

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE VERIFICATION PROCEDURE, WARRANTY AND IN-USE COMPLIANCE REQUIREMENTS FOR IN-USE STRATEGIES TO CONTROL EMISSIONS FROM DIESEL ENGINES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines. The proposed amendments would revise, clarify and make specific requirements that pertain to the process for obtaining the ARB's verification of devices or strategies to control emissions from diesel engines.

DATE: January 28, 2010

TIME: 9:00 a.m.

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

This item may be considered at a two day meeting of the Board, which will commence at 9:00 a.m., January 28, 2010, and may continue at 8:30 a.m., on January 29, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before January 28, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), sections 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, and proposed adoption of new section 2711.

Background:

In 1998, ARB identified diesel particulate matter (PM) as a toxic air contaminant (title 17, CCR, section 93000). In 2000, ARB adopted the Diesel Risk Reduction Plan (DRRP) with the goal of reducing PM emissions and their associated health risks by 85 percent by the year 2020. The DRRP identified a number of key measures to achieve this goal: more stringent standards for all new diesel-fueled engines and vehicles, retrofitting in-use diesel engines with diesel emission control systems, and the use of low-sulfur diesel fuel.

To support the DRRP, staff developed a verification procedure (Procedure) for in-use diesel emission control systems (systems or DECS) that was adopted by the Board in May 2002. The Procedure is used by staff to ensure that in-use diesel emission control systems achieve real and durable PM emissions reductions. It specifies test procedures, warranty requirements, and in-use compliance testing requirements. Systems that meet all of the Procedure's requirements are verified and thus become candidate compliance options for ARB fleet regulations that require the control of diesel emissions from in-use fleets.

In-use fleet regulations, both adopted by the Board and currently under development, rely on having verified diesel emission control systems available to fleet owners as compliance options. Diesel vehicles and equipment for which regulations have already been adopted include transit buses (title 13, CCR, section 2023, et seq.), solid waste collection vehicles (title 13, CCR, section 2021, et seq.), vehicles that belong to public agencies and utilities (title 13, CCR, section 2022, et seq.), mobile cargo handling equipment at ports and intermodal rail yards (title 13, CCR, section 2479), transport refrigeration units (title 13, CCR, section 2477), off-road diesel equipment (title 13 CCR, section 2449 et seq.), and private on-road diesel vehicles (title 13, CCR, section 2025 et seq.). These regulations provide several paths to compliance, one of which is the installation of verified diesel emission control systems. To support the successful implementation of these regulations, it is therefore critical for the Procedure to be an effective and efficient means to evaluate diesel emission control systems. However, as the verification program has matured, staff has found that a number of amendments to the Procedure are necessary to better serve the needs of the in-use fleet regulations.

Proposed Amendments:

The proposed regulatory language and explanations can be found in the Staff Report: Initial Statement of Reasons (ISOR) and the attachments thereto. The most significant proposed amendments are summarized below:

Pre-Installation Compatibility Assessment Requirements

Staff proposes to add new language to section 2706 (Other Requirements) of the Procedure to provide guidance and direction on how to assess the compatibility of a DECS with a candidate vehicle prior to installation. The proposal establishes basic

requirements to help standardize the evaluation process and allows for the option of using exhaust temperature data from similar engines and applications in lieu of logging exhaust temperature data for every candidate vehicle.

Remedial Action for High Warranty Claim Rates

The current Procedure requires annual warranty reporting, but does not clearly spell out possible ramifications of high numbers of warranty claims. Most verified device manufacturers recognize that ARB can terminate a verification if a system has catastrophic problems in the field. However, ARB can take less drastic remedial actions according to the situation. Staff proposes to clarify this ability as it is unclear in the current language.

Incident Notification Timeframe

Staff proposes to change the period applicants currently have to submit a report of any incidents during the durability or field demonstration period. This change will result in applicants having a period of no more than 45 days, rather than 90, within which they must submit a report describing device/component failures, unscheduled repairs or unscheduled maintenance events.

Exhaust Temperature and Engine Backpressure Monitoring

Engine history and maintenance information as well as the backpressures, temperatures, and warning and fault codes experienced by a verified device are critical data in determining compatibility with an application as well as helping to resolve warranty disputes. Therefore staff has introduced language that would require all temperature dependent DECS that are verified after the effective date of the proposed amendments to have the capability to measure and record certain operational parameters.

Identification of Off-road Categories

Currently, marine, locomotive, transport refrigeration units, and auxiliary power units are grouped into the off-road engines category, but are typically tested differently for verification (emissions and durability) according to the most appropriate test procedure and durability demonstration for the application. The proposed changes clarify this distinction by acknowledging these applications as individual and unique subcategories within the off road arena.

Installation Warranty Clarifications

Staff proposes to add clarifying language to section 2707 (Warranty Requirements) making it clear that the installation warranty requirements are identical to the product warranty requirements. The proposed clarification does not in any way alter the warranty period or coverage for either the applicant or installer.

Compliance with California's Industrial Safety Regulations

The Division of Occupational Safety and Health of the California Department of Industrial Relations is in the process of developing safety regulations that will pertain to

the installation of DECS on off-road vehicles and equipment. Staff proposes that an applicant for verification must conform to these regulations when conducting durability and field demonstrations. Staff's proposal will ensure that each applicant is familiar with California's industrial safety regulations and is able to comply with them.

Photographic Documentation

To better illustrate and document durability and field demonstrations, staff proposes that the applicant must submit digital photographs of each DECS and demonstration vehicle or piece of equipment as part of the application for verification. Staff's proposal would require photographs at three stages of a demonstration: before installation of the DECS, after installation, and after completion of the demonstration. This requirement should not add any significant burden to applicants.

Public Availability of Information on DECS Maintenance

Staff proposes that applicants provide comprehensive DECS maintenance information to the device owner upon delivery. This includes routine maintenance procedures, filter cleaning procedures, the identification of any equipment necessary to clean and maintain DECS components, and any performance criteria used to determine a proper state of maintenance, such as the pressure drop, minimum air flow rates, or filter weight in a fully cleaned filter.

Component Swapping

Staff proposes to extend the ability to swap devices by removing the restriction that components may only be swapped within a given common ownership fleet under certain conditions. All of the other restrictions and provisions in the current regulation still apply.

Re-Designation Practices for Repowered Engines

Currently, the Procedure does not address situations where the DECS remains on a chassis, but the engine is replaced with a different one. This action is equivalent to a DECS re-designation which is already governed under the Procedure. Staff therefore proposes to allow re-designation to include this situation. All existing re-designation requirements apply.

Component Swapping and DECS Re-Designation Warranty Clarifications

The Procedure is clear on the applicant's warranty responsibilities in the context of component swapping and DECS re-designation, but less so on the installer's responsibilities. Staff's proposal clarifies the installer's warranty responsibilities for both component swapping and DECS re-designation that occur both before and after expiration of the original warranty. Before expiration of the original warranty, the installer must honor the remaining terms of the warranty just as the applicant does. If the original warranty has expired or has less than one year remaining, the installer must provide a new one-year installation warranty. Each installer is thus held responsible for each component swap or re-designation that he or she performs.

Labeling requirements

To ensure that only ARB verified systems carry a label compliant with Section 2706, and have the assigned DECS name, staff proposed to clarify that such label must only be used with verified systems. Therefore any verified device carrying an ARB approved label is obligated to honor all terms and conditions of verification including, but not limited to, warranty requirements.

Unidirectional Design Clarification

Staff proposes to clarify the unidirectional design requirement contained in section 2706(r). As currently specified in the Procedure, this requirement becomes effective January 1, 2010. However, due to the effects of the current global recession, and recent changes to some of the in-use diesel fleet rules, sales of verified DECS are lower than expected, resulting in some DECS manufacturers having excess inventory of DECS that do not meet the unidirectional design requirement. To address this, staff proposes to provide a “sell through” period.

Scope of Compliance

Currently, ARB can enforce or revoke a verification if the verified device manufacturer fails to meet the requirements of the Procedure. Section 2711 clarifies ARB’s authority to enforce on issues related to verified devices regardless of the location of the verified device. Staff’s proposal further explains that a product should not be sold, offered for sale, or introduced into commerce as “Verified” or carrying an ARB approved (per section 2706 of the Procedure) label if the product does not meet all the terms and conditions of the governing Executive Order. The amendment gives flexibility to the Executive Officer to modify, revoke or suspend an Executive Order if the applicant violates the terms and conditions thereof. Additionally, staff proposes to clarify that a device which has not been ARB verified may not be represented as such.

Data Logging Date and Time Stamp Requirements

Staff proposes to add language to sections 2704 (Durability Testing Requirements), and 2705 (Field Demonstration Requirements), to clarify the type of data that must be recorded during durability demonstrations and field demonstrations.

Other Proposed Amendments

Staff clarified appropriate contacts and mailing addresses for all application submittals. Staff also modified the application outline in section 2702 to ask for pre-installation compatibility procedures and clarified the scope of information requested describing DECS installation requirements.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) has published a draft document, “General Verification Protocol for Diesel Exhaust Catalysts, Particulate Filters, and Engine Modification Control Technologies for Highway and Nonroad Use Diesel Engines,” but has not promulgated formal regulations for this verification protocol. That verification protocol is intended to support the voluntary retrofit programs

initiated by U.S. EPA, while staff's proposal is to support ARB's DRRP and all the associated in-use fleet regulations. Additionally, the U.S. EPA program affords no warranty protection.

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 of the economic and environmental impacts of the proposal. The report is entitled: *Proposed Amendments to the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines*.

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 ARB's website listed below, or may be obtained from the 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 on January 28, 2010.

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 website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Juan Avila, Air Pollution Specialist, Retrofit Assessment Section, at (626) 575-7098, or Ms. Shawn Daley, Manager, Retrofit Assessment Section, at (626) 575-6972.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Trini Balcazar, Regulations Coordinator, (916) 445-9564. 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 website for this rulemaking at www.arb.ca.gov/regact/2010/verdev2010/verdev2010.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 amendments 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 would not create 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 Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. In general, 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. Participation in the Procedure is purely voluntary, both in its current form and as amended under the proposed action. Presumably, only entities that expect to benefit financially by obtaining verification will do so. While it is true that participation in the verification process is voluntary and there is no prohibition against selling diesel emission control strategies in California that have not been verified by ARB, the Board has adopted and may in the future adopt regulations requiring reductions of PM from in-use diesel vehicles through the application of verified, retrofitted diesel emission control strategies in specific situations. Entities subject to these retrofit requirements must use verified diesel emission control strategies to comply with these requirements under some compliance options. Consequently, entities that wish to pursue these compliance options will only purchase systems from manufacturers that have obtained ARB's verification. For the most part, the proposed amendments would not raise compliance costs, and in the case of pre-installation assessment flexibility, maintenance procedure availability, and component swapping across fleets, cost savings may be afforded to some participants and end users.

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 section 11346.3, the Executive Officer has determined that the proposed regulatory action would not eliminate jobs within the State of California, and may lead to the creation of new businesses within the State of California. It may also lead to the expansion of businesses currently operating within the State of 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 would not negatively affect small businesses though it has the potential for creating additional business opportunities. These opportunities may result from the proposals to make maintenance practices transparent, to allow inter-fleet component swapping, and to define representative sampling of candidate engines. These proposals may also benefit fleets that are affected by ARB's in-use fleet regulations.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

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

Interested members of the public may also present comments orally or in writing at the meeting and may be submitted by postal mail or by electronic submittal before the meeting. To be considered by the Board, written comments, not physically submitted at the meeting, must be received **no later than 12:00 noon, January 27, 2010**, 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>

Please note that under the California Public Records Act (Gov. Code, § 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 20 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 39002, 39003, 39500, 39600, 39601, 39650-39675, 40000, 43000, 43000.5, 43011, 43013, 43018, 43105, 43600, and 43700. This action is proposed to implement, interpret and make specific sections 39650-39675, 43000, 43009.5, 43013, 43018, 43101, 43104, 43105, 43106, 43107, and 43204-43205.5 of the Health and Safety Code and title 17, CCR, section 93000.

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, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidade especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la officina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: December 1, 2009

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.