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September 6, 2011

The Honorable Mary Nichols  
Chair  
Air Resources Board  
1001 I Street  
Sacramento, CA 95812

RE: RULEMAKING TO CONSIDER THE PROPOSED AMENDMENTS TO THE REGULATIONS FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS AND OFF-ROAD LARGE SPARK IGNITION ENGINE FLEET REQUIREMENTS

Dear Chairwoman Nichols:

Once again, the American Rental Association (ARA) is pleased to have the opportunity to comment on the proposed regulations for Large Spark Ignition (LSI) equipment. Please refer to our comments of December 14, 2010 for additional perspective on our position with respect to the proposed regulation.

We continue to have significant issues with the way the proposal treats equipment rental companies and their use of LSI equipment for services in the rental yard. The rules are unclear and potentially burdensome to operators of small equipment rental businesses who do not have the luxury or size to afford two separate LSI fleets; one for rental and one for service. Moreover, the likely response of rental companies to the uncertain and potentially burdensome aspects of this proposed regulation will be to eliminate the use of LSI equipment in servicing the rental yard and replace that activity with diesel-powered equipment that will be covered under the *In-Use Off-Road Diesel Regulation*. This outcome will relieve equipment rental businesses from the responsibility of being considered an *Operator* under the proposed LSI rule without improving air quality.

We continue to be ready and willing to work with ARA members in California and the ARB staff to find a reasonable solution to this problem while protecting air quality and creating flexible regulatory compliance for equipment rental businesses in California.

Sincerely,

John W. McClelland



## COMMENTS

### LSI Rule for Rental Companies

August 29, 2011

The LSI rule applies to fleets using Large Spark Ignition equipment; for the rental Industry this is principally gasoline and LPG forklifts over 25 hp. The purpose of the rule is to control emissions from fleets of forklifts and other equipment powered by LSI engines.

The rule requires fleets that are subject to the “Operator” definition with more than three forklifts must meet an emissions average compliance schedule. Rental equipment is not supposed to fall under this definition.

**The ARB Staff Proposal does not provide any quantifiable emissions benefits from Rental Companies. Rental Companies will find the provisions difficult to deal with, and will adjust their operations to avoid having to comply with this rule.**

#### **The problem:**

There are two ways that rental companies manage the service function in their yards. In many rental yards, especially those owned by larger rental companies, it is common practice to dedicate an LSI warehouse type forklift to assist in moving, loading and unloading tools, pumps, scaffolding etc. Generally, the forklifts used might be LPG with a 5,000 pound lift capacity and a 42 to 56 hp engine. These are used intermittently on a daily basis. The typical use might be one hour per day per yard. It would be rare that a yard might have more than one dedicated forklift, and some yards might not have any dedicated units.

The American Rental Association (ARA) understands that larger rental companies generally manage two fleets that are booked differently for business and regulatory purposes. These are the rental fleet and the service fleet. The service fleet is not generally subject to the more rigorous preventative maintenance program reserved for rental units. Typically, service equipment is not rented because it does not receive as much preventative maintenance required minimizing equipment failure while equipment is on rent.

Some rental businesses, especially smaller ones, tend to use off-rent equipment to service their yards. In this instance, rental businesses tend to randomly choose an available unit to provide yard services that happens to be in their yard because it is not out on-rent. Thus, even though they could be a small LSI fleet (3 or fewer units) with respect to yard service, they do not take advantage of that opportunity because they cannot afford the capital investment required to operate two separately booked fleets as part of their current business model. However, the functions performed by the LSI equipment that is used as both rental equipment and yard service equipment are the same regardless of how the equipment is booked.

In our December 14, 2010 comment, we estimated that the total number of *non-exempt* LSI forklifts controlled by rental companies for yard service is **241** based upon the number of stores *controlled by*

*businesses with four or more rental store locations.* In comparison, we estimate that the rental LSI forklift fleet may be on the order of 10 times as large.

There are approximately 262 smaller businesses within ARA operating 308 rental store locations in California. Based upon the ratio of stores to businesses, most of these are essentially single store operations. There are three main types of rental stores. These are construction equipment, tool stores and party rental stores. The latter two, consisting of about 113 stores rent no LSI forklift equipment and do not own off-road fleets subject to regulation. A very few of these businesses might have more than three rental store locations. Based upon these data, most of these party rental and tool business would have fewer than four forklifts and would thus be exempt under the small fleet definition.

The remaining 195 stores may rent LSI equipment and may use forklift equipment for yard service and also may have 2 or 3 stores. We believe, but have limited supporting data, that many or most of these businesses do not differentiate between rental and service fleets where applicable, even though their yard service needs could be filled by designating service forklifts. Most of these rental businesses would qualify as small LSI fleets with regard to operations equipment as defined below by Staff.

We previously reported to ARB that based upon an informal survey of our members, the average time reported for use for yard service was 166 hours per year. Some yards did exceed 199 service hours per year.

ARB staff has generally been flexible with regard to special situations to simplify compliance while maintaining emission benefits. If Staff can verify our estimate of fleet size and hours of use, we believe that this would constitute such a special situation that could be handles without forcing a change in current operating practices by small, single-location equipment rental companies.

***We have already provided a number of proposals that would make the LSI Rule more compatible with rental business practices. Our ideas have not been incorporated and we find this proposal lacking and potentially counterproductive with respect to emissions control.***

We have seen no analysis of the impact of this proposal on rental fleets or the emissions inventory.

***We recommend that the Board instruct Staff to analyze the emissions impact of servicing rental yards to determine whether any benefits actually exist and if there are no benefits, to exempt all rental yard service units.***

ARA would be willing to help Staff by working with them to survey rental businesses operating in California.

#### **Staff Proposal:**

Staff proposes that the operator definition will be modified as follows:

*(33) "Operations equipment" as used in the "Operator" definition means equipment that is operated by a person whose usual and customary business is the rental, leasing, or sale of equipment and is used more than 50 percent of the time for rental or lease, or is designated for sale.*

It is not clear from the definitions whether Operations equipment or the total fleet which includes rental equipment is used to establish the Fleet Size. We believe the Fleet Size Definition should be based upon "Operations Equipment" only.

*(34) "Operator" means a person with legal right of possession and use of a piece of equipment including a person whose usual and customary business is the rental, leasing, or sale of equipment as provided below:*

*A person whose usual and customary business is the rental, leasing, or sale of equipment will be deemed an operator of:*

- (A) all service equipment (as defined in section 2775(d)(40) regardless of hours of operation, and*
- (B) any operations equipment (as defined in section 2775(d)(33) they use more than 50 hours per year.*

Under (A), the term “regardless of hours of operation” is confusing. Assuming that a fleet size is based upon the Operations equipment, that size (large, medium or small) is based upon all equipment in the service fleet regardless of the hours of operation. But, only equipment that is not LHU (low hour use) must be included in the fleet average. We are concerned that this phrase implies some other treatment.

Because of the burden of being classified as an Operator, equipment rental companies will do whatever is necessary to avoid the Operator definition. The service fleet is a necessary but small part of their operations that generates no revenue. The hours per year of usage are much greater for LSI rental equipment than LSI service equipment. This proposed definition could encourage newer equipment to be used for service and older equipment to be used for rent with an associated negative emissions impact. Rental companies are free to rent older equipment to exempt fleets with no limitation.

In order to avoid the Operator definition, some rental yards currently use existing diesel powered forklifts or skid steers to perform the required service fleet tasks since there are no limitations on their use in the yard. We have been told that at least 35 diesel forklifts and skid steers are being used instead of LSI forklifts for yard work in various rental companies throughout California. These units are covered by ARB’s off-road diesel regulation. Other equipment rental businesses also report that given the proposed s Operator definition, they will begin to move to diesel forklifts. This is contrary to the goals of California’s Diesel Risk Reduction Plan which has as its goal the reduction, and not the increase of diesel emissions. However, the move away from LSI forklifts and increased utilization of diesel-powered equipment to provide rental yard services will result if the proposed Operator definition is adopted by the Board.

How the 50 hour allowance is to be enforced for rental companies who use LSI units as rental units and as units for yard service is not clear. Units have non-resettable hour meters. Additionally, hours accumulated on rent are known. However, as a part of the rental operation, units must also undergo testing, maintenance and other operations related to the rental of the unit. We have no information on the quantity of hours associated with these functions. We believe these hours are a part of the rental function and should not be applied against the 50 hour allowance. We also believe that the 50 hour allowance which could be used to perform incidental service functions is impractical because of the scheduling and bookkeeping required so as to not violate the allowance for any individual unit.

Several of our members who are smaller equipment rental businesses that do not have dedicated service fleets asked if the 50-hour relief could be administered on average. They might have to keep the necessary records to show that they met this criterion. One of our single yard businesses has ten LSI forklifts. The business should need the equivalent of one dedicated forklift to service the business. The owner wrote: *“Usually the older units are held back and the newer units are rented first but when we get short, all units are rentable. It is so much more efficient to keep everything on the same maintenance program and the fleet uniform. Differentiating between what is, or what is not rentable could be problematic. The urge to put a dedicated yard lift out on rent to meet a customer’s needs would be great. If I understand what you wrote below, I should have 50 hours grace times the 10 units I own (or 500 hrs/year) which should make my compliance a non-issue. Is my interpretation correct?”* With his business model, trying to manage a strict 50-hour annual use schedule is problematic. He indicated that his average daily use is about 0.5 hours or about 154 hours per year (307 days per year operation).

Staff proposes the Low Use Definition as follows:

*(23) "Limited Hours of Use equipment or LHU equipment" means a piece of equipment that, on a year-by-year basis, was operated in California fewer hours than the prescribed threshold established for the preceding calendar year (the 12-month period running from January 1 to December 31). The threshold for the 2010 calendar year is 251 hours. The threshold for 2011 and subsequent calendar years is 200 hours. For example, an operator would only consider that a piece of equipment had met the requirements of the LHU provisions for exclusion from a fleet average emission level calculation performed in 2014 if the piece of equipment were used fewer than 200 hours between January 1, 2013 and December 31, 2013.*

In order to meet the requirement for service fleets, some businesses might simply retain additional older units in their service fleet when they turn over their rental fleets to insure they don't exceed 199 hours per unit. This approach satisfies the rule but provides no emissions benefits.

We continue to believe it is a burden on rental companies to have to comply with the LSI rule when so few pieces of equipment are affected. Finally, we think it is an inefficient use of enforcement's time to check compliance for at most 241 pieces of *non-exempt* equipment held by the rental businesses especially considering that rental companies control a universe of several thousand pieces of equipment.