~ recordings from an hour meter, fuel meter, or other device approved by the Executive Officer, and the corresponding dates of the recordings for each registered engine or equipment unit based on the following:

(A) for each project as defined in 2452 (gg) or (hh), readings shall be recorded prior to the commencement of operation and at the completion of the project; or

(B) for ongoing operation of a registered engine or equipment unit at multiple locations within a stationary source, readings shall be recorded at the beginning and end of each calendar week; or

(C) for each location, readings shall be recorded prior to commencement of operation and upon completion of operation at that location.

(3) For registered engines and equipment units subject to a daily operational limitation, daily records of either hours of operation, fuel usage, or process throughput as applicable.

(~~3~~4) recordings from an hour meter, fuel meter, or other device approved by the Executive Officer and the corresponding dates of the recordings any time an engine or equipment unit is undergoing service, repair, or maintenance; and ~~the location(s) at which the portable engine or equipment unit was operated, identified by district, county, or specific location(s)~~;

(~~4~~5) for each start and stop reading specified in (2) and (3) above, the location identified by district, county, or other indicator (i.e., street address, UTM coordinates, etc.) ~~for equipment units, the total process weight or throughput~~;

~~(5) for engines that are subject to hours of operation limitations, actual hours of operation; and~~

~~(6) for engines that are subject to fuel use limitations, total fuel used in gallons:~~

~~(A) for engines initially registering on or after September 1, 2005, daily fuel consumption shall be measured by fuel flow meter; and~~

~~(B) for engines initially registering prior to September 1, 2005, daily fuel consumption shall be measured either by fuel flow meter, fuel tank stick test, or by fuel purchase records. If fuel purchase records or a stick test is used, the operator shall record the average operating load of the engine or use the approved operating load default factors, and the calculation approved by the Executive Officer to determine the daily fuel use for the engine. The stick test shall be performed prior to the start of and after the shutdown of operations on any given day to~~

~~determine the amount of fuel used on that day. For an engine that operates on a 24-hour basis, the stick test shall be performed once at the same time each day of uninterrupted operation, and then compared to the previous day's test to calculate daily fuel use.~~

(~~c~~b) A rental business or ~~T~~the owner of a registered ~~portable~~ engine or equipment unit ~~owned by~~ involved in a third party rental ~~a rental business and designated for the purpose of renting~~, shall maintain records for each rental or lease transaction. The written rental or lease agreement shall be kept onsite with the registered engine or equipment unit at all times. Recordkeeping for registered units not previously required to maintain records shall begin upon the effective date of the regulation or January 1, 2007, which ever is later. For registered units not previously required to have an hour meter, fuel meter or other device approved by the Executive Officer, the owner or operator shall record hours of operation until the hour meter, fuel meter or other device approved by the Executive Officer has been installed. The owner shall provide each person who rents a registered ~~portable~~ engine or equipment unit with a written copy of applicable requirements of this article, including recordkeeping and notification requirements, as a part of the agreement. The records, including written acknowledgment by each renter of the ~~portable~~ registered engine or equipment unit of having received the above information, shall be maintained by the rental business or the owner of the registered engine or equipment unit involved in a third-party rental at a central location for five years, and made accessible to the Executive Officer or districts upon request. Records shall be maintained in a format approved by the Executive Officer and include, at a minimum, for each registered ~~portable~~ engine or equipment unit all of the following:

(1) ~~portable~~ registered engine or equipment unit registration number;
(2) dates for the start and end of the rental transaction ~~portable engine left and returned to a rental yard~~; ~~and~~
(3) hours of operation for each rental period including the hour meter reading at the start of the rental transaction and the hour meter reading at the end of the rental transaction~~.~~; and
(4) location of use (by district, county or other indicator (i.e., street address, UTM coordinates, etc.)).

(~~d~~c) For TSE, each military installation shall provide the Executive Officer an annual report, in a format approved by the Executive Officer, within 60 days after the end of each calendar year. The report shall include the number, type, and rating of registered TSE at each installation as of December 31 of that calendar year, and be accompanied by the applicable fees pursuant to section 2461. Any variation of registered TSE to actual TSE shall be accounted for in this annual report, and the Executive Officer shall issue an updated TSE list accordingly. A renewal registration will be issued with the updated TSE list every three years according to expiration date.

~~(e) For generators used to provide power to a building, facility, stationary source, or stationary equipment during unforeseen interruptions of electrical power from the serving utility or during electrical upgrades, the owner or operator shall maintain a daily record that shall include the following:~~

~~(1) location;~~
~~(2) month, day, and year of operation; and~~
~~(3) hours of operation.~~

(~~f~~d) For each registered engine subject to the requirements of Title 1~~3~~7 California Code of Regulations section 93116, the owner shall keep records and submit reports in accordance with Title 1~~3~~7 California Code of Regulations section 93116.4.

(e) Except for registered engines or equipment units owned by a rental business, used in a third-party rental, operated by a PEPS or TSE, the owner of a registered engine or equipment unit shall provide the Executive Officer an annual report signed by the responsible official, in a format approved by the Executive Officer, by March 1 of each calendar year containing all of the following information:

(1) the reporting year;
(2) *the registration number of each registered engine and/or equipment unit;*
(3) for registered engines, quarterly summaries for each district or county the total fuel usage in gallons per quarter, or total hours of operation per quarter, for each registered engine; and
(4) for registered equipment units, quarterly summaries for each district or county in which the registered equipment unit was operated and the total process weight or throughput.

(f) The owner of a registered ~~portable~~ engine or equipment unit owned by a rental business or used in a third-party rental transaction shall provide the Executive Officer an annual report signed by the responsible official, in a format approved by the Executive Officer, by March 1 of each calendar year containing all of the following information:

(1) the reporting year;
(2) the registration number of each registered engine and/or equipment unit;
(3) total hours of operation for the reporting year for each registered engine based on, and including, beginning and ending annual hour meter readings and dates upon which the total hours of annual operation calculation is based;
(4) list of all counties in which the registered engine operated in during the reporting year as reported by the entity(ies) that operated the registered engine or equipment unit; and
(5) estimate of the percentage of total hours operated in each of the counties identified in (4) above.

(g) the owner or operator of a registered engine or equipment unit used by a PEPS shall provide the Executive Officer an annual report, in a format approved by the Executive Officer, by March 1st of each calendar year containing all of the following information:

(1) the reporting year;
(2) *the registration number of each registered engine and/or equipment unit;*
(3) total hours of operation; and

(4) estimate of the percentage of hours or fuel usage for the three counties in which the registered engine or equipment unit operated the most.

(h) Records requests made by a district or Executive Officer shall be made to the responsible official. The responsible official shall provide the requested records within 30 days from receipt of the request. Failure to provide the records by the specified date shall be deemed a violation of this article.

(i) Each district shall provide the Executive Officer with an annual report, in a format approved by the Executive Officer, by March 31 following the year in which the information was collected containing all of the following information:

(1) the number of portable engines and equipment units inspected;
(2) the number of portable engines and/or equipment units found operating without valid district permits or statewide registrations;
(3) the number of registered engines and equipment units inspected; and
(4) summary of results of inspections.

(j) Vendors selling new portable engines and/or equipment units in California shall:

(1) notify the buyer about this regulation; and
(2) on a monthly basis submit to the Executive Officer the number of portable engines and/or portable equipment units sold by the vendor for use in California including: the name, address, and contact information of the purchaser, and description of the engine and/or equipment unit including make, model, and engine family name.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2459. Notification.

(a) Except as listed in subsection (~~f~~d) of this section, if a registered ~~portable engine or~~ equipment unit will be ~~in a district~~ at a location for more than five days, the owner or operator ~~or renter~~ of that registered equipment unit, shall notify the district in writing~~, via facsimile, electronic mail, or by telephone,~~ in a format approved by the Executive Officer, within two working days of commencing operations in that district. If the registered equipment unit is to be moved to different locations within the same district, the owner or operator shall be subject to the notification requirements above, unless the owner or operator and the district, by mutual agreement, arrange alternative notification requirements on a case-by-case basis. The notification shall include all of the following:

(1) the registration number of the registered ~~portable engine or~~ equipment unit;
(2) the name and phone number of the responsible official or renter with information concerning the locations where the registered ~~portable engine or~~ equipment unit will be operated within the district; and

(3) estimated time the registered ~~portable engine or~~ equipment unit will be located in the district.

(b) If the district has not been notified as required in ~~paragraph (a)~~,section 2459(a) above, because the owner or operator did not reasonably expect the duration of operation ~~in the district~~ to trigger the notification requirement in section 2459(a) above, the owner or operator ~~or renter (except as noted in (c) below),~~ shall notify the district ,in a format approved by the Executive Officer, within 12 hours of determining the registered ~~portable engine or~~ equipment unit will be operating ~~in the district~~ at a location more than five days.

~~(c) Except as listed in sub-section (f) of this section, owners and operators of registered portable engines rated less than 200 brake horsepower and designated by the Executive Officer for rental use by a rental business are not subject to notification requirements.~~

(~~d~~c) Owners and operators of TSE are not subject to the notification requirements of this section 2459.

~~(e) Except as listed in sub-section (f) of this section, owners and operators of registered portable engines or equipment units moving into the designated home district are not subject to notification requirements, providing the home district is identified at the time of registration.~~

(~~f~~d) For STW projects, the owner ~~and/~~or operator of a registered engine or registered ~~such~~ equipment unit shall notify the corresponding onshore district in writing, ~~via facsimile, electronic mail, or by telephone,~~ in a format approved by the Executive Officer at least 14 days in advance of commencing operations in that district. The notification shall include all of the following:

(1) the registration number of the registered ~~portable~~ engine~~(s)~~ or equipment unit(s);
(2) the name and phone number of the responsible official with information concerning the locations where the registered ~~portable~~ engine~~(s)~~ or equipment unit~~(s)~~ will be operated within the district;
(3) estimated time the registered ~~portable~~ engine(s) or equipment unit(s) will be located in the district; and
(4) calculations showing the estimation of actual emissions expected for the project.

(e) Except as listed in section 2459(d) above, owners and operators of registered engines are not subject to notification requirements.

(f) The Executive Officer shall make available via the Internet a list of approved notification methods for each district.

(g) Failure to provide the required notifications within the timelines specified in this section shall be deemed a violation of this article.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2460. Inspections and Testing.

(a) In determining if a portable engine or equipment unit is eligible for registration, the Executive Officer may inspect ~~a~~the portable engine or equipment unit and/or require a source test, at the owner's expense~~, in order to verify information submitted in the application except as provided in section 2460 (d)~~.

(b) Each district shall inspect all registered engines and equipment units for which the district has been designated as the home district pursuant to section 2453(i) above, as specified below:

(1) Within 45 days after the date of initial issuance or renewal of a registration, the owner or operator shall contact the home district to arrange for inspection of the registered engine or equipment unit to be completed within one year of the initial registration or renewal date. If the registered engine or equipment unit shall be operating in a district, other than the home district, the owner or operator may request the home district to arrange for an inspection by that other district.

(2) For portable engines, each home district should conduct no more than 20 percent of the arranged inspections for that district as in-field inspections. All arranged inspections not conducted as in-field inspections shall be conducted as non-field inspections. If a portable engine is found in violation during an in-field inspection, the next arranged inspection for that engine shall be an in-field inspection. This section does not limit the authority of a district to conduct any number of non-arranged in-field or non-field inspections for which no fee is charged.

(3) For registered equipment units operating with registered engines, the owner or operator may request that the registered engine be inspected under the arranged inspection program or together with the equipment unit at the hourly rate specified in Table 2.

(4) Arranged inspections for PEPS engines and registered equipment units shall be non-field inspections unless an in-field inspection is requested by the holder of the registration and a reasonable in-field inspection location is arranged with the appropriate district.

(5) The time for an arranged inspection shall be agreed upon in advance with the district and company preferences regarding time of day shall be to accommodated within reason. To the extent that an arranged inspection does not fall within the district's normal workday, the district may charge for the off-hour time based on a fee as specified in Table 2.

(6) If an arranged inspection of a registered engine or registered equipment unit does not occur due to unforeseen circumstances, the owner or operator and the home district shall reschedule the arranged inspection no later than 90 days of the initially scheduled inspection. Any unreasonable actions on the part of the owner or operator that prevents the inspection to occur within the specified time frame shall be deemed a violation of this article. Actions taken by the owner or operator that could be deemed "unreasonable" include, but are not limited to:

(A) failing to respond to the district correspondences or other contracts made to schedule the inspection;

(B) failing to ensure that the registered engine or equipment unit is in operation for arranged "in-field inspections" or where the district has provided advance notification to the owner or operator that the registered engine or equipment unit is required to be observed in operation.

(7) The owner or operator may request the scheduling of one or more arranged inspections for multiple engines in order to qualify for an inspection fee discount as specified in section 2461 (d). Within 45 days of date of initial issuance of registration or by January 30 of each year for renewals, the owner or operator shall submit a letter of intent including an equipment list and registration numbers to the district to arrange for inspection of multiple engines. The inspections shall be completed within one year after the registration renewal date for each engine inspected.

(8) If a registered engine or equipment unit is out of California for one year or more following initial registration or renewal, the engine or equipment unit shall be excused from having the arranged inspection within that period if:

(A) within 45 days after the date of initial issuance or renewal of the registration, the owner or operator submitted a letter to the district noting the registration number of the registered engine or equipment unit and that the engine or unit is out of California for the one-year period; and

(B) upon the return of the registered engine or equipment unit to the State, the owner or operator shall arrange to have the registered engine or equipment unit inspected within 30 days.

(~~b~~c) After issuance of registration, the Executive Officer or district may at any time conduct an inspection of any registered engine or equipment unit in order to verify compliance with the requirements of this article. The district shall not charge the owner or operator an additional inspection fee for that inspection. ~~However,~~ ~~s~~Source testing of engines for compliance purposes shall not be required more frequently than once every three years (including testing at the time of registration), except as provided in section 2460 (~~d~~e), unless evidence of engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect engine emissions are identified. In no event shall the Executive Officer or district require source testing of a registered engine for which there is no applicable emission

standard, emission limit or other emission related requirement contained in this regulation.

(~~c~~d) Testing shall be conducted in accordance with the following methods or other methods approved by the Executive Officer:

Particulate Matter:	ARB Test Method 5 with probe catch and filter catch only
VOC:	ARB Test Method 100 or U.S. EPA Test Method 25A
NOx:	ARB Test Method 100 or U.S. EPA Test Method 7E
Carbon Monoxide:	ARB Test Method 100 or U.S. EPA Test Method 10
Oxygen:	ARB Test Method 100 or U.S. EPA Test Method 3A
Gas Velocity and Flow Rate:	ARB Test Method 1 & 2 or U.S. EPA Test Method 1 & 2

(~~d~~e) Initial or follow-up source testing of engines to verify compliance with the requirements of this regulation shall not be required for certified engines. ~~the following:~~

~~(1) engines certified to satisfy the most stringent emissions standards for the applicable horsepower range specified for State or federal newly-manufactured engines pursuant to Title 13 of the California Code of Regulations, 40 CFR Part 86, or 40 CFR Part 89~~; or

~~(2) engines certified to meet the most stringent emissions standards for the applicable horsepower range specified for State or federal on-highway engines pursuant to Title 13 of the California Code of Regulations; or~~

~~(3) engines that are retrofitted to meet the most stringent emissions standards for the applicable horsepower range specified for State or federal newly-manufactured engines pursuant to Title 13 of the California Code of Regulations or 40 CFR Part 89, where the retrofit kit has undergone testing consistent with the applicable certification procedures~~.

(~~e~~f) The exemption provided in section 2460 (~~d~~e) shall not apply to source testing of engines for compliance purposes where evidence of engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect engine emissions are identified.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2461. Fees.

(a) Except as otherwise set out herein, ~~T~~the Executive Officer shall assess and collect reasonable fees for registration, renewal, and associated administrative tasks, to recover the estimated costs to the Executive Officer for evaluating registration applications, and issuing registration documentation.

(b) Fees shall be due and payable to the Executive Officer at the time an application is filed or as part of any request requiring a fee. Fees are nonrefundable except in circumstances as determined by the Executive Officer.

(c) The owner or operator of a ~~portable~~ registered engine or equipment unit shall submit fees to the Executive Officer and to districts in accordance with Table 2. ~~Until December 31, 2005, new program participants shall pay an increased registration fee in accordance with Table 2. This increased fee shall not apply to agricultural sources or new program participants who have lost permit exemption due to the lowering of the maximum rated horsepower (bhp) permit requirement threshold.~~

~~(d) Prior to switching from non-operational to operational status, the owner or operator shall pay the applicable fee as listed in Table 2. The Executive Officer shall verify that the portable engine or equipment unit meets the requirements of this article prior to operation of the portable engine or equipment unit.~~

(~~e~~d) The Executive Officer shall collect an inspection fee as listed in Table 2 one time per every three calendar years for each registered engine to be paid upon initial application and renewal. Except for TSE, ~~W~~when multiple registered ~~portable~~ engines ~~TSE units~~ are inspected at a given source or location, the owner shall receive a discount if the owner or operator intends to arrange multiple engines inspections with the district and complies with the requirements specified in section 2460(b)(6). The discounts shall be applied as follows:

(1) no discount for 1 to 3 engines
(2) 25 percent discount for 4 to 9 engines
(3) 35 percent discount for 10 or more engines

(~~f~~e) Failure to pay renewal fees when due ~~shall~~ may result in penalties. If a fee payment is not received or postmarked by the specified due date, fee penalties ~~shall~~ may be assessed per unit in accordance with Table 2. Failure to pay renewal fees prior to expiration ~~shall~~ may result in cancellation of the registration. If a registration has expired for an engine or equipment unit that is eligible for ~~reinstatement~~ reactivation, a canceled registration may be ~~reinstated~~ reactivated after payment of all renewal and penalty fees. Registration ~~shall~~ may be reissued under the original registration number and expiration date. A portable engine or equipment unit without valid registration is subject to the rules and regulations of the district in which it operates.

(~~g~~f) Fees shall be periodically revised by the Executive Officer in accordance with the consumer price index, as published by the United States Bureau of Labor Statistics.

(~~h~~g) A district may collect a fee for the inspection of a registered equipment unit pursuant to section 2460. The district shall bill the owner of the equipment unit at a rate as specified in Table 2 of the regulation for actual staff time taken to perform the inspection, not to exceed the amount specified in Table 2. Upon receipt of the invoice for the inspection fee, the owner shall have the right to appeal the district's fee determination to the district Air Pollution Control Officer/Executive Officer pursuant to the provisions of the district's rules and regulations that govern appeals of fee determinations. ~~In lieu of section 2461 (e) above, a district may collect a fee, in~~

~~an amount to be assessed by the district, for costs associated with implementing and enforcing the requirements of 40 CFR Part 60 Subpart OOO for each registered equipment unit subject to Subpart OOO. In no event shall the fee assessed exceed the actual costs, including staff time, to the district for implementing and enforcing Subpart OOO. If for reasonable cause, the district performs an inspection leading to determination of non-compliance with this article, or any applicable state or federal requirements, the district may charge a fee per portable equipment unit for each inspection necessary for the determination and ultimate resolution of the violation. In no event shall the total fees exceed the actual costs, including staff time, to the district of conducting the investigations and resolving any violations~~.

(h) The Executive Officer shall collect fees at the time of initial registration and renewal for each registered engine as specified in Table 2.

(i) The Executive Officer shall annually distribute district inspection fees collected for that year. General inspection fees will be distributed equally among the districts. Home district inspection fees will be distributed to the corresponding home district.

(~~i~~j) TSE fees are due at the time of the report pursuant to section 2458 (~~d~~c). Failure to submit the annual report and applicable fees within six calendar months after the end of the year will result in cancellation of the registration. For TSE, if registration is cancelled or allowed to expire, the applicant shall reapply and pay initial registration fees.

(~~e~~k) The district may collect an inspection fee as listed in Table 2 one time per calendar year for each registered TSE inspected. When multiple registered ~~portable~~ TSE units are inspected at a given source or location, the inspection fee shall be equal to the lesser of the actual cost, including staff time, for conducting the inspection or the fee as listed in Table 2 per registered portable engine or equipment unit inspected. If the district performs an inspection leading to determination of non-compliance with this article, or any applicable state or federal requirements, the district may charge a fee as listed in Table 2 per portable engine or equipment unit for each inspection necessary for the determination and ultimate resolution of the violation. In no event shall the total fees exceed the actual costs, including staff time, to the district of conducting the investigations and resolving any violations.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

Table 2 Fees for Statewide Registration Program
(Fees are per registered unit except where noted otherwise)

1	Initial Registration	$270.00
A	~~existing program participants until 12/31/05; all applicants thereafter (3 year cycle)~~	~~$270.00~~
B	~~existing program participants until 12/31/05; all applicants thereafter (5 year cycle)~~	~~$450.00~~
C	~~new program participants until 12/31/05, except applicants that lost permit exemption (3 year cycle)~~	~~$370.00~~
D	~~new program participants until 12/31/05, except applicants that lost permit exemption (5 year cycle)~~	~~$550.00~~
2	Tactical support equipment, initial registration	
A	Registration of first 25 units (or portion thereof)	$750.00
B	Registration of every additional 50 units (or portion thereof)	$750.00
3	Change of status from non-operational to operational	
A	Where initial evaluation has not been previously completed	$180.00
B	Where initial evaluation has been previously completed	$90.00
4	Identical replacement	$75.00
5	Renewal, non-TSE	$225.00
A	~~Every 3 years~~	~~$225.00~~
B	~~Every 5 years~~	~~$375.00~~
6	Penalty fee for late renewal payments, non-TSE	
A	Postmarked within 2 calendar months prior to registration expiration date	$45.00
B	Postmarked within the calendar month prior to registration expiration date	$90.00
C	Postmarked after the registration expiration date	$250.00
7	Annual TSE inventory fee	
A	*first 25 units (or portion thereof)*	$375.00
B	every additional 50 units (or portion thereof)	$375.00
8	Modification to registered portable engine or equipment unit	$75.00
9	Change of ownership	$75.00
10	Replacement of registration identification device or placard	$30.00
11	Correction to an engine or equipment unit description	$45.00
12	Update company information, copy of registration documents	$45.00
13	Copy of registration documents	$45.00
14	Total d~~D~~istrict inspection fee per registered portable engine, paid once every 3 years ~~or equipment unit inspected~~	~~$75.00~~ $345.00
A	General district inspection fee	$30.00
B	Home district inspection fee	$315.00
15	District off-hour service fee per hour	$50.00
16	District inspection fees for equipment units: **(Table 2 Continued)**	

A	General district inspection fee, paid once every 3 years	$75.00
B	District inspection fee per equipment unit, per hour	$98.00 (not to exceed $500.00)
17	TSE inspection fees:	
A	General district inspection fee per TSE unit, paid annually	$10.00
B	District inspection fee per TSE unit per inspection	$75.00
18	Placard	$5.00

2462. Duration of registration.

(a) Except as provided for in section 2456(d)(6), registrations and renewals will be valid for ~~either~~ three ~~or five consecutive~~ years from date of issuance. ~~A new program participant must choose either the three year or five year duration period for all current and future registrations at the time of initial application submittal. An existing program participant may choose to convert to the five year duration period for all registrations which shall be reissued upon renewal only. The existing program participant shall submit a written request for this conversion.~~ For change of ownership, the registration shall retain the original expiration date ~~and upon renewal shall be converted to the duration period chosen by the new owner, if different than the duration period of the previous owner. Once a registration duration period is chosen by a program participant, it shall not be changed.~~

(b) The Executive Officer shall mail to the owner ~~or operator~~ of a registered ~~portable~~ engine or equipment unit a renewal invoice at least 60 days prior to the registration expiration. Failure to send or receive a renewal invoice does not relieve the responsible official from paying all applicable fees when due.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2463. Suspension or revocation of registration.

(a) The Executive Officer for just cause may suspend or revoke registration in any of the following circumstances:

(1) the holder of registration has violated one or more terms and conditions of registration or has refused to comply with any of the requirements of this article;

(2) the holder of registration has materially misrepresented the meaning, findings, effect or any other material aspect of the registration application, including submitting false or incomplete information in its application for

registration regardless of the holder's personal knowledge of the falsity or incompleteness of the information;

(3) the test data submitted by the holder of registration to show compliance with this regulation have been found to be inaccurate or invalid;

(4) enforcement officers of the ARB or the ~~D~~districts, after presentation of proper credentials, have been denied access, during normal business hours or hours of operation, to any facility or location where registered ~~portable~~ engines and equipment units are operated or stored and are prevented from inspecting such engines or equipment units as provided for in this article (the duty to provide access applies whether or not the holder of registration owns or controls the facility or location in question);

(5) enforcement officers of the ARB or the ~~D~~districts, after presentation of proper credentials, have been denied access to any records required by this regulation for the purpose of inspection and duplication;

(6) the registered ~~portable~~ engine or equipment unit has failed in-use to comply with the findings set forth in the registration. For the purposes of this section, noncompliance with the registration may include, but is not limited to:

(A) a repeated failure to perform to the standards set forth in this article; or

(B) modification of the engine or equipment unit that results in an increase in emissions or changes the efficiency or operating conditions of such engine or equipment unit, without prior notice to and approval by the Executive Officer; or

(7) the holder of registration has failed to take requested corrective action as set forth in a Notice of Violation or Notice to Comply within the time period set forth in such notice or as otherwise specified in writing by the issuing district.

(8) the holder of the registration has failed to pay fees assessed by either the Executive Officer or district within 120 after the specified due date and there is no pending appeal.

(b) A ~~registration~~ holder of registration may be subject to a suspension or revocation action pursuant to this section based upon the actions of an agent, employee, licensee, or other authorized representative.

(c) The Executive Officer shall notify each holder of registration by certified mail of any action taken by the Executive Officer to suspend or revoke any registration granted under this article. The notice shall set forth the reasons for and evidence supporting the action(s) taken. A suspension or revocation is effective upon receipt of the notification.

(d) A ~~party~~ holder of registration having received a notice to revoke or suspend registration may request that the action be stayed pending a hearing under section 2464. In determining whether to grant the stay, the Executive Officer shall consider the reasonable likelihood that the registration holder will prevail on the merits of the appeal and the harm the ~~registration~~ holder of registration will likely suffer if the stay is not granted. The Executive Officer shall deny the stay if the adverse effects of the stay on the public health, safety, and welfare outweigh the harm to the ~~registration~~ holder of registration if the stay is not granted.

(e) Once a registration has been suspended pursuant to (a) above, the holder of registration shall satisfy and correct all noted reasons for the suspension and submit a written report to the Executive Officer advising him or her of all such steps taken by the holder before the Executive Officer will consider reinstating the registration.

(f) After the Executive Officer suspends or revokes a registration pursuant to this section and prior to commencement of a hearing under section 2464, if the holder of registration demonstrates to the Executive Officer's satisfaction that the decision to suspend or revoke the registration was based on erroneous information, the Executive Officer will reinstate the registration.

(g) Nothing in this section shall prohibit the Executive Officer from taking any other action provided for by law for violations of the Health and Safety Code.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2464. Appeals.

(a) Hearing Procedures

(1) Any applicant for~~, or a holder of,~~ registration whose application has been denied or a holder of registration whose registration has been ~~denied~~, suspended, or revoked may request a hearing to review the action taken by sending a request in writing to the Executive Officer. A request for hearing shall include, at a minimum, the following:

(A) name of applicant or holder of registration;
(B) registration number;
(C) copy of the Executive Order revoking or suspending registration or the written notification of denial;
(D) a concise statement of the issues to be raised, with supporting facts, setting forth the basis for challenging the denial, suspension, or revocation (mere conclusory allegations will not suffice);
(E) a brief summary of evidence in support of the statement of facts required in (D) above; and
(F) the signature of an authorized person requesting the hearing.

(2) A request for a hearing shall be filed within 20 days from the date of issuance of the notice of the denial, suspension, or revocation.

(3) A hearing requested pursuant to this section shall be heard by a qualified and impartial hearing officer appointed by the Executive Officer. The hearing officer may be an employee of the ARB, but may not be any employee who was involved with the registration at issue. In a request for a hearing of a denial of registration, after reviewing the request for a hearing and supporting documentation provided under subsection (1) above, the hearing officer shall

grant the request for a hearing if he or she finds that the request raises a genuine and substantial question of law or fact.

(4) Except as provided in (3) above, the hearing officer shall schedule and hold, as soon as practicable, a hearing at a time and place determined by the hearing officer.

(5) Upon appointment, the hearing officer shall establish a hearing file. The file shall consist of the following:

(A) the determination issued by the Executive Officer which is the subject of the request for hearing;
(B) the request for hearing and the supporting documents that are submitted with it;
(C) all documents relating to and relied upon in making the determination to deny registration or to suspend or revoke registration; and
(D) correspondence and other documents material to the hearing.

(6) The hearing file shall be available for inspection by the applicant at the office *of the hearing officer.*

(7) An applicant may appear in person or may be represented by counsel or by any other duly-authorized representative.

(8) The ARB may be represented by staff or counsel familiar with the registration program and may present rebuttal evidence.

(9) Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to relying in the conduct of serious affairs. No action shall be overturned based solely on hearsay evidence, unless the hearsay evidence would be admissible in a court of law under a legally recognized exception to the hearsay rule.

(10) The hearing shall be recorded either electronically or by a certified shorthand reporter.

(11) The hearing officer shall consider the totality of the circumstances of the denial, suspension, or revocation, including but not limited to, credibility of witnesses, authenticity and reliability of documents, and qualifications of experts. The hearing officer may also consider relevant past conduct of the applicant including any prior incidents involving other ARB programs.

(12) The hearing officer's written decision shall set forth findings of fact and conclusions of law as necessary.

(~~11~~13) Within 30 days of the conclusion of a hearing ~~If a hearing is held~~, the hearing officer shall ~~render~~ submit a written proposed decision, including proposed finding as well as a copy of any material submitted by the hearing participants as part of that hearing and relied on by the hearing officer, to the Executive Officer. ~~within 30 working days from the last day of hearing.~~ The hearing officer may ~~do~~ recommend to the Executive Officer any of the following:

(A) uphold the denial, suspension, or revocation action as issued;
(B) reduce a revocation to a suspension;
(C) increase a suspension to a revocation if the registration holder's conduct so warrants; ~~and~~ or
(D) overturn a denial, suspension, or revocation in its entirety.

~~(12) The hearing officer shall consider the totality of the circumstances of the denial, suspension, or revocation, including but not limited to credibility of witnesses, authenticity and reliability of documents, and qualifications of experts. The hearing officer may also consider relevant past conduct of the applicant including any prior incidents involving other ARB programs.~~

~~(13) The hearing officer's written decision shall set forth findings of fact and conclusions of law as necessary.~~

(14) The Executive Officer shall render a final written decision within 60 working days of the last day of hearing. The Executive Officer may do any of the following:

(A) adopt the hearing officer's proposed decision;
(B) modify the hearing officer's proposed decision; or
(C) render a decision without regard to the hearing officer's proposed decision.

(b) Hearing conducted by written submission.

(1) In lieu of the hearing procedure set forth in (a) above, an applicant may request that the hearing be conducted solely by written submission.

(2) In such case the requestor must submit a written explanation of the basis for the appeal and provide supporting documents within 20 days of making the request. Subsequent to such a submission the following shall transpire:

(A) ARB staff shall submit a written response to the requestor's submission and documents in support of the Executive Officer's action no later than 10 days after receipt of requestor's submission;
(B) The registration holder may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised;
(C) If the registration holder submits a rebuttal, ARB staff may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised; and
(D) the hearing officer shall be designated in the same manner as set forth in (a)(3) above. The hearing officer shall receive all statements and documents and ~~render~~ submit a proposed written decision and such other documents as described in (a) 13 above ~~,~~ to the Executive Officer ~~The hearing officer's decision shall be mailed to the requestor~~ no later than 30 working days after the final deadline for submission of papers. The Executive Officer's final decision shall be mailed to the holder of registration no later than 60 days after the final deadline for submission of papers.
(E) The Executive Officer shall render a final written decision within 60 working days of the last day of hearing. The Executive Officer may do any of the following:

(1) adopt the hearing officer's proposed decision;
(2) modify the hearing officer's proposed decision; or

(3) render a decision without regard to the hearing officer's proposed decision.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

§ 2465. Penalties.

Violation of the provisions of this article may result in ~~a nuisance,~~ civil, and/or criminal penalties ~~violations~~ pursuant to the California Health and Safety Code. Each day during any portion of which a violation occurs is a separate violation.

NOTE: Authority cited: Sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750, 41751, 41752, 41753, 41754, and 41755, Health and Safety Code.

Appendix B

Increased Program Fees

Appendix B

Increased Program Fees

1	Initial Registration	$270.00
~~a~~	~~existing program participants until 12/31/05; all applicants thereafter (3 year cycle)~~	~~$270.00~~
~~b~~	~~existing program participants until 12/31/05; all applicants thereafter (5 year cycle)~~	~~$450.00~~
~~c~~	~~new program participants until 12/31/05, except applicants that lost permit exemption (3 year cycle)~~	~~$370.00~~
~~d~~	~~new program participants until 12/31/05, except applicants that lost permit exemption (5 year cycle)~~	~~$550.00~~
2	Tactical support equipment, initial registration	
a	Registration of first 25 units (or portion thereof)	$750.00
b	Registration of every additional 50 units (or portion thereof)	$750.00
3	Change of status from non-operational to operational	
a	Where initial evaluation has not been previously completed	$180.00
b	Where initial evaluation has been previously completed	$90.00
4	Identical replacement	$75.00
5	Renewal, non-TSE	$225.00
~~a~~	~~Every 3 years~~	~~$225.00~~
~~b~~	~~Every 5 years~~	~~$375.00~~
6	Penalty fee for late renewal payments, non-TSE	
a	Postmarked within 2 calendar months prior to registration expiration date	$45.00
b	Postmarked within the calendar month prior to registration expiration date	$90.00
c	Postmarked after the registration expiration date	$250.00
7	Annual TSE inventory fee	
a	first 25 units (or portion thereof)	$375.00
b	every additional 50 units (or portion thereof)	$375.00
8	Modification to registered portable engine or equipment unit	$75.00
9	Change of ownership	$75.00
10	Replacement of registration identification device or placard	$30.00
11	Correction to an engine or equipment unit description	$45.00
12	Update company information, copy of registration documents	$45.00
13	Copy of registration documents	$45.00
14	Total d~~D~~istrict inspection fee per registered portable engine, paid once every 3 years ~~or equipment unit inspected~~	~~$75.00~~ $345.00
a	General district inspection fee	$30.00
b	Home district inspection fee	$315.00
15	District off-hour service fee per hour	$50.00
16	District inspection fees for equipment units	

a	General district inspection fee, paid once every 3 years	$75.00
b	District inspection fee per equipment unit, per hour	$98.00 (not to exceed $500.00)
17	TSE inspection fees	
a	General district inspection fee per TSE unit, paid annually	$10.00
b	District inspection fee per TSE unit	$75.00
18	Placard	$5.00

Appendix C

Economic Impact Analysis

Appendix C

Economic Impact Analysis

Table 1 - Total Fee Increase Attributed to Amendments to PERP

Cumulative Impact (Assumes 5-Year Life + One-Time Costs)	
Cumulative Impact From District Inspection Fee Engines	$9,803,925
Cumulative Impact From District Inspection Fee Equipment	$1,896,200
Cumulative Impact From District Inspection Fee TSE	$236,050
Cumulative Impact From Obtaining a Placard	$193,525
Cumulative Impact From Placard Replacement	$33,750
Cumulative Impact From Hour Meter Installation	$876,000
Cumulative Impact From Recordkeeping	$41,192,000
Total Fee Increase Attributed to Amendments to the PERP Regulation	**$54,231,450**
Breakout of Impacts:	
Private Businesses:	
Cumulative Impact From District Inspection Fee Engines	$9,172,650
Cumulative Impact From District Inspection Fee Equipment	$1,831,337
Cumulative Impact From Obtaining a Placard	$150,685
Cumulative Impact From Placard Replacement	$26,279
Cumulative Impact From Hour Meter Installation	$682,082
Cumulative Impact From Recordkeeping	$38,661,409
Total Cumulative Impact – Businesses	**$50,524,441**
Total Cumulative Impact - (Small Businesses Only)	**$35,366,376**
State Agencies:	
Cumulative Impact From District Inspection Fee Engines	$10,876
Cumulative Impact From District Inspection Fee Equipment	$0
Cumulative Impact From Obtaining a Placard	$161
Cumulative Impact From Placard Replacement	$28
Cumulative Impact From Hour Meter Installation	$727
Cumulative Impact From Recordkeeping	$41,221
Total Cumulative Impact - State Agencies	**$53,012**
Local Agencies:	
Cumulative Impact From District Inspection Fee Engines	$551,834
Cumulative Impact From District Inspection Fee Equipment	$58,124
Cumulative Impact From Obtaining a Placard	$8,634
Cumulative Impact From Placard Replacement	$1,506
Cumulative Impact From Hour Meter Installation	$39,081
Cumulative Impact From Recordkeeping	$2,215,163
Total Cumulative Impact - Local Agencies	**$2,874,342**
Federal Agencies:	
Cumulative Impact From District Inspection Fee Engines	$68,566
Cumulative Impact From District Inspection Fee Equipment	$6,739
Cumulative Impact From District Inspection Fee TSE	$236,050
Cumulative Impact From Obtaining a Placard	$34,046
Cumulative Impact From Placard Replacement	$5,937
Cumulative Impact From Hour Meter Installation	$154,110
Cumulative Impact From Recordkeeping	$274,207
Total Cumulative Impact - Federal Agencies	**$779,655**

Table 2 – Summary of Costs Impacts

	Federal (all agencies)	State (all agencies)	Local (all agencies)	Small Business Total (all businesses)	Small Business Low Estimate (per business)	Small Business High Estimate (per business)	Typical Business Total (all businesses)	Typical Business Low Estimate (per business)	Typical Business High Estimate (per business)
Inspection Fees Engines									
One Time	$0	$0	$0	$0	$0	$0	$0	$0	$0
Annual					$115	$992		$518	$5,950
Total Program (5 Years)	$68,566	$10,876	$551,834	$6,420,855			$9,172,650		
Inspection Fees Equipment									
One Time	$0	$0	$0	$0	$0	$0	$0	$0	$0
Annual				$256,387	$58	$958		$346	$5,750
Total Program (5 Years)	$6,739	$0	$58,124	$1,281,936			$1,831,337		
Inspection Fees TSE									
One Time	$0	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Annual	$47,210	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Program (5 Years)	$236,050								
Placard									
One Time	$34,046	$161	$8,634	$105,477	$5	$25	$150,685	$30	$150
Annual	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Program (5 Years)	$34,046	$161	$8,634	$105,477			$150,685	$30	$150
Recordkeeping									
One Time	$0	$0	$0	$0	$0	$0	$0	$0	$0
Annual				$5,412,454	$0	$2,000	$7,732,282	$0	$12,000
Total Program (5 Years)	$274,207	$41,221	$2,215,163	$27,062,269			$38,661,409		
Hour Meters									
One Time	$154,110	$727	$39,081	$477,445	$0	$1,000	$682,082	$0	$6,000
Annual	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Program (5 Years)	$154,110	$727	$39,081	$477,445			$682,082	$0	
Placard Replacment									
One Time	$0	$0	$0	$0	$0	$0	$0	$0	$0
Annual				$3,679	$0	$25	$3,679	$0	$900
Total Program (5 Years)	$5,937	$28	$1,508	$18,395			$26,279	$0	

Total Cumulative Impacts from Regulation Changes

	Federal	State	Local	Small Business Total			Business Total		
One Time	$188,156	$888	$47,715	$582,921			$832,766		
Cummulative annual (5 Year)	$591,499	$52,125	$2,826,628	$34,783,455			$49,691,674		
Total Program Cost	$779,655	$53,012	$2,874,342	$35,366,376			$50,524,441		
Total Cost 5 years for all Amendments	$54,231,450								
	Low	High							
A Small Business Initial	$5	$1,025							
A Typical Business Initial	$30	$6,150							
A Small Business Annual	$173	$3,975							
A Typical Business Annual	$864	$24,600							

Table 3 – Master Information

Businesses w/Engines/Equipment	
Private Businesses (Non-TSE)	1916
Private Small Businesses (Non-TSE)*	1341
Federal (Non-TSE)	22
State (Non-TSE)	8
Local (City-County) (Non-TSE)	181
Total (Non-TSE)	2127
Total Business w/TSE	2155
Typical Business	
# of Engines/Equipment Low	6
# of Engines/Equipment High	30
Typical Small Business*	
# of Engines/Equipment Low	1
# of Engines/Equipment High	5
Registered Engines	
Number of Registered Engines Private	19398
Number of Registered Engines Private (Small Business)*	13579
Number of Registered Engines State	23
Number of Registered Engines Local	1167
Number of Registered Engines Federal (Non-TSE)	145
Total Registered Engines (Non-TSE)	20733
Registered Equipment	
Number of Registered Equipment Private	2174
Number of Registered Equipment Private (Small Business)	1522
Number of Registered Equipment State	0
Number of Registered Equipment Local	69
Number of Registered Equipment Federal (Non-TSE)	8
Total Registered Equipment (Non-TSE)	2251
Table 3 - Master Information (Cont)	
Registered Engines and Equipment	
Number of Registered Engines and Equipment Private	21572
Number of Registered Engines and Equipment Private (Small Business)	15100
Number of Registered Engines and Equipment State	23
Number of Registered Engines and Equipment Local	1236
Number of Registered Engines and Equipment Federal (w/TSE)	4874
Number of Registered Engines and Equipment Federal (w/o TSE)	153
Number of Registered Engines and Equipment Federal (TSE Only)	4721
Total Registered Engines and Equipment	27705
Total Registered Engines and Equipment (w/o TSE)	22984
New Equipment	
New Engines Entering Program/yr	2600
New Equipment Units Entering Program/Yr	250
Equipment Inspections Time	
Inspection Time (low) = 1 Hr	1
Inspection Time (High)= 5.1	5
Hour Meters	
Cost for Hour Meter Installed	$200
Engines w/Hour Meters	16353
Need Hour Meters (Fuel Stick)	3423
May Need Hour Meters (No Indication of Having Meters)	957
Total Needing Meters (2006)	4380
Recordkeeping	
Engines Required to Keep records	5637
Equipment Units Required to Keep Records	2251
Total Required to Keep Records	7888
Total Units That Will Need to Keep Records (2006)	16096
Cost Data	Costs
Recordkeeping (per Unit)	$400
Placards (Per Unit)	$5
Placard Replacement (Per Replacement)	$30
Hour Meter Installed (Per Unit)	$200
District Inspection Engines (New and Every 3 Years)	$345
District Inspection Engines (25% Discount Rate 4-9 Engines)	$269
District Inspection Engines (35% Discount Rate > 10 Engines)	$224
Off-Hour Inspection Cost (4 Hours@$50/Hour)	$200
District Equipment Inspection Cost per Hour (High)	$500
District Equipment Inspection Cost per Hour (Low)	$98
Average Cost to Inspect Equipment (Every Three Years)	$400
General Inspection Fee $75 (Every Three Years)	$75
Total Fee to Inspect Equipment (Average)	$475
District Inspection Fee TSE (Annual Per Unit)	$10
*Small Business is Equal to 70 Percent of Total Business	

Table 4 – District Inspection Engine

In program		% of Total
Number of Active Engines Private	19398	0.94
Number of Active Engines Private (Small Business)	13679	0.66
Number of Active Engines State	23	0.00
Number of Active Engines Local	1167	0.06
Number of Active Engines Federal (non TSE)	146	0.01
Total Active Engines (non TSE)	20733	1.00

# of Engines Needing Inspection Renewal *	2006	2007	2008	2009	2010
Engines Private	3318	5374	4577	***	***
Engines Private (Small Business)	2323	3762	3204	***	***
Engines State	4	6	5	***	***
Engines Local	200	323	275	***	***
Engines Federal (non TSE)	25	40	34	***	***
Total	3547	5744	4892		

Total Number Of Engines Needing Inspection (Renewal Plus New)	2006	2007	2008	2009***	2010***
Engines Private	5,657	7,713	6,916	6,593	8,648
Engines Private (Small Business)	3,960	5,399	4,841	4,615	6,054
Engines State	7	9	6	8	10
Engines Local	340	464	416	397	520
Engines Federal (non TSE)	42	58	52	49	65

Cost to Perform Inspection in Program and New W/O Discount/Fees	2006	2007	2008	2009	2010
Engines Private	$1,951,803	$2,660,882	$2,385,860	$2,274,588	$2,983,567
Engines Private (Small Business)	$1,366,262	$1,862,617	$1,670,108	$1,592,212	$2,088,667
Engines State	$2,314	$3,156	$2,829	$2,897	$3,538
Engines Local	$117,422	$160,081	$143,536	$136,841	$179,500
Engines Federal (non TSE)	$14,590	$19,890	$17,834	$17,003	$22,303
Total	$2,086,129	$2,844,008	$2,550,068	$2,431,129	$3,189,008

Discount for Multiple Engine Inspections

	# of engines in category	Percent will Utilize Discount **	Total Engines Using Discount
# of Engines = 4 through 9	2302	0.25	576
# of Engines = >10	16443	0.33	5426

Combined Discounts Associated with multiple inspections	
4 Thru 9 Engines	
Engines Private	538 / $46,441
Engines Private (Small Business)	377 / $32,509
Engines State	1 / $55
Engines Local	32 / $2,794
Engines Federal (non TSE)	4 / $347
>=10 Engines	
Engines Private	5077 / $613,023
Engines Private (Small Business)	3564 / $429,116
Engines State	5 / $727
Engines Local	305 / $36,880
Engines Federal (non TSE)	36 / $4,582

Cost to Perform Inspection with Discounts	2006	2007	2008	2009	2010
Engines Private	$1,292,339	$2,001,318	$1,726,404	$1,615,124	$2,324,203
Engines Private (Small Business)	$904,537	$1,400,992	$1,208,483	$1,130,587	$1,626,942
Engines State	$1,532	$2,373	$2,047	$1,915	$2,756
Engines Local	$77,748	$120,407	$103,862	$97,167	$139,826
Engines Federal (non TSE)	$9,660	$14,961	$12,905	$12,073	$17,373

Off-Hour Service Fee	2006	2007	2008	2009	2010
Engines Private	$39,944	$46,276	$41,493	$39,558	$51,890
Engines Private (Small Business)	$23,761	$32,393	$29,045	$27,691	$36,323
Engines State	$40	$55	$49	$47	$62
Engines Local	$2,042	$2,784	$2,496	$2,380	$3,122
Engines Federal (non TSE)	$254	$346	$310	$296	$388

Total Cost For Inspection (Total + Discount + Off-Hour Service Fee)	2006	2007	2008	2009	2010	Total
Engines Private	$1,326,283	$2,047,594	$1,767,898	$1,654,682	$2,375,093	$9,172,550
Engines Private (Small Business)	$928,298	$1,433,385	$1,237,528	$1,158,278	$1,663,265	$6,420,955
Engines State	$1,573	$2,428	$2,096	$1,963	$2,817	$10,876
Engines Local	$79,790	$123,191	$106,358	$99,547	$142,948	$551,834
Engines Federal (non TSE)	$9,914	$15,307	$13,215	$12,369	$17,761	$68,566
						$9,803,926

Active Engines in Program	# engines	% renew	Total Renew
2006 = 4729 engines due for renewal*	4729	0.75	3547
2007 = 7658 engines due for renewal*	7658	0.75	5744
2008 = 6522 engines due for renewal*	6522	0.75	4892
2009 = 2006 new and renewed engines plus 1000***			
2010 = 2007 new and renewed engines plus 1000***			
New Engines Coming Into Program/Yr (2006-2008)	2500		

Inspection Costs	
Cost For Inspection	$346
Cost for Discounted Inspection (4-9) engines (25%)	$259
Cost for Discounted Inspection (>10) engines (35%)	$224
Off-Hour Inspection Service Fee ($50/Hr x 4 Hrs)(**)	$200

* Historically 75 Percent of engines renew their Registration
** Assumed 3% of engines would be inspected off hours
*** Assumptions for 2009 and 2010

Table 5 – District Inspection Equipment

Active Equipment		Check	%			
Number of Registered Equipment Units Private	2174	2174	0.97			
Number of Registered Equipment Units Private (Small Business)	1522	1522	0.68			
Number of Registered Equipment Units State	0	0	0.00			
Number of Registered Equipment Units Local	69	69	0.03			
Number of Registered Equipment Units Federal	8	8	0.00			
Total Registered Equipment Units	2251	2251				
Equipment Inspections						
Equipment Cost per hour (high)	$500					
Equipment Cost per hour (low)	$98					
Inspection Time (low) = 1 Hr	1					
Inspection Time (High)= 5.1	5					
Inspection Time Average (Hours)	4.08					
General Insp Fee $75 Every Three Years	$75					
Total Average Inspection Cost/Unit (Every Three Years)	$475					
	Can Renew	Percent renew	Will Renew	New Units	Total Need Inspection	
2006	601	75%	451	250	701	
2007	763	75%	572	250	822	
2008	769	75%	577	250	827	
2009 (2006 Total Plus 250 Units)	701	75%	526	250	776	
2010 (2007 Total Plus 250 Units)	822	75%	617	250	867	
	Number of Equipment that need inspection					
	2006	2007	2008	2009	2010	
Equipment Private	677	794	798	749	837	
Equipment Private (Small Business)	474	556	559	524	586	
Equipment State	0	0	0	0	0	
Equipment Local	21	25	25	24	27	
Equipment Federal (non TSE)	2	3	3	3	3	
	701	822	827	776	867	
	Cost to Inspect Units					
	2006	2007	2008	2009	2010	Total
Cost to Inspect Equipment Units Private	$321,470	$377,209	$379,273	$355,791	$397,594	$1,831,337
Cost to Inspect Equipment Units Private (Small Business)	$225,029	$264,046	$265,491	$249,053	$278,316	$1,281,936
Cost to Inspect Equipment Units State	$0	$0	$0	$0	$0	$0
Cost to Inspect Equipment Units Local	$10,203	$11,972	$12,038	$11,292	$12,619	$58,124
Cost to Inspect Equipment Units Federal	$1,183	$1,388	$1,396	$1,309	$1,463	$6,739
Total						$1,896,200

Table 6 – District Inspections TSE

Cost to inspect per year	$10					
# Of TSE equipment*	4721					
Total Annual Cost to Inspect TSE	$47,210					
*Historically, the number of TSE equipment has been relatively constant; therefore, staff used the current number for all years.						
	Cost for TSE Inspection					
	2006	2007	2008	2009	2010	Total
Cost to Inspect Tactical Support Units Federal	$47,210	$47,210	$47,210	$47,210	$47,210	$236,050

Table 7 - Placards

Cost for Placard	$5							
Total Registered Engines and Equipment	**# Of Equipment**	**% of Total**						
Number of Registered Engines and Equipment Private	21572	0.78						
Number of Registered Engines and Equipment Private (Small Business)	15100	0.55						
Number of Registered Engines and Equipment State	23	0.00						
Number of Registered Engines and Equipment Local	1236	0.04						
Number of Registered Engines and Equipment Federal	4874	0.18						
Total Number of Registered Engines and Equipment	27705	1						
Number of New Engines and Equipment Entering Program per Year	2750							
			Number of Placards Needed					
			2006	2007	2008	2009	2010	
Number of Engines and Equipment That Need Placards Private			21572	2141	2141	2141	2141	
Number of Engines and Equipment That Need Placards Private (Small Business)			15100	1499	1499	1499	1499	
Number of Engines and Equipment That Need Placards State			23	2	2	2	2	
Number of Engines and Equipment That Need Placards Local			1236	123	123	123	123	
Number of Engines and Equipment That Need Placards Federal			4874	484	484	484	484	
Total			27705	2750	2750	2750	2750	
			Cost for Placards					Total
			2006	2007	2008	2009	2010	
Cost For Placards Private			$107,860	$10,706	$10,706	$10,706	$10,706	$150,685
Cost For Placards Private (Small Business)			$75,500	$7,494	$7,494	$7,494	$7,494	$105,477
Cost For Placards State			$115	$11	$11	$11	$11	$161
Cost For Placards Local			$6,180	$613	$613	$613	$613	$8,634
Cost For Placards Federal			$24,370	$2,419	$2,419	$2,419	$2,419	$34,046
Total								$193,525

Table 8 – Placard Replacement

Cost for Placard Replacement	$30							
Total Active Engines and Equipment	**# Of Equipment**	% of Total						
Number of Active Engines and Equipment Private	21572	0.78						
Number of Active Engines and Equipment Private (Small Business)	15100	0.55						
Number of Active Engines and Equipment State	23	0.00						
Number of Active Engines and Equipment Local	1236	0.04						
Number of Active Engines and Equipment Federal	4874	0.18						
Total Number of Active Engines and Equipment	27705	1						
Number of replacement placards needed per year*	225							
*Based on 1/2 of total PERP replacement stickers issued in 2005								
			# of Placards needed					
			2006	2007	2008	2009	2010	
Number of Engines and Equipment That Will Replace Placards Private			175	175	175	175	175	
Number of Engines and Equipment That Will Replace Placards Private (Small Business)			123	123	123	123	123	
Number of Engines and Equipment That Will Replace Placards State			0	0	0	0	0	
Number of Engines and Equipment That Will Replace Placards Local			10	10	10	10	10	
Number of Engines and Equipment That Will Replace Placards Federal			40	40	40	40	40	
Total			225	225	225	225	225	
			Cost for placards					Total
			2006	2007	2008	2009	2010	
Cost For Placard Replacements Private			$5,256	$5,256	$5,256	$5,256	$5,256	$26,279
Cost For Placard Replacements Private (Small Business)			$3,679	$3,679	$3,679	$3,679	$3,679	$18,395
Cost For Placard Replacements State			$6	$6	$6	$6	$6	$28
Cost For Placard Replacements Local			$301	$301	$301	$301	$301	$1,506
Cost For Placard Replacements Federal			$1,187	$1,187	$1,187	$1,187	$1,187	$5,937
Total								$33,750

Table 9- Hour Meters

Cost of Meter Installed	$200								
	#	% of Total		# Engines/Equipment That Need Hour Meters					
Total Registered Engines and Equipment				2006	2007*	2008*	2009*	2010*	
Number of Registered Engines and Equipment Private	21572	0.78		3410	0	0	0	0	
Number of Registered Engines and Equipment Private (Small Business)	15100	0.55		2387	0	0	0	0	
Number of Registered Engines and Equipment State	23	0.00		4	0	0	0	0	
Number of Registered Engines and Equipment Local	1236	0.04		195	0	0	0	0	
Number of Registered Engines and Equipment Federal	4874	0.18		771	0	0	0	0	
Total Registered Engines and Equipment	27705	1		4380	0	0	0	0	
# Engines That Need Hour Meters (2006)	4380								
				Cost For Hour Meters					
				2006	2007	2008	2009	2010	Total
Cost for Engines and Equipment That Need Hour Meters Private				$682,082	$0	$0	$0	$0	$682,082
Cost for Engines and Equipment That Need Hour Meters Private (Small Business)				$477,445	$0	$0	$0	$0	$477,445
Cost for Engines and Equipment That Need Hour Meters State				$727	$0	$0	$0	$0	$727
Cost for Engines and Equipment That Need Hour Meters Local				$39,081	$0	$0	$0	$0	$39,081
Cost for Engines and Equipment That Need Hour Meters Federal				$154,110	$0	$0	$0	$0	$154,110
Total									$876,000

* Assumes all engines entering program after 2006 will be equipped with an hour meter.

Table 10- Recordkeeping

			# Engines/Equipment That Need to Keep Records				
Cost to keep records per engine/unit	$400						
	#	% of Total	2006	2007	2008	2009	2010
Total Registered Engines and Equipment							
Number of Registered Engines and Equipment Private	21572	0.94	14169	16750	19331	21912	24493
Number of Registered Engines and Equipment Private (Small Business)	15100	0.66	9918	11724	13531	15338	17145
Number of Registered Engines and Equipment State	23	0.00	15	18	21	23	26
Number of Registered Engines and Equipment Local	1236	0.05	812	960	1108	1255	1403
Number of Registered Engines and Equipment Federal	153	0.01	100	119	137	155	174
Total Registered Engines and Equipment	22984	1					
# engines/equipment that need recordkeeping (2006)	15096						
#engines/equipement new (2007-2010)	2750						

	Cost To Keep Records					Total
	2006	2007	2008	2009	2010	
Cost for Engines and Equipment That Need Recordkeeping Private	$5,667,437	$6,699,859	$7,732,282	$8,764,704	$9,797,127	$38,661,409
Cost for Engines and Equipment That Need Recordkeeping Private (Small Business)	$3,967,101	$4,689,777	$5,412,454	$6,135,131	$6,857,807	$27,062,269
Cost for Engines and Equipment That Need Recordkeeping State	$6,043	$7,143	$8,244	$9,345	$10,446	$41,221
Cost for Engines and Equipment That Need Recordkeeping Local	$324,724	$383,878	$443,033	$502,187	$561,341	$2,215,163
Cost for Engines and Equipment That Need Recordkeeping Federal	$40,196	$47,519	$54,841	$62,164	$69,486	$274,207
Total						$41,192,000

Appendix D

List of Acronyms

Appendix D

List of Acronyms

AB	Assembly Bill
AQIA	Air Quality Impact Analysis
ARB or Board	Air Resources Board
ARB staff or Staff	Air Resources Board Staff
ATCM	Airborne Toxic Control Measure
BACT	Best Available Control Technology
bhp	Brake-horsepower
CAA	Federal Clean Air Act
CAPCOA	California Air Pollution Control Officers Association
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CO	Carbon Monoxide
Districts	Air Pollution Control Districts or Air Quality Management Districts
DOF	Department of Finance
g/bhp-hr	Grams per Brake Horsepower-hour
HAP	Hazardous Air Pollutant
HC	Hydrocarbons
HSC	California Health and Safety Code
ISOR	Initial Statement of Reasons
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
NMHC	Non-methane Hydrocarbons
NOx	Oxides of Nitrogen
NSR	New Source Review
OCS	Outer Continental Shelf
PEPS	Provider of Essential Public Service
PERP	Statewide Portable Equipment Registration Program
PM	Particulate Matter
ppmvd	Parts Per Million by Dry Volume
PSD	Prevention of Significant Deterioration
SB	Senate Bill
SCAQMD	South Coast Air Quality Management District
SOx	Oxides of Sulfur
STW	State Territorial Waters
Statewide Regulation	Statewide Portable Equipment Registration Program Regulation
TACs	Toxic Air Contaminants
TSE	Tactical Support Equipment
U.S. EPA	United States Environmental Protection Agency

UTM	Universal Transverse Mercator
VOC	Volatile Organic Compounds
Workgroup	Portable Equipment Workgroup

Appendix E

PERP Consensus Development Workgroup Proposal

PERP CONSENSUS DEVELOPMENT WORKGROUP PROPOSAL

August 1, 2005

PERP CONSENSUS DEVELOPMENT WORKGROUP PROPOSAL

1. REGISTRATION RENEWAL PERIOD - § 2462 (a)

All registrations and renewals would be valid for three years. There would be no five-year registrations or renewals.

2. ARRANGED INSPECTIONS

A. Home District Designation

1. Each applicant for ARB registration would be required to designate in the application a "home district" based on the district in which the portable engine or equipment unit resides most of the time. § 2452 (l)

2. An owner/operator of a portable engine or portable equipment unit with an existing registration for which a home district has not been designated would be required to designate a home district within 90 days of the effective date of the amended regulation based on the district in which the portable equipment resides most of the time. § 2453 (i)(1)

1. **Home-District Switch:** If, at the time of the registration renewal following the required submittal of three annual reports after the effective date of the amended regulation, the last three annual reports for a portable engine or portable equipment unit showed that the engine or unit, based on an averaging of the data for the three years for those reports, operated the largest percentage of the time in one non-home district, the owner/operator would be required to change the home district designation to that other district at the time of the next registration renewal for that engine or unit. The switch would not be required if the difference in the two largest percentages was 5 % or less. This review would then happen every three years at the time of the registration renewal. § 2453 (i)(3)

   a. **Exception to Home-District Switch for Rental Businesses:** The home-district switch provisions would not apply to a "rental business" as defined in the ARB regulation. § 2453 (i)(3)

B. Arranged Inspections by Home District

1. **Scope:** Each district would inspect all portable equipment registered with ARB for which the district in question is designated as the home district, as specified below. § 2460 (b)

2. **Contact:** Within 45 days of the date of issuance or renewal of a registration for the portable equipment in question, the owner/operator would be required to contact the district to start the arrangement process for the inspection of the portable equipment engine or portable equipment unit. The 45-day period would be the period in which the owner/operator must make that contact. The actual scheduling of the inspection, and the performance of the inspection, would not have to be completed within that period. [For clarity, the "arrangement" process includes the initial contact and the subsequent scheduling (date/time/location) of the inspection.] § 2460 (b)(1)

3. **Time Period/Frequency:** The district and owner/operator would arrange the inspection of the portable engine or portable equipment unit so that the inspection would be completed within one year of the registration date or registration renewal date. Each engine or unit would have an arranged inspection every three years. § 2460 (b)(1)

4. **Non-field Inspections:** Each district would conduct at least 80 percent of the arranged inspections for that district as "non-field" inspections at a location that is mutually acceptable to the district and the owner/operator (i.e., a company location or a district location). The at least 80 percent number applies on a district basis -not on an owner/operator basis. § 2460 (b)(2)

5. **In-field Inspection:** Each district could conduct up to 20 percent of the arranged inspections for that district as "in-field" inspections with the portable engine or portable equipment unit under operation in the field. The up to 20 percent number applies on a district basis -not on an owner/operator basis.
§ 2460 (b)(2)

    a. Generally the district would work out with the owner/operator the number of engines or units that would be inspected in the field under operating conditions. This would be a reasonable number of engines and/or units and not a large number of engines and/or units. Not addressed in reg.

    b. If an owner/operator requested an in-field inspection for one or more of its portable engines or portable equipment units, the number of engines/units covered under that request would not have to count toward the district's "up to 20 percent" number. Not addressed in reg.

    c. There would be a provision to address reasonable situations where the engine or unit might not be running at the arranged time. § 2460 (b)(5)

d. The owner/operator would be subject to enforcement if the district determined that owner/operator was trying to circumvent having an infield inspection under operation based on a pattern of activity.§ 2460 (b)(5)

e. If a portable engine or portable equipment unit failed an in-field inspection, the next arranged inspection for that engine would be an infield inspection. § 2460 (b)(2)

f. Because utility/telecommunication industry registered portable engines and portable equipment units need to move frequently as they provide critical services to the public, the arranged inspections for utility/telecommunications industry registered portable engines and portable equipment units would all be non-field inspections at locations that are mutually acceptable to the district and the owner/operator (i.e., company locations or district locations). § 2460 (b)(4)

6. **Time of Inspection:** The time for the arranged inspection would be arranged in advance and company preferences regarding time of day would be accommodated within reason. (CAPCOA recognizes that early or late afternoon inspections would be more workable for many businesses due to work force and operational reasons.) § 2460 (b)(5

   a. To the extent that part or all of an arranged early-or late-in-the-day inspection does not fall within the district's normal workday, the district could charge for the off-hour time based on a fee for service of $50 per hour. § 2460 (b)(5)

7. **Arranged Inspection in a Non-Home District:** In a situation where the portable engine/portable equipment unit was operating in another district for an extended period, the owner/operator or rental business could request that the home district contact that other district and request that the other district conduct the arranged inspection in that district. Such an inspection would be arranged in advance with the owner/operator. § 2460 (b)(1)

8. **Engines and/or Equipment Units Operating Out of State/Country:** If a particular portable engine or portable equipment unit is out-of-state (or country) for the one-year period following the registration renewal date, the engine or equipment unit would be automatically be excused from having the arranged inspection within that one-year period if: § 2460 (b)(8)

   a. the owner/operator submitted a letter to the district noting the registration number of the engine or unit and that the engine or unit is out-of-state for the one-year period; § 2460 (b)(8)(B)

   b. The owner/operator arranged, upon the return of the portable engine or portable equipment unit to the state, to have the engine or unit inspected within 30 days of the return of the engine or unit to the state. § 2460 (b)(8)(C)

9. **Cooperation:** The regulation would provide that owner/operator would not unreasonably withhold the scheduling of the inspection. CAPCOA recognizes that there is a one-year period in which the inspection could be scheduled. An example of unreasonably withholding the scheduling would be where the owner/operator did not return the district's calls regarding scheduling within a reasonable period of time. Noncompliance with this provision could trigger a Notice to Comply. Not addressed in reg.

C. Arranged Inspections for Multiple Portable Engines/Portable Equipment Units

1. The owner/operator could request the scheduling of one or more arranged inspections for multiple engines and/or equipment units in order to qualify for an inspection fee discount for multiple engines and/or equipment units. (This might involve multiple inspections with multiple engines and/or equipment units for one owner/operator.) § 2460 (b)(7)

2. The scheduling of the multiple engine and/or equipment unit inspections would be arranged so that the home district would perform the inspection of a particular engine or equipment unit within one year of the registration renewal date for that engine or equipment unit. § 2460 (b)(7)

3. If the owner/operator chose to make such a request, the owner operator would be required by January 30 to submit to the district an equipment list with the registration renewal dates, and the corresponding registration numbers, for the portable engines and equipment units for which the renewal date would occur in that year. The company would select which engines and/or equipment units would be aggregated at the particular arranged inspection for multiple engines and/or equipment units. § 2460 (b)(7)

D. "Based Out-Of-State" Optional Exception from Arranged Inspection and Automatic Fee Requirement

1. At the time of registering a portable engine or equipment unit, or renewing the registration for a portable engine or equipment unit, which is based out-ofstate and that occasionally operates in California, the owner/operator could elect in writing in the registration to except the engine/unit from the arranged inspection requirement. § 2460 (b)(8)

2. An owner/operator that elects the exception for an engine or equipment unit would be required to:
   a. designate a home district in California based on where the engine or unit is most likely to be used. § 2452 (l) - definition of Home District
   b. pay the triennial inspection fee of $345 or annual inspection fee of $115 per year; and § 2460 (b)(8)(A)
   c. notify the appropriate district via facsimile or e-mail as soon as the equipment is ordered for a job in California (i.e., this would be prior to movement of the engine or unit into the state for operation in that

district).

3. This category would not be subject to the arranged inspection requirement if the owner/operator did not bring the engine into the State. However, once the owner/operator notified a district that it was moving the engine or unit into a district in the State, that district could arrange an inspection with the owner/operator in coordination with the designated home district. § 2460 (b)(8)(c)?

E. Non-Arranged Inspections

The regulation would not preclude a district from conducting a non-arranged inspection for a registered portable engine or registered portable equipment unit. However, the district could not charge the owner/operator and additional inspection fee for that inspection. In other words, an owner/operator would be required to pay only one inspection fee for a portable engine or portable equipment unit for each 3-year registration cycle. § 2460 (c)

3. NEW PORTABLE ENGINES AND EQUIPMENT UNITS

The vendor that sells the new portable engine or portable equipment unit would be required to:

A) notify ARB of the sale of the engine. Such notifications could be made on a monthly basis to allow "bundling" of the notifications; and

B) notify the buyer of the PERP requirements (e.g., with a fact sheet).

4. READILY VISIBLE INDICATOR OF REGISTRATION - § 2452(n) and 2453(f)

The Workgroup wants to explore the notion of a larger sticker or other indicator that would be stuck to or mounted to the engine/equipment unit or the engine/equipment unit cover (along with the registration sticker) so that the engine or equipment unit could be easily identified as a registered engine or equipment unit or a permitted engine or equipment unit. This new generic indicator would be separate from the registration sticker to simplify distribution and installation (i.e., the new indicator would not have the registration number on it). For registered engines or equipment units, the indicator could include an indication of the home district (e.g., with a number assigned to each district). § 2452 (n) and § 2453 (f)

5. HOUR METERS

A. **Scope:** Non-resettable hour meters or functionally equivalent devices would be required for both non-certified and certified engines.

B. **Phase-In:** A phase-in period of 6 months from the effective date of the amended regulation would be provided for installation of the meter/devices.

6. RECORD KEEPING

A. **Non-Certified Engines (General Provision):** The record keeping provisions that are currently proposed to go to OAL for non-certified engines would apply to non-certified engines (with the exceptions noted below). Under these provisions, the owner/operator would record for each day of operation the hours of operation (for engines that are subject to hour limits) or fuel usage (for engines that are subject to fuel use limitations) and the location(s) by district, county or specific location. (See the proposed amended rule for more detail.) See Sections 6.C., 6.D., 6.E and 6.F. for exceptions. § 2458 (a)

B. **Certified Engines (General Provision):** The record keeping provisions that are currently proposed to go to OAL for **non-certified** engines would apply to **certified** engines. Under these provisions, the owner/operator would record for each day of operation the hours of operation (for engines that are subject to hour limits) or fuel usage (for engines that are subject to fuel use limitations) and the location(s) by district, county or specific location. (See the proposed amended rule for more detail.) See Sections 6.C., 6.D., 6.E, and 6.F. for exceptions.

§ 2458 (a)

C. **Rental Business:** Record keeping for a rental business would consist of the following for both non-certified and certified engines: § 2458 (b)

1) the portable engine or equipment unit registration number;
2) the hours at the start of the rental transaction, the hours at the return of the rental transaction and the difference (the hours of operation for the rental period);
3) the location of use (by district, county or specific location) that was reported to the rental business by the entity renting the portable engine or portable equipment unit for the rental period.

[Note – the rental business would be required to request that the company renting the portable engine or portable equipment provide the location of use.]

D. **Third-Party Rentals:** For third-party rentals not involving a rental business, the record keeping for the owner/operator would consist of the following for both non-certified and certified engines: § 2458 (b)

1) the portable engine or equipment unit registration number;
2) the hours at the start of the rental transaction, the hours at the return of the rental transaction and the difference (the hours of operation for the rental period);
3) the location of use (by district, county or specific location) that was reported to them by the entity renting the portable engine or portable equipment unit for the rental period.

[Note – the owner/operator would be required to request that the company renting the portable engine or portable equipment provide the location of use.]

E. **Record Keeping and Annual Report for Portable Engines and Portable Equipment Units Owned/Operated/Rented/Leased by Utilities/ Telecommunication Industry:** This category would report the total annual hours operated in the annual report (from the hour meter or functionally equivalent device) and **estimate** the percentage of hours for the three counties in which the engine operates the most (e.g., 50% San Joaquin, 30% Sacramento, 20% Colusa) for both non-certified and certified engines. This category would not have to maintain daily or other records under PERP. § 2458 (g)

F. **Tactical Support Equipment (TSE):** This package does not propose any changes to the record keeping requirements for TSE. NA

7. RECORDS REQUESTS - § 2458 (h)

A. A PERP records request would have to be made by the district in writing;

B. the records request would go to the designated contact person;

C. the requirement would cover records prospectively (records made after the effective date of the regulation);

D. the owner/operator would have 30 days to provide the records; and

E. the APCO would be willing to meet with the owner/operator if the owner/operator believed that the district in question was making unreasonable multiple requests for PERP records.

8. ANNUAL OWNER/OPERATOR REPORT

A. Contents:

1. **Non-Certified Engines (General Provision):** Except as noted below, the annual report requirement that applies currently applies to non-certified engines (and is proposed to be stricken in the current proposal going to OAL) would apply again for non-certified portable engines and portable equipment units. § 2458 (e)

2. **Certified Engines (General Provision):** Except as noted below, the annual report requirement that applies currently to non-certified engines and equipment units (and does not apply to certified engines) **would apply to certified** portable engines and portable equipment units. § 2458 (e)

3. **Rental Businesses:** For non-certified and certified portable engines or portable equipment units that a rental business rents, the rental business would include in the annual report: § 2458 (f)
   a. the reporting year;
   b. the portable engine or equipment unit registration number;
   c. the total hours of operation for that year for that engine or equipment unit based on, and including, beginning and ending annual hour meter readings and dates upon which the total hours of annual operation calculation is based;
   d. a list of all counties that the portable engine or portable equipment operated in during that reporting year as reported to the rental business by the entity(ies) that operated the rented engine;
   e. an estimate of the percentage of total hours operated in the reporting year that the portable engine or portable equipment unit operated in the county in question for each of those counties.

4. **Third-Party Rentals:** For non-certified and certified portable engines or portable equipment units that an owner/operator (as opposed to a rental business) rents to a third party, the owner/operator would include in the annual report: § 2458 (f)
   a. the reporting year;
   b. the portable engine or equipment unit registration number;
   c. the total hours of operation for that year based on, and including, the hour reading at the beginning of the year, and for the last time out for that year;
   d. a list of all counties that the portable engine or portable equipment operated in during that reporting year as reported to the owner/operator by the entity(ies) that operated

the rented engine;

e. an estimate of the percentage of total hours operated in the reporting year that the portable engine or portable equipment unit operated in the county in question for each of those counties.

5. **Portable Engines and Portable Equipment Units Owned/Operated/Rented/Leased by Utilities/Telecommunication Industry:** This category would report in the annual report for both non-certified and certified engines and equipment units: § 2458 (g)

   a. the reporting year;
   b. the portable equipment engine or equipment unit registration number;
   c. the total hours of operation (from the hour meter or functionally equivalent device);
   d. an estimate of the percentage of hours for the three counties in which the engine operates the most (e.g., 50% San Joaquin, 30% Sacramento, 20% Colusa).

6. **Tactical Support Equipment:** ARB regulation requirements apply (i.e., if that is no annual report requirement, then no annual report requirement applies). NA

B. Signatory: The signatory for the owner/operator annual report would have to be a manager in the owner/operator company. § 2458 (e) & (f)

9. DELETION OF PERP NOTIFICATION REQUIREMENTS

With the exceptions noted below, the notification requirements would be deleted from the regulation because of the creation of the arranged inspection program and the addition of the other elements of this proposal. § 2459 (e)

A. "Based Out-of State" Exception: As noted above, a specific notification requirement would apply to portable engines and portable equipments that are based out-of-state and elect out of the arranged inspection program. § 2460(b)(8)(C)

B. Auxiliary Equipment Exception: See Section 12 below.

10. INCREASED UNIFORM INSPECTION FEE

A. Amount/Payee/Period: The owner/operator would pay to ARB a district inspection fee according to one of the following two options from which the owner/operator would select:

1. Option 1 -Trienial: $345 at the time of registration renewal (i.e., every three years) – which includes a $30 general inspection fee; § 2461 Table 2.

a. ARB would distribute the district inspection fee to the home district in

question on an annual basis. § 2461 Table 2.

2. Option 2 -Annual: $115 every year at the same date as the registration renewal date -which includes a $10 general inspection fee. NA

   a. This option would be available if the owner/operator owned or operated at least **X** registered engines.

   [Note: "X" would be determined during the ARB process.]

B. TSE Inspection Fees: For TSE, the military would pay the $30 triennial ($10 per year) general inspection fee, but otherwise the existing fee structure would apply (i.e., the $345 every three years would not apply except for the $30 portion). § 2461 Table 2.

C. Use: The regulation would specify that the use of the inspection fee dollars is limited to enforcement of the PERP. Not addressed in reg.

D. Fee Discount for Inspection of Multiple Engines/Equipment Units: A multiple engine/equipment unit discount would apply based on the number of engines and/or equipment units made available at the inspection as follows:

1. 1-3 engines and/or equipment units: no discount;
2. 4 -9 engines and/or equipment units: 25% discount;
3. 10 or more engines and/or equipment units: 35% discount. § 2461 (d)

E. [UNDER REVIEW BY ARB] Inspection Fee "Credit" for Mid-Registration Cycle Replacement: The Workgroup proposes that if an owner/operator pays the inspection fee but then replaces that engine at some point in the registration cycle, the owner/operator should not have to pay a PERP inspection fee for the replacement engine until the next registration renewal date (or annual inspection fee payment date). ARB is evaluating this proposal for feasibility. NA

F. Renewal Date Options: There would be options (at the choice of the owner/operator) related to renewal dates and consolidation and/or staggering of inspections/fee payment. NA

1. Option 1 – maintain the existing schedule for registration renewal;
2. Option 2 – consolidate renewal dates on one new date;
3. Option 3 -stagger/consolidate renewal dates with one renewal date each year so that one-third of the engines/units are inspected each year.

11. TACTICAL SUPPORT EQUIPMENT

This package does not propose any changes for PERP requirements for Tactical Support Equipment except where explicitly stated in this document. NA

12. AUXILIARY EQUIPMENT

The following PERP provisions would apply for a specified set of auxiliary equipment.

A. **Scope:** The provisions below would apply to the list of auxiliary equipment currently listed in the PERP regulation that is proposed to go to OAL (i.e., no additions or deletions – the list would be the portable equipment units associated with:

1. confined abrasive blasting operations;
2. concrete batch plants;
3. sand and gravel screening, rock crushing and pavement crushing and recycling operations;
4. unconfined abrasive blasting operations;
5. tub grinders and trommel screens).

B. **Inspection Type:** the arranged inspections for equipment in this category would all be in-field (under load) inspections when possible;

1. the owner/operator would work in good faith with the district to schedule an inspection time when the auxiliary equipment would be already be operating under load; § 2460 (b)(6)
2. the owner/operator would make reasonable efforts to make it possible for the inspector to inspect the auxiliary equipment at a site under load; § 2460 (b)(8)
3. there would be a provision to address reasonable situations where a particulate piece(s) of auxiliary equipment might not be running at the arranged time;
4. § 2460 (b)(6)
5. the owner/operator would be subject to enforcement if the district determined that owner/operator was trying to circumvent having an in-field inspection under load based on a pattern of activity. § 2460 (b)(6)

C. **Inspection Fee:** a $98/hour inspection fee (in lieu of regular inspection fee) for the first inspection within a **compliance year** to be billed by the local district for that inspection; § 2461 (g)

1. the inspection fee for auxiliary equipment would be **capped** at $500. § 2461 (g)
2. if the owner/operator thought that the inspection fee was unreasonable, the district APCO would be willing to discuss that concern with the owner/operator. § 2461 (g)
3. the costs for all other inspections for that piece of equipment for that compliance year would be at the district's expense (i.e., no additional fee). 61(g)
4. Inspection frequency defined in Section 2.B.3.

[Note: CAPCOA and CMAC agreed that equipment under Section 12 of this proposal should be inspected on the same 3-yr cycle as all other PERP equipment/engines]

D. **General Inspection Fee:** The owner/operator would pay a fee of $75 per piece of registered auxiliary equipment per three-year registration cycle (or $25 per year) for the general inspection pool funding to be divided among local air districts (analogous to the $30 per engine general inspection fee that is part of the $345 inspection fee per three-year cycle or $10 per engine general inspection fee that is part of the $115 per year annual inspection fee for the registered portable engines and equipment units). § 2461 Table 2.

E. **Inter-District Notification:** the existing notification (5-day inter-district notification) requirement would still apply for this category of equipment. NA

F. **Intra-District Notification**: The existing "Inter-district" notification requirement (see (E) above) would be extended to apply also to movement of auxiliary equipment within a district, except that the equipment owner and the district may, by mutual agreement, arrange a limited intra-district notification requirement that would apply as follows for auxiliary units under this section: § 2459 (a)

1. the district and owner/operator would work out an agreement designating the areas in which such notification would be required based on special circumstances (e.g., sites with naturally occurring asbestos):

2. if the owner/operator was going to move the unit into a designated area, the owner/operator would be required to notify the district of the approximate arrival time and location by facsimile or e-mail prior to moving to that area;

3. notification would be required if the owner/operator dismantled the equipment and moved it to a different location in a designated area.

G. **Related Engine Inspection Election:** The owner/operator would select in the registration whether the related portable **engine** would be inspected and assessed an inspection fee under the arranged inspection program or would be inspected § 2460 (b)(3) together with the auxiliary equipment under these provisions (with the time for the engine inspection being counted toward the hourly-based inspection fee).

H. **Public Meeting, Status Report and Potential Program Changes for Auxiliary Equipment:**

1. After the first 3-year cycle of implementation, ARB staff would prepare a report (or memorandum) to its Board regarding implementation of the new auxiliary equipment provisions. The intent would be to determine if changes are needed to the auxiliary provisions after implementation experience.

   a. To solicit public input for the development of the report, ARB staff would notice and hold a public meeting prior to issuing the report for that purpose.

2. Staff would present the report (or memorandum) to the Board at a regular Board meeting, and the Board would hear public testimony on the item. The Board, at

its discretion, could decide if changes to the auxiliary sections of the program were needed (i.e., whether or not a rulemaking should be initiated).

13. ANNUAL DISTRICT REPORT - § 2458 (i)

Each district would be required to submit an annual report to ARB by March 31 of the following year that would include:

A) the number of portable engines and equipment units inspected;

B) the number of scofflaw engines and equipment units discovered (i.e., the number of engines and equipment units discovered that are neither registered with ARB nor permitted by a district);

C) the number of registered engines and equipment units inspected;

D) the number of registered auxiliary units (that fall under Section 12) inspected;

E) summary results for its inspections as a whole.

Appendix F

CAPCOA Proposal For Home District Fees On Portable Equipment

CAPCOA PROPOSAL FOR HOME DISTRICT FEES ON PORTABLE EQUIPMENT

RECOMMENDATIONS

- ***Inspection Frequency:*** Sources registered in the PERP will be subject to inspection, on average, every 2 years but may be inspected more or less frequently as circumstances dictate. Increased frequency of inspection for a given piece of equipment is at the discretion of the district and will not affect the annual renewal rate.

- ***Inspection/Renewal Fees:*** A renewal/inspection fee on each piece of registered equipment would be would be invoiced and collected annually by each home district based on the average cost of a biannual inspection:

  - *Simple Portable Engines:* $315 per inspection/2 = $155 per engine per year.
  - *Portable Aggregate Plants and Other Complex Equipment:* $353/2 = $175 per unit per year
  - *Multiple Engines Under Single Ownership:*
    - More than 10 engines = 10% discount per engine
    - More than 50 engines = 15% discount per engine
    - More than 100 engines = 20% discount per engine

- ***Home District Designation:*** All portable engines registered in the PERP program must have a designated home district.

- ***Unregistered Equipment:*** ARB, Registered Equipment Owners and District Staff will coordinate regularly to identify and require registration for all applicable equipment not currently registered in the program. CAPCOA's Enforcement Manager's committee will work with ARB staff to develop recommended minimum penalties for unregistered equipment discovered after the amnesty period.

DISCUSSION

The current $75.00 inspection fee authorized in ARB's Portable Equipment Registration Program (PERP) to reimburse air districts for equipment inspections is insufficient to cover the actual inspection costs incurred by Districts. It also does not address the resources needed to establish and maintain emissions, operation, and compliance databases, to estimate and prioritize health risks, or to report information to the ARB. To enable air districts to continue implementing the compliance part of the PERP program, CAPCOA has expressed the need for the inspection fee be increased to a level that covers the real costs of inspecting and reporting on this equipment.

Renewal/Inspection Fees

At ARB's March 30, 2004 and May 18, 2004 workshops on this issue, it was agreed by all participants that CAPCOA would draft a proposal that incorporated the concept of an annual fee for registered equipment. The fee would be collected by the designated home district to cover documented average costs for inspections and recordkeeping. CAPCOA has conducted surveys of districts to determine the average time spent by district staff in all activities associated with portable equipment inspections (Attachment 1). Such activities include the following:

- research and review of compliance data on the equipment prior to inspection,
- travel to and from the inspection site,
- onsite evaluation of the equipment and required records,
- post-inspection follow-up, recordkeeping, data entry and reporting, and
- invoicing and accounts receivable activities.

The average time spent per district was found to be approximately 4.2 hours for standard engines. For more complex equipment such as portable aggregate plants, the onsite inspection generally takes longer, resulting in an average total of 4.7 hours. The average billing rate for district services is approximately $75 per hour. Thus, District costs per inspection are as follows:

- Standard Portable engines: $75/hour x 4.2 hours = $315
- Complex Portable equipment: $75/hour x 4.7 hours = $353

* *It is important to note that the costs identified above do not include district staff time and resources to implement the new requirements contained in the proposed ATCM for portable diesel engines. As CARB has acknowledged in their Notice of Public Hearing on the ATCM, local air districts may incur additional enforcement costs as a result of implementing the ATCM. Some of those new requirements (i.e. the fleet standards) may not be applicable for some time, but others have earlier compliance deadlines. These costs may have to be addressed at a later date. Attachment 2 provides more detail on the new enforcement requirements under the ATCM.*

Multiple Engines at One Site

Much discussion has occurred regarding reducing the fees for inspections of multiple equipment located at the same site. It is true that district travel time and costs per engine inspected are generally reduced when more than one engine is inspected at a specific site. However, it is also true that the current inadequate noticing requirements for portable equipment make it very difficult to know in advance if multiple engines will be present at the same site, or which engines those might be. With an annual renewal fee rather than individual inspection fees, it is not possible to adjust fees for the different situations encountered in the field. This applies not only to situations where district costs are reduced due to the presence of multiple engines at one site, but also when district costs are higher due to unexpected conditions encountered with the equipment or operations that require more time for the inspection and recordkeeping.

Given these circumstances, the only feasible way to provide a discount for multiple engines at the same site is to base the discount on the number of engines owned by each company. This method assumes that, the more engines under one ownership, the higher the probability that two or more engines may be inspected at the same site. CAPCOA is willing to agree to the following discounts for owners of multiple engines registered in the program:

- More than 10 engines under single ownership = 10% discount per engine
- More than 50 engines under single ownership = 15% discount per engine
- More than 100 engines under single ownership = 20% discount per engine

Inspection Schedule

Discussions with district staff have indicated a willingness to limit inspections to a biannual schedule. If the home districts collected an annual renewal fee based on biannual inspections, the annual fee would be

½ of the values cited above. A given district would still have discretion to conduct more frequent inspections as needed, but the annual renewal fee would remain based on a biannual inspection schedule.

Inspection Forms and Reporting
The CAPCOA Enforcement Managers committee will discuss options for creating a standardized reporting form, including consideration of modifying ARB's existing online inspection form to make it more usable for districts. *However, use of any standardized reporting method developed by CAPCOA* would be voluntary for each district.

Home District Registration
In order for this program to work properly, each engine registered in the PERP must designate a home district. The home district will be responsible for conducting the biennual inspections on registered equipment and for processing the annual invoices for renewal payments. ARB should publish a list annually identifying the number of registered equipment units per district. Any registered piece of equipment that does not have a designated home district would be subject to a penalty equal to 1.5 times the annual renewal fee and a requirement to designate the district that first inspects it as its home district.

Unregistered Equipment
District Staff will coordinate regularly with ARB and registered equipment owners to identify and address applicable equipment not currently registered in the program. CAPCOA's Enforcement Manager's committee will work with ARB staff to develop recommended minimum penalties for unregistered equipment discovered after the amnesty period. Such penalties should include, at a minimum, back payment for all years in which the equipment should have been registered.

UNRESOLVED ISSUES

Some districts currently have little or no portable equipment registered in their area, but may have portable equipment registered elsewhere working in their district. With a single annual registration fee rather than separate registration and inspection fees, there is no current mechanism to recover district costs if an inspection is required.

One potential mechanism for resolving this is for ARB to agree to conduct the portable equipment inspections in those districts using the funds they collect through their own registration fees. Alternatively, ARB could agree to reimburse such districts for each inspection performed by district staff on portable equipment not registered in their district.

Attachment 1

CURRENT PERP INSPECTION ACTIVITIES

ACTION	TIME (min)
For Simple Engines:	
Pre-Inspection:	
Rule review for PERP	30
Database & Records Review	20
Driving Time (Round Trip)	30 - 60
Subtotal =	80 - 110
Inspection:	
Interview responsible person	20
Inspect ICE/s (VEE) (1 ICE to #s)	20-50
Review onsite records for CARB Certification	15
Distribute CARB Flyer, District permit info, rule review	15-25
Inspection Report Write up	20
Subtotal for simple engine =	90-130
Post-Inspection:	
Check CARB Registration database for certification or permit	20-30
Annual invoicing and accounts receivable recordkeeping	20
Subtotal =	40-50
Grand Total for all PERP Activities for Simple Engines =	***210-290***
Average =	***250 min***
=	***4.2 hrs***
For Complex equip, extra time is required in two areas:	
Inspect complex portable equipment	+10
Review records for operations & processing rates	+20
Subtotal for complex equip =	+30
Grand Total for all PERP Activities for Complex Equipment =	***240-320***
Average =	***300 min***
=	***4.7 hrs***

Attachment 2

ADDITIONAL PERP INSPECTION ACTIVITIES TO IMPLEMENT THE PERP ATCM

The following are the additional duties and compliance efforts that districts must undertake over and above the existing PERP Regulations in order to implement the Portable Engine ATCM Enforcement Mandates:

- The use of CARB diesel or other acceptable fuel must be verified.
- Engines designated as "emergency engines" under the ATCM must be evaluated to determine that they are used for emergencies as defined in the ATCM.
- Add-on controls will be necessary for some engines. The inspector must verify that the control equipment is installed and operating properly.
- Inspectors will need to review status reports submitted to demonstrate compliance with the fleet emission standard.
- Inspectors will have to verify in the field that the data submitted to show compliance with the fleet standard is accurate.
- Electrification, alternative fueled engines and add-on controls must be evaluated in determining compliance with the fleet standard.
- Engines designated as "low use" shall operate less than 80 hours/year. The inspector must verify the engine operating time. **
- Inspectors will have to verify the accuracy of the annual hours of operation submitted for each engine subject to fleet recordkeeping.**

** *Verification of these operating parameters cannot be performed unless hour meters are installed on the equipment, which is not required under the current version of the ATCM.*

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to regulations regarding the availability of motor vehicle service information in California.

DATE: June 22, 2006

TIME: 9:00 am

PLACE: South Coast Air Quality Management District
Auditorium
21865 East Copley Drive
Diamond Bar, CA 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 22, 2006, and may continue at 8:30 a.m., June 23, 2006. This item *might not be considered until* June 23, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before June 22, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected:

Proposed amendments to title 13, California Code of Regulations (CCR), division 3, chapter 1, article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles), section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles and 2007 and Subsequent Model Heavy-Duty Vehicles, and the documents incorporated therein: Society of Automotive Engineers (SAE) Recommended Practice J2534, "Recommended Practice for Pass-Thru Vehicle Programming," December 2004, and SAE J1979, "E/E Diagnostic

Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002; Technology and Maintenance Council, Recommended Practice RP1210A, "Windows™ Communication API," July 1999; SAE J1939, "Recommended Practice for a Serial Control and Communications Vehicle Network " and the associated subparts in SAE HS-1939, Truck and Bus Control and Communications Network Standards Manual," 2005 Edition; SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004

Proposed amendments to title 17, CCR, division 3, chapter 1, subchapter 1.25, article 2.5, Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles, sections 60060.1 through 60060.34.

Background

Senate Bill (SB) 1146, enacted in 2000, established Health and Safety Code section 43105.5, directing ARB to adopt regulations for the availability of emission-related motor vehicle service information and diagnostic equipment to independent service facilities and the aftermarket parts industry. The legislation applies to 1994 and later model-year vehicles equipped with on-board diagnostic (OBD) systems for the detection of emission-related malfunctions. On December 13, 2001, the Board approved adoption of the ARB's service information regulation, which was formally implemented on March 30, 2003. The requirements as originally adopted applied to 1994 and later model-year passenger cars, light-trucks, and medium-duty vehicles equipped with second generation, on-board diagnostic (OBD) systems. The regulation is found in title 13, CCR, section 1969, with related administrative procedures in title 17, CCR sections 60060.1 through 60060.34.

In 2004, the Board adopted initial OBD requirements for 2007 and later model-year heavy-duty vehicles and, in accordance with the legislation, also expanded the scope of California's service information requirements to include these vehicles. However, the Board deferred requirements for the availability of manufacturer diagnostic tools and reprogramming equipment for heavy-duty vehicles until diagnostic tool communication requirements were finalized under a second round of more comprehensive OBD requirements for heavy-duty vehicles. The added lead time was granted to address manufacturer concerns that necessary tool-related changes could not be efficiently implemented ahead of knowing these communication requirements in greater detail, and to permit the manufacturers the opportunity to incorporate additional safeguards into the interface between the diagnostic tools and engines.

These more comprehensive heavy-duty OBD requirements were finalized and approved by the Board in July of 2005. Under the regulation, implementation of the diagnostic tool communication requirements would begin with the 2013 model-year. Therefore, the staff is now proposing that the Board expand the requirements for the availability of

manufacturer diagnostic tools to include tools that will be designed for 2013 and later model-year heavy-duty engines. The staff is also proposing additional minor amendments to the regulation to increase consistency between the service information and OBD requirements and to improve the overall clarity and effectiveness of the regulation.

In drafting these proposed regulatory amendments, staff met with engine and vehicle manufacturers, aftermarket parts manufacturers, trade associations and other interested parties in various meetings and via phone calls. Staff issued Mail-Out #MSC 05-01 on January 11, 2005, which explained staff's initial proposed amendments to the service information regulation. Comments submitted in response to the mail-out, as well as those received through numerous subsequent discussions and meetings, were considered in the development of the final proposal.

Proposed Amendments

Below is a brief summary of the staff's proposed amendments to title 13, California Code of Regulations, section 1969, for consideration by the Board:

Availability of Heavy-Duty Vehicle Diagnostic Tools

Staff proposes that manufacturers of 2013 and later model-year, OBD-equipped, heavy-duty engines be required to make available all enhanced emission-related diagnostic, recalibration, and reconfiguration tools provided by the manufacturers to their franchised dealers or authorized service networks. Engine manufacturers would be permitted to require appropriate training on the proper use of these tools as a condition for sale. The associated data stream and bi-directional control information used in these tools would also have to be made available to aftermarket diagnostic tool manufacturers to allow incorporation of the same functionality into their products. Consistent with the existing requirements for the availability of service information and tools, engine manufacturers would be permitted under the regulation to set "fair, reasonable, and non-discriminatory" prices for the availability of heavy-duty tools and related information. The amendments proposed by the staff would also require heavy-duty vehicle engine manufacturers to comply with the recalibration methods set forth in SAE Recommended Practice J2534 or the Technology and Maintenance Council's Recommended Practice RP1210a, "Windows™ Communication API," July 1999 on all 2013 and later model-year on-board computers installed on heavy-duty vehicle engines.

Other Amendments to the Regulatory Language

- Staff is proposing amendments to make clear that heavy-duty transmission manufacturers are not subject to the regulation if transmissions are not required to meet OBD or any other emission control requirements.

- A provision is proposed to permit compliance flexibility for manufacturers that certify vehicles or engines under both medium-duty and heavy-duty vehicle categories, preventing manufacturers from having to comply with more than one set of requirements for a given vehicle or engine model.

- Staff is proposing that engine manufacturers be required to use emission-related nomenclature in all service information that complies with SAE Recommended Practice J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004, for 2010 and later model year engines. The use of standardized nomenclature will minimize the number of manufacturer-specific terms and acronyms that technicians must become familiar with in order to effectively use manufacturers' service information.

- SAE J2534, incorporated by reference, contains standardization requirements related to the reprogramming of light and medium-duty vehicles. Subsequent to the closing of ARB's 2004 service information amendments, the publication date of the document changed from September 2004 to December 2004. Staff is proposing an amendment to update the publication date in the text of the regulation.

- Other minor revisions are being proposed to update regulatory definitions, provide clarity between light- and heavy-duty requirements, and to improve the readability of the regulation.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) approved amendments to its service information regulation on June 27, 2003. (See Title 40, Code of Federal Regulations, part 86, sections 86.094-38 et seq.) However, federal service information language still does not cover heavy-duty vehicles that exceed 14,000 pounds gross vehicle weight rating. U.S. EPA has stated its intent to consider provisions for these heavy-duty vehicles in the near future.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a detailed summary of the proposed amendments, as well as the potential environmental and economic impacts of the proposal, and supporting technical documentation. The ISOR is entitled: "Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to Regulations for the Availability of California Motor Vehicle Service Information."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below, or may be obtained from the Public Information Office, Visitors and Environmental Services Center, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990. The documents will be available at least 45 days prior to the scheduled hearing on June 22, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will also be made available and copies may be requested from the agency contact persons identified in this notice or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Dean Hermano, Staff Air Pollution Specialist, at (626) 459-4487 or e-mail dhermano@arb.ca.gov, or Ms. Jackie Lourenco, Chief, New Vehicle/Engine Programs Branch, at (626) 450-6152 or email jlourenc@arb.ca.gov.

Further, the agency representative and designated back-up contact person to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are respectively Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's Internet site for this rulemaking at http://www.arb.ca.gov/regact/cmvsip06/cmvsip06.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESS AND PERSONS AFFECTED

The determinations of the Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed amendments are presented below.

The Executive Officer has determined pursuant to Government Code section 11346.5(a)(5) that the amendments will not create costs or mandates to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies. The Executive Officer has further determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulatory amendments will not create any costs or savings to any state agency, or any cost to any local agency or school district that is required to be reimbursed under Part 7

(commencing with section 17500), of division 4, or other nondiscretionary cost or savings imposed on local agencies, or any cost or savings in federal funding to the state.

In developing this regulatory proposal, the staff evaluated the potential economic impacts on representative private persons or businesses. Staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments would likely have a small positive cost impact on independent service repair facilities and tool and equipment companies that do business in California because of the greater availability of such tools and related information. Although the proposed amendments may indirectly have some adverse cost impacts on heavy-duty vehicle franchised dealerships and authorized service networks in California due to the loss of some repair business to independent service facilities, the impact would be the result of increased competition, consistent with the intent of the Legislature in drafting SB 1146.

The Executive Officer has also made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. The Executive Officer has determined that the proposed action may possibly create some jobs, create new businesses, or promote the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small business. Small businesses in the aftermarket service and parts industries should be positively affected by the availability of service information and tools. And, as noted above, while some heavy-duty vehicle dealerships and service network facilities may be adversely affected by the potential for increased competition, this result was the intent and purpose of SB 1146.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, June 21, 2006**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic submittal : http://www.arb.ca.gov/lispub/comm/bclist.php **no later than 12:00 noon, June 21, 2006.**

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB no later than **12:00 noon, June 21, 2006.**

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted Health and Safety Code sections 39600, 39601, 43000.5, 43018, 43105.5, and 43700. This action is proposed to implement, interpret or make specific sections 39027.3, 43104, and 43105.5 Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such an event the full regulatory text, with the

modifications clearly indicated, will be made available to the public, for written comment, for at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: April 25, 2006

State of California
AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS
FOR PROPOSED RULEMAKING

PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

Date of Release: May 05, 2006
Scheduled for Consideration: June 22, 2006

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

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Attachment B – Proposed Amendments to title 17, California Code of Regulations, Chapter 1, Subchapter 1.25, Article 2.5 Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles

EXECUTIVE SUMMARY

California's service information requirements ensure that independent motor vehicle service providers and aftermarket parts manufacturers have access to dealership-quality service information and tools necessary to effectively conduct emission-related repair work. The regulation was originally approved by the Air Resources Board (ARB or Board) pursuant to Health and Safety Code section 43105.5 in December 2001, and initially applied to 1994 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles certified to meet ARB's On-Board Diagnostic (OBD) requirements. Portions of the regulation were amended in January 2004 to include heavy-duty vehicles and engines as they are certified to meet new OBD requirements that take affect with the 2007 model year. The service information regulation is codified at title 13, California Code of Regulations, section 1969, and title 17, California Code of Regulations, sections 60060.1 through 60060.34.

The amendments approved in 2004 for 2007 and later model year, heavy-duty engines only included requirements for access to text-based service information. The Board deferred provisions that would have required the availability of emission-related diagnostic and reprogramming tools for heavy-duty applications until more comprehensive OBD requirements for heavy-duty vehicles were finalized for 2010 and later model year heavy-duty applications. The Board's decision to delay these requirements was based on the fact that the 2010 OBD requirements, and their impact on the design of heavy-duty vehicle tools, were not yet fully defined and because of manufacturers' concerns that additional lead time was necessary to address security and safety concerns associated with release of the tools beyond manufacturer dealerships. The Board subsequently adopted OBD requirements for 2010 and later model year heavy-duty applications in July 2005. Full phase-in of the requirements will be achieved in model year 2013. Therefore, consistent with the Board's decision in 2004, staff is again proposing to include availability requirements for heavy-duty tools and related information in the service information regulation. These heavy-duty tool requirements would be implemented beginning with the 2013 model year at which time the data communication requirements in the OBD II regulation are fully phased-in.

Apart from the requirements for the availability of emission-related tools, amendments are being proposed to address how the requirements apply to transmission manufacturers and to provide compliance flexibility for manufacturers that produce both medium- and heavy-duty products. Additional further minor amendments are also being proposed to improve the overall clarity and effectiveness of the regulation.

Heavy-duty manufacturers have estimated that initial costs to redevelop tools and software for use by the aftermarket could be as high as approximately $1.5 million. Annual maintenance costs thereafter would be about $70,000 per year. Affected

manufacturers would be permitted by the regulation to set fair, reasonable, and non-discriminatory prices for the tools and information thereby offsetting some or all of the compliance costs.

State of California
AIR RESOURCES BOARD

Staff Report: Initial Statement of Reasons For Proposed Rulemaking

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA REGULATIONS FOR THE AVAILABILITY OF MOTOR VEHICLE SERVICE INFORMATION

Date of Release: May xx, 2006
Scheduled for Consideration: June 22, 2006

I. Introduction

Pursuant to the directives of Senate Bill 1146, stats 2000 (SB 1146) (codified in Health and Safety Code sections 30027.3 and 43105.5), the Air Resources Board (ARB or Board) adopted the California Motor Vehicle Service Information Regulation on December 13, 2001. This regulation can be found in title 13, California Code of Regulations (CCR), section 1969 and title 17, CCR, sections 60060.1 through 60060.34. The requirements ensure that independent service facilities and aftermarket part companies have access to information and tools necessary to diagnose and repair emission-related malfunctions and produce emission-related replacement parts for California vehicles.

The regulation requires vehicle manufacturers to make text-based service information available for purchase over the internet. The manufacturers must also make the diagnostic and reprogramming tools (and related information) they offer to franchised dealerships available for purchase to independent service providers. The manufacturers set pricing for the information and tools, but the prices must meet regulatory criteria for being "fair, reasonable, and non-discriminatory."

The regulation as adopted in 2001 applied to manufacturers of 1994 and later model year passenger cars, light-duty trucks, and medium-duty vehicles equipped with on-board diagnostic (OBD) systems. The Board adopted amendments in 2004 to include heavy-duty engines produced during or after model year 2007, the year in which these engines must begin meeting initial OBD requirements. However, the Board deferred the requirements for tools availability for heavy-duty engine

manufacturers until the impact of future OBD requirements on the design and use of the tools became better defined.

The Board adopted this second round of OBD requirements for heavy-duty engines in 2005, which will apply to 2010 and later model year engines, with full phase-in occurring by the 2013 model year. As such, staff is now ready to propose service information amendments to require heavy-duty engine manufacturers to make their emission-related tools available for purchase. Staff is also proposing amendments to address the applicability of the regulation to transmission manufacturers along with more minor amendments to improve the clarity and overall effectiveness of the regulation.

II. Background

The use of sophisticated emission control devices has allowed motor vehicle and engine manufacturers to meet stringent emission standards necessary for California's attainment of ambient air quality goals. However, continued compliance with these low emission levels depends on the proper operation of the emission control systems built into the vehicles. Emission-related malfunctions can cause vehicle emission levels to greatly exceed certification standards. Current light- and medium-duty vehicles sold in California are equipped with on-board diagnostic (OBD) systems that detect the occurrence of these malfunctions.

When a malfunction is detected, the "check engine" or "service engine soon" light illuminates on the vehicle's instrument panel, and diagnostic information is stored in the on-board computer. Through the rapid identification and repair of emission-related problems, the lifetime emissions from motor vehicles can be minimized. However, because emission levels are not reduced until the vehicle is successfully repaired, it is critical that service technicians have access to the information and diagnostic tools necessary to effectively utilize OBD system information and carry out necessary repair work for identified problems. The availability of compatible aftermarket replacement parts is also important to the repair process. If there is not an adequate supply of needed replacement parts at reasonable prices, the repair of emission-related malfunctions may be postponed or carried out improperly.

Prior to ARB's service information regulation, independent service facilities (i.e., those not directly affiliated with the vehicle manufacturers), did not always have access to dealership-quality information and tools. In response to concerns from aftermarket service facilities and parts manufacturers, SB 1146 was signed into law on September 30, 2000.

The key elements of ARB's existing service information requirements include:

- The availability of dealership-quality, emission-related service information over the internet to independent service technicians and aftermarket parts manufacturers.
- Descriptions of the design and operation of manufacturers' OBD systems.
- The availability of emission-related diagnostic tools and reprogramming equipment used by manufacturer dealerships. (These tool availability requirements are currently applicable only to manufacturers of light- and medium-duty vehicles.)
- Assurance that the prices charged for information and tools are "fair, reasonable, and non-discriminatory."
- Provisions to address the release of information considered to be trade secrets by the manufacturers, the review of manufacturers' compliance, and procedures for the resolution of non-compliance determinations.

Light-duty vehicle manufacturers have been complying with these regulations since March 2003. Apart from a few issues regarding pricing and service information website content, manufacturers are successfully meeting the service information requirements and the number of subscribers to manufacturers' websites is on the rise.

The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to its service information regulation on June 27, 2003[1]. The federal language is substantially similar in most respects to the information and tool provisions for light- and medium-duty vehicles. Its provisions are currently not applicable to heavy-duty vehicles and engines (as defined under California regulations), although EPA has stated its intent to consider provisions for heavy-duty vehicles in the near future.

III. Proposed Amendments

ARB staff's proposed amendments to title 13, CCR, section 1969 are presented below. The regulatory text for these requirements is included in Attachment A.

A. Heavy-Duty Tools and Information

Staff is proposing to expand the requirements for the availability of manufacturers' diagnostic tools to include those designed for use on heavy-duty engines. The requirements would take effect with the 2013 model year. Under

[1] Refer to 40 Code of Federal Regulations part 86, sections 86094.38 et seq.

staff's proposal, heavy-duty engine manufacturers would be required to offer for sale all emission-related diagnostic, reconfiguration, and recalibration tools that they supply to their dealerships or authorized service networks. Software or data files used in such equipment would also be required to be made available. Manufacturers would further be required to use recalibration methods consistent with established industry standards.[2] Many manufacturers already offer for sale at least some of the types of tools that would be required under staff's proposal.

Staff has recommended that engine manufacturers to make the above tools available by the 2013 model year because it coincides with the implementation date for a number of diagnostic tool communication requirements in ARB's heavy-duty OBD regulation, including the use of standardized communication protocols, diagnostic connectors, and data stream formats. These requirements are expected to result in engine manufacturers making design changes to the types of emission-related diagnostic tools currently in existence. To ensure public safety and proper use of the tools in the field the proposed amendments would provide engine manufacturers with sufficient time to incorporate necessary safeguards in the redesigned tools that would prevent truck engines from being improperly reconfigured or recalibrated. Also the additional time would allow manufacturers time to incorporate necessary security into the tools to protect proprietary information.

Despite the long lead time that will allow manufacturers to incorporate features into their diagnostic tools to safeguard against misuse of the tool, heavy-duty engine manufacturers consider it critical that technicians be properly trained on how the tools are to be used. These tools will include sophisticated capabilities that are needed to configure an engine for use with a wide variety of transmission, axle ratio, and chassis combinations, among other variables. To further guard against misuse, staff has proposed that manufacturers may require training as a condition of sale for their tools. In order to ensure that the requirement for training does not impose an obstacle that prevents independent technicians from being able to acquire dealership-quality tools, any requirement for training is subject to the following conditions: 1) the manufacturer must require substantially similar training (e.g., content and duration) for dealership technicians; 2) the training must be available within six months from the time a tool request has been made; 3) the training must be available at a minimum of one California location; and 4) the cost of the training must be fair, reasonable and nondiscriminatory.

In addition to offering diagnostic tools and equipment for sale, heavy-duty manufacturers would be required under staff's proposal to also make available information necessary for reading data stream information and carrying out

[2] Recalibration methods would need to comply with either Society of Automotive Engineers' Recommended Practice J2534 or Technology and Maintenance Council's Recommended Practice RP1210A.

bi-directional controls for 2013 and later model year heavy-duty engines.[3] The information would be available to manufacturers of aftermarket diagnostic equipment tools to enable them to incorporate into their product the ability to read and process this information.[4] Because this information does not enable aftermarket tools to make permanent recalibrations, staff is not proposing that manufacturers can require training as a condition for providing the required information.

Consistent with existing similar requirements for light- and medium-duty motor vehicle manufacturers, staff is proposing that heavy-duty engine manufacturers be able to petition the Executive Officer to withhold disclosure of the data stream and bidirectional control information to any requesting tool or equipment company if it has evidence that the company could not produce a safe or accurate aftermarket tool. Under staff's proposal, manufacturers would also be permitted to require equipment and tool companies to comply with "component identifier message" requirements specified in Society of Automotive Engineers' Recommended Practice J1939. This function provides a way for the engine control unit to log a unique identification number transmitted by diagnostic tools that have been used to service it, which can be used to help resolve questions over whether a particular tool was misused or malfunctioned in a way that caused engine damage or safety issues .

B. Optional Compliance Provisions

Staff is proposing amendments that would allow manufacturers of heavy-duty gasoline powered vehicles or engines the option of complying with the service information requirements for light- and medium-duty vehicles (e.g., following light- and medium-duty industry standards instead of heavy-duty standards). Conversely, manufacturers of medium-duty diesel powered engines would have the option of complying using the service information requirements for heavy-duty engines. In general terms, gasoline powered vehicles are typically certified in California under light- or medium-duty emission standard classifications, and diesel powered engines are typically certified under the heavy-duty classification.[5] Additionally, whether or not certified to the light- and medium-duty standards, gasoline powered vehicles are typically serviced by facilities specializing in light- and medium-duty vehicles. On the other hand, medium-duty diesel powered vehicles are most often serviced at heavy-duty repair facilities because their technicians have familiarity with and experience in servicing the engine technology being used. Therefore, the proposed flexibility would permit manufacturers to provide service information and tools that follow the industry standards and practices that are most familiar to the type of service

[3] Data stream information is defined generally as information that originates within the vehicle or engine's control unit that is transmitted to diagnostic tools for use by service technicians. Bi-directional control refers to the ability of a diagnostic tool to send messages to a vehicle or engine control unit that temporarily override a module's control over a sensor or actuator in order to give control to the diagnostic tool operator.
[4] Health and Safety Code Section 43105.5 (a)(2).
[5] ARB regulations classify vehicles with a Gross Vehicle Weight (GVW) of 14,000 pounds or less as medium-duty vehicles, and vehicles weighing more than 14,000 pounds are classified as heavy-duty vehicles.

providers that will work on the vehicles. Staff's proposal would also bring the service information regulations into consistency with similar compliance provisions included in ARB's OBD regulations.

C. Other Modifications

1. Requirements for Heavy-Duty Transmission Manufacturers

ARB staff is proposing language that would make clear that the service information requirements do not apply to heavy-duty manufacturers of transmissions that are not required to meet emission control requirements under ARB regulations. Staff's rationale for the proposal is presented in Section IV below.

2. Regulatory Definitions

For purposes of clarity, staff is proposing language that would define "engine manufacturer" throughout title 13, CCR, section 1969, and title 17, CCR, sections 60060.1 through 60060.34 (see Attachment B), in order to distinguish manufacturers of heavy-duty engines from light- and medium-duty motor vehicle manufacturers. The distinction is necessary because heavy-duty engine manufacturers do not typically build or have responsibility for transmissions or chassis for heavy-duty vehicles and as such do not have identical responsibilities under the service information regulation.

Staff is also proposing the addition of definitions for "recalibration" and "reconfiguration," both of which are terms used for heavy-duty engines instead of "reprogramming" -- which is the commonly used term for light- and medium-duty vehicles -- to indicate the process of changing an engine's operating parameters programmed into the on-board computer.

3. Use of Industry Standards for Heavy-Duty Service Information and Tools

Staff is proposing to require the use of the following heavy-duty vehicle industry standards for compliance with the regulation. These documents would be incorporated by reference in the regulation.

> Technology and Maintenance Council's Recommended Practice RP1210A, "Windows™ Communication API," July 1999, for the recalibration and reconfiguration of heavy-duty engines (Section 1969(h)(1)(B)
>
> SAE J1939, "Recommended Practice for a Serial Control and Communications Vehicle Network " and the associated subparts in SAE HS-1939, Truck and Bus Control and Communications Network

Standards Manual," 2005 Edition. (Section 1969(e)(2)(G)(ii), and (h)(2)(B)).

SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004, for heavy-duty engine emission-related terms and acronyms. (Section 1969(f)(2)(K)(ii)).

Staff is also proposing to update the regulatory references to SAE J2534, and SAE J1979 to reflect the most recent publication dates and document titles.

Other minor revisions are also being proposed to provide clarity between light-, medium-, and heavy-duty requirements and to improve readability. The regulatory text for all of ARB staff's proposed amendments can be found in Attachment A to this report.

IV. Issues Regarding Staff's Proposal

A. Applicability of the Regulation to Heavy-Duty Transmission Information

Staff is proposing to amend the language of the service information regulation to exempt manufacturers of heavy-duty transmissions that are not otherwise subject to California emission-control requirements. In 2004, when the Board expanded the applicability of the service information requirements to include heavy-duty vehicles, staff anticipated that future OBD regulations for these vehicles would include specific monitoring requirements related to heavy-duty transmissions. However, in finalizing the proposed heavy-duty OBD requirements adopted by the Board in July of 2005, staff determined that requiring transmission manufacturers to develop and certify OBD systems would be inappropriately costly and impractical. Consistent with this decision, staff believes that regulating transmission manufacturers to make available service information and tools would not be of significant benefit.

Heavy-duty (and some medium-duty) engines are certified for emissions compliance using test procedures that evaluate the performance of the engine only and do not consider any emission effects from vehicle chassis or transmissions. These procedures have been used due to the "non-vertical integration" of heavy-duty truck construction, in which a particular engine model can be installed in essentially an unlimited number of vehicle chassis and transmission combinations, a process in which the engine manufacturer has little or no involvement. As such, heavy-duty transmission manufacturers are not subject to ARB emission standards or certification requirements, making regulation of the format and availability of transmission manufacturers' service information difficult to justify.

Representatives from the independent heavy-duty service industry believe that heavy-duty transmission manufacturers should be required to comply with service information availability provisions. They point out that SB 1146 specifically

includes within the definition of emission-related motor vehicle information emissions from components such as transmissions and that repair information is needed by independent service providers because they service all aspects of heavy-duty vehicles, including transmissions.

With respect to the language in the statute, staff believes that the use of regulatory discretion is appropriate based on the circumstances that existed when the statute was created. Specifically, at the time SB1146 was created, OBD regulations existed only for light- and medium-duty vehicles, for which the transmission is part of the vehicle's emissions-certified configuration. Further, the OBD regulations applicable to these vehicles include specific monitoring requirements for transmission functions. In contrast, although OBD requirements for heavy-duty transmissions were at one time contemplated, they were not ultimately adopted. The Legislature clearly contemplated that the definitions may need to be modified given the context of adopted regulations and provided ARB with express authority to do so.[6]

In terms of the need for transmission-related service information, staff agrees that full access to dealership-quality information and tools would benefit the aftermarket service industry. However, without a stronger link to vehicle emissions or engine on-board diagnostic systems, staff believes that continued reliance on current business relationships for the dissemination of transmission service information is more appropriate than having access regulated by ARB. Staff understands that transmission manufacturers already make available a significant amount of the service information that they provide to dealerships. If a need for emission-related monitoring of transmission components develops as engine manufacturers make progress towards meeting 2010 and later model year OBD requirements, ARB staff would commit itself to revisiting the issue whether transmission-related emissions information from heavy-duty vehicles should be made available to the aftermarket service industry.

B. Separate Regulatory Language for Heavy-Duty Engines

Engine manufacturers have requested that the service information provisions for heavy-duty engines be set up in an entirely separate regulatory section from the requirements for light- and medium-duty vehicles. The manufacturers state that separate references to vehicle manufacturers and engine manufacturers along with different implementation dates and referenced industry standards for vehicles versus engines would be confusing to stakeholders. They point out that ARB's OBD requirements for light-/medium-duty versus heavy-duty applications are in separate regulatory sections.

[6] Health and Safety Code section 39010: "Unless the context requires otherwise, a definition set forth in this chapter shall govern the construction this division, unless and until rules and regulations are adopted by the state board pursuant to Section 39601 which revise such definition."

ARB staff shares the engine manufacturers' desire for clear and understandable regulatory language; however, it disagrees that creating completely separate regulatory sections is the best way to achieve this goal. Most of the regulatory language applies equally to vehicle and engine manufacturers, minimizing opportunities for confusion. Further, if the requirements were separated, lengthy portions of each section would contain essentially identical text, and ARB staff would have an added burden of making sure that future changes to the text were carried out in the same manner for each regulatory section.

Notwithstanding, staff recognizes that the opportunity for confusion is potentially greater with respect to the requirements for availability of diagnostic tools, reconfiguration/recalibration equipment, and tool information. These provisions are more technical and specific to particular vehicle categories (e.g., different industry standards are referenced for light-and medium-duty vehicles than for heavy-duty applications). Therefore, in order to ensure adequate clarity, ARB staff has proposed separate subsections delineating the requirements for availability of diagnostic tools, reconfiguration/recalibration equipment, and tool information for light- and medium-duty vehicles versus heavy-duty engines. Staff believes that with the proposed formatting of the regulatory text, all vehicle and engine manufacturers will be able to clearly distinguish how the service information requirements apply to their particular products.

V. Air Quality, Environmental, and Economic Impacts

A. Air Quality and Environmental Impacts

The proposed amendments will have a positive impact on air quality by ensuring that independent heavy-duty vehicle service providers have access to sophisticated diagnostic tools and equipment to better repair emission-related malfunctions. Through improved maintenance and more effective emission repair work, the amendments will help ensure that the emission benefits attributed to California's heavy-duty emission standards and OBD requirements will be fully realized. ARB has estimated the emission reductions of oxides of nitrogen (NOx) and particulate matter (PM) statewide for ARB's 2007 heavy-duty emission standards to be 48.0 and 2.7 tons per day, respectively, by the year 2010.[7] These emission benefits increase dramatically to 209.5 and 8.3 tons per day by 2020. For the average heavy-duty vehicle, this translates to approximately 4.2 tons of NOx plus non-methane hydrocarbons reduced over its lifetime.

B. Environmental Justice

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption,

[7] Source: Staff Report: Initial Statement of Reasons, "Public Hearing to Consider Amendments Adopting More Stringent Emission Standards for 2007 and Subsequent Model Year Heavy-Duty Diesel Engines," Air Resources Board, September 7, 2001.

implementation, and enforcement of environmental laws, regulations, and policies (Senate Bill 115, Solis; Stats 1999, Ch. 690; Government Code § 65040.12(c)). The Board has established a framework for incorporating environmental justice into the ARB's programs consistent with the directives of State law. The policies developed apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low income and minority communities, which sometimes experience higher exposures to some pollutants as a result of the cumulative impacts of air pollution from multiple mobile, commercial, industrial, areawide, and other sources.

Over the past twenty years, the ARB, local air districts, and federal air pollution control programs have made substantial progress towards improving the air quality in California. However, some communities continue to experience higher exposures than others as a result of the cumulative impacts of air pollution from multiple mobile and stationary sources and thus may suffer a disproportionate level of adverse health effects.

Since the same ambient air quality standards for heavy-duty vehicles apply to all regions of the State, all communities, including environmental justice communities, will benefit from the air quality benefits that would be associated with the proposal. To the extent that heavy-duty vehicle operation is higher near certain communities, these communities will receive a greater benefit from well-maintained California vehicle fleets.

C. Economic Impacts

The Administrative Procedures Act requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess the potential for adverse economic impacts on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states, and fiscal impacts on state and local agencies. Below is staff's assessment of the economic impacts of this proposal.

1. Cost to State Agencies

When the initial service information regulation was adopted, staff estimated that ARB would incur ongoing costs of up to $200,000 annually to implement and enforce the regulation. Staff believes that no significant additional ARB resources will be required as a result of the amendments being proposed. The proposed amendments are also not expected to create additional costs to any other state agency, local district, or school district, including any federally funded state agency or program.

2. Costs to Engine and Motor Vehicle Manufacturers

Engine manufacturer have commented that some diagnostic tools and equipment will have to be redesigned to incorporate necessary features and safeguards prior to their release to the independent service industry. Approximately 28 heavy-duty engine manufacturers do business in California. Manufacturers have estimated that startup costs to comply with the proposed amendments could reach $1.5 million per manufacturer. Annual maintenance costs related to updating tools and posting information on the engine manufacturers' Internet website are estimated to be approximately $70,000 per manufacturer. These estimates are based on limited cost data provided by engine manufacturers and do not take into account any revenue from the sale of such tools and information. Staff anticipates that engine manufacturers will be able to spread startup compliance costs over several years if necessary because approximately six years of lead time still exist before the proposed tools availability requirements would take effect.

3. Potential Impacts on Other Businesses

The proposed amendments should have a positive impact on independent service repair facilities and aftermarket parts manufacturers through the wider availability of emission-related tools and information. Covered persons should only incur additional expenses resulting from the amendments if they chose to purchase additional information and tools. However, in doing so, it is assumed that the purchases will be based on business decisions wherein the use of the information would be expected to yield a profit. The cost of purchasing tools and information under the proposal should be equal to or less than the current costs for the aftermarket service industry and equipment and tool companies.

Franchised heavy-duty truck dealerships and authorized service networks may experience some loss of business as independent facilities conduct more repairs using the tools and information that would be provided by the proposed amendments. However, this stimulation of competition in the service and repair industry was in fact the goal of SB 1146 and, thus, such an effect was clearly recognized by the California Legislature when the bill was passed.

4. Potential Impact on Business Competitiveness

The proposed amendments are expected to have no net effect on the ability of California businesses to compete with businesses in other states. Adoption of the regulations would allow California independent service facilities to compete more evenly with manufacturer dealerships and service networks within the state through access to dealership quality diagnostic tools and equipment. Since the competition between the aftermarket and franchised dealerships/service networks is primarily of an intrastate origin, the regulation should have no effect on the ability of California businesses to compete with businesses in other states.

5. Potential Impact on Employment

Staff does not believe the regulatory proposal would result in the loss of jobs. In fact, it may create some jobs in California, based on the need for manufacturers to redesign diagnostic tools and to provide a sufficient number of instructors to conduct tools-related training. Some service-related business may move from dealerships to independent service providers; however, staff does not expect any overall reduction in engine or vehicle repair work and, thus, no reduction in California jobs. To the extent that more competition in the service industry is achieved, lower prices and better service could offer an incentive for more vehicle owners to seek repairs, possibly resulting in increased employment.

D. Regulatory Alternatives

Regulatory alternatives were proposed by stakeholders for application of the service information requirements to manufacturers of heavy-duty transmissions, and for separation of the service information requirements into separate regulatory sections, one covering light- and medium-duty applications, and one covering heavy-duty applications. These alternatives are discussed in Section IV of this report, above.

Another alternative considered was to take no action for the inclusion of diagnostic tools for heavy-duty engines. Staff rejected this alternative because it believes that Senate Bill 1146 requires the availability of emission-related tools and equipment for all 1994 and later model year vehicles equipped with on-board diagnostic systems, including heavy-duty vehicles. For the reasons stated previously, existing regulation does not yet apply such provisions to heavy-duty engine manufacturers.

In summary, staff has determined that no feasible alternative considered would be more effective in carrying out the purpose of the proposed amendments. No alternative would be as effective or less burdensome to affected private persons than the proposed amendments to the regulation.

VI. Summary and Staff Recommendation

The availability of emission-related tools and information to all heavy-duty service facilities would help ensure that repair work is accurate and thorough, which in turn would provide California's citizens with the air quality benefits that are associated with properly maintained vehicles. Equipment and tool companies would also be able to benefit from the proposal because it would allow them to use engine manufacturers' tool information to produce generic, competitively priced, diagnostic tools for servicing the advanced emission control systems of today's heavy-duty vehicles.

Staff believes the proposed amendments properly take into account heavy-duty manufacturers' concerns regarding the safe and effective use of the tools they would be required to provide. Further, the proposed amendments would also fully implement the requirements of Health and Safety Code section 43105.5 as they apply to heavy-duty engines. Therefore, staff recommends that the Board adopt the proposed amendments to the service information regulations as outlined in title 13, CCR, section 1969 and title 17, CCR, sections 60060.1 through 60060.34.

VII. References

SAE J1939, "Recommended Practice for a Serial Control and Communications Vehicle Network " and the associated subparts in SAE HS-1939, Truck and Bus Control and Communications Network Standards Manual," 2005 Edition.

SAE J1979, "E/E Diagnostic Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002.

SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004.

SAE, "Recommended Practice for Pass-Thru Vehicle Programming," J2534, December 2004

International Standards Organization (ISO) 15765-4, "Road vehicles -- Diagnostics on Controller Area Networks (CAN) -- Part 4: Requirements for emissions-related systems," December 2001.

Technology and Maintenance Council, Recommended Practice RP1210A, "Windows™ Communication API," July 1999.

Title 40, Code of Federal Regulations, Part 86, Section 86094.38 et seq.

Staff Report: Initial Statement of Reasons, "Public Hearing to Consider Adoption of California Regulations for Motor Vehicle Service Information," Air Resources Board, December 5, 2003.

Staff Report: Initial Statement of Reasons, "Public Hearing to Consider Amendments Adopting More Stringent Emission Standards for 2007 and Subsequent Model Year Heavy-Duty Diesel Engines," Air Resources Board, September 7, 2001.

Senate Bill 1146: Motor Vehicles: Pollution Control Devices, authored by State Senator John Burton; approved by Governor Gray Davis September 30, 2000.

Title 13, California Code of Regulations, Section 1968.1.

Title 13, California Code of Regulations, Section 1968.2.

Title 13, California Code of Regulations, Section 1971.

Title 13, California Code of Regulations, Section 1971.1.

Attachment A

Title 13, California Code of Regulations, Chapter 1, Motor vehicle Pollution Control Devices, Article 2, Approval of Motor vehicle Pollution Control Devices (New Vehicles); Section 1969, Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty Trucks, and Medium-Duty Engines and Vehicles and 2007 and Subsequent Model Heavy-Duty ~~Vehicles~~ Engines

This document is printed in a style to indicate changes from the existing provisions in title 13, California Code of Regulations, section 1969. All existing language is indicated by plain type. All proposed additions to language are indicated by underlined text. All proposed deletions to language are indicated by ~~strikeout~~.

Final Regulation Order

Section 1969, title 13, California Code of Regulations, chapter 1, Motor vehicle Pollution Control Devices:

Article 2. Approval of Motor vehicle Pollution Control Devices (New Vehicles)

§1969 Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty ~~Vehicles~~ Engines

(a) Applicability.

(1) This section shall apply to: (1) all California-certified 1994 and subsequent model year passenger cars, light-duty trucks and medium-duty engines and vehicles equipped with on-board diagnostic (OBD) systems pursuant to title 13, California Code of Regulations, sections 1968.1 or 1968.2; and (2) all 2007 and subsequent model year California-certified heavy-duty engines ~~and transmissions~~ equipped with ~~diagnostic~~ OBD systems pursuant to title 13, California Code of Regulations, sections 1971 or 1971.1. This section shall supersede the provisions of section 1968.1(k)(2.1) at all times that this section is effective and operative. ~~These~~ This regulations shall also apply to any passenger cars, light-duty trucks, medium-duty vehicles, and medium- and heavy-duty ~~vehicles~~ engines certified to future on-board diagnostic requirements adopted by the Air Resources Board.

(2) Motor vehicle and engine manufacturers shall comply with amendments made to this section no later than 90 days after such amendments are made effective by the Secretary of State~~, except for paragraph (f)(3)(A) for which compliance is required no later than 180 days after such amendments are made effective by the Secretary of State~~. Copies of any amendments to this section may be obtained upon request to the Chief of the Mobile Source Operations Division at 9528 Telstar Avenue, El Monte, California 91731.

(b) Optional Regulatory Compliance.

(1) Motor vehicle manufacturers that produce gasoline-derived engines for use in heavy-duty vehicles may, for those engines, alternatively comply with all service information and tool provisions of this regulation that are applicable to 1994 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, subject to Executive Officer approval. Implementation dates must comply with the service information provision dates applicable to motor vehicle manufacturers.

(2) Engine manufacturers of diesel-derived engines used in medium-duty vehicles may, for those engines, alternatively comply with all service information and tool provisions of this regulation that are applicable to 2010 and subsequent model year heavy-duty engines, subject to Executive Officer approval. Implementation dates must comply with the service information provision dates applicable to engine manufacturers.

(~~b~~ c) **Severability of Provisions**. If any provision of this section or its application is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected.

(~~c~~ d) **Definitions**. The definitions in section 1900(b), Division 3, Chapter 9, Title 13 of the California Code of Regulations, apply with the following additions:

(1) "Access codes, recognition codes and encryption" mean any type, strategy, or means of encoding software, information, devices, or equipment that would prevent the access to, use of, or proper function of any emission-related part.

(2) "Authorized service network" means a group of independent service and repair facilities that are recognized by motor vehicle manufacturers or engine manufacturers as being capable of performing repairs to factory specifications, including warranty repair work.

(3) "Bi-directional control" means the capability of a diagnostic tool to send messages on the data bus (if applicable) that temporarily override a module's control over a sensor or actuator and give control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

(4) "Covered person" means: (1) any person or entity engaged in the business of service or repair of passenger cars, light-duty trucks, ~~and~~ or medium-duty motor vehicles, engines, or transmissions who is licensed or registered with the Bureau of Automotive Repair, pursuant to ~~S~~section 9884.6 of the Business and Professions Code, to conduct that business in California; (2) any person or entity engaged in the business of service or repair of heavy-duty motor vehicles, engines, or transmissions; (3) any commercial business or government entity that repairs or services its own California motor vehicle fleet(s); (4) tool and equipment companies; or (5) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle or engine parts for California motor vehicles and motor vehicle engines.

(5) "Data stream information" means information that originates within ~~the~~ a vehicle or engine by a module or intelligent sensor (including, but not limited to, a sensor that contains and is controlled by its own module) and is transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communications wires. The information is broadcast over communication wires for use

by other modules such as chassis or transmission modules to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.

(6) "Days" means calendar days (unless otherwise specified in this section); in computing the time within which a right may be exercised or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included, unless the last day falls on a Saturday, Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer or engine manufacturer, in which case the last day shall be the following day.

(7) "Emission-related motor vehicle information" means 1994 and subsequent model year passenger car, light-duty truck, and medium-duty engine and vehicle information regarding any of the following:

(A) Any original equipment system, component, or part that controls emissions.

(B) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.

(C) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.

(8) "Emission-related engine information" means 2007 and subsequent model year heavy-duty engine information regarding any of the following:

(A) Any original equipment system, component, or part that controls emissions.

(B) Any original equipment system, component, or part associated with the engine system including, but not limited to, the fuel system and ignition system, but not including the transmission.

(~~8~~ 9) "Emission-related motor vehicle or engine part" means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle or engine, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.

(10) "Engine manufacturer," for the purposes of this regulation and unless otherwise noted, means any manufacturer of 2007 and subsequent model year heavy-duty engines equipped with on-board diagnostic systems pursuant to title 13, California Code of Regulations, sections 1971 or 1971.1.

(~~9~~ 11)"Enhanced data stream information" means data stream information that is specific for a motor vehicle manufacturer's or an engine manufacturer's brand of tools and equipment.

(12) "Enhanced diagnostic, recalibration, and reconfiguration tool" means a proprietary tool developed by or for an engine manufacturer for its

engines that can perform emission-related functions including, but not limited to, generic and enhanced tool diagnostic capability, recalibration, and reconfiguration.

(1~~0~~3) "Enhanced diagnostic tool" means a diagnostic tool that is specific to ~~the~~ a motor vehicle manufacturer's vehicles or an engine manufacturer's engines and which can be used for emission-related repair purposes.

(1~~1~~4) "Fair, reasonable, and nondiscriminatory price", for the purposes of section 1969, means a price that allows a motor vehicle or engine manufacturer~~s~~ to be compensated for the cost of providing required emission-related motor vehicle or engine information and diagnostic tools considering the following:

(A) The net cost to the motor vehicle ~~manufacturers'~~ or engine manufacturer's franchised dealerships or authorized service networks, as applicable, for similar information obtained from motor vehicle manufacturers or engine manufacturers, less any discounts, rebates or other incentive programs;

(B) The cost to the motor vehicle manufacturer or engine manufacturer, as applicable, for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included;

(C) The price charged by other motor vehicle manufacturers or engine manufacturers, as applicable, for similar information;

(D) The price charged by the motor vehicle manufacturer or engine manufacturer, as applicable, for similar information immediately prior to the applicability of this section;

(E) The ability of an average covered person to afford the information.

(F) The means by which the information is distributed;

(G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and

(H) Inflation.

(15) "Generic scan tool" is a tool that can read standardized information pursuant to title 13, California Code of Regulations, sections 1968.1, 1968.2, and/or 1971.1 and that can be used on a number of different engines manufactured by different manufacturers.

(1~~2~~6) "Initialization" or "reinitialization" means the process of resetting a vehicle or engine security system by means of an ignition key or access code(s).

(1~~3~~7) "Intermediary information repository" means any individual or entity, other than a motor vehicle manufacturer or engine manufacturer, which collects and makes available to covered persons service information

and/or information related to the development of emission-related diagnostic tools.

(14~~8~~) "Motor vehicle manufacturer," for the purposes of this section ~~1969~~, means~~:~~

~~(A)~~ ~~A~~any manufacturer of 1994 and subsequent model year engines or vehicles in the following classes: passenger cars, light-duty trucks, and medium-duty vehicles equipped with on-board diagnostic systems pursuant to title 13, California Code of Regulations, sections 1968.1 ~~and~~ or 1968.2~~, or~~;.

~~(B) Any manufacturer that has certified in California a 2007 and subsequent model year heavy-duty engine or transmission equipped with an on-board diagnostic system.~~

(1~~5~~9) "Nondiscriminatory" as used in the phrase "fair, reasonable, and nondiscriminatory price" means that motor vehicle manufacturers and engine manufacturers shall not set a price for emission-related motor vehicle or engine information or tools that provides franchised dealerships or authorized service networks with an unfair economic advantage over covered persons.

(1~~6~~ 20) "On-board diagnostic system" or "OBD system" for purposes of this section means any system certified to meet the requirements of title 13, California Code of Regulations, ~~S~~sections 1968.1, 1968.2, 1971, 1971.1, or future OBD requirements adopted by the Air Resources Board.

(~~17~~ 21) A "Reasonable business mean" is a method or mode of distribution or delivery of information that is commonly used by businesses or government to distribute or deliver and receive information at a fair, reasonable, and nondiscriminatory price. A reasonable business mean includes, but is not limited to, the Internet, first-class mail, courier services, intermediary information repositories, and fax services.

(22) "Recalibration" means the process of downloading to an engine's on-board computer emission-related, heavy-duty revisions of on-board computer application software and calibration parameters with default configurations. Recalibration is not dependent on the use of the vehicle identification number (VIN) in determining vehicle configuration.

(23) "Reconfiguration" means the process of enabling or adjusting engine features or engine parameters associated with such features to adapt a heavy-duty engine to a particular vehicle and/or application.

(~~d~~ e) (1) **Service Information.** Except as expressly specified below, motor vehicle manufacturers and engine manufacturers shall make available for purchase to all covered persons all emission-related motor vehicle and engine information that is provided to the motor vehicle manufacturer's or engine manufacturer's franchised dealerships or authorized service networks for the engine~~, transmission,~~ or vehicle models they have certified in California. The information shall include,

but is not limited to, diagnosis, service, and repair information and procedures, technical service bulletins, troubleshooting guides, wiring diagrams, and training materials useful for self-study outside a motor vehicle manufacturer's or engine manufacturer's training classroom. Any motor vehicle manufacturer or engine manufacturer choosing to withhold training materials because it has determined they are not useful for self-study as indicated above shall identify and describe the materials on its website. The motor vehicle manufacturer's or engine manufacturer's determination is subject to Executive Officer review and approval.

(2) On-Board Diagnostic System (OBD) Information. Motor vehicle manufacturers and engine manufacturers shall make available for purchase to all covered persons, a general description of each OBD system used in 1996 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, and 2007 and subsequent model year heavy-duty engines, which shall include the following:

(A) A general description of the operation of each monitor, including a description of the parameter that is being monitored.

(B) A listing of all typical OBD diagnostic trouble codes associated with each monitor.

(C) A description of the typical enabling conditions for each monitor to execute during vehicle or engine operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. Motor vehicle manufacturers and engine manufacturers must also make available all existing monitor-specific OBD drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas recirculation, secondary air, and air conditioning system. As applicable, manufacturers of diesel vehicles or engines~~, or transmissions~~ must also make available all existing monitor-specific drive cycle information for those engines and vehicles that perform misfire, fuel system, and comprehensive monitoring under specific driving conditions (i.e., non-continuous monitoring).

(D) A listing of each monitor sequence, execution frequency and typical duration.

(E) A listing of typical malfunction thresholds for each monitor.

(F) For OBD parameters for specific vehicles and engines that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles and engines. Subject to Executive Officer approval, manufacturers may consolidate typical value

listings into a range of values or another acceptable format if the number of typical parameters is unduly burdensome to list.

(G) Identification and Scaling Information.

(i) For 1994 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, ~~I~~identification and scaling information necessary to interpret and understand data available to a generic scan tool through ~~"~~Service/~~m~~Mode 6,~~"~~ pursuant to Society of Automotive Engineers (SAE) J1979, "E/E Diagnostic Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002, which is incorporated by reference in title 13, ~~CCR~~ California Code of Regulations, sections 1968.1 and 1968.2.

(ii) For 2013 and subsequent model year heavy-duty engines, identification and scaling information necessary to interpret and understand data available through Diagnostic Message 8 pursuant to SAE Recommended Practice J1939-73 or through Service/Mode $06 pursuant to Society of Automotive Engineers (SAE) J1979, "E/E Diagnostic Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002, both of which are incorporated by reference in title 13, California Code of Regulations, section 1971.1.

(H) Except as provided below, the information required by this subsection does not include specific algorithms, specific software code or specific calibration data beyond those required to be made available through the generic scan tool pursuant to the requirements of title 13, California Code of Regulations, sections 1968.1, 1968.2, ~~1971,~~ 1971.1, as applicable, and all future adopted OBD regulations for passenger cars, light-duty trucks, ~~and~~ medium-duty engines and vehicles, and heavy-duty ~~vehicles~~ engines. Algorithms, software codes, or calibration data that are made available to franchised dealerships or authorized service networks shall be made available for purchase to covered persons. To the extent possible, motor vehicle manufacturers and engine manufacturers shall organize and format the information so that it will not be necessary to divulge specific algorithms, codes, or calibration data considered to be a trade secret by the motor vehicle manufacturer or engine manufacturer.

(3) On-Board Computer Initialization Procedures.

(A) Consistent with the requirements of subsection (~~h~~ i) below, motor vehicle manufacturers and engine manufacturers shall make available for purchase to all covered persons computer or anti-theft system initialization information for vehicles or engines so equipped necessary for:

(i) The proper installation of on-board computers on motor vehicles or engines that employ integral vehicle security systems; or

(ii) The repair or replacement of any other emission-related part.

(B) Motor vehicle manufacturers and engine manufacturers must make this information available for purchase in a manner that will not require a covered person to purchase enhanced diagnostic tools to perform the initialization. Motor vehicle manufacturers and engine manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.

(C) A motor vehicle manufacturer or engine manufacturer may request Executive Officer approval to be excused from the requirements above for some or all model year vehicles or engines, as applicable, through the 2009 model year. The Executive Officer shall approve the request upon finding that the motor vehicle manufacturer or engine manufacturer has demonstrated that:

(i) The availability of such information to covered persons would significantly increase the risk of vehicle theft;

(ii) A technical and economic need for such a request exists; and

(iii) It will make available to covered persons reasonable alternative means to install computers, or to otherwise repair or replace an emission-related part, at a fair, reasonable, and nondiscriminatory price and that such alternative means do not place covered persons, as a class, at a competitive disadvantage to either franchised dealerships or authorized service networks in their ability to service and repair vehicles or engines.

(a) Any alternative means shall be available to covered persons within 24 hours of the initial request and shall not require the purchase of enhanced diagnostic tools to perform an initialization. Alternatives may include lease of such tools, but only at a fair, reasonable and nondiscriminatory price.

(b) In lieu of leasing its enhanced diagnostic tools, a motor vehicle manufacturer or engine manufacturer may alternatively make available for purchase to independent equipment and tool companies all data stream information needed to make their diagnostic tools fully functional for initialization purposes. Any motor vehicle manufacturer or engine manufacturer choosing this option must release the information to equipment and tool companies within 60 days of Executive Officer approval.

(D) All approvals are conditional and subject to audit under ~~paragraph~~ subsection (~~j~~ l) below and possible rescission if the conditions set forth in ~~paragraph~~ subsection (~~d~~ e)(3)(C) fail to be satisfied.

(4) The information in this subsection shall be made available for purchase no later than 180 days after the start of engine or vehicle introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.

(~~e~~ f) Internet Availability for Service Information.

(1) Information required to be made available for purchase under subsection (~~d~~ e), excluding ~~paragraph~~ subsection (~~d~~ e)(3), shall be directly accessible via the Internet. As an exception, motor vehicle manufacturers or engine manufacturers with annual California sales of less than 300 engines~~, transmissions,~~ or vehicles (based on the average number of California-certified engines~~, transmissions,~~ or vehicles sold by the motor vehicle manufacturer or engine manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such motor vehicle manufacturers and engine manufacturers may instead propose an alternative reasonable business means for providing the information required by this section to the Executive Officer for review and approval. The alternate method shall include an Internet website that adequately specifies that the required service information is readily available through other reasonable business means at fair, reasonable, and nondiscriminatory prices. If a motor vehicle manufacturer or engine manufacturer later exceeds the three-year sales average, it would be required to begin complying with all Internet availability requirements the next model year. In such cases, the requirements would apply only to those engine~~, transmission,~~ and vehicle models certified in that and subsequent model years and would not apply to any models that were within carry-over test groups that were initially certified before the sales average was exceeded.

(2) For purposes of making the information available for purchase via the Internet, motor vehicle manufacturers and engine manufacturers, or their designees, shall establish and maintain an Internet website(s) that:

(A) Is accessible at all times, except during times required for routine and emergency maintenance. Routine maintenance shall be scheduled after normal business hours. If the motor vehicle manufacturer's or engine manufacturer's service information website(s) is not available for more than 24 hours for other than routine maintenance, the motor vehicle manufacturer or engine manufacturer, as applicable, shall notify the Executive Officer by either phone or email within one business day.

(B) Houses all of the required information such that it is available for direct online access (i.e., for online viewing and/or file downloading), except as provided in subsections (~~d~~ e)(3), (~~e~~ f)(2)(G) and (~~e~~ f)(2)(J). In addition to direct online access, motor vehicle manufacturers and engine manufacturers may concurrently offer the information by means of electronic mail, fax transmission, or other reasonable business means.

(C) Is written in English with all text using readable font sizes.

(D) Has clearly labeled and descriptive headings or sections, has an online index connected to a search engine and/or hyperlinks that directly take the user to the information, and has a comprehensive search engine that permits users to obtain information by various query terms including, but not limited to, engine, transmission, or vehicle model (as applicable), model year, bulletin number, diagnostic procedure, and trouble code.

(E) Provides, at a minimum, e-mail access for communication with a designated contact person(s). The contact person(s) shall respond to any inquiries within 2 days of receipt, Monday through Friday. The website shall also provide a business address for the purposes of receiving mail, including overnight or certified mail.

(F) Lists the most recent updates to the website. Updates must occur concurrently with the availability of new or revised information to franchised dealerships or authorized service networks, whichever occurs first.

(G) Provides all training materials offered by the motor vehicle manufacturer or engine manufacturer, as applicable, as required under ~~paragraph~~ subsection (~~d~~ e)(1). For obtaining any training materials that are not in a format that can be readily downloaded directly from the Internet (e.g., instructional tapes, full-text information associated with bundled software, CD-ROMs, or other media), the website must include information on the type of materials that are available, and how such materials can be purchased.

(H) Offers media files (if any) and other service information documents in formats that can be viewed with commonly available software programs (e.g., Adobe Acrobat, Microsoft Word, RealPlayer, etc.).

(I) Provides secure Internet connections (i.e., certificate-based) for transfer of payment and personal information.

(J) Provides ordering information and instructions for the purchase of ~~motor vehicle manufacturer emission-related enhanced diagnostic~~ tools and ~~reprogramming~~ information that are required to be made available pursuant to subsections (~~f~~ g) and (h).

(K) Complies with the following requirements for term, definitions, abbreviations, and acronyms:

(i) For 2003 and subsequent model-year passenger cars, light duty trucks, and medium-duty engines and vehicles, ~~C~~complies with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2: April 30, 2002," ~~May 1998~~ April 2002, incorporated by reference herein, for all emission-related motor vehicle information. ~~This subsection only applies to passenger cars, light-duty trucks, and medium-duty vehicles beginning with the 2003 model year.~~

(ii) For 2010 and later model year heavy-duty engines, emission-related nomenclature shall comply with SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004, incorporated by reference herein.

(L) Complies with the following website performance criteria:

(i) Possesses sufficient server capacity to allow ready access by all users and has sufficient downloading capacity to assure that all users may obtain needed information without undue delay.

(ii) Broken weblinks shall be corrected or deleted weekly.

(iii) Website navigation does not require a user to return to the motor vehicle manufacturer's or engine manufacturer's home page or a search engine in order to access a different portion of the site. The use of "one-up" links (i.e., links that connect to related webpages that preceded the one being viewed) is recommended at the bottom of subordinate webpages in order to allow a user to stay within the desired subject matter.

(iv) Any manufacturer-specific acronym or abbreviation shall be defined in a glossary webpage which, at a minimum, is hyperlinked by each webpage that uses such acronyms and abbreviations. Motor vehicle manufacturers and engine manufacturers may request Executive Officer approval to use alternate methods to define such acronyms and abbreviations. The Executive Officer shall approve such methods if the motor vehicle manufacturer or engine manufacturer adequately demonstrates that the method provides equivalent or better ease-of-use to the website user.

(M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).

(3) All information must be maintained by ~~the~~ motor vehicle manufacturers and engine manufacturers for a minimum of fifteen years. After such time, the information may be retained in an off-line electronic format (e.g., CD-ROM) and made available for purchase in that format at fair, reasonable, and nondiscriminatory prices upon request. Motor vehicle manufacturers and engine manufacturers shall index their available

archived information with a title that adequately describes the contents of the document to which it refers. Motor vehicle manufacturers and engine manufacturers may allow for the ordering of information directly from the website, or from a website hyperlinked to the motor vehicle manufacturer's or engine manufacturer's website. In the alternative, motor vehicle manufacturers and engine manufacturers shall list a phone number and address where covered persons can call or write to obtain requested information through reasonable business means.

(4) Motor vehicle manufacturers and engine manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures relative to a range of time periods for online access (e.g., in cases where information can be viewed online) and/or the amount of information purchased (e.g., in cases where information becomes viewable after downloading). These pricing structures shall be submitted to the Executive Officer for review concurrently with being posted on the motor vehicle manufacturer's or engine manufacturer's service information website(s).

(5) Motor vehicle manufacturers and engine manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites. Access shall include the ability to directly view and download posted service information. The information necessary to access the websites (e.g., user name, password, contact person(s)) must be submitted to the Executive Officer once the websites are operational.

(6) Reporting Requirements. Motor vehicle manufacturers and engine manufacturers shall provide the Executive Officer with reports that adequately demonstrate that their individual Internet websites meets the requirements of subsection (e f)(2). The reports shall also indicate the performance and effectiveness of the websites by using commonly used Internet statistics (e.g., successful requests, frequency of use, number of subscriptions purchased, etc.). Motor vehicle manufacturers and engine manufacturers shall submit such reports annually within 30 days of the end of the calendar year. The Executive Officer may also require motor vehicle manufacturers and engine manufacturers to submit additional reports upon request, including any information required by the United States Environmental Protection Agency under the federal service information regulation. These reports shall be submitted in a format prescribed by the Executive Officer.

(f g) Light-Duty and Medium-Duty Vehicle Diagnostic and Reprogramming Tools and Information.

(1) Diagnostic and Reprogramming Tools. Motor vehicle Mmanufacturers ~~of passenger cars, light-duty trucks, and medium-duty vehicles~~ shall make available for purchase through reasonable business means~~,~~

~~including ordering over the Internet,~~ to all covered persons, all emission-related enhanced diagnostic tools and reprogramming tools available to franchised dealers, including software and data files used in such equipment. The motor vehicle manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made.

(2) Data Stream and Bi-Directional Control Information. Motor vehicle manufacturers shall make available for purchase through reasonable business means, to all equipment and tool companies, all information necessary to read and format all emission-related data stream information, including enhanced data stream information, that is used in diagnostic tools available to franchised dealerships or authorized service networks, and all information that is needed to activate all emission-related bi-directional controls that can be activated by franchised dealership or authorized service network tools. ~~Heavy-duty engine and transmission manufacturers are exempt from these requirements as they apply to enhanced data stream information and bi-directional control information.~~ ~~The m~~Motor vehicle manufacturers shall make all required information available through the Internet or other reasonable business means to the requesting equipment and tool company within 14 days after the request to purchase has been made, unless the motor vehicle manufacturer petitions the Executive Officer for approval to refuse to disclose such information ("petition for non-disclosure") to the requesting company or petitions the Executive Officer for additional time to comply ("petition for additional time"). After receipt of a petition and consultation with the affected parties, the Executive Officer shall either grant or refuse the petition based on the evidence submitted during the consultation process:

(A) If the evidence demonstrates that the motor vehicle manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the vehicle, ~~the~~ a petition for non-disclosure will be granted.

(B) If the evidence ~~does not~~ demonstrates that the motor vehicle manufacturer ~~has~~ does not have a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the vehicle, ~~the~~ a petition for non-disclosure will be denied and the motor vehicle manufacturer shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

(C) If the motor vehicle manufacturer submits a petition for additional time, and satisfactorily demonstrates to the Executive Officer that the motor vehicle manufacturer is able to comply but requires additional time within which to do so, the Executive Officer shall

grant the petition and provide additional time that is necessary to fully and expeditiously comply. Petitions for additional time shall be considered by the Executive Officer on a case-by-case basis.

(3) Reprogramming Information.

(A) Beginning with the 2004 model year, reprogramming methods used for passenger cars, light-duty trucks, and medium-duty engines and vehicles shall be compatible with SAE J2534 Paper, "Recommended Practice for Pass-Thru Vehicle Programming, ~~September~~ December 2004, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships or authorized service networks.

(B) Motor vehicle ~~M~~manufacturers ~~of passenger cars, light-duty trucks, and medium-duty vehicles~~ shall make available for purchase through reasonable business means to covered persons for vehicle models meeting the requirements of subsection (~~f~~ g)(3)(A) all vehicle reprogramming information and materials necessary to install motor vehicle manufacturers' software and calibration data to the extent that it is provided to franchised dealerships. The motor vehicle manufacturer shall, within 2 days of receipt of a covered person's request, provide purchased reprogramming information via an Internet download or, if available in a different electronic format, via postal mail or package delivery service.

(4) The information and tools required by this subsection shall be made available for purchase no later than 180 days after the start of vehicle introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.

(h) Heavy-Duty Engine Enhanced Diagnostic, Recalibration, and Reconfiguration Tools and Information.

(1) (A) Engine manufacturers shall continue to make available for purchase through reasonable business means all emission-related diagnostic tools currently available to covered persons, including installation software and data files used in such equipment. Beginning with the 2013 model year, engine manufacturers shall also make available for purchase all emission-related enhanced diagnostic tools, recalibration tools, and reconfiguration tools available to franchised dealerships and authorized service networks, including installation software and data files used in such equipment. The engine manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made. As a condition for sale and shipment, however, an engine manufacturer may request that the requesting covered persons to

take all necessary training offered by the engine manufacturer. Any required training materials and classes must comply with the following conditions: (i) similar training must be required by the engine manufacturer for the use of the same tool by its franchised dealerships and authorized service networks, and the training required for covered persons must be substantially similar to such training in terms of material covered and length of training classes; (ii) the training must be available within six months after a tool request has been made; (iii) the training must be available at a minimum of one California location; and (iv) the training must be made available to the covered person at a fair, reasonable and nondiscriminatory price.

(B) Recalibration and reconfiguration software, methods, and parameters shall be made available for purchase through reasonable business means to covered persons. Recalibration information and methods shall be compatible with either SAE J2534, December 2004, or the Technology and Maintenance Council's (TMC) Recommended Practice RP1210A. "Windows™ Communication API," July 1999, which are incorporated by reference herein.

(2) Data Stream and Bi-Directional Control Information.

(A) Beginning with the 2013 model year, engine manufacturers shall make available for purchase through reasonable business means, to all equipment and tool companies, all information necessary to read and format all emission-related data stream information, including enhanced data stream information, that is used in diagnostic tools available to franchised dealerships or authorized service networks, and all information that is needed to activate all emission-related bi-directional controls that can be activated by franchised dealership or authorized service network tools. Engine manufacturers shall make all required information available through the Internet or other reasonable business means to the requesting equipment and tool company within 14 days after the request to purchase has been made, unless the engine manufacturer petitions the Executive Officer for approval to refuse to disclose such information ("petition for non-disclosure") to the requesting company or petitions the Executive Officer for additional time to comply ("petition for additional time"). After receipt of a petition and consultation with the affected parties, the Executive Officer shall either grant or refuse the petition based on the evidence submitted during the consultation process:

(A i) If the evidence demonstrates that the engine manufacturer has a reasonably based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to

the engine, the petition for non-disclosure will be granted. Engine manufacturers are not required to provide data stream and bi-directional control information that would permit an equipment and tool company's products to modify a California-certified engine or transmission configuration.

(~~B~~ ii) If the evidence does not demonstrate that the engine manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the engine, the petition for non-disclosure will be denied and the engine manufacturer, as applicable, shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

(iii) If the engine manufacturer submits a petition for additional time, and satisfactorily demonstrates to the Executive Officer that the motor vehicle manufacturer is able to comply but requires additional time within which to do so, the Executive Officer shall grant the petition and provide additional time to fully and expeditiously comply. Petitions for additional time shall be considered by the Executive Officer on a case-by-case basis.

(B) Engine manufacturers may require that tools using information covered under subsection (h)(2)(A) comply with the Component Identifier message specified in SAE J1939-71 as Parameter Group Number (PGN) 65249 (including the message parameter's make, model, and serial number) and the SAE J1939-81 Address Claim PGN.

(3) The information and tools required by this subsection shall be made available for purchase no later than 180 days after the start of engine introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.

(~~g~~ i) **Costs**: All information and ~~diagnostic and reprogramming~~ tools required to be provided to covered persons by ~~these~~ this regulations shall be made available for purchase at ~~a~~ fair, reasonable, and nondiscriminatory prices.

(~~h~~ j) Motor vehicle manufacturers and engine manufacturers shall not utilize any access code, recognition code or encryption for the purpose of preventing a vehicle or engine owner from using an emission-related motor vehicle or engine part (with the exception of the powertrain control module, engine control modules and transmission control modules, as applicable), that has not been manufactured by that motor vehicle manufacturer or engine manufacturer or any of its original equipment suppliers.

(~~i~~ k) **Trade Secrets:** Motor vehicle manufacturers and engine manufacturers may withhold trade secret information (as defined in the Uniform Trade Secret Act contained in Title 5 of the California Civil Code) which otherwise must be made available for purchase, subject to the following:

(1) At the time of initial posting of all information required to be provided under subsections (d) through (~~f~~ g) above, ~~the~~ a motor vehicle manufacturer or engine manufacturer shall identify, by brief description on its Internet website, any information that it believes to be a trade secret and not subject to disclosure.

(2) A covered person, believing that a motor vehicle manufacturer or engine manufacturer has not fully provided all information that is required to be provided under subsections (d) through (~~f~~ h) above shall submit a request in writing by certified mail to the motor vehicle manufacturer for release of the information.

(3) Upon receipt of the request for information, a motor vehicle manufacturer or engine manufacturer shall do the following:

(A) If it had not previously made the information available for purchase because of an oversight, it shall make the information available within 2 days from receipt of the request directly to the requesting covered person at a fair, reasonable, and nondiscriminatory price and by reasonable business means. Additionally, the motor vehicle manufacturer or engine manufacturer shall, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of ~~these~~ this regulations.

(B) If it has not made the requested information available for purchase because it believes the information to be a trade secret, it shall within 14 days, notify the requesting covered person that it considers the information to be a trade secret, provide justification in support of its position, and make reasonable efforts to see if the matter can be resolved informally.

(C) If during this 14 day period set forth in ~~paragraph~~ subsection (k)(3)(B), the motor vehicle manufacturer or engine manufacturer determines that the information is, in fact, not a trade secret, it shall immediately notify the requesting covered person of its determination and make the information available within the timeframes and means set forth in ~~paragraph~~ subsection (k)(3)(A).

(D) If the parties can informally resolve the matter, the motor vehicle manufacturer or engine manufacturer shall within 2 days provide the requesting covered person with all of the information that is subject to disclosure consistent with that agreement. The motor vehicle manufacturer or engine manufacturer shall also, within 7 days, make such information available for purchase to other

covered persons consistent with the requirements of ~~these~~ this regulations.

(E) If the matter cannot be informally resolved, the motor vehicle manufacturer or engine manufacturer shall, within 30 days from the date that it notified the requesting covered person that it considers the ~~initially received the request for~~ information to be a trade secret, or such longer period the parties may mutually agree upon, petition the California superior court for declaratory relief to make a finding that the information is exempt from disclosure because it is a trade secret. The petition shall be filed in accordance with the California Code of Civil Procedure section 395 et seq. The petition shall be accompanied with a declaration stating facts that show that the motor vehicle manufacturer or engine manufacturer has made a reasonable and good faith attempt to informally resolve the matter.

(~~j~~ l) Executive Officer Review of Compliance.

(1) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.

(2) The Executive Officer, through the Chief of the Mobile Source Operations Division (Division Chief), shall periodically audit a motor vehicle manufacturer's or engine manufacturer's Internet website(s) and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Motor vehicle manufacturers and engine manufacturers must provide the Executive Officer with free unrestricted access to the sites and other sources for the purposes of an audit.

(3) The Division Chief shall also commence an audit upon receipt of a request from a covered person that provides reasonable cause to believe that a motor vehicle manufacturer or engine manufacturer is not in compliance.

(A) Such a request shall be in the form of a written declaration setting forth specific details of the alleged noncompliance of the motor vehicle manufacturer or engine manufacturer. The declaration shall also set forth facts that demonstrate that the requesting covered has undertaken efforts to resolve the matter informally with the named motor vehicle manufacturer or engine manufacturer.

(B) The covered person shall concurrently serve a copy of the audit request on the motor vehicle manufacturer or engine manufacturer against whom the request has been filed.

(C) The Division Chief shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer or engine manufacturer is in noncompliance with Health and Safety Code section 43105.5 or

~~these~~ this regulations and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the motor vehicle manufacturer or engine manufacturer directly. If the Division Chief determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's or engine manufacturer's Internet website. Otherwise, the Division Chief shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer or engine manufacturer of his or her determination.

(4) In conducting any audit, the Division Chief may require the motor vehicle manufacturer or engine manufacturer to provide the ARB with all information and materials related to compliance with the requirements of Health and Safety Code section 43105.5 and this regulation, including but not limited to:

(A) Copies of all books, records, correspondence or documents in its possession or under its control that the motor vehicle manufacturer or engine manufacturer is required to provide to persons engaged in the service and repair industries and to equipment and tool companies under ~~paragraphs~~ subsections (~~e~~ d) through (~~f~~ h) of this regulation, and

(B) Any and all reports or records developed or compiled either for or by the motor vehicle manufacturer or engine manufacturer to monitor performance of its Internet site(s).

(5) In conducting the audit, the Division Chief may order or subpoena the motor vehicle manufacturer or engine manufacturer, the party filing the request for inspection, or any other person with possible knowledge of the issue of noncompliance to appear in person and testify under oath. The Division Chief may also request or subpoena such persons to provide any additional information that the Division Chief deems necessary to determine any issue of noncompliance.

(6) Except for good cause, the audit shall be completed within 60 days from the date that the Division Chief notifies the motor vehicle manufacturer or engine manufacturer about the audit. At the conclusion of the audit, the Division Chief shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer or engine manufacturer.

(7) If the Division Chief finds sufficient credible evidence that the motor vehicle manufacturer or engine manufacturer is not in compliance with any requirements of Health and Safety Code section 43105.5 or this regulation, the determination shall be in the form of a notice to comply against the motor vehicle manufacturer or engine manufacturer.

(8) The Division Chief's determination not to issue a notice to comply against a motor vehicle manufacturer or engine manufacturer is subject to limited review by the Executive Officer.

(A) A covered person may only request that the Executive Officer review a determination that it specifically requested pursuant to ~~paragraph~~ subsection (I)(3) above.

(B) The covered person shall file the request for Executive Officer review within 10 days from the date of issuance of the Division Chief's determination.

(i) The request shall be filed to the attention of the Executive Officer c/o Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812-2815. A copy of the request shall be concurrently served on the motor vehicle manufacturer that was the subject of the audit and determination.

(ii) The request shall set forth specific facts and reasons why the determination should be reviewed and supporting legal authority for why a notice to comply should have been issued.

(C) The motor vehicle manufacturer or engine manufacturer may file an opposition to the request for review within 10 days from the date of service of the request for review.

(D) The Executive Officer shall issue a determination within 30 days from the last day that the motor vehicle manufacturer or engine manufacturer had to file an opposition. The Executive Officer may affirm the decision of the Division Chief; remand the matter back to the Division Chief for further consideration or evidence; or issue a notice to comply against the motor vehicle manufacturer or engine manufacturer.

(9) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer or engine manufacturer shall either:

(A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer or engine manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive Officer deems appropriate to allow the motor vehicle manufacturer or engine manufacturer to properly remedy the noncompliance; or

(B) Request an administrative hearing to consider the basis or scope of the notice to comply.

(10) If the motor vehicle manufacturer or engine manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The Executive Officer shall reject the compliance plan if the Executive Officer finds that it will not bring the motor vehicle manufacturer or engine manufacturer into compliance within 45 days from the date that the plan would have been approved, or such longer period that the Executive Officer deemed appropriate to allow the

motor vehicle manufacturer or engine manufacturer to properly remedy the noncompliance. The Executive Officer shall notify the motor vehicle manufacturer or engine manufacturer in writing of his or her determination, and that the Executive Officer will be seeking administrative review pursuant to subsection (~~k~~ m) below.

(11) After approving a proposed compliance plan, if the Executive Officer determines that the motor vehicle manufacturer or engine manufacturer has failed to comply with the terms of the plan, the Executive Officer shall notify the motor vehicle manufacturer or engine manufacturer of his or her determination and that he or she will be seeking administrative review pursuant to subsection (~~k~~ m) below.

(~~k~~ m) Administrative Hearing Review.

(1) A motor vehicle manufacturer or engine manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the motor vehicle manufacturer or engine manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by ~~paragraph~~ subsection (~~j~~ l)(9)(A) shall result in the Executive Officer's determination becoming final and may subject the motor vehicle manufacturer or engine manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and ~~paragraph~~ subsection (l).

(2) The Executive Officer shall forward the following matters to a hearing officer for appropriate administrative review, including, if warranted, consideration of penalties:

(A) A compliance plan that it has rejected pursuant to ~~paragraph~~ subsection (~~j~~ l)(10).

(B) A notice to comply that has been issued against a motor vehicle manufacturer or engine manufacturer who has failed to either request administrative review of the Executive Officer determination, or, in the alternative, to submit a compliance plan.

(C) An Executive Officer determination that a motor vehicle manufacturer or engine manufacturer has failed to satisfy the terms of a compliance plan it has submitted in response to a notice to comply.

(3) Administrative hearings under this regulation shall be conducted pursuant to the procedures set forth in title 17, California Code of Regulations, section 60060 et seq.

(~~l~~ n) Penalties.

(1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer or engine manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer or engine manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer

may impose a civil penalty upon the motor vehicle manufacturer or engine manufacturer in an amount not to exceed $25,000 per day (including Saturdays, Sundays, and observed holidays) per violation until the violation is corrected. The hearing officer may immediately impose a civil penalty in cases where a motor vehicle manufacturer or engine manufacturer has failed to act in accordance with a compliance plan it has previously submitted.

(2) For purposes of this section, a finding by a hearing officer that a motor vehicle manufacturer or engine manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13, ~~CCR~~ California Code of Regulations, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

NOTE: Authority cited: sections 39600, 39601, 43000.5, 43018, 43105.5, and 43700, Health and Safety Code. Reference: section 39027.3, 43104 and 43105.5, Health and Safety Code

Attachment B

Title 17, California Code of Regulations, Chapter 1,
Subchapter 1.25, Article 2.5 Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles and 2007 and Subsequent Model Year Heavy-Duty Engines

This document is printed in a style to indicate changes from the existing provisions in title 17, California Code of Regulations, sections 60060.1 through 60060.34. All existing language is indicated by plain type. All proposed additions to language are indicated by underlined text. All proposed deletions to language are indicated by ~~strikeout~~.

Final Regulation Order

Title 17, California Code of Regulations, Chapter 1, Subchapter 1.25, reads as follows:

Article 2.5. Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles and 2007 and Subsequent Model Year Heavy-Duty Engines.

Subarticle 1. General Provisions

§ 60060.1. Applicability.

(a) This article governs review of Executive Officer determinations regarding compliance with the provisions of Health and Safety Code section 43105.5, and its implementing regulations, title 13, California Code of Regulations, section 1969 et seq.

(b) The provisions of this article apply only to determinations issued on or after the effective date of this article.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: 43105.5(e) and (f), Health and Safety Code; Sections 11500, et seq., Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.2. Definitions.

(a) The definitions applicable to these rules include those set out in the Health and Safety Code (commencing with section 39010) and in Title 13, California Code of Regulations, section 1969(c). The definitions set forth in Title 17, California Code of Regulations, section 60065.2 shall also be applicable to the extent that such definitions do not conflict with any terms as defined below. To the extent that any definition in section 60065.2 is applicable to these hearing procedures, any reference to a section within Article 3 that is set forth in that definition shall be read as the parallel section within this Article.

(b) The following definitions also apply:

(1) "Executive Officer" is the Executive Officer of the state board and employees of the state board authorized to represent the Executive Officer in the determination made pursuant to title 13, CCR, section 1969(j).

(2) "Interested Party" shall mean the covered person who filed the underlying request for audit that led to the issuance of a notice to comply.

(3) "Party" refers to the Executive Officer, ~~or~~ motor vehicle manufacturer or engine manufacturer appearing before a hearing officer in a hearing to review an

Executive Officer determination against the motor vehicle manufacturer or engine manufacturer for noncompliance with Health and Safety Code section 43105.5 and title 13, California Code of Regulations section 1969 and also to an person whose motion to intervene has been granted pursuant to section 60060.8.

(4) "Request for Review" refers to the document requesting an administrative hearing that may be filed by a motor vehicle manufacturer, an engine manufacturer, or the Executive Officer.

(5) "Response" means a document that is responsive to the request for review filed by a party opposed to the review or the relief requested.

NOTE: Authority cited: Sections 39010, 39600, and 39601, Health and Safety Code. Reference: Part 5, (commencing with 39010) and Sections, 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.3. Right to Representation.

(a) A party may appear in person or through a representative, who is not required to be an attorney at law. The right to representation is at the party's own expense. Following notification that a party is represented by a person other than him or herself, all further communications regarding the proceedings shall be directed to that representative.

(b) A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding. Persons who appear as representatives shall not engage in unethical conduct or intentionally fail to observe the procedures set forth in these rules and the proper instructions or orders of the hearing officer.

(c) A representative may withdraw an appearance by filing a written notice of withdrawal with the hearing office and by serving a copy on all parties.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.4. Time Limits; Computation of Time.

(a) All actions required under these rules shall be completed within the times specified in this article, unless extended by the hearing officer after a showing of good cause and consideration of prejudice to other parties. Requests for extensions of time for the filing of any pleading, letter, document, or other writing or completing any other required action must be received in advance of the date on which the filing or action is due and should contain sufficient facts to establish a reasonable basis for the relief requested.

(b) In computing the time that a person has to perform an act or exercise a right, the day of the event initiating the running of the time period shall not be included and the last day of the time period shall be included. If the last day falls on a Saturday, Sunday, or a state holiday, time shall be extended to the next working day.

(c) In computing time, the term "day" means calendar day, unless otherwise provided.

(d) Unless otherwise indicated by proof of service, the mailing date shall be presumed to be the postmark date appearing on the envelope if first-class postage was prepaid and the envelope was properly addressed.

(e) Where service of any pleading, petition, letter, document, or other writing is by mail, overnight delivery, or facsimile transmission (fax), pursuant to section 60060.5(c), and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time that such right may be exercised or act performed shall be extended as provided in section 60060.5(c).

(f) Papers delivered to or received by the hearing office during regular business hours (8 a.m. to 5 p.m.) will be filed on that date. Papers delivered or received at times after regular business hours will be filed on the next regular business day.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.5. Service, Notice and Posting.

(a) Except as otherwise provided in this article, the original of every pleading, petition, letter, document, or other writing served in a proceeding under these rules shall be filed with the hearing office.

(b) A copy of the request for review shall be concurrently served on all other parties.

(c) Unless otherwise required, service of any documents in the proceedings may be made by personal delivery, by United States first-class or interoffice mail, by overnight delivery, or by fax.

(1) Service is complete at the time of personal delivery.

(2) In the case of first-class mail, the documents to be served must be deposited in a post office, mailbox or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, properly addressed to the person on whom it is to be served at the address as last given by that person on any document filed in the present cause of action and served on the party making service or otherwise at the place of residence of the person to be served. The

service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended five days if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and fifteen days if the place of address is outside the United States.

(3) If served by overnight delivery, or interoffice mail, the document must be deposited in a box or other facility regularly maintained for interoffice mail or by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the address as last given by the person on any document filed in the present cause of action and served on the party making service or otherwise at that place of residence of the person to be served. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(4) If served by fax, the document must be transmitted to a fax machine maintained by the person on whom it is served at the fax machine telephone number as last given by that person on any document which he or she has filed in the present cause of action and served on the party making the service. The service is complete at the time of the transmission, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(d) Each document filed shall be accompanied by a proof of service on each party or its representative of record on the date of service. The proof of service shall state whether such service was made personally, first-class mail, overnight delivery, or fax.

(1) Where service is made by personal delivery, the declaration shall show the date and place of delivery and the name of the person to whom the documents were handed. Where the person making the service is unable to obtain the name of the person to whom the documents were handed, the person making the service may substitute a physical description for the name.

(2) Where service is made by first-class mail or overnight delivery, the declaration shall show the date and place of deposit in the mail, the name and address of the person served as shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(3) Where service is made by fax, the declaration shall show the method of service on each party, the date sent, and the fax number to which the document was sent.

(e) The proof of service declaration shall be signed by the person making it and contain the following statement above the signature: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at (City, State) on (Date)." The name of the declarant shall be typed and signed below this.

(f) Proof of service made in accordance with the California Code of Civil Procedure section 1013a complies with this regulation.

(g) Service and notice to a party who has appeared through a representative shall be made upon such representative.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11182 and 11184, Government Code; Sections 1013 and 1013a, California Code of Civil Procedure; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.6. Motions.

(a) Any motion or request for action by the hearing officer filed by any party, except those made orally on the record at a hearing, shall be in writing and filed with the hearing officer, with written notice and proof of service to all parties. The caption of each motion shall contain the title and docket number of the proceeding and a clear and plain statement of the relief sought and supporting rationale.

(b) Except as otherwise provided by statute or these regulations, or as ordered by the hearing officer, a motion shall be made and filed at least 15 days before the date set for the motion to be heard or the commencement of the hearing on the merits. Any response to the motion shall be filed and served no later than five days before the motion is scheduled to be heard or as ordered by the hearing officer.

(c) The hearing office shall set the time and place for the hearing of the motion. The hearing shall occur as soon as practicable.

(d) Except as otherwise provided by statute or these regulations, the hearing officer may decide a motion filed pursuant to this section without oral argument. Any party may request oral argument at the time of the filing of the motion or the response. If the hearing officer orders oral argument, the party requesting oral argument, or any party directed to do so by the hearing officer, shall serve written notice on all parties of the date, time and place of the oral argument. The hearing officer may direct that oral argument be made by telephone conference call. The hearing officer may order that the proceedings be recorded.

(e) The hearing officer shall issue a written order deciding any motion, unless the motion is made during the course of the hearing on the merits while on the record. The hearing officer may request that the prevailing party prepare a proposed order.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.7. Form of Pleadings.

(a) Except as otherwise expressly provided in this article or by the hearing officer, there are no specific requirements as to the form of documents filed in a proceeding under these rules.

(b) The filing party or its representative shall sign the original of any pleading, letter, document, or other writing (other than an exhibit). The signature constitutes a representation by the signer that it has read the document, that to the best of its knowledge, information and belief, the statements made therein are true, and that it has not filed the document for the purpose of delay.

(c) The initial document filed by any person shall indicate his or her status (as a party or representative of the party) and shall contain his or her name, address and telephone number. Any changes in this information shall be communicated promptly to the hearing office and all parties to the proceeding. A party who fails to furnish such information and any changes to it shall be deemed to have waived his or her right to notice and service under these rules.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.8. Motion to Intervene.

(a) Any person may file a motion to intervene.

(b) The hearing officer shall grant, as a matter of right, a timely written motion to intervene filed by an interested party to the determination for which review has been requested.

(c) As to other persons, the hearing officer may grant such a motion to intervene if all of the following conditions are satisfied:

(1) The motion is in writing, with copies served on all parties named in the request for review.

(2) The motion is made as early as practicable.

(3) The motion states facts demonstrating that the proceeding will substantially affect the requesting person's legal rights, duties, privileges, or immunities.

(4) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(d) Upon a motion filed under paragraph (b) or (c) being granted, the hearing officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a later time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.9. Limitations on Written Legal Arguments or Statements

(a) Any written legal argument or statement submitted to the hearing officer by a participant in an action under this part shall be double spaced and typed in a font size 12 point or larger. Except as otherwise provided by this part, or otherwise authorized by the hearing officer for good cause shown, no written legal argument, exclusive of any supporting documentation, may exceed:

(1) Fifteen pages, for arguments in support of or opposition to motions; and

(2) Five pages, for reply arguments.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.10. Interpreters and Other Forms of Accommodation.

(a) In proceedings where a party, a party's representative, or a party's expected witness requires an interpreter for any language, including sign language, that party shall be responsible for notifying the hearing office as soon as the requirement is known, but no later than ten days prior to the first day of hearing. The hearing officer may allow later notification for good cause. The hearing office shall be responsible for securing the interpreter, and for providing reasonable accommodation.

(b) The state board shall pay the cost of interpreter services if the hearing officer so directs. In determining who should pay the cost of the interpreter, the hearing officer shall base the decision on equitable considerations, including the ability of the party in need of the interpreter to pay the cost.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10 11435.25, 11435.30 and 11435.55, Government Code; Section 751, Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 2. Hearing Officers

§ 60060.11. Authority of Hearing Officers.

(a) The hearing officer shall have authority to review matters arising under Health and Safety Code section 43105.5 and title 13, CCR, section 1969(k). Such authority shall include those matters in which:

(1) A motor vehicle manufacturer <u>or engine manufacturer</u> has contested a notice to comply that has been issued by the Executive Officer because the motor vehicle manufacturer <u>or engine manufacturer</u> has allegedly failed to comply with the provisions of section 43105.5 or the implementing regulations, title 13, CCR, section 1969;

(2) The Executive Officer has requested review and issuance of a compliance order against a motor vehicle manufacturer <u>or engine manufacturer</u> who has failed to request review of a notice to comply and has not filed a compliance plan as required by the notice to comply; and

(3) The Executive Officer has rejected a compliance plan submitted by a motor vehicle manufacturer <u>or engine manufacturer</u> pursuant to section 43105.5(e); and

(4) The Executive Officer has requested review and issuance of a compliance order against a motor vehicle manufacturer <u>or engine manufacturer</u> that has failed to comply with the terms of an approved compliance plan.

(b) Except as may be specifically limited in title 13, CCR, section 1969, in any matter subject to review pursuant to these rules, the hearing officer shall have the authority to do any act and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules, including, but not limited to, authority to hold prehearing conferences; conduct hearings to determine all issues of fact and law presented; to rule

upon motions, requests and offers of proof, dispose of procedural requests, and issue all necessary orders; administer oaths and affirmations and take affidavits or declarations; to issue subpoenas and subpoenas duces tecum for the attendance of a person and production of testimony, books, documents, or other things; to compel the attendance of a person residing anywhere in the state; to rule on objections, privileges, defenses, and the receipt of relevant and material evidence; to call and examine a party or witness and introduce into the hearing record documentary or other evidence; to request a party at any time to state the respective position or supporting theory concerning any fact or issues in the proceeding; to certify official acts; to extend the submittal date of any proceeding; to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, decisions, and appropriate remedies, including penalties, as may be necessary for the full adjudication of the matter.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11181-11182 and 11425.30, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.12. Disqualification.

(a) The hearing officer shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing.

(b) A hearing officer may not hear any case in which he or she has previously served as an investigator, prosecutor, or advocate.

(c) Any party may request the disqualification of a hearing officer by filing an affidavit or declaration under penalty of perjury. A request against the hearing officer must be made no later than five days prior to the commencement of a prehearing conference or first day of hearing on the merits, whichever is earlier. The affidavit or declaration must state with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined, in the first instance, by the hearing officer against whom the request for disqualification has been filed.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10, 11425.30, 11425.40 and 11512, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 3. Ex Parte Communications

§ 60060.13. Prohibited Communications.

(a) Except as otherwise provided in this section, while the proceeding is pending, the hearing officer shall not participate in any communications with any party,

representative of a party, or any person who has a direct or indirect interest in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all parties, to participate in communication.

(b) No pleading, letter, document, or other writing shall be filed in a proceeding under these rules by a party unless service of a copy thereof together with any exhibit or attachment is made on all other parties to a proceeding. Service shall be in a manner as prescribed in section 60060.5.

(c) For the purpose of this section, a proceeding is pending from the time that a request for review is first filed with the hearing office.

(d) Communications prohibited under paragraph (a) do not include communications concerning matters of procedure or practice, including requests for continuances that are not in controversy.

(e) A communication between a hearing officer and an employee of the state board that would otherwise be prohibited by this section is permissible if the employee is another employee of the hearing office whose job duties include aiding the hearing officer in carrying out the hearing officer's adjudicative responsibilities. Upon request, the hearing office will provide a list of employees of the hearing office to the parties. The prohibitions of paragraph (a) that apply to the hearing officer shall also apply to such other employees employed in the hearing office. Communications permitted under this paragraph shall not furnish, augment, diminish, or modify the evidence in the record.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10, 11430.70 - 11430.80, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.14. Disclosure of Communication.

(a) If, while the proceeding is pending, but before serving as hearing officer, the hearing officer receives a communication of a type that would be in violation of this subarticle if received while serving as hearing officer, he or she shall, promptly after starting to serve, disclose the content of the communication on the record and give all parties an opportunity to address it as provided below.

(b) If a hearing officer receives a communication in violation of this article, the hearing officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the hearing officer to the communication; and

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the hearing officer, and the identity of each person from whom the hearing officer received the communication.

(c) The hearing officer shall notify all parties that a communication described in this section has been made a part of the record.

(d) If a party requests an opportunity to address the communication within ten days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The hearing officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

(e) Receipt of ex parte communications may be cause for disqualification of the hearing officer.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10 and 11430.10 et. seq., Government Code; Section 1969, title 13, California Code of Regulations Sections 11425.10 and 11430.10 et. seq., Government Code; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 4. Filing Requests for Administrative Hearing Review

§ 60060.15. Requests for Review by a Motor Vehicle Manufacturer <u>or Engine Manufacturer</u>.

(a) A motor vehicle manufacturer <u>or engine manufacturer</u> may file a request that a hearing officer review an Executive Officer determination to issue a notice to comply against the motor vehicle manufacturer <u>or engine manufacturer</u>, pursuant to Health and Safety Code section 43105.5(e) and title 13, CCR, section 1969(j).

(b) The motor vehicle manufacturer <u>or engine manufacturer</u> shall file the request for hearing within 30 days from the date that the Executive Officer issues a determination to issue a notice to comply. The hearing officer may, for good cause, extend the time for such filing.

(c) A failure to file a timely request for hearing of the Executive Officer's determination to issue a notice to comply, without alternatively serving on the Executive Officer a compliance plan as required by title 13, CCR, section 1969(j)(8), will result in the Executive Officer determination becoming final. The manufacturer's failure to pursue administrative review could subject the manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and title 13, CCR, section 1969(l).

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections, 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.16. Requests for Review by the Executive Officer

(a) The Executive Officer shall file a request for hearing officer review and issuance of a compliance order when:

(1) The Executive Officer has issued a notice to comply against a manufacturer and the manufacturer has failed to either request administrative review of the determination, or, in the alternative, to submit a compliance plan as required under Title 13, CCR, section 1969(j)(8). The Executive Officer shall file the request for review within 30 days from the last day that the manufacturer had to file either a request for review of the determination with the hearing office or submit a compliance plan to the Executive Officer.

(2) A motor vehicle manufacturer <u>or engine manufacturer</u> has submitted a compliance plan pursuant to Title 13, CCR, section 1969(j)(8), and the Executive Officer has determined pursuant to the procedures set forth in section 1969(j)(9) that the compliance plan is unacceptable. The Executive Officer shall file the request for review within 30 days from the date that he or she issues the determination.

(3) A motor vehicle manufacturer <u>or engine manufacturer</u> has had a compliance plan approved pursuant to Title 13, CCR, section 1969(j)(9) but has failed to comply with the terms of the plan.

(b) The hearing officer may, for good cause, extend the time for such filing.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.17. Content of a Request for Review.

A request for review is not required to follow any particular form or format. But the request for review shall include all of the following.

(a) The signature of the requesting party or its designated representative.

(b) Copies of and specific reference to the respective determination of the Executive Officer that is the subject of the request for review (i.e., the notice to comply issued against the motor vehicle manufacturer <u>or engine manufacturer</u>, or the determination rejecting the motor vehicle manufacturer's <u>or engine manufacturer's</u> compliance plan).

(c) The correct business address of the requesting party and, if applicable, the name and address of the party's designated representative.

(d) The name and address of any interested party identified in the challenged determination.

(a) A statement of the circumstances or arguments that are the basis of the request for hearing, with specific reference to the evidence that was before the Executive Officer that supports such arguments.

(f) A statement of the proposed relief sought by the requesting party.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.18. Notice of Receipt of Request for Review.

(a) Upon receipt of a timely request for review, the hearing office shall review the request for completeness.

(b) If the request does not include the information required under section 60060.17, the hearing office shall immediately acknowledge receipt of the request and notify the requesting party of the deficiencies that must be corrected before the request for hearing may be deemed filed and docketed. The requesting party shall have 10 days from the date of mailing the notice of deficiencies to submit a complete request for hearing. If the deficiencies are not corrected within the 10 days or the time provided for initially filing the request in sections 60060.15 through 60060.16, whichever is later, the underlying Executive Officer determination will become final.

(c) If the hearing office finds the request for hearing to be complete, it shall deem the request filed on the date that the request was received and notify the requesting party, the Executive Officer, and any identified interested party that a request for hearing has been filed.

(d) Except as provided in paragraph (f) below, the notice shall inform the parties that:

(1) Copies of these hearing procedures are available from the hearing office and that the procedures set forth at Government Code section 11500 et seq. are not applicable.

(2) Interested parties may file a motion to intervene pursuant to these rules if they wish to participate in the hearing.

(3) The parties shall submit to the hearing office responsive and reply arguments by the dates specified in these procedures.

(4) The parties have the right to be represented by counsel or other representative of their choosing and the right to an interpreter or other necessary accommodation.

(e) Upon being informed that the request for review is complete, the Executive Officer shall forward to the hearing officer, within 15 days from the date of service, a certified copy of the Executive Officer determination that is the subject of the request for review and the investigative record that was compiled during the Executive Officer's investigation.

(f) In those matters in which the Executive Officer has requested review of his or her determination to issue a notice to comply because the manufacturer has failed to contest the notice or, in the alternative, submit a compliance plan, the notice shall inform the parties that no hearing on the merits of the underlying Executive Officer determination will be held. Instead the notice shall inform the parties that the hearing officer will issue a compliance order against the motor vehicle manufacturer or engine manufacturer within 30 days of receipt from the Executive Officer of a certified copy of the Executive Officer determination and investigative record.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Part 5, Health and Safety Code; Section 11425.10, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.19. Response to Request for Review.

Any party opposed to a filed request for review shall file a response within 30 days after service of the notice of filing by the hearing office. The response shall be in writing and address the issues raised in the request for hearing. The response should include any rebuttal to the issues and arguments raised by the party requesting review, with specific reference to the investigative record that was before the Executive Officer when he or she made a determination that is the subject of the review before the hearing officer. The response shall be in the form of a declaration signed under penalty of perjury.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.20. Reply.

Within 15 days of receipt of the last submitted response, the party requesting review may file a reply responding to the contentions raised in any response. The reply shall be in the form of a declaration signed under penalty of perjury.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.21. Extensions of Time for Submitting a Response or Reply.

The time period for submitting a response required under section 60060.19 or a reply under section 60060.20 may be extended:

(1) By stipulation of the parties for 30 additional days to allow the parties to conduct informal settlement negotiations; or

(2) Upon motion to the hearing officer, who may extend the time period for up to 30 days, if the moving party can show good cause and if the other parties are not prejudiced by a delay.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.22. Stays Pending Issuance of Hearing Officer's Decision.

Pending the hearing officer issuing its decision, a motor vehicle manufacturer <u>or engine manufacturer</u> contesting an Executive Officer determination to issue a notice to comply or to reject a compliance plan submitted in response to a notice to comply shall not be required to take any action in response to the challenged Executive Officer determination.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 5. Pre-Hearing Procedures

§ 60060.23. Schedule of Review Proceedings.

(a) Upon receipt of a request for review, the administrative hearing office of the state board shall assign an administrative law judge to be the hearing officer, unless staffing and other resources of the hearing office would prevent timely consideration of

the matter. If the resources of the administrative hearing office prevent assignment, the administrative hearing office shall refer the matter to the State Office of Administrative Hearings for assignment.

(b) With the consent of the parties, hearings shall be conducted based on the written record certified by the Executive Officer and the written submissions of the parties, whenever possible.

(c) For matters that are to be decided based upon the submitted written record, the hearing officer shall serve upon the parties a schedule setting forth the date that the record will be closed and submitted for decision.

(d) For hearings requiring personal appearances, the hearing officer shall serve upon the parties the dates scheduled for hearing for the purpose of taking evidence. Such hearing shall not be set earlier than 30 days from the date that the notice is served on all parties.

(e) Upon either a motion of the hearing officer or any party, the hearing officer may grant such delays or adjustments to the schedule for the review proceedings as may be necessary or desirable in the interest of fairness. In filing a motion, the moving party shall file the request not less than five days prior to the date set for the action covered by the request and shall submit such evidence to establish good cause for the requested delay or adjustment to the schedule. If the hearing officer orders a delay or adjustment to schedule, he or she shall provide written notice to all parties.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11509 and 11440.30, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.24. Consolidation, Separation of Proceedings.

(a) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may consolidate for review and decision:

(1) Any number of proceedings involving the same parties; and

(2) Any number of proceedings involving common issues of law or fact where consolidation would expedite and simplify consideration of the issues and would not adversely affect the rights of the parties.

(b) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may, in furtherance of convenience or to avoid prejudice, or when separate review proceedings will be conducive to expedition and economy, order a separate review proceeding of any issue or any number of issues, including issues raised in a party's response to a request for hearing.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.25. Discovery.

(a) The provisions of this section provide the exclusive right to, and method of, discovery as to any proceeding governed by these review procedures. Nothing in this section prohibits the parties from voluntarily stipulating to exchange any information that they deem appropriate. This section does not authorize the inspection or copying of, any writing or thing that is privileged from disclosure by law or protected as part of an attorney's work product.

(b) No discovery is available to the parties in matters forwarded to the hearing officer for issuance of compliance orders pursuant to section 60060.16(a)(1).

(c) For other hearings, within 30 days from the date of service of the notice of filing, a party may serve on any other party to the proceeding a written request, for the *following:*

(1) The names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and

(2) The opportunity to inspect and make a copy of any thing, document, statement or other writings relevant to the issues for hearing that are in the possession, custody or control of another party to the proceeding and would be admissible in *evidence. This includes the following information from the investigative file compiled by* the Executive Officer: (i) the names and addresses of witnesses or of persons (other than confidential informants) having personal knowledge of the issues involved in the proceeding, (ii) matters perceived by the investigator in the course of his or her investigation (as opposed to his or her analysis or conclusions), and (iii) statements related to the issues of the proceedings which are otherwise admissible.

(d) The parties subject to the requirements of paragraph (c) shall arrange a mutually convenient time for the exchanging of the names and addresses of witnesses *and the inspecting and copying of relevant things, documents, statements, and other* writings identified in subparagraph (B) above, but such date shall not be later than 30 days from the date of receipt of the request made pursuant to subparagraph (b)(1). Unless other arrangements are made, the party requesting the writings shall pay for the copying.

(e) Absent a stipulation between the parties, a party claiming that certain writings or things are privileged against disclosure shall, within 15 days of receipt of the request for inspection and copying, serve on the requesting party a written statement setting *forth what matters it claims are privileged and the reasons supporting its claims.*

(f) A party may file a motion requesting that the hearing officer allow further discovery. The motion shall specify the proposed method of discovery that it would like to use and shall include affidavits describing in detail the nature of the information that the requesting party seeks through discovery, the relevance and probative value of the information, proposed time and place of the discovery (if applicable), and why the need for the information was not previously raised with the Executive Officer during his or her consideration of the determination under review. After fully considering the arguments of the parties, the hearing officer may order such discovery that will promote a full and fair hearing. The hearing officer's order shall set forth the form and method of permissible discovery and the time and place for its occurrence.

(g) Proceeding to Compel Discovery.

(1) Any party claiming that its request for discovery pursuant to this section has not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall include the following:

(A) Facts showing the party has failed or refused to comply with a discovery request or stipulation;

(B) A description of the information sought to be discovered;

(C) The reasons why the requested information is discoverable;

(D) Evidence that a reasonable and good faith attempt to contact the noncomplying party for an informal resolution of the issue has been made; and

(E) To the extent known by the moving party, the measures for the noncomplying party's refusal to provide the requested information.

(2) The motion shall be filed within 15 days after the date the requested information was to be made available for inspection and copying or the date a deposition was scheduled to take place and served upon the party who has failed or refused to provide discovery.

(3) The hearing on the motion to compel discovery shall be held within 15 days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three days prior to the date set for hearing.

(4) Where the matter sought to be discovered is under the custody or control of the party who has refused or failed to provide discovery and that party asserts that the matter is not a discoverable matter under this section, or is privileged against disclosure, the hearing officer may order that the party in custody lodge with the hearing

office the matters identified in subdivision (b) of section 915 of the Evidence Code, and the hearing officer shall examine the matters in accordance with those provisions.

(5) The hearing officer shall decide the case on the matters examined in a closed meeting, the papers filed by the parties, and such oral argument and additional evidence as the hearing officer may allow.

(6) Unless otherwise stipulated by the parties, the hearing officer shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing office shall serve a copy of the order by mail upon the parties. Where the order grants the motion in whole, or in part, the order shall not become effective until ten days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(7) If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f). Health and Safety Code. Reference:; Sections 43105.5(e) and (f), Health and Safety Code; Sections 11189 and 11507.6, Government Code; Section 915(b), Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 6. Contempt and Sanctions

§ 60060.26. Contempt.

If any person in proceedings before the hearing officer disobeys or resists any lawful order or, if applicable, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing, the hearing officer may certify the facts to the superior court in and for the county where contempt proceedings are held pursuant to Government Code section 11455.20.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.27. Sanctions.

(a) Notwithstanding the above, the hearing officer may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions and the failure to comply with a lawful order of the hearing officer.

(2) "Frivolous" means:

(A) Totally and completely without merit, or

(B) For the sole purpose of harassing an opposing party.

(b) An order for sanctions shall be in writing and shall set forth the factual findings that are the basis for the imposition of sanctions.

(1) In determining reasonable expenses, the party or parties to whom payment is to be made shall, at the hearing officer's discretion, either make a statement on the record under oath or submit a written declaration under penalty of perjury setting forth with specificity the expenses incurred as a result of the other party's conduct.

(2) Within five days of the receipt of the hearing officer's order for the payment of expenses, a party or representative may, on the ground of hardship, request reconsideration from the hearing officer issuing the order. The request for reconsideration shall be filed in writing, and include a declaration under penalty of perjury.

(c) The order or denial of an order to pay expenses under paragraph (b) is subject of procedural review in the same manner as a final decision pursuant to Subarticle 11.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 7. Review Proceedings

§ 60060.28 Failure to Appear.

If after service of a notice of hearing, including notice of consolidated hearing or continuance, a party fails to appear at a hearing either in person or by representative, the hearing officer may take the proceeding off the calendar or such other appropriate action to insure the rights and interests of all parties under Health and Safety Code section 43105.5 and title 13, CCR, section 1969 et seq.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.29. Conduct of Hearings.

(a) All hearings shall be presided over by a hearing officer who shall conduct a full and fair hearing in which all parties have a reasonable opportunity to be heard and to present evidence.

(b) All hearings shall be conducted in the English language, although any party may request the assistance of an interpreter.

(c) In matters brought before the hearing officer pursuant to a request for review filed by the Executive Officer under section 60060.16(a)(1), no hearing on the merits of the underlying Executive Officer determination issuing a notice to comply shall be held. At the hearing officer's discretion, the hearing officer may issue an order to comply without convening a formal hearing.

(d) For all other hearings, subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:

(1) Call and examine witnesses.

(2) Introduce exhibits.

(3) Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations.

(4) Impeach any witness regardless of which party first called the witness to testify.

(5) Call and examine an opposing party as if under cross-examination, even if that party has not testified on its own behalf.

(e) The burden of proof and of going forth with evidence in hearings covered by paragraph (c) shall be as follows.

(1) In all hearings for the review of Executive Officer determinations to issue a notice to comply against a motor vehicle manufacturer <u>or engine manufacturer</u>, to reject a motor vehicle manufacturer's <u>or engine manufacturer's</u> compliance plan, or to seek enforcement of a motor vehicle manufacturer's <u>or engine manufacturer's</u> failure to comply with the terms of an approved compliance plan, the burden of proof and of going forward shall be on the Executive Officer.

(2) At the conclusion of Executive Officer's case-in-chief, the motor vehicle manufacturer <u>or engine manufacturer</u> has the burden of producing evidence to show that no basis exists to support the Executive Officer determination that is under review.

(3) At the close of the motor vehicle manufacturer's <u>or engine manufacturer's</u> presentation of evidence, the parties respectively have the right to introduce rebuttal

evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer pursuant to subparagraph (f)(1) below.

(f) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement;

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(g) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received.

(h) The hearing officer shall base its decision as to whether a motor vehicle manufacturer <u>or engine manufacturer</u> is not in compliance or whether the Executive Officer properly rejected a manufacturer submitted compliance plan upon a preponderance of the evidence.

(i) Hearings shall be recorded electronically or by a court reporter. The record made by the Administrative Hearing Office shall be the official record of the hearing.

(1) A verbatim transcript of the official recording will not normally be prepared, but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.

(2) The official record of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.30. Evidence.

(a) Oral testimony shall be taken only under oath or affirmation.

(b) The hearing need not be conducted in accordance with technical rules of evidence. Rather, the hearing officer shall admit evidence that is the type of evidence that responsible persons are accustomed to relying upon in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but upon timely objection shall not be sufficient by itself to support a finding unless it would be admissible over objection in a civil court action.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized.

(d) Regarding evidence claimed to be trade secrets or other confidential information, the hearing officer will defer to the findings and conclusions of law made by the superior court pursuant to Health and Safety Code section 43105.5(b) and title 13, CCR, section 1969(i). The hearing officer shall preserve the confidentiality of information determined to be a trade secret and may make such orders as may be necessary, including considering such information in a closed meeting.

(e) In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the state board's area of expertise, and determinations, rulings, orders, findings and decisions, required by law to be made by the hearing officer.

(1) The hearing officer shall take official notice of those matters set forth in section 451 of the Evidence Code.

(2) The hearing officer may take official notice of those matters set forth in section 452 of the Evidence Code.

(3) Each party shall give notice of a request to take official notice and be given reasonable opportunity on request to present information relevant to:

(A) The propriety of taking official notice; and

(B) The effect of the matter to be noticed.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 451

and 452, Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.31. Evidence by Declaration.

(a) At any time 20 or more days prior to a hearing or a continued hearing, a party may mail or deliver to the opposing party or parties a copy of any declaration which the proponent proposes to introduce in evidence, together with a notice as provided in paragraph (b). Unless an opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the declarant the opposing party's right to cross-examine such declarant is waived and the declaration, if introduced in evidence, shall be given the same effect as if the declarant had testified orally. If an opportunity to cross-examine a declarant is not afforded after a request is made as herein provided, the hearing officer may allow the declaration to be introduced, but it shall only be given the same effect as other hearsay evidence.

(b) The notice referred to in paragraph (a) shall be a separate document concurrently served with the declaration, entitled "Notice of Intent to Use Declaration in Lieu of Oral Testimony." The title shall be in bold print. The content of the notice shall be substantially in the following form:

> The accompanying declaration of [insert name of declarant] will be introduced as evidence at the hearing in [insert title and docket number or petition number of proceeding]. [Insert name] will not be called to testify orally and you will not be entitled to question the declarant unless you notify [insert name of the proponent or representative] at [insert address] that you wish to cross-examine the declarant. To be effective, your request must be mailed or delivered to [insert name of proponent or representative] on or before [insert a date 7 days after the date of mailing or delivery of the declaration to the opposing party]."

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 8. Decisions of the Hearing Officer

§ 60060.32. Decisions and Orders of the Hearing Officer.

(a) Except for compliance orders issued pursuant to or after a request for hearing filed under section 60060.16(a)(1) or otherwise ordered, all proceedings shall be submitted at the time identified by the hearing officer in the schedule for review that has been served upon the parties. Within 30 days of the matter being submitted, the hearing officer shall make findings upon all facts relevant to the issues under review, and file a written decision and order setting forth the reasons or grounds therefore.

(b) If the decision finds that the motor vehicle manufacturer <u>or engine manufacturer</u> has failed to comply with any of the requirements of Health and Safety

Code section 43105.5 or title 13, CCR, section 1969, including the obligation to submit an acceptable compliance plan, the decision shall order the motor vehicle manufacturer or engine manufacturer to come into compliance within 30 days of the effective date of the decision.

(1) The order shall further provide that if the motor vehicle manufacturer or engine manufacturer fails to comply within the 30-day time period set forth above, the hearing officer may order that the motor vehicle manufacturer or engine manufacturer be assessed penalties in an amount not to exceed $25,000 per day per violation, commencing of the 31st day of noncompliance and continuing until the violation is corrected.

(2) For purposes of this section, a finding by the hearing officer that a motor vehicle manufacturer or engine manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13 CCR, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

(c) A compliance order issued pursuant to a request for review filed under section 60060.16(a)(1) shall be in writing and issued within 30 days from the date the hearing officer notified the parties that it is in receipt of the documents forwarded by the Executive Officer. The order shall require that the motor vehicle manufacturer or engine manufacturer, within 30 days from the date of the order, correct the noncompliance identified by the Executive Officer in its notice to comply. The hearing officer may order the assessment of penalties for continuing noncompliance after the 30-day grace period consistent with the provisions of paragraphs (b)(1) and (2) above.

(d) The decision or order of the hearing officer is the final decision of the ARB and is effective on the date of issuance.

(e) A copy of the decision or order shall be served on each party or representative.

(f) Within five days of the filing of any decision or order, a party may file a written request that the hearing officer correct a mistake or clerical error.

(1) Pursuant to the party's request or on the hearing officer's own motion, the hearing officer may issue a revised decision or order correcting a mistake or clerical error with respect to any matter respectively covered therein. If the hearing officer makes such a determination, he shall provide written notice to the parties.

(2) A motion filed by a party under this subparagraph shall be deemed denied if the hearing officer has taken no action to address the request within 15 days of filing of the request. In such a case, the decision shall become effective 15 days after the motion was filed.

(3) Within 15 days notifying the parties of his or her intent to modify the decision or order, the hearing officer shall serve a copy of any modified decision or order on each party that had previously been served with the original. The modified decision or order shall supersede the previously served document. The date of service of the modified decision or order shall become the effective date of the document.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 11425.50, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

§ 60060.33. Penalty Assessment

In determining the appropriate conditional daily penalties that a motor vehicle manufacturer or engine manufacturer may be subject to under Health and Safety Code section 43105.5(f) and these regulations, the hearing officer shall consider the following factors.

(a) The extent of noncompliance by the motor vehicle manufacturer or engine manufacturer.

(b) The harm caused by the noncompliance to the covered person and other persons, as well as any violations to public health and safety and to the environment.

(c) The nature and persistence of the noncompliance.

(d) The compliance history of the motor vehicle manufacturer or engine manufacturer, including the history of past noncompliance.

(e) The efforts made to comply, and any special circumstances preventing or delaying compliance.

(f) The cooperation of the motor vehicle manufacturer or engine manufacturer during the course of the Executive Officer's investigation.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Section 43105.5 Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

Subarticle 9. Judicial Review

§ 60060.34. Judicial Review.

(a) Except as provided in paragraph (b) below, a party adversely affected by the final decision of the hearing officer may seek judicial review by filing a petition for a writ of mandate in accordance with section 1094.5 of the California Code of Civil Procedure. Such petition shall be filed within 30 days after the order or decision becomes final.

(b) A motor vehicle manufacturer or engine manufacturer adversely affected by a compliance order issued pursuant to section 60060.33(a) may only request judicial review of a penalty assessment and not the merits of the underlying notice to comply, which the manufacturer never itself contested.

(c) The state board may seek to enforce a final order or decision in superior court in accordance with applicable law.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1094.5, California Code of Civil Procedure; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

State of California
AIR RESOURCES BOARD

NOTICE OF POSTPONEMENT

NOTICE OF PUBLIC HEARING TO CONSIDER TECHNICAL AMENDMENTS TO THE MOTOR VEHICLE EVAPORATIVE AND EXHAUST EMISSIONS TEST PROCEDURES

By Notice dated March 28, 2006, and published in the April 7, 2006, California Regulatory Notice Register, Register 2006, No. 14-Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider technical amendments to the motor vehicle evaporative and exhaust emissions test procedures. The hearing was scheduled for Thursday, May 25, 2006, at 9:00 a.m., at the California Environmental Protection Agency, Air Resources Board, 1001 "I" Street, Auditorium, Second Floor, Sacramento, California.

PLEASE BE ADVISED that the hearing has been postponed to the following date, time and place:

DATE:	**June 22, 2006**
TIME:	9:00 a.m.
PLACE:	South Coast Air Quality Management District Auditorium 21865 E. Copley Drive Diamond Bar, CA 91765

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 22, 2006, and may continue at 8:30 a.m., June 23, 2002. This item may not be considered until June 23, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before June 22, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette, or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: April 13, 2006

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER TECHNICAL AMENDMENTS TO THE MOTOR VEHICLE EVAPORATIVE AND EXHAUST EMISSIONS TEST PROCEDURES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of regulatory amendments to the Motor Vehicle Evaporative Emissions Test Procedures, Refueling Emission Test Procedures, and Exhaust Test Procedures. The amendments, collectively referred to as "Streamline Evap," will clarify and modify ARB's current test procedures and will also harmonize them with recently amended federal test procedures. The amendments will not affect the stringency of current exhaust or evaporative emission test procedures or associated emissions standards.

DATE: May 25, 2006

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 25, 2006, and may continue at 8:30 a.m., May 26, 2006. This item may not be considered until May 26, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before May 25, 2006, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to http://www.arb.ca.gov/html/ada/ada.htm for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), section 1961 and the following test procedure incorporated by reference: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted August 5, 1999, as last amended August 4, 2005; 13 CCR section 1976 and the following test procedure incorporated by reference: "California Evaporative Emission

Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," as adopted August 5, 1999; and 13 CCR section 1978 and the following test procedure incorporated by reference: "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5,1999, as last amended September 5, 2003.

Background:

ARB's Current Evaporative and Exhaust Emission Test Procedures

The ARB staff has worked with the automotive industry and with the United States Environmental Protection Agency (U.S. EPA) since 1996 to "streamline" or harmonize ARB and U.S. EPA evaporative emissions-related test procedures to reduce the test burden on manufacturers related to new vehicle certification and in-use vehicle compliance. On December 8, 2005, U.S. EPA adopted a direct final rule which, effective February 6, 2006, amended the federal evaporative and refueling emissions test procedures, dynamometer test provisions, and vehicle labeling regulations applicable to on-road light-duty vehicles, light-duty trucks, and heavy-duty vehicles up to 14,000 pounds Gross Vehicle Weight Rating. The comparable California motor vehicle test procedures do not currently reflect the new federal amendments.

The Proposed Amendments

Staff is proposing technical amendments to ARB's motor vehicle exhaust and evaporative emission regulations that would clarify and revise the current test procedures to achieve better harmonization with the recently amended corresponding federal test procedures. These amendments will reduce manufacturers' certification and in-use vehicle compliance emission testing burden related to evaporative/refueling standards without modifying the stringency of the procedures or the associated standards.

Currently, manufacturers demonstrate certification compliance with the California evaporative emission standards through a series of two specific test procedure sequences: 1) Three-Day Diurnal plus High-Temperature Hot Soak and Running Loss (3-day diurnal); and 2) Supplemental Two-Day Diurnal plus Hot Soak (2-day diurnal). The following is a summary of staff's proposed amendments, all of which are consistent with the recent federal amendments:

- *Optional waiver of the 2-day diurnal test for certification*

  The primary purpose of the 2-day diurnal test is to ensure that a vehicle's carbon canister adequately purges during short trips. The 2-day diurnal test is considered redundant for certification purposes because adequate purge is assured if a vehicle demonstrates compliance with both the 3-day diurnal and the onboard refueling vapor recovery test standards. The proposed amendments would provide manufacturers the option to not perform the 2-day diurnal test for

certification purposes. Manufacturers would still be subject to applicable 2-day diurnal certification standards, and ARB could still perform 2-day diurnal tests for in-use compliance or require manufacturers to perform confirmatory 2-day diurnal tests for certification. Furthermore, a 2-day diurnal test would still be required under the In-Use Verification Program (IUVP).

- *Clarify the provisions for an alternative running loss test method*

  The current running loss test procedures allow manufacturers to use an alternative test procedure as long as the alternative is demonstrated to be equivalent or more stringent than the specified procedure. The proposed amendments would align the provisions for alternative procedures for certification confirmatory and in-use compliance tests with the recent federal amendments. The intent of both the federal and proposed California amendments is to encourage manufacturers to develop alternative methods that resolve technical complexities in the current procedures.

- *Modify canister preconditioning procedures*

  The proposed amendments would allow manufacturers to use alternative canister preconditioning procedures. The current preconditioning procedure does not provide sufficient flexibility to address complications arising from the inaccessibility of present-day canisters. The proposed changes would provide manufacturers an option to use alternative preconditioning methods that allow evaporative canisters to remain installed in the vehicle throughout the preconditioning procedure.

- *Clarify In-Use Verification Program evaporative test requirements*

  The proposed amendments would clarify the IUVP requirements regarding the certified fuel types of in-use vehicles. Specifically, gasoline- and ethanol-fueled in-use vehicles would be required to perform 2-day diurnal tests. Liquefied petroleum gas- and non-dedicated compressed natural gas-fueled IUVP vehicles would be required to perform 3-day diurnal tests.

- *Clarify onboard refueling vapor recovery test procedures*

  The proposed amendments would provide manufacturers the option to leave canister vent lines connected to the canister under certain situations during the onboard refueling vapor recovery tests. Such situations can occur, for example, when the vent lines are relatively inaccessible.

- *Four-wheel drive dynamometer provisions*

  The number of full-time four-wheel and all-wheel drive vehicles in the statewide fleet has dramatically increased since exhaust emission standards were first

adopted. Ideally, these vehicles should be emission tested on four-wheel drive dynamometers. However, the current test procedures only contain provisions for two-wheel drive dynamometers. The proposed amendments would add provisions specifying that full time four-wheel and all-wheel drive vehicles may be tested on four-wheel drive dynamometers. Other amendments would clarify aspects related to in-use compliance tests and certification confirmatory tests with respect to four-wheel drive vehicles.

- *Vehicle labeling*

  Some of the current vehicle label content specifications are outdated. The proposed amendments would eliminate the need to include outdated engine information on the labels, such as a vacuum hose routing diagram, engine tune-up adjustment specifications, and the vehicle emission control bar code. This revision allows more design flexibility, and further aligns the California label regulations with federal label provisions.

COMPARABLE FEDERAL REGULATIONS

Under Title II of the federal Clean Air Act (CAA), U.S. EPA has adopted comprehensive regulations to regulate emissions from new motor vehicles and motor vehicle engines (see 40 CFR Part 86). However, both state law and CAA section 209(b), allow California to establish its own emission standards that are more stringent than comparable federal standards. California's evaporative emission standards are significantly more stringent than the federal standards. The more stringent California standards are necessary to attain the national and state ambient ozone standards, and to fulfill the requirements of state and federal law.

As previously noted, the proposed amendments would align California's exhaust and evaporative emission test procedures with the recently amended federal procedures (70 FR 72917, December 8, 2005). The proposed amendments would not affect any of California's existing exhaust or evaporative emission standards.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Proposed Technical Amendments to the Motor Vehicle Evaporative and Exhaust Emissions Test Procedures."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental

Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on May 25, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Ronald Haste, Air Resources Engineer, by e-mail to rhaste@arb.ca.gov or by phone at (626) 450-6145, or to Sharon Lemieux, Manager, by e-mail to sclemieu@arb.ca.gov or by phone at (626) 575-7067.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/evap2006/evap2006.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

The affected businesses that would be required to comply with the proposed amendments are manufacturers that certify new California motor vehicles. In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments are not expected to increase costs, but may result in cost savings because the amended test procedures will streamline and harmonize California's test procedures with existing

federal procedures, thereby allowing manufacturers to reduce the number of emission tests for vehicle certification and the IUVP.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the proposed amendments allow for reducing the number of emission tests required for vehicle certification and the IUVP, and these tests are conducted by vehicle manufacturers, none of which are small businesses.

Before taking final action on the proposed regulatory action, the Executive Officer must reasonably determine that no alternative considered by the Executive Officer would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, May 24, 2006,** and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Electronic submittal : http://www.arb.ca.gov/lispub/comm/bclist.php **no later than 12:00 noon, May 24, 2006.**

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon May 24, 2006.**

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39500, 39600, 39601, 39667, 43013, 43018, 43101, 43104, 43105, and 43107 of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39500, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43204, and 43205 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: March 28, 2006

State of California
CALIFORNIA ENIVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

STAFF REPORT:
INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING

PROPOSED TECHNICAL AMENDMENTS TO THE MOTOR VEHICLE EVAPORATIVE AND EXHAUST EMISSIONS TEST PROCEDURES

Date of Release: April 7, 2006
Scheduled for Consideration: May 25, 2006

This document has been reviewed by the staff of the California Air Resources Board, and approved for publication. Publication does not signify that the contents necessarily reflect the views and policies for the Air Resources Board.

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EXECUTIVE SUMMARY

The Air Resources Board, United States Environmental Protection Agency (U.S. EPA), and automobile manufacturers have collaborated in an effort to streamline the motor vehicle evaporative emissions test procedures. The U.S. EPA issued a direct final rule for these amendments on December 8, 2005 (U.S. EPA 2005; Summary), that became effective on February 6, 2006. Additional minor amendments were also included that address four-wheel drive dynamometer provisions and clarify the vehicle label specifications. Similarly, staff proposes to modify the applicable California procedures to align with these latest federal versions. The proposal serves to reduce the test burden on manufacturers that is connected with evaporative emission-related certification and in-use vehicle compliance activities, without any change in the stringency of the procedures or effectiveness of the emission standards. This objective is accomplished by procedural clarifications and modifications that eliminate redundancies and complexities and result in a better harmonization with the federal procedures.

In particular, the proposal includes amendments that provide manufacturers with an option to waive compliance demonstration with the certification supplemental two-day diurnal emission standard in order to eliminate compliance redundancy; to clarify the current provision for alternative running loss test procedures so that technical complexities are resolved; to provide an allowance for alternative evaporative canister preconditioning methods with the intent to eliminate inaccessibility difficulties; to clarify the applicability of the In-Use Verification Procedure requirements with respect to fuel types; and, to provide an optional configuration of the canister and vent hoses under refueling emission tests. Accordingly, staff recommends that the proposed amendments be adopted as described.

I. INTRODUCTION

The Air Resources Board (ARB) first required compliance with motor vehicle evaporative emissions standards and test procedures in 1970. Since then ARB has established more stringent evaporative emission standards and more realistic test requirements that reduce evaporative emissions. California's implementation of evaporative emission standards has usually preceded federal action.

In 1996, the United States Environmental Protection Agency (U.S. EPA), ARB, and automobile manufacturers began a collaborative effort to determine if the evaporative test procedures could possibly be "streamlined" without impacting stringency. In December 2002, U.S. EPA proposed streamlined measures that included both clarifications to their current procedures and suggestions for future regulatory modifications (U.S. EPA 2002). Subsequently, these clarifications and modifications were codified by U.S. EPA, and became effective on February 6, 2006 (U.S. EPA 2005). The amendments also included minor revisions to the dynamometer[1] procedures and specifications, and vehicle label requirements.

ARB now proposes similar changes to better harmonize the relevant California procedures with the latest federal revisions. Specifically, these evaporative-related revisions both clarify and modify particular requirements contained within the evaporative, refueling, and exhaust emission test procedures. Other minor amendments to the exhaust procedures are proposed that add new provisions to recognize four-wheel drive dynamometer tests, and update the current vehicle label specifications. Staff's proposal will lessen the test burden on manufacturers of certification and in-use vehicle compliance. The amendments do not affect the stringency of the current requirements. A general discussion of the evaporative emissions-related standards and test procedures is provided below, as well as a more detailed discussion of staff's proposal.

II. PROPOSED EVAPORATIVE-RELATED AMENDMENTS

A. Background

The majority of evaporative emissions results from fuel vapors escaping from a vehicle's fuel system and permeation of the fuel through components such as the

[1] A dynamometer is a stationary laboratory device used to simulate on-road driving.

fuel tank and fuel lines. Modern vehicles control these emissions by use of a carbon canister[2], and fuel tanks and lines made from advanced, non-permeable materials.

Evaporative Emission Test Procedures

Evaporative emission certification requirements adopted under the second generation of California's Low Emission Vehicle emission regulations (LEV II evap) were phased in over the 2004 – 2006 model years. These LEV II evap requirements affect passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles[3]. The regulations ensure that evaporative emissions are controlled to "near-zero" levels and that this control will be effective for the useful life of the vehicle. As an option, manufacturers may also certify to California's unique "zero fuel" evaporative emission standard giving manufacturers the opportunity to generate credits to satisfy their Zero Emission Vehicle requirements.

Compliance with the LEV II evaporative standards is demonstrated by measuring the vehicle's evaporative emissions over simulated real-world conditions. For example, evaporative emissions are measured in an enclosed chamber in which the vehicle is subjected to temperatures swings that are intended to simulate exposure to several hot summer days (i.e., diurnals). Evaporative emissions are also measured during simulated driving conditions (i.e., running losses), and immediately after the engine is shut down (i.e., hot soak). Specifically, compliance is demonstrated using a series of two specific test procedure sequences: 1) Three-Day Diurnal plus High-Temperature Hot Soak and Running Loss (3D+HS); and, 2) Supplemental Two-Day Diurnal plus Hot Soak (2D+HS) ("California Evaporative Emission Standards and Test Procedures For 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999 [hereinafter referred to as "Evap Test Procedures"]; Part I.E.1(d)). Both of these procedures involve prescribed methods to suitably condition and stabilize the evaporative emission control system components (i.e., preconditioning of the canister and the vehicle fuel system (e.g., fuel tank drain and fills, dynamometer test cycles, etc.) prior to the actual emission tests. Moreover, certification compliance is also demonstrated by properly aging evaporative emission control system components to the required useful life in advance of any certification tests. The evaporative certification data submitted by manufacturers are subject to confirmation when requested by the ARB (i.e., confirmatory testing).

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[2] The onboard carbon canister is the prime evaporative emissions control device. The canister contains activated carbon material that collects hydrocarbon vapors and later, under suitable engine conditions, the vapors are "purged" out of the canisters and combusted in the engine.

[3] Incomplete medium-duty vehicles and heavy-duty vehicles, over 14,000 pounds gross vehicle weight rating, are certified to the applicable evaporative emission standards solely on the basis of an engineering evaluation of the system and data which may be partly derived from evaporative control systems certified for use on light- and medium-duty vehicles.

A continuous five-day period is necessary to conduct a 3D+HS test sequence while the 2D+HS test sequence requires approximately four days.

In addition, a manufacturer-administered in-use compliance program (i.e., the In-Use Verification Program or "IUVP"[4]) requires manufacturers to procure and emission test a specified number of in-use vehicles on an "as received" basis at certain mileage intervals. Under the IUVP, vehicles must show compliance with the 3D+HS and 2D+HS emission standards; failure to demonstrate compliance may subject the manufacturer to remedial action. In addition, ARB may conduct its own in-use compliance test program of vehicles that have been identified to have a higher probability of non-compliance.

Onboard Refueling Vapor Recovery Emission Procedures

The existing Onboard Refueling Vapor Recovery (ORVR) requirements ensure that hydrocarbon vapors are not released to the atmosphere during the refueling process. The ORVR emission standards for California are applicable to passenger cars, light-duty trucks, and medium-duty vehicles with a gross vehicle weight rating less than 8,501 pounds. Certification compliance with the ORVR standards is demonstrated by a single test sequence. Test preparations involve steps to condition and stabilize the ORVR and fuel system in a similar manner done for the evaporative emission test sequences. The ORVR sequence allows for evaluations of both integrated and non-integrated evaporative/refueling systems[5]. Vehicle certification also requires a demonstration of compliance with the refueling spitback standard. The ORVR test sequence takes three days to conduct.

B. Description of the Proposal

Optional Demonstration of Compliance – Supplemental Two-Day Diurnal Standard for Certification

The primary purpose of the 2D+HS test is to gauge the evaporative emission control system's ability to adequately purge the canister of "trapped" hydrocarbon vapors within a short drive-time period. However, this purge capability can also be demonstrated by the ORVR test. Furthermore, even though other pertinent evaporative information can be obtained under the 2D+HS test, this information can also be obtained by other means (i.e., 3D+HS test.) Consequently, the

[4] The In-Use Verification Program was adopted as part of the Compliance Assurance Program ("CAP 2000") amendments included in the LEV II November 5,1998 rulemaking.

[5] An integrated evaporative/refueling system uses a single carbon canister to retain the hydrocarbon vapors produced by both the evaporative and refueling processes. A non-integrated system uses two separate canisters – one for evaporative, and one for refueling emissions. Only integrated systems have been utilized on vehicles to date.

combined results of the 3D+HS and ORVR tests offer a reliable indication of purge capability and overall evaporative emissions compliance. Thus, if a vehicle complies with both the 3D+HS and ORVR emission standards, it is very likely to comply with the 2D+HS standard. Consequently, in practice, the 2D+HS test becomes somewhat redundant for certification purposes.

Accordingly, staff proposes that manufacturers be allowed the option to certify new vehicles to the 2D+HS standard on the basis of an engineering evaluation. This option relieves manufacturers of the need to demonstrate compliance with the standard by the 2D+HS test sequence. A manufacturer must submit a compliance statement at the time of certification, based on good engineering judgment, that the vehicle's canister purges adequately and complies with the 2D+HS emission standard.

Manufacturers that use this option may be requested by the ARB to provide specific data and information used by the manufacturer to ensure adequate purge flow and compliance with the 2D+HS emission standard. This information may include, but be not limited to, canister type, canister volume, canister working capacity, fuel tank volume, fuel tank geometry, fuel delivery system (e.g., returnless, variable flow fuel pump, etc.), description of the input parameters and software strategy used to control canister purge, nominal purge flow volume (i.e., amount of bed volumes) achieved by a test vehicle after a completed 2D+HS dynamometer drive cycle, and nominal purge flow volume achieved by a test vehicle after completion of the 3D+HS dynamometer drive cycles. In addition, although this option would exempt vehicles from demonstrating compliance with the 2D+HS standard during certification, these vehicles would still be liable for complying with the emission standard in-use. Therefore in-use compliance testing would provide added assurance that the canister is purging adequately.

This option is only available for certification of current technology, gasoline- and ethanol-fueled vehicles that are configured with conventional evaporative emission control systems (e.g., conventional fuel tank materials, liquid seal ORVR systems, carbon canisters, etc.). The option is not available when certifying a vehicle with a non-integrated evaporative/refueling system.

Staff believes this option will not result in any loss of stringency of the standards since manufacturers that elect to use this provision must still certify their vehicles to both the 3D+HS and ORVR emission standards; and comply with the 2D+HS and ORVR emission standards in-use. As a check at the time of certification, the ARB could still request a manufacturer to conduct a 2D+HS certification confirmatory test.

Alternative Methods for the Running Loss Test Procedure

Included in the 3D+HS test sequence is the running loss emission test (Evap Test Procedures, Part III.D.8; and Figure 2). The current running loss test procedure specifies two sampling methods. One method uses atmospheric sampling equipment to measure evaporative emissions in a SHED[6] while the test vehicle operates on the specified dynamometer drive cycle. The other method (i.e., point source sampling) uses a hydrocarbon analyzer to measure evaporative emissions at discreet locations in and around the vehicle while it is operated on the specified cycle (Evap Test Procedures, Parts III.D.8.1; III.D.8.2).

Of particular concern using either of the methods described above is the requirement to monitor and control the temperature of the liquid fuel inside of the tank (Evap Test Procedures, Parts III.D.8.1.8; III.D.8.2.4). This temperature control is aided by the installation of two separate temperature gauges, or thermocouples, into the sides of the fuel tank. Two thermocouples are necessary to obtain the average temperature of the liquid fuel. Moreover, they must be installed at critical locations inside of the tank in order to achieve accurate measurements. As a result, the present method is burdensome because the installation is difficult to perform and requires follow-up repairs or complete replacement of the tank. In addition, because of its invasive nature, this method could likely compromise the long-term performance and durability of the vehicle's evaporative emission control system. At this time, the procedures do not prescribe any other method in which to monitor the liquid fuel temperature inside the tank. However, the existing regulations do give manufacturers the option to use their own alternative running loss procedure (including the monitoring of the liquid fuel temperature) if it provides an equivalent demonstration of compliance (Evap Test Procedures, Part III.D.8.3). While this provides flexibility for the manufacturers, the ARB, under the existing regulations, must follow the prescribed procedures for monitoring the liquid fuel temperature. Thus, the existing regulations do not explicitly allow the ARB to deviate from these procedures, even if the manufacturer certified the vehicle using an alternative method. Accordingly, staff proposes to revise the regulations to make it clear that the ARB may approve a manufacturer's proposed alternative running loss test procedure with the understanding that ARB may also perform certification confirmatory tests and any in-use compliance tests with either the existing procedures or the manufacturer's alternative procedure. This revision would align California's procedures with current federal regulations.

Optional Alternative Canister Preconditioning Methods

The carbon canister must be conditioned properly prior to any tests to ensure accurate and representative test results. The evaporative procedures specify

[6] A Sealed Housing for Evaporative Determination or "SHED" is a sealed, instrumented, and environmentally controlled chamber in which evaporative emission tests are conducted.

particular methods to precondition a canister for each type of test. For instance, the 3D+HS test sequence prescribes a series of repeated vapor-load-and-purge steps that are performed on the canister to establish an "in-use" state (i.e., stabilization). This stabilization step is then followed by a prescribed injection of a specific amount of vapor into the canister (i.e., loading). Thus, the stabilization and loading steps together form the canister preconditioning process.

The current evaporative procedures require that the canister remain installed in the test vehicle unless the necessary access to the canister's service ports is not available. In that case, the canister may be removed to allow completion of the basic purge or load processes. Such component removals must be completed carefully so that all of the components remain undamaged and are reassembled properly. Failure to exercise such care can produce leaks or other malfunctions in the system. As a result, the current procedures are burdensome for manufacturers in those situations where the canister is not readily accessible.

Therefore, staff proposes that the evaporative procedures be amended to provide manufacturers an option to use an alternative canister preconditioning method, as applicable. The alternative method must be as, or more, stringent than the comparable method already specified in the procedures. Use of the alternative procedure requires the advance approval of the Executive Officer.

Manufacturers will be required to provide information/data to demonstrate that the alternative method provides at least the current level of stringency throughout the canister preconditioning process. Such information may include, but is not limited to, the canister's service port locations, description of an auxiliary canister, and a description of how vapors are vented. The ARB may use either a manufacturer's alternative preconditioning method or the methods already specified in the evaporative procedures for both certification confirmatory testing and in-use compliance testing.

In-Use Verification Program Evaporative Emissions Test Requirements

The existing California motor vehicle IUVP provisions (with amendments) are patterned after the federal regulations ("California Exhaust Emission Standards and Test Procedures For 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted August 5, 1999, and last amended August 4, 2005 [hereinafter "Exhaust Test Procedures"]; Introductory Paragraph, Part I.I). The IUVP procedures imply that manufacturers must demonstrate compliance with both the 3D+HS and 2D+HS emission standards for all applicable fuel types on each evaporative/refueling family. However, the intent of CAP2000 has historically been that only one evaporative test demonstration (i.e., either the 3D+HS or the 2D+HS, not both) would be required for all applicable fuel types of each evaporative/refueling family under the IUVP

(U.S. EPA 2005; List of Changes To Test Procedures, Evaporative Test Procedure, Item 6). Indeed, the U.S. EPA has amended the federal IUVP regulations to clarify this ambiguity.

Accordingly, staff proposes that the California IUVP provisions be modified to align with the current federal version. The change clarifies the IUVP requirements, and thus decreases the burden of the IUVP compliance for manufacturers. Specifically, the change requires that for gasoline- and ethanol-fueled IUVP vehicles, the 2D+HS test would be used to demonstrate compliance. For liquefied petroleum gas- and non-dedicated compressed natural gas-fueled (i.e., gaseous-fueled) IUVP vehicles, the 3D+HS test would be used. An example of a non-dedicated compressed natural-gas vehicle would be a dual-fueled vehicle that can operate on either gasoline or compressed natural gas.

Onboard Refueling Vapor Recovery and Spitback Test Procedures

The existing California ORVR procedures (with amendments) are patterned after the federal ORVR provisions ("California Refueling Emission Standards and Test Procedures For 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and last amended September 5, 2003 [hereinafter "ORVR procedures"]; Introductory Paragraph). Included within these procedures are specifications for the proper configuration of the canister and fuel tank-vent hose assembly when tested. Specifically, the vent hose is required to be disconnected from the canister while the drain-and-10-percent-fill step of the test sequence is performed (U.S. EPA 2005; List of Changes To Test Procedures, ORVR and Spitback Test Procedure, Item 1). Disconnection of the vent hose allows the fuel tank vapors to be directed to the ambient air when the ORVR precondition steps are performed. Consequently, these vapors are never "loaded" into the canister. However, manufacturers have indicated that the requirement to disconnect the vent hose from the canister is burdensome. The procedure is invasive and increases the possibility of accidental damage to the evaporative emission control system and improper re-assembly of the components. Either of these occurrences can lead to system leakage which will affect the accuracy and/or repeatability of the test results.

Accordingly, staff proposes that the ORVR procedures be revised to make the disconnection of the canister and vent hose assembly optional when those specific drain-and-fill steps are performed. A manufacturer will be required to indicate in the application for certification which type of canister and vent hose assembly configuration will be used for test purposes. The ARB will utilize the same configuration for certification confirmatory test purposes. Use of this option yields a more stringent test method since the fuel tank vapors are now directed to the canister when the preconditioning steps are performed. Hence, these vapors add an extra load to the canister. However, the option serves to reduce the test

burden associated with preconditioning process. The proposal is also consistent with the recent changes to the federal ORVR requirements.

Non-Substantive Changes

Staff proposes minor non-substantive amendments to maintain harmonization with the applicable federal evaporative requirements. In particular, certain test waiver provisions for certification vehicles that relate to the ORVR and refueling spitback tests are added to the ORVR procedures. These provisions, which are contained in the revised federal procedures, were inadvertently omitted from the July 2002 Code of Federal Regulations.

III. PROPOSED FOUR-WHEEL DRIVE DYNAMOMETER AMENDMENTS

A. Background

Chassis dynamometers capable of testing four-wheel drive (4WD) vehicles were not generally available when the existing dynamometer testing procedures and specifications were initially developed. Consequently, the existing regulations contain procedures and specifications for only two-wheel drive (2WD) dynamometers. Thus, when certifying a 4WD vehicle, manufacturers have historically had to reconfigure the vehicle so that it could operate on a 2WD dynamometer. This sometimes requires major modifications to the vehicle's drivetrain and/or electronic controls. In addition, emission test data derived from a reconfigured 4WD vehicle may not be representative of the vehicle's actual on-road (4WD) operation. With the proliferation of 4WD and all-wheel drive (hereinafter included under "4WD") vehicles in recent years, these issues have become a significant concern.

B. Description of the Proposal

California's existing regulations covering chassis dynamometer procedures and specifications are aligned with existing federal regulations (Exhaust Test Procedures; Introductory Paragraph, Part II.A.100.5.3). The U.S. EPA recently revised its regulations to now include procedures and specifications for 4WD dynamometers.

Consequently, staff proposes that the existing California regulations be amended to allow manufacturers to perform certification emission tests of 4WD vehicles on 4WD dynamometers. Also, depending on the vehicle, and with advance Executive Officer approval, manufacturers would still be given the option to certify 4WD vehicles in a 2WD mode of dynamometer operation.

IV. PROPOSED VEHICLE LABELING AMENDMENTS

A. Background

California's existing emission control label requirements for new vehicles and engines (with amendments) are patterned after the federal provisions (Exhaust Test Procedures; Introductory Paragraph, Part I,C.3). The U.S. EPA recently amended those label provisions in order to more accurately reflect recently adopted emission control system requirements. The label provisions contained within the exhaust procedures are applicable to passenger cars, light-duty trucks, and medium-duty vehicles.

B. Description of the Proposal

Some of the information required to be on California's emission control labels is outdated. For example, the requirement for manufacturers to include engine tune-up specifications and adjustments on labels is redundant because contemporary vehicles and engines are electronically controlled such that manual tune-up adjustments are not necessary. The same redundancy applies to the requirement to provide a vacuum hose routing diagram. Any pertinent vacuum hose information will be readily available in the service manuals for vehicles equipped with any vacuum-actuated controls. Also, the requirement to include a machine-readable Vehicle Emission Configuration (VEC) bar code on labels has already been recognized by the ARB as unnecessary (ARB 2002).

Therefore, staff proposes that the label requirements contained within the exhaust procedures be amended. The proposed amendments would align California's label requirements with the latest revisions to the corresponding federal regulations. Specifically, the proposed amendments will eliminate the need for manufacturers to provide label information related to the engine tune-up specifications and adjustments, diagrams of vacuum hose routing, and the VEC bar codes. All other current California label requirements remain in effect. The proposed label content changes should result in an overall decrease in the size of the labels since less information must be displayed. In some instances, it may eliminate the need to install a second, supplemental label. Finally, manufacturers may not need to produce as many different label types because the amendments allow for a more generic format. Staff's proposal provides increased flexibility for the manufacturers without impacting the stringency of the emission control system requirements.

V. REGULATORY ALTERNATIVES

One possible regulatory alternative is to not make any changes to the existing evaporative and exhaust emission test procedures. Staff does not recommend this "no action" alternative because the recent federal changes would not be reflected in the California procedures. This would increase the inconsistency between these procedures, which would increase the test burden on manufacturers. The main intent of these proposed amendments is to reduce the test burden on manufacturers by streamlining the manufacturers' evaporative emission-related certification and IUVP activities. These proposals are the result of several years of ongoing dialogue and cooperation among U.S. EPA and manufacturers. All parties agree that the proposed revisions are mutually beneficial. Therefore, staff believes that there are no other viable regulatory alternatives to the proposed amendments.

VI. AIR QUALITY, ENVIRONMENTAL, AND ECONOMIC IMPACTS

Air Quality and Environmental Impacts

The proposed amendments are primarily intended to streamline the procedure through which new motor vehicles are both evaporative emission certified and in-use vehicles are compliance tested. The other minor amendments that provide 4WD dynamometer provisions and update vehicle label specifications further refine and improve the overall vehicle emission compliance program. The proposal does not change the stringency of the existing procedures or emission standards. Thus, California's air quality will not be affected by these amendments. Further, staff has determined that adoption of the proposed amendments will not result in any significant adverse impacts on water quality, land, or biological resources.

Economic Impacts

The proposed amendments to streamline the evaporative procedures should offer an overall improvement in the efficiency of certification and IUVP processes. Indeed, the proposed amendments serve to reduce the manufacturers' compliance burden through allowances for test waivers and use of alternative methods. The degree of savings will vary depending on a manufacturer's specific use of those waivers or alternatives. In addition, the proposed minor amendments also offer improvements to these processes. Thus, in the aggregate, the proposed amendments result in beneficial economic impacts to the affected manufacturers. Staff expects that the proposed amendments would have no adverse impacts on California employment, business status, or competitiveness.

VII. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (Senate Bill 115, Solis; Stats 1999, Ch. 690; Government Code §65040.12(c)). The Board has established a framework for incorporating environmental justice into the ARB's programs consistent with the directives of State law. The policies developed apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low income and minority communities, which sometimes experience higher exposures to some pollutants as a result of the cumulative impacts of air pollution from multiple mobile, commercial, industrial, areawide, and other sources.

Over the past twenty years, the ARB, local air districts, and federal air pollution control programs have made substantial progress towards improving the air quality in California. However, some communities continue to experience higher exposures than others as a result of the cumulative impacts of air pollution from multiple mobile and stationary sources and thus may suffer a disproportionate level of adverse health effects.

Since the proposal does not change the current stringency of the ambient air quality standards for motor vehicles that apply to all regions of the State, all communities, including environmental justice communities, will continue to benefit from the air quality benefits that would be associated with the proposal. To the extent that motor vehicle operation is higher near certain communities, these communities will receive a greater benefit from well-maintained California vehicle fleets.

VIII. STAFF RECOMMENDATION

Staff recommends that the Board adopt, on the basis of the reasons presented, the proposal as set forth within this staff report, and as specifically described in the appendices.

IX. REFERENCES

1. U.S. EPA 2005. United States Environmental Protection Agency. "Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulations, and Vehicle Labeling," United States Environmental Protection Agency; Federal Register, Vol. 70, Page 72917 (December 8, 2005) http://www.epa.gov/fedrgstr/EPA-AIR/2005/December/Day-08/a23714.htm

2. U.S. EPA 2002. United States Environmental Protection Agency. December 31, 2002. United States Environmental Protection Agency, Certification and Compliance Division, Office of Transportation and Air Quality, Request for Comments on Potential Evaporative Regulation Changes; Evaporative Guidance for Certification and In-use Testing. EPACCD-02-02 http://www.epa.gov/otaq/cert/dearmfr/ccd0220.pdf

3. ARB. June 26, 2002. Waiver of Vehicle Emission Configuration (VEC) Bar Code Label Requirement for 2003 Model-Year (MY) and Newer Vehicles and Engines. Mail-Out #MSO 2002-06 http://www.arb.ca.gov/msprog/mailouts/mso0206/mso0206.pdf

APPENDIX A

PROPOSED REGULATION ORDER

FINAL REGULATION ORDER

Amend the following sections of Title13, California Code of Regulations, to read as set forth in the following pages:

§1961 :	Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.
§1976 :	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.
§1978 :	Standards and Test Procedures for Vehicle Refueling Emissions.

Note: The proposed amendments are shown in underlined to indicate additions to the existing language, and in ~~strikeouts~~ to indicate deletions.

Existing sections that are not amended are indicated by "[No Change]."

Date of Release: April 7, 2006; 45-Day Notice Version
Board Hearing: May 25, 2006

SECTION 1961, TITLE 13, CCR

Amend section 1961 to read as follows:

1961. Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.

Introduction. [No Change]

(a) [No Change]

(b) [No Change]

(c) [No Change]

(d) *Test Procedures.* The certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended ~~August 5, 2005~~[Insert date of amendment], and the "California Non-Methane Organic Gas Test Procedures," as amended July 30, 2002, which are incorporated herein by reference. In the case of hybrid electric vehicles and on-board fuel-fired heaters, the certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the "California Exhaust Emission Standards and Test Procedures for 2005 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes," incorporated by reference in section 1962.

(e) [No Change]

Note: Authority cited: Sections 39500, 39600, 39601, 43013, 43018, 43101, 43104 and 43105, Health and Safety Code. Reference: Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204 and 43205, Health and Safety Code.

Date of Release: April 7, 2006; 45-Day Notice Version
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SECTION 1976, TITLE 13, CCR

Amend section 1976 to read as follows:

1976. Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.

(a) [No Change]

(b) [No Change]

(c) The test procedures for determining compliance with the standards in subsection (b) above applicable to 1978 through 2000 model year vehicles are set forth in "California Evaporative Emission Standards and Test Procedures for 1978-2000 Model Motor Vehicles," adopted by the state board on April 16, 1975, as last amended August 5, 1999, which is incorporated herein by reference. The test procedures for determining compliance with standards applicable to 2001 and subsequent model year vehicles are set forth in "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted by the state board on August 5, 1999, <u>and as last amended [insert date of amendment]</u>,which is incorporated herein by reference.

(d) [No Change]

(e) [No Change]

(f) [No Change]

NOTE: Authority cited: Sections 39600, 39601, 39667, 43013, 43018, 43101, 43104 and 43107, Health and Safety Code. Reference: Sections 39003, 39500, 39667, 43000, 43013, 43018, 43100, 43101, 43102, 43104 and 43107, Health and Safety Code.

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SECTION 1978, TITLE 13, CCR

Amend section 1978 to read as follows:

1978 Standards and Test Procedures for Vehicle Refueling Emissions.

(a) [No Change]

(b) The test procedures for determining compliance with standards applicable to 1998 through 2000 gasoline, alcohol, diesel, and hybrid electric passenger cars, light-duty trucks, and medium-duty vehicles are set forth in the "California Refueling Emission Standards and Test Procedures for 1998-2000 Model Year Motor Vehicles," as amended August 5, 1999, which is incorporated herein by reference. The test procedures for determining compliance with standards applicable to 2001 and subsequent gasoline, alcohol, diesel, and hybrid electric passenger cars, light-duty trucks, and medium-duty vehicles are set forth in the "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and last amended ~~September 5, 2003~~[insert date of amendment], which is incorporated herein by reference.

NOTE: Authority cited: Sections 39600, 39667, 43013, 43018, 43101 and 43104, Health and Safety Code. Reference: Sections 39003, 39500, 39667, 43000, 43013, 43018, 43101, 43102 and 43104, Health and Safety Code.

Date of Release: April 7, 2006; 45-Day Notice Version
Board Hearing: May 25, 2006

APPENDIX B

DESCRIPTION OF PROPOSED AMENDMENTS – TITLE 13

DESCRIPTION OF PROPOSED AMENDMENTS – TITLE 13

Title 13, California Code of Regulations (CCR)

A. Amendments to §1961: Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles

Subsection (d) is amended to indicate the latest amended date for the reference and incorporation of the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999; and, last amended August 4, 2005.

B. Amendments to §1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions

Subsection (c) is modified to indicate the latest amended date for the reference and incorporation of the "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999.

C. Amendments to §1978: Standards and Test Procedures for Vehicle Refueling Emissions

Subsection (b) is changed to indicate the latest amended date for the reference and incorporation of the amended "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999.

APPENDIX C

DESCRIPTIONS OF PROPOSED AMENDMENTS – TEST PROCEDURES

DESCRIPTIONS OF PROPOSED AMENDMENTS – Test Procedures

A. "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles" (hereinafter "Evap TPs")

1. Introductory paragraph. The original Evap TPs adopted by reference Title 40, Code of Federal Regulations (CFR), Part 86, Subparts A and B (as adopted or amended as of July 1, 1989), and, Subpart S (as adopted or amended on May 4, 1999). The United States Environmental Protection Agency (U.S. EPA) recently adopted a direct final rule that modified the federal evaporative and refueling emissions test procedures applicable to on-road light-duty vehicles, light-duty trucks, and heavy-duty vehicles up to 14,000 pounds Gross Vehicle Weight Rating. The corresponding California test procedures do not currently reflect the updated federal procedures.

In order to harmonize California's test procedures with the modified U.S. EPA test procedures, the language of the introductory paragraph is amended to identify the corresponding dates of those CFR sections affected by U.S. EPA's recent rulemaking action that will be incorporated into this rulemaking (i.e., December 8, 2005).

General Standards; increase in emissions; unsafe conditions; waivers

2. Part I.D.1.1. The citation to §86.1810-01 is amended from July 1, 1989 to December 8, 2005. The reference to §86.1810-04 is deleted as redundant because that section does not exist in the current version of the CFR. Subsection I.D.1.1(j)(4) is added without any changes from the federal version because this addition does not affect the California procedures. This subsection provides an allowance for the U.S. EPA to accept California certification test data for demonstrations of compliance with the appropriate federal certification standards. Subsections (o) and (p) are added with language explaining that these CFR sections pertain to exhaust emission procedures. Lastly, minor grammatical corrections are made in the text that references the Exhaust Emission Test Procedures in subsection I.D.1.1(a) through (g).

DURABILITY DEMONSTRATION

3. Part II.A.5. The title of the citation is amended to include the word "waivers" to more accurately reflect the content of the CFR section. Subsection 5.1 is added to amend the citation to § 86.1829-01 from the version adopted or amended as of July 1, 1989 to the version amended December 8, 2005. This proposed amendment primarily provides manufacturers the option to provide a statement of compliance in lieu of an actual test demonstration of compliance with the two-day diurnal plus hot soak emission standards for certification purposes (i.e., a "waiver" from the two-day diurnal and hot soak emissions test). In addition, subsection 5.2 is added to clarify that any related actions by the U.S. EPA, as allowed under this subsection, are also

available to the Air Resources Board's (ARB's) Executive Officer. Subsection 5.3 is added to clearly state the applicability of the optional provision.

EVAPORATIVE EMISSION TEST PROCEDURES FOR LIGHT- AND MEDIUM-DUTY VEHICLES

Vehicle Preconditioning

4. Part III.D.3.4. The December 8, 2005 amendments to the federal procedures included a specific allowance for manufacturers to propose an alternative method to precondition evaporative canisters (40 CFR 86.132-96(n)). The amendment was enacted to address difficulties encountered under the current canister preconditioning process due to the inherent inaccessibility of the canisters themselves. Currently, a canister may be removed from a vehicle when suitable access is not available to complete preconditioning steps. In those cases, the amendments now allow manufacturers to develop an alternative method for preconditioning the canister. The amendments also allow U.S. EPA to use a manufacturer's alternative method for certification and in-use compliance purposes. The proposed amendments to the current vehicle preconditioning procedures incorporate the above amendments to the federal procedures, even though a general allowance for alternative test methods already exists in the Evap TPs, Part III.G. However, the amendments make clear that the manufacturer's alternative canister preconditioning method must be approved by the Executive Officer, and that the Executive Officer may conduct certification and in-use compliance tests with either the manufacturer's alternative method or the methods already specified in the Evap TPs.

Dynamometer Procedure

5. Part III.D.4. The citation to 40 CFR §86.135-90 is amended from the version adopted or amended as of July 1, 1989 to the version amended December 8, 2005. In particular, the amendments allow four-wheel and all-wheel drive vehicles to be tested in either a four- or a two-wheel drive mode of operation. Four- and all-wheel drive vehicles may be tested in a two-wheel drive mode by either disengaging one set of drive wheels or shifting into a two-wheel drive mode if the vehicle is so equipped.

Running Loss Test

6. Part III.D.8.3. The current Evap TPs allow manufacturers to use an alternative running loss procedure for certification if that alternative method provides an equivalent demonstration of compliance to the procedure specified in the Evap TPs, Part III.D.8. In addition, the Executive Officer is allowed to conduct certification confirmatory tests and in-use compliance tests with either one of the two running loss procedures specified in the Evap TPs (i.e., by means of either an enclosure with atmospheric sampling equipment [Sealed Housing for Emissions Determination or SHED] or with point source sampling equipment). However, the current Evap TPs do not explicitly state that the Executive Officer

may conduct confirmatory and in-use compliance tests using the manufacturer's alternative certification running loss procedure. The recent changes to the federal running loss procedures included an allowance for manufacturers to propose and receive approval for alternative procedures under the condition that the U.S. EPA may perform confirmatory and in-use compliance tests with either the two methods currently specified or the alternative method (40 CFR 86.134-96(g)(3), December 8, 2005). The proposed amendments to this section would incorporate this allowance in order to make the running loss test procedures fully consistent with the federal provisions. Specifically, the amendments clarify that the Executive Officer must approve a manufacturer's proposed alternative certification running loss test procedure, and that the Executive Officer may conduct certification confirmatory tests and in-use compliance tests with either the manufacturer's alternative method or one of the other running loss procedures that are already specified in the Evap TPs.

Alternative Test Procedure

7. Part III.G. The language is modified to clarify the level of stringency that manufacturers must demonstrate in order to use an alternative test procedure. The current requirement is that the demonstration yield test results that are more stringent than those derived from the specified procedures. A more reasonable requirement is that the demonstration yield test results that are equivalent to, or more, stringent than the results derived from specified test procedures.

B. "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles" (hereinafter "Refueling TPs")

General Standards, increase in emissions; unsafe conditions; waivers

1. Part I.E.1. The citation to 40 CFR §86.1810-01 is amended from the version adopted or amended as of July 1, 1989 to the version amended, December 8, 2005. In addition, the numbering format of this subsection is revised to accommodate the December 8, 2005 amendments in §86.1810-01 that occurred when the provisions related to certification refueling (inherently low emissions) tests and refueling spitback tests were re-submitted into the CFR. Specifically, the existing reference in I.E.1.2 to adopt without changes subsections (k) through (n) of 40 CFR §86.1810-01 (July 12, 2001) is revised to adopt only subsection (k) of 40 CFR § 86.1810-01 (December 8, 2005) without changes.

The existing language in I.E.1.3 that references subsection (o) and (p) of 40 CFR §86.1810-01 (July 12, 2001) is deleted and replaced with subsection (l) of 40 CFR § 86.1810-01 (December 8, 2005) with amendments to indicate certification to the applicable California standards. The existing language in I.E.1.4 that addresses a manufacturer's fuel spillage test requirements is deleted and replaced with the reference to the re-submitted subsection (m) of 40 CFR

§ 86.1810-01 (December 8, 2005) with the appropriate modifications to indicate compliance with California standards. Section I.E.1.5 is added with a reference that adopts subsection (n) of 40 CFR § 86.1810-01 (December 8, 2005) without change. Section I.E.1.6 is added to contain the existing reference to subsections (o) and (p) of 40 CFR §86.1810-01 (July 12, 2001) that was deleted from I.E.1.3. Finally, I.E.1.7 is added to contain the existing manufacturer's fuel spillage test requirement that was deleted from I.E.1.4.

Emission Standards

2. Part I.F.1. The reference to 40 CFR §86.1815 is deleted and replaced by 40 CFR 86.1816. The CFR ORVR-refueling emission standards designated in §86.1811-04(e); §86.1812-01(e); §86.1813-01(e); and, §86.1816-05(e) are not applicable to California (ref.: Refueling TPs, Part I.F.2).

Durability Demonstration procedures for refueling emissions.

3. Part I.G.1. A minor grammatical correction is made to the "No change" reference to 40 CFR §86.1825-01 (October 6, 2000) that adds a missing right-hand bracket.

4. Citation of Subpart B, 40 CFR §§86.101 through 86.145 and Appendix I. The existing references to 40 CFR §86.152-98 and §86.153-98 are amended to specifically indicate the December 8, 2005 amended versions of those sections. In particular, §86.152-98 provisions are applicable to both integrated and non-integrated ORVR systems. However, §86.153-98, as amended December 8, 2005, allows for the vent hose of a non-integrated system to remain connected to the refueling emission canister when the 95%-fueling portion of the canister precondition operation is conducted.

C. "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" (hereinafter "Exhaust TPs")

Vehicle Labeling

1. Part I.C.3.1; §86.1807-01. The citation to 40 CFR §86.1807-01 is revised from the October 6, 2000 version to the version amended December 8, 2005. The latest version provides updated specifications that offer manufacturers greater flexibility in label content and design. Existing text in subsection 3.1.8 regarding approvals and formats of specific tune-up settings is now redundant because requirements to provide such information on labels has been removed from the recent amendments to §86.1807-01 and this text will therefore be deleted.

2. Part I.C.3.2; The citation to §86.1807-01 is amended to indicate that amendments to the December 8, 2005 version of 40 CFR §86.1807-01, are still applicable to §86.1807-07.

3. Part I.D.1; §86.1810-01. The citation to 40 CFR §86.1810-01 is amended to the December 8, 2005 version of this CFR section. This version of this section has added language that allows the U.S. EPA to accept California certification test data to demonstrate compliance with federal evaporative standards for non-Tier 2 vehicles. Also, the latest version includes provisions that were previously inadvertently omitted regarding test waivers for both fuel dispensing spitback and inherently low refueling emissions.

Durability data and emission data testing requirements; waivers

4. Part I.G.3.1; §86.1829-01. The citation to 40 CFR §86.1829-01 is amended to the December 8, 2005 version of this CFR section. This version of this section has added language that allows manufacturers the option to waive the evaporative certification demonstration of compliance with the supplemental two-day diurnal plus hot soak standard.

In-Use Compliance Requirements and Procedures

5. Parts I.I.1.1; and, I.I.1.2; §§86.1845-01; -04. The citations to 40 CFR §86.1845-01 and 40 CFR §86.1845-04, are revised to the December 8, 2005 versions of these CFR sections. These revisions clarified the evaporative emission standards for which IUVP-compliance must be demonstrated with respect to fuel type. In particular, gasoline- and ethanol-fueled vehicles must show compliance with only the 2 day + hot soak standard. Gaseous-fueled vehicles must demonstrate compliance with only the 3 day diurnal + hot soak standard.

Calibration methods and frequency.

6. Part II.A.100.4; The citation to 40 CFR §86.117-96 is revised to indicate the December 8, 2005 revised version of this CFR section. The amendment recognizes the recently modified CFR language that mainly harmonizes the federal sealed housing for evaporative determination (SHED) calibration specifications with the current California versions.

California Vehicle Preconditioning Requirements.

7. Part II.A.100.5.3; The citation to 40 CFR §86.134-96 is revised to indicate the December 8, 2005 revised version of this CFR section. The amendment allows for alignment with the proposed changes to the Evap Procedures that clarify ARB's allowances to conduct confirmatory and in-use verification tests with a manufacturer's alternative running loss method (see Evap TPs, Item 6 above).

8. Part II.A.100.5.3; Text is added to indicate that this CFR section is still adopted without any changes except that the four-wheel drive dynamometer provisions, as specified in the Federal Register (Volume 70, Page 72917, and published December 8, 2005) are applicable.

Calculations; exhaust emissions.

9. Part II.A.100.5.4; The citations to 40 CFR §86.159-00 and §86.160-00 are amended to the December 8, 2005 versions of these CFR sections. These versions provide provisions for four-wheel drive dynamometers in the Exhaust TPs with respect to US06 (aggressive driving test cycle) and SC03 (air conditioning test cycle) emissions. As with the amendments proposed to Part II.A.100.5.3 (see Item 8 above), the amendments allow four-wheel and all-wheel drive vehicles to be tested in either a four- or a two-wheel drive mode of operation. Four- and all-wheel drive vehicles may be tested in a two-wheel drive mode by either disengaging one set of drive wheels or shifting into a two-wheel drive mode if the vehicle is so equipped.

APPENDIX D

PROPOSED CHANGES TO EVAP TEST PROCEDURES

State of California
AIR RESOURCES BOARD

CALIFORNIA EVAPORATIVE EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES

Adopted: August 5, 1999
Amended: [insert date of amendment]

Note: Proposed amendments to this document are shown in underline to indicate additions and ~~strikeouts~~ to indicate deletions compared to the test procedures as adopted August 5, 1999. Existing intervening text that is not amended is indicated by a row of asterisks (* * * *).

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CALIFORNIA EVAPORATIVE EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES

The provisions of Title 40, Code of Federal Regulations (CFR), Part 86, Subparts A and B (as adopted or amended as of July 1, 1989);, ~~and~~ Subpart S (as adopted or amended on May 4, 1999); and, such sections of these Subparts as last amended on such other date set forth next to the 40 CFR Part 86 section title listed below, insofar as those subparts pertain to evaporative emission standards and test procedures, are hereby adopted as the "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Years," with the following exceptions and additions:

* * * *

PART I. GENERAL CERTIFICATION REQUIREMENTS FOR EVAPORATIVE EMISSIONS

* * * *

D. *General Standards; Increase in emissions; unsafe conditions; waivers*

1. Light- and Medium-Duty Vehicles.

1.1 Amend §86.1810-01 (December 8, 2005)~~and §86.1810-04~~ as follows:

(a) through (g). [The provisions of these paragraphs are contained in the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger ~~c~~Cars, Light-Duty Trucks and Medium-Duty Vehicles~~.~~," adopted August 5, 1999, as last amended [insert date of amendment]. "]

* * * *

(j) Evaporative emissions general provisions.

* * * *

(4) [No change.]

(k) through (n) [The provisions of these paragraphs are contained in the "California Refueling Emission Standards and Test Procedures for 2001 and

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Subsequent Model Year Motor Vehicles~~.~~," adopted August 5, 1999, as last amended [insert date of amendment].

(o) through (p). [The provisions of these paragraphs are contained in the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999, as last amended [insert date of amendment].]

* * * *

PART II. DURABILITY DEMONSTRATION

A. Light- and Medium-Duty Vehicles

* * * *

5. Durability and Emission Testing Requirements~~.~~; waivers ~~§86.1829-01 [No change.]~~

5.1. §86.1829-01 (December 8, 2005). [No change, except as otherwise noted.]

5.2. References to the "EPA" shall mean the Executive Officer of the Air Resources Board.

5.3. The optional provision for a manufacturer to provide a statement of compliance in lieu of a demonstration of compliance with the supplemental two-day diurnal plus hot soak emission standard for certification purposes, as contained in §86.1829-01(b)(2)(iii), shall be applicable to gasoline- and ethanol-fueled passenger cars, light-duty trucks, and medium-duty vehicles, including hybrid electric, fuel-flexible, dual fuel, and bi-fuel vehicles. Heavy-duty vehicles over 14,000 lbs. GVWR and incomplete medium-duty vehicles shall comply with the requirements of section I.D.2.

* * * *

PART III. EVAPORATIVE EMISSION TEST PROCEDURES FOR LIGHT- AND MEDIUM-DUTY VEHICLES

* * * *

D. Test Procedure

* * * *

3. Vehicle Preconditioning

* * * *

3.4 As allowed under the provisions of section III.G of these test procedures, a manufacturer may propose, for Executive Officer approval, the use of an alternative method to precondition canisters in lieu of the methods required under sections III.D.3.3.4; III.D.3.3.5(a); and, III.D.3.3.5(b). The Executive Officer may conduct certification confirmatory tests and in-use compliance tests with the either the alternative canister loading method or the methods specified in sections III.D.3.3.4; III.D.3.3.5(a); and, III.D.3.3.5(b), as applicable.

4. Dynamometer Procedure.

To be conducted according to 40 CFR §86.135-90 (December 8, 2005). For hybrid electric vehicles, the dynamometer procedure shall be performed pursuant to the "California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes" as incorporated by reference in §1962(e), title 13, CCR.

* * * *

8. Running Loss Test

* * * *

8.3. Manufacturers may use an alternative running loss test procedure if it provides an equivalent demonstration of compliance. The use of an alternative procedure also requires the prior approval of the Executive Officer. ~~However,~~ The Executive Officer may conduct confirmatory testing or in-use compliance testing ~~may be conducted by the Executive Officer~~ using either the running loss measurement enclosure incorporating atmospheric sampling equipment or in a test cell utilizing point source sampling equipment, as specified in paragraph III.A.2 (40 CFR §86.107-90(a)(1)), ~~and~~ in conjunction with the procedures as outlined in either paragraph III.D.8.1 or III.D.8.2 of this test procedure, or using the manufacturer's approved alternative running loss test procedure for a specific evaporative family.

* * * *

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G. Alternative Test Procedure

* * * *

Manufacturers may use an alternative set of test procedures to demonstrate compliance with the standards set forth in section I.E. of these test procedures with advance Executive Officer approval if the alternative procedure is demonstrated to yield test results equivalent to, or more stringent than, those resulting from the use of the test procedures set forth in section III.D. of these test procedures.

* * * *

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Board Hearing: May 25, 2006

APPENDIX E

PROPOSED CHANGES TO REFUELING TEST PROCEDURES

State of California
AIR RESOURCES BOARD

CALIFORNIA REFUELING EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES

Adopted: August 5, 1999
Amended: September 5, 2003
Amended: [insert date of amendment]

Note: Proposed amendments to this document are shown in underline to indicate additions and ~~strikeouts~~ to indicate deletions compared to the test procedures as last amended September 5, 2003. Existing intervening text that is not amended is indicated by a row of asterisks (* * * *).

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Board Hearing: May 25, 2006

CALIFORNIA REFUELING EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL MOTOR VEHICLES

The provisions of Title 40, Code of Federal Regulations (CFR), Part 86, Subparts B (as adopted or amended by the U.S. Environmental Protection Agency (U.S. EPA) on the date listed) and S (as adopted on May 4, 1999, or as last amended on such other date set forth next to the 40 CFR Part 86 section title listed below) to the extent they pertain to the testing and compliance of vehicle refueling emissions for passenger cars, light-duty trucks and medium-duty vehicles, are hereby adopted as the "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles" with the following exceptions and additions.

Subpart S Requirements

I. General Certification Requirements for Refueling Emissions

* * * *

E. General Standards, increase in emissions; unsafe conditions; waivers

1. Amend §§86.1810-01 (~~July 12, 2001~~December 8, 2005) as follows:

1.1 (a) through (j). [See the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999, as last amended [insert latest amended date]; or the "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles~~.~~," adopted August 5, 1999, as last amended [insert date of amendment.]

1.2 (k)~~ through (n)~~ [No change.]

1.3 ~~(o) and (p) [n/a]~~(l) Substitute certification to the applicable refueling emission standards set forth in section I.F of these test procedures instead of with the standards set forth in §86.1811-04(e); §86.1812-01(e); §86.1813-01(e); and, §86.1816-05(e).

1.4 (m) Substitute compliance with applicable refueling emission standards set forth in section I.F of these test procedures instead of with the standards set forth in §86.1811-04(e); §86.1812-01(e); §86.1813-01(e); and, §86.1816-05(e).~~A manufacturer shall also demonstrate compliance with the fuel spillage test requirements contained in Title 13, California Code of Regulations, §2235, Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks, as last amended January 22, 1990, incorporated by reference herein.~~

1.5 (n) [No change.]

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1.6 (o) and (p) [See the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999 as last amended [insert date of amendment].]

1.7 A manufacturer must demonstrate compliance with the fuel spillage test requirements in Title 13, California Code of Regulations, §2235, Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks, as last amended January 22, 1990, which is hereby incorporated by reference herein.

* * * *

F. Emission Standards

1. Delete 40 CFR §§86.1811 through ~~86.1815~~86.1816 (all years).

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G. Durability Demonstration procedures for refueling emissions.

[No change from 40 CFR §1825-01 (October 6, 2000).]

Subpart B - Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks; Test Procedures

40 CFR §§ 86.101 through 86.145 and Appendix I (UDDS Schedule) of this Subpart B, as incorporated by reference and amended in the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," are hereby incorporated by reference herein.

Refueling Test Procedures

86.146-96 Fuel dispensing spitback procedure. August 23, 1995.
86.150-98 Overview, refueling test. September 21, 1994.
86.151-98 General requirements; refueling test. April 6, 1994.
86.152-98 Vehicle preparation; refueling test. ~~August 23, 1995~~December 8, 2005.
86.153-98 Vehicle and canister preconditioning; refueling test. ~~August 23, 1995~~December 8, 2005.
86.154-98 Measure procedure; refueling test. August 23, 1995.
86.155-98 Records required; refueling test. April 6, 1994.
86.156-98 Calculations. April 6, 1994.

APPENDIX F

PROPOSED CHANGES TO EXHAUST TEST PROCEDURES

California Environmental Protection Agency
AIR RESOURCES BOARD

CALIFORNIA EXHAUST EMISSION STANDARDS TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES

Adopted: August 5, 1999
Amended: December 27, 2000
Amended: July 30, 2002
Amended: September 5, 2002 (corrected February 20, 2004)
Amended: May 28, 2004
Amended: August 4, 2005
Amended: [Insert date of amendment]

Note: The proposed amendments are shown in underlined text to indicate additions to the existing text, and in ~~strikeouts~~ to indicate deletions, compared to the test procedures as last amended August 4, 2005. Existing intervening text that is not amended is indicated by a row of asterisks (* * * *).

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CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 AND SUBSEQUENT MODEL PASSENGER CARS, LIGHT-DUTY TRUCKS AND MEDIUM-DUTY VEHICLES

The provisions of Subparts B, C, and S, Part 86, Title 40, Code of Federal Regulations, as adopted or amended on May 4, 1999 or as last amended on such other date set forth next to the 40 CFR Part 86 section title listed below, and to the extent they pertain to exhaust emission standards and test procedures, are hereby adopted as the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," with the following exceptions and additions.

PART I: GENERAL PROVISIONS FOR CERTIFICATION AND IN-USE VERIFICATION OF EMISSIONS

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C. General Requirements for Certification

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3. §86.1807 Vehicle Labeling.

3.1 §86.1807-01. ~~October 6, 2000~~December 8, 2005. Amend as follows:

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3.1.8. Subparagraph (g): Add the following: The manufacturer shall obtain approval from the Executive Officer for all emission control label formats and locations prior to use. ~~Approval of the specific tune-up settings is not required; however, the format for all such settings and tolerances, if any, is subject to review.~~ If the Executive Officer finds that the information on the label is vague or subject to misinterpretation, or that the location does not comply with these specifications, ~~he or she~~the Executive Officer may require that the label or its location be modified accordingly. Samples of all actual production emission control labels used within a test group shall be submitted to the Executive Officer within thirty days after the start of production. The Executive Officer may approve alternate label locations or may, upon request, waive or modify the label content requirements provided that the intent of these requirements is met. If the Executive Officer finds any motor vehicle or motor vehicle engine manufacturer using emission control labels which are different from those approved or which do not substantially comply with the readability or durability requirements set forth in these labeling requirements, the Executive Officer may invoke §2109, title 13, CCR.

3.2 §86.1807-07. January 18, 2001. [No change, except that the amendments to §86.1807-01, 70 FR 72917 (December 8, 2005), still apply.]

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D. §86.1810 General standards; increase in emissions; unsafe conditions; waivers

1. §86.1810-01. ~~April 13, 2001~~December 8, 2005. Amend §86.1810-01 as follows:

* * * *

G. Procedures for Demonstration of Compliance with Emission Standards

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3. §86.1829 Durability data and emission data testing requirements; waivers.

3.1 §86.1829-01. ~~July 12, 2001~~December 8, 2005. Amend as follows:

* * * *

I. In-Use Compliance Requirements and Procedures

1. §86.1845 Manufacturer in-use verification testing requirements.

1.1 §86.1845-01. ~~October 6, 2000~~December 8, 2005. Amend as follows:

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1.2 §86.1845-04. ~~July 12, 2001~~December 8, 2005. Amend as follows:

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PART II: CALIFORNIA EXHAUST AND PARTICULATE EMISSION TEST PROCEDURES FOR PASSENGER CARS, LIGHT-DUTY TRUCKS AND MEDIUM-DUTY VEHICLES

This part describes the equipment required and the procedures necessary to perform gaseous and particulate exhaust emission tests (40 CFR Part 86, Subpart B); cold temperature test procedures (40 CFR Part 86, Subpart C); the California 50°F test procedure; the development of reactivity adjustment factors; and the supplemental federal test procedure (40 CFR Part 86, Subpart B) on passenger cars, light-duty trucks and medium-duty vehicles.

A. 40 CFR Part 86, Subpart B – Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks; Test Procedures.

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100.4 Calibrations methods and frequency.

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86.117-96 Evaporative emission enclosure calibrations. ~~August 23, 1995~~December 8, 2005.

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100.5 Test Procedures and Data Requirements.

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100.5.3 California Vehicle Preconditioning Requirements.

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86.134-96 Running loss test. ~~August 23, 1995~~December 8, 2005.
86.135-00 Dynamometer procedure. October 22, 1996. [No change, except that the amendments to §86.135-90, 70 FR 72917 (December 8, 2005), shall apply.]

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100.5.4 Calculations; exhaust emissions.

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86.159-00 Exhaust emission test procedures for US06 emissions. ~~October 22, 1996~~December 8, 2005.
86.160-00 Exhaust emission test procedure for SC03 emissions. ~~October 22, 1996~~December 8, 2005.

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