

State of California
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text and
Availability of Additional Documents**

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED
REGULATION FOR IN-USE OFF-ROAD DIESEL VEHICLES**

Public Hearing Date: July 26, 2007
Public Availability Date: February 5, 2008
Deadline for Public Comment: March 6, 2008

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved the adoption of section 2449, title 13, California Code of Regulations (CCR), as modified. The regulation for In-use Off-road Diesel Vehicles is designed to reduce emissions of diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from in-use off-road diesel vehicles that operate in California. The regulation will significantly reduce diesel PM and NOx emissions from the nearly 180,000 off-road diesel vehicles that operate in California by requiring fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits. The regulation supports the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, which was adopted by the Board on September 30, 2000.

The Board's Action

At the July 26, 2007, hearing, the Board adopted Resolution 07-19, approving the adoption of the regulation with modifications. In the First Notice of Public Availability of Modified Text and Availability of Additional Documents (First Notice), which was released on December 11, 2007, staff made all the changes requested by the Board except for one, and modified the regulation to clarify specific provisions and correct clerical errors. The comment period for the First Notice closed on January 8, 2008.

The one change that the Board directed staff to make that was not addressed in the First Notice is described below:

Add a new section using incentive-based funding that would allow any air quality management district or air pollution control district to achieve additional NOx reductions from in-use off-road heavy-duty diesel vehicles operating within its air basin by opting to follow the requirements of the section and providing incentive funding to fleets that would be required to apply for funds and, if received, use the funds to achieve real, calculable, and enforceable surplus NOx emission reductions.

Additional Modified Text Being Made Available

Staff is proposing modifications to the regulatory text to address the one remaining Board-directed change that was not addressed in the First Notice. Based on comments received during the First Notice, staff is also proposing additional substantive, clarifying, and technical modifications to the regulatory text that are needed to better reflect the underlying intent of the regulation.

A more complete discussion of these proposed modifications is provided below. The proposed regulatory text, including staff's modifications, is appended to this notice as Attachment 1. The proposed modifications that were made available in the First Notice are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The additional proposed modifications being made available in this Second Notice are shown in double underline to indicate additions and double ~~strikeout~~ to indicate deletions.

Summary of Proposed Modifications

The following is a summary of the substantive modifications and staff's rationale for making them:

Modifications to introductory language to article 4.8

Staff clarified that the regulation includes sections 2449, 2449.1, 2449.2, and 2449.3.

Modifications to title 13, CCR, section 2449

Section 2449(c) Definitions

(19) Emission Factor: Staff has modified the definition of emission factor by deleting the reference to how an emission factor is defined for engines for which the model year is unknown. This situation is already discussed in the introductory text to Appendix A and therefore does not need to be repeated.

(25)(C) Fleet Size Category, Small Fleet: Staff has modified the definition of small fleet to include non-profit organizations that have a fleet with total maximum power of 2,500 horsepower or less. Without this modification, even the smallest non-profit organization fleet would have been defined as a medium fleet. Staff has also removed the requirement for small fleets to also meet the Government Code definition of small business because that definition was not inflation adjusted. This means that any business with 2,500 horsepower or less now can qualify as a small fleet.

(27) Highest Level Verified Diesel Emission Control Strategy: Staff corrected the term, “Verified Diesel Emission Control Strategy,” to say “strategy” rather than “system.”

(47) Small Business: Because the definition of small business is no longer used in the regulation, staff removed the definition of small business.

Section 2449(e) *Special Provisions/Compliance Extensions*

(6) Compliance Extension for Equipment Manufacturer Delays: Staff has given fleet owners two more months to enter into a purchase contract for equipment and vehicles and still be able to qualify for the compliance extension for equipment manufacturer delays. Now, the extension applies to equipment and vehicles for which the fleet owner entered into a purchase contract at least four rather than six months prior to the compliance date. This is to address concerns that some agencies may not have their budgets approved in time to be able to purchase equipment and vehicles six months ahead of compliance dates.

(8) Verified Diesel Emission Control Strategy (VDECS) That Impairs Safe Operation of Vehicle: Staff has modified the criteria that will be considered in determining whether a VDECS is not the highest level VDECS available because of safety concerns. An additional factor has been added to include consideration of whether use of a VDECS would conflict with state or federal mine safety and health requirements. This was necessary because some vehicles subject to the regulation operate in mining environments that are subject to mine safety laws.

Staff has also clarified that if a fleet owner appeals an Executive Officer’s initial finding that a VDECS can be installed safely, the fleet owner may request the administrative law judge to stay compliance until a final decision is issued. This modification will allow fleets to proceed with certainty during a requested review. If the Executive Officer denies the request and the fleet does not request further review, the fleet will have six months from the date of the decision to bring the fleet into compliance.

Finally, staff has extended the time allowed for fleets that wish to appeal the Executive Officer’s finding that a VDECS can be installed safely from 20 to 30 days to allow more time for fleets to consult with retrofit device manufacturers, gather relevant data, and prepare their appeal.

Section 2449(g) Reporting

Staff has added a requirement for fleets to report whether they are Captive Attainment Area Fleets. This is necessary because requirements for captive attainment area fleets differ from those of other fleets.

Staff has removed the requirement for medium and small fleets to report fleet changes between 2010 and 2012 or 2014, respectively. This requirement is unnecessary because medium and small fleets are required to report their fleet information in 2009 and then again in 2012 for medium fleets and 2014 for small fleets. Such reporting will include all actions relevant to compliance or accumulation of early credit.

Section 2449(m) Severability

Staff has added a severability clause to express its clear intent that if any subsection of the regulation is found invalid, the remainder of the regulation shall remain in effect.

Title 13, CCR, Section 2449.2 PM Performance Requirements

Staff has clarified that the credit for turnover to Tier 4 in lieu of retrofitting in section 2449.2(a)(2)(A)1.a. applies to repowers with Tier 4 engines as well as turnover to Tier 4 vehicles. Staff has also clarified that the exemption from the retrofit requirement for engines in vehicles less than 5 years old in section 2449.2(a)(2)(A)4.a. is based on the vehicle's date of manufacture.

Title 13, CCR, Section 2449.3 Requirement for Largest Fleets to Achieve Additional Reductions of Oxides of Nitrogen

As directed by the Board, the staff has added section 2449.3, the Surplus Off-road Opt-in for NOx (SOON) program, to the regulation. Additionally, staff has made clerical changes and clarifications to the SOON program from the draft that was made public at the July Board hearing, in response to comments received from stakeholders since that date.

The SOON program is described further in Attachment 2, the SOON Program Description. Some important aspects of the proposed SOON program are described further below:

- **Extends to all air districts** - As directed by the Board, the regulation allows any local air district to opt in to SOON. Many districts in addition to the South Coast and San Joaquin Valley districts are in need of additional NOx reductions. By opening up the SOON program to all districts in California, there is a potential that more early NOx reductions will be achieved.
- **Early Years of the SOON Program Would Be Voluntary** – Except for fleets in the South Coast Air Quality Management District (SCAQMD) or San Joaquin Valley Air Pollution Control District (SJAPCD) participation in the SOON program by fleets in other local air quality management districts and air pollution control districts (air districts) would be voluntary for all solicitations issued prior to April 2, 2010. During this time these other air

districts that opt into the SOON program may issue solicitations for SOON project funding, but fleets may elect whether to report to the district and apply for funding. For solicitations closing on or after April 2, 2010, the local air districts other than the SCAQMD and SJVAPCD may choose to make participation by fleets mandatory. For fleets in the SCAQMD and SJVAPCD, solicitations prior to April 2, 2009, shall be voluntary. On or after April 2, 2009, the SCAQMD and SJVAPCD may elect to make their respective programs mandatory for all fleets subject to this section. In no event shall a fleet be required to apply for SOON funding with an air district for vehicles that the fleet intends to move out of the district.

- **Applicability** - Fleets that operate within a local air district that has opted into the SOON program and made it mandatory must apply for funding if they have a statewide fleet with maximum power greater than 20,000 horsepower (hp), and have as of January 1, 2008, on a statewide level, consisted of more than 40 percent Tier 0 and Tier 1 vehicles.
- **No requirement for VDECS** - A fleet that receives SOON funding to repower a vehicle is not required to install the highest level VDECS along with the repower. However, such vehicles will remain subject to the requirements of section 2449.2 and therefore will likely eventually need to be fitted with highest level VDECS.
- **ARB enforcement authority** - ARB retains sole authority to enforce the SOON program and to oversee implementation by local air districts of their respective SOON programs. ARB will oversee and enforce the local district SOON programs under the exclusive authority granted to ARB to regulate motor vehicles under Health and Safety Code sections 39602, 39667, and 40000. While ARB has delegated limited authority to implement the SOON programs to participating local air districts, enforcement authority continues to rest solely with ARB.
- **Any fleet can apply** - If a district chooses to make the SOON program mandatory, fleets that have vehicles operating within the air district and that have a statewide fleet totaling more than 20,000 horsepower of which 40 percent or more is composed of vehicles that had Tier 0 or Tier 1 engines as of January 1, 2008 must apply for SOON funding. Fleets with a lower total statewide horsepower or that had a lower percentage of Tier 0 and Tier 1 engines are not required to apply for funding but may, nevertheless, choose to participate and compete for project funding.
- **Requesting high priority for funding** – Local air districts must ask fleets if they are requesting high priority for SOON funding and take the fleets decision into account when selecting SOON projects for funding. For mandatory SOON programs, this gives fleets an ability to indicate whether they prefer to participate in SOON or not.
- **Local air district guidelines** – Local air districts must develop written SOON guidelines that set forth the method the local air district will use to prioritize projects based on cost-effectiveness and whether a fleet has requested high priority for funding. The guidelines must also describe “any requirements that the local air district will impose on fleets, including

any requirement that a fleet receiving SOON funding must pay part of the SOON project cost.” Such guidelines and any rules districts adopt for SOON must be submitted to ARB for review. The guidelines cannot take effect until they have been approved by ARB.

Appendix A

Staff has clarified that flexibility engines certified before January 1, 2007, should use the emission factors in the Appendix tables. While this was specified in section 2449(c), it was not previously mentioned in the introductory text to Appendix A.

Staff has also identified why it may be impossible to determine an engine’s model year (i.e., because it is missing a serial number, manufacturer’s build code, and/or an engine family number). The Appendix has been clarified to explain that if an engine’s model year is unknown, but the manufacturer is capable of bracketing the model year of the engine (for example that an engine was built between 1987 and 1994) by examining the engine’s build and components, the fleet can use the earliest date the engine could have been manufactured as the model year of that engine (in the example, 1987). This is important because being able to bracket the model year of an engine may allow a more appropriate emission factor to be assigned to the engine.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added to the rulemaking record the following document, the SOON Program Description, which is a technical evaluation of the proposed modification (Attachment 2).

By this notice, the modified regulation and additional documents and information are being made available for public comment prior to the final action by the Board’s EO. All of the documents referenced above are available for public inspection at ARB’s Internet website at the following address:
<http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>, or by contacting Amy Whiting, Regulations Coordinator at (916) 322-6533, 1001 “I” Street, 23rd floor, Sacramento, California 95814.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the additional modifications are being made available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the EO shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board must be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the EO, comments must be directed to the ARB in one of the three forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulation and other information made available by the notice shall be considered by the EO.

Attachments (2)