

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATION FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS AND AN UPDATE ON STATUS OF IMPLEMENTATION OF THE REGULATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adopting amendments to its regulation for In-Use Off-Road Diesel-Fueled Fleets. This notice summarizes the specific amendments being proposed. At the hearing, the Board will also receive an update from staff on the status of implementation of the regulation, which will include a technology update report regarding diesel emission control strategies that have been verified by ARB. The staff report (Initial Statement of Reasons) presents the proposed amendments and information supporting the adoption of the amendments in greater detail, as well as the update.

DATE: January 22, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 22, 2009, and may continue at 8:30 a.m., January 23, 2009. This item may not be considered until January 23, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before January 22, 2009, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact ARB's Reasonable Accommodations/Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services, or go to <http://www.arb.ca.gov/html/ada/ada.htm>.

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.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT **OVERVIEW**

Sections Affected: Proposed amendments to California Code of Regulations, title 13, sections 2449(d)(4)(A), 2449(g)(1)(D), 2449(h)(8), 2449.1(a)(2)(A)5., and 2449.2(a)(2)(A)2.a.i., the regulation for In-Use Off-Road Diesel Vehicles.

Background:

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved the regulation for In-Use Off-Road Diesel-Fueled Fleets (the in-use off-road regulation or regulation) with the adoption of California Code of Regulations, title 13, sections 2449 through 2449.3. The regulation is intended 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, which is necessary to meet state and federal air quality standards. The regulation requires fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits. The regulation also 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.

On October 24, 2008, the Board released public notice that it would consider at its December, 2008 hearing two minor changes to the regulation as part of the regulatory package for the Proposed Regulation for In-Use On-Road Diesel Vehicles. As part of the regulatory package for the Proposed Regulation for In-Use On-Road Diesel Vehicles, staff has proposed to make two minor changes to the regulation: (1) clarify the low-use provisions, and (2) add all two engine cranes to the off-road regulation. The Board will still consider these changes at the December, 2008 hearing.

Applicability

The fleet requirements of the in-use off-road regulation apply to any person, business, or government agency who owns or operates within California any diesel-fueled or alternative diesel fueled off-road compression ignition vehicle engine with maximum power of 25 horsepower (hp) or greater that is used to provide motive power in a workover rig or to provide motive power in any other motor vehicle that (1) cannot be registered and driven safely on-road or was not designed to be driven on-road, and (2) is not an implement of husbandry or recreational off-highway vehicle. The regulation only addresses engines that drive self-propelled vehicles (i.e., it does not apply to stationary equipment or portable equipment like generators).

Fleet Requirements

In general, the regulation requires owners to modernize their fleets by replacing engines with newer, cleaner ones (repowering), replacing vehicles with newer vehicles equipped

with cleaner engines, retiring older vehicles, operating higher emitting vehicles less often (designating them as low-use vehicles) or by applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere. The regulation determines the date of compliance and the actions required based on the size of the fleet, splitting fleets into three categories: large fleets with over 5,000 horsepower, medium fleets with 2,501 to 5,000 horsepower, and small fleets with 2,500 horsepower or less.

Retrofits

To meet the diesel PM emission reduction requirements of the in-use off-road regulation, fleets have the option of meeting fleet average emissions targets, or installing the highest level verified diesel emission control strategy (VDECS or retrofit) on 20 percent of their maximum horsepower in each year of compliance. To assist fleets spread out the cost of compliance during the early years of the regulation and to encourage retrofits prior to implementation of the regulation, fleets were granted double credit for all retrofits installed by March 1, 2009.

Description of Proposed Regulatory Action

Early Double Credit for Retrofits

Staff proposes to amend section 2449.2(a)(2)(A)2.a.i. to extend the deadline for double retrofit credit for fleets that have installed the highest level VDECS by 10 months from March 1, 2009 to January 1, 2010. The change would also provide double credits for VDECS ordered by September 1, 2009 even if manufacturer or installer delays cause their installation to be delayed beyond January 1, 2010. Staff recommends this extension because exhaust retrofits have become verified slower than anticipated since the July 2007 Board Hearing, leaving many fleets unable to take full advantage of the early credit provisions. The ability of fleets to take advantage of the double retrofit credit provision was important during the Board's consideration and approval of the regulation, as it provides an important mechanism for fleets to use to reduce their costs during the initial years of the regulation. The change would provide additional time for manufacturers of diesel emission control strategies to submit and verify new off-road retrofit applications, as well as additional fleets to purchase and install VDECS that have been recently verified.

Fleet Size Changes

Staff proposes to amend section 2449(d)(4)(A) to remove the provision that requires a small fleet that becomes a medium or large fleet, and then subsequently becomes a small fleet again, to continue meeting the medium or large fleet requirements for the next two reporting years after returning to small fleet status. This provision was initially developed to prevent fleets from potentially circumventing the regulation by growing and shrinking their fleet and remaining subject to only the small fleet requirements. However, staff has determined that, in practice, application of the provision is too

complex and potentially confusing for affected fleets, especially in those situations where a fleet's size may change frequently over time. Staff believes that such complexity and potential confusion far outweighs the potential for fleets to abuse the changing fleet size provisions.

Recordkeeping Requirements for Disclosure of Applicability

Staff also proposes that section 2449(h)(8) be amended to clarify that the section applies to both sellers and dealers of off-road vehicles, and that both sellers and dealers must maintain records of the disclosure of regulation applicability. The record retention requirements currently require that only dealers must maintain records of the disclosure of the regulation applicability. However, since section 2449(j) applies to any person in California selling a vehicle with an engine subject to the regulation and that the seller is required to include a disclosure of applicability, staff believes it is necessary to clarify that the record retention requirements of disclosure apply to any person that sells a vehicle, and not just to dealers.

Turnover Delay for Tier 1

Staff is proposing to amend section 2449.1(a)(2)(A)5. to clarify the turnover exemption for Tier 1 or higher engines. The original intent of this provision was to exempt Tier 1 vehicles from the turnover requirements only through March 1, 2012, and that these vehicles would have to meet the March 1, 2013 compliance deadline -- that is a fleet may have to turn over their Tier 1 vehicles between March 1, 2012 and February 28, 2013, provided that all Tier 0 vehicles in the fleet owner's fleet not qualifying for exemption have already been turned over. Staff is proposing to clarify this language by stating that all vehicles with a Tier 1 or higher engine are exempt from the turnover requirement until the compliance year ending March 1, 2013 (i.e., the first turnover of Tier 1 or higher engines would be required between March 2, 2012 and March 1, 2013).

VDECS Reporting

Staff is proposing to amend section 2449(g)(1)(D) to require reporting of the VDECS family name and serial number, rather than the VDECS model. During development of the reporting system for the regulation, staff determined that just the VDECS model does not provide specific enough information to determine if a device was verified for a particular engine at the time of installation. Instead, the VDECS family name is necessary for this purpose. The VDECS serial number is also important to enable ARB enforcement to track a particular device should there be some question regarding the proper functioning of that device. Including VDECS serial number data in DOORS will also facilitate transfer of that information to the buyer should a vehicle with a VDECS be sold.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) has promulgated federal emission standards for new non-road engines. However, no federal standards have been promulgated addressing emission reductions from in-use diesel vehicle engines.

Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off-road engines and equipment not expressly subject to federal preemption, so long as California applies for and receives authorization from the Administrator of U.S. EPA. California's request for authorization was submitted on August 12, 2008, and on October 27, 2008, the U.S. EPA conducted a hearing regarding California's request for authorization for the in-use off-road regulation; the request is presently pending.

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 Amendments to the Regulation for In-Use Off-Road Diesel Vehicles and Implementation Update."

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 January 22, 2009.

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 regulation may be directed to Ms. Kim Heroy-Rogalski, Manager of the Off-road Implementation Section at (916) 327-2200, or Ms. Elizabeth Yura, Air Resources Engineer, at (916) 323-2397.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Amy Whiting, Regulations Coordinator, (916) 322-6533. 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/2009/ordiesl09/ordiesl09.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

Costs to State Government and Local Agencies

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has prepared an estimate in accordance with instructions adopted by the Department of Finance, and determined that the proposed regulatory action would not create overall costs or savings 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 proposed modification to extend early double credit would provide fleets additional time to install early VDECS, and thereby the opportunity to accumulate additional credits and spread out their compliance costs over several years, without increasing or decreasing the total cost of the regulation. The ability to spread out initial compliance costs will benefit the state, federal, and larger municipal fleets whose first compliance date is March 1, 2010, more than local municipalities that are small or medium fleets, because their earlier first compliance dates mean their need for early credit is more urgent.

Effect on Private Persons and Businesses

Pursuant to Government Code section 11346.5(a)(9), ARB has evaluated the potential economic impacts on representative private persons or businesses and the Executive Officer has determined that a representative private person and business would incur minimal, if any, cost impacts because of the proposed amendments. The only amendment that would potentially result in additional costs is including all sellers in the disclosure retention provision. However, the cost of retaining such records is expected to be negligible. In addition, it was staff's original intent to include all sellers in the disclosure requirements, and thus any additional cost of maintaining these records was accounted for in the statewide cost analysis for the in-use off-road regulation when it was originally adopted.

As discussed previously, the proposed modification to extend early double credit is not expected to result in any additional costs or savings on businesses overall. Instead, it will provide a benefit to them by enabling fleets additional time to install early VDECS, and thereby accumulate credit that will enable them to spread out their compliance costs in later years.

The Executive Officer has also determined, pursuant to CCR, title 1, section 4, that the proposed regulatory action may affect small businesses.

Effect on State Economy

Pursuant to Government Code section 11346.5(a)(8), the Executive Officer has made an initial determination that the proposed regulatory action would 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 sections 11346.5(a)(10) and 11346.3(b), the Executive Officer has further determined that the proposed regulatory action would 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. A detailed assessment of the economic impacts of the proposed regulatory action and its effect on California businesses can be found in the ISOR.

Consideration of Alternatives

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been 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 REGARDING PROPOSED REGULATORY ACTION

The public may present comments relating to the proposed amendments 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, January 21, 2009**, and addressed to the following:

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>
The list name is: **ordies109**

{NOTE: Comments submitted here should be for the regulatory action ONLY}

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.

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 ten 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.

For comments to the update on status of implementation of regulation for in-use off-road diesel vehicles please the last page of this notice. Comments submitted to the link above should be for the proposed regulatory action only.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code sections 39600, 39601, 39602.5, 39667, 43013, and 43018. This action is proposed to implement, interpret and make specific California Code of Regulations, title 13, sections 2449, 2449.1, and 2449.2.

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 amendments 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.

**NON-REGULATORY UPDATE ON STATUS OF IMPLEMENTATION OF
REGULATION FOR IN-USE OFF-ROAD DIESEL VEHICLES AND SUBMITTAL OF
COMMENTS**

At the hearing, the Board will also receive a status update on implementation of the regulation. The update is described in the aforementioned staff report describing the proposed regulatory amendments. The public may present comments 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, January 21, 2009**, and addressed to the following.

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>
List name: **ordieslnr**

{NOTE: Comments submitted here, should be for the non-regulatory status update ONLY}

Facsimile submittal: (916) 322-3928

At the Board meeting, the Board may direct staff to develop additional modifications to the regulation to be considered at a later Board hearing. If directed to do so, ARB will prepare a separate notice of proposed rulemaking that will be published not less than 45 days before the scheduled hearing date.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: November 25, 2008