UPDATED INFORMATIVE DIGEST

Sections Affected: This action amends section 2477 and adopts sections 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, and 2477.21, California Code of Regulations (CCR), title 13, Division 3, Chapter 9, Article 8.

Background: Over 90 percent of Californians breathe unhealthful air at times. To improve air quality and human health, Air Resources Board (ARB) establishes requirements to reduce emissions from new and in-use on-road and off-road vehicles, engines, and other sources.

The California Toxic Air Contaminant Identification and Control Program, established under California law by Assembly Bill 1807 (Stats. 1983, Ch. 1047) and set forth in Health and Safety Code (H&S Code) sections 39650-39675, requires ARB to identify and control air toxicants in California. In 1998, the Board identified particulate matter (PM) emissions from diesel-fueled engines as a toxic air contaminant (TAC). Two years later, in September 2000, the Board adopted the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Diesel Risk Reduction Plan (RRP)). The Diesel RRP established a goal of reducing emissions and the resultant health risk from virtually all diesel-fueled engines and vehicles within the State of California by the year 2020, and included the goal of reducing diesel PM by 85 percent in 2020 from the baseline emissions in 2000. The Diesel RRP also identified various control measures for achieving the goals. These measures included new, more stringent standards for all new diesel-fueled engines and vehicles, the replacement of older in-use engines with new, cleaner engines, the use of diesel emission control strategies on in-use engines, and the use of low-sulfur and alternative diesel fuels.

Transport refrigeration unit (TRU) diesel engines currently (2011) emit approximately 1.4 tons per day of diesel PM. Staff determined that there are situations where the public's estimated 70-year potential cancer risk resulting from exposure to diesel PM emissions from TRUs is in excess of a 100 in a million, because of the high cancer-causing potential of diesel PM and the potential for large numbers of TRUs to operate at 1 location, such as distribution centers located near residential areas.

On May 16, 2002, the Board approved the *Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines* (title 13 CCR, sections 2700-2710). This regulation establishes procedures for the verification of diesel emission control strategies by ARB that can be utilized in various diesel-fueled engines, including those in TRUs, to significantly reduce diesel PM emissions.

H&S Code sections 39666 and 39667 require ARB to adopt regulations to achieve the maximum possible reduction in public exposure to TACs through the application of best available control technology, or a more effective control method, in consideration of cost, risk, environmental impacts, and other specified factors.

The TRU Airborne Toxic Control Measure (ATCM) is part of ARB's ongoing effort to reduce PM emissions from diesel-fueled engines and vehicles, and to improve air quality. ARB adopted the TRU ATCM in 2004. The TRU ATCM established in-use performance standards for TRUs and TRU generator sets (gen sets) that were to be phased in commencing on December 31, 2008. In March 2005, ARB requested that the U.S. Environmental Protection Agency (U.S. EPA) grant ARB authorization to adopt and enforce the TRU ATCM pursuant to federal Clean Air Act (FCAA) section 209(e)(2); U.S. EPA granted California such authorization on January 16, 2009. However, because U.S. EPA's authorization was granted after the first compliance date specified in the TRU ATCM, ARB delayed the enforcement of the TRU ATCM's in-use performance standards until January 2010.

On February 2, 2011, the Board adopted amendments to the TRU ATCM that provided owners of model year (MY) 2003 TRU engines in the 25 horsepower (hp) and greater category, and of MY 2003 and MY 2004 engines in the less than 25 hp category, the option to meet the less stringent Low-Emission TRU (LETRU) in-use performance standard in lieu of complying with the otherwise applicable Ultra-Low-Emission TRU (ULETRU) in-use performance standard. The Board also adopted amendments to clarify that "flexibility" engines installed in TRUs by original equipment manufacturers before the effective date of those amendments under either the federal Transitional Program for Equipment Manufacturers or California's equipment manufacturer flexibility program (title 13 CCR, section 2423(d)), are provided seven years of operational life, and that flexibility engines installed after that date are subject to shorter operational lives under the amendments. Finally, the amendments established new reporting requirements on TRU original equipment manufacturers.

Description of the Regulatory Action: The Notice of Public Hearing to Consider Amendments to the TRU ATCM was published on August 31, 2011, and the Staff Report: Initial Statement of Reasons (Staff Report) for the amendments was also posted on ARB's rulemaking website on that date at: http://www.arb.ca.gov/regact/2011/tru2011/tru2011.htm. At its October 21, 2011 meeting, the Board adopted Resolution 11-35, which approved for adoption the amendments to the TRU ATCM.

Amendments Approved at the Board Hearing (45-Day Notice)

The purpose of the amendments is primarily to provide MY 2001 through 2003 TRU engines that complied with applicable LETRU in-use performance standards by specified time periods, a one- or two-year extension from the more stringent ULETRU in-use performance standards. The amendments also clarify manual recordkeeping requirements for electric standby-equipped TRUs, and ultimately require automated electronic tracking system requirements for such TRUs; establish requirements for businesses that arrange, hire, contract, or dispatch the transport of goods in TRU-equipped trucks, trailers or containers (i.e., brokers, shippers, or receivers); and clarify issues that were identified during the implementation of the regulation. A more detailed description of the amendments is presented below.

Applicability

The amendments apply to owners of MY 2003 and older TRU engines that met the LETRU in-use standards by their originally-specified compliance dates. Freight brokers and forwarders, shippers, and receivers are affected by the amendments if they arrange the transport of perishable goods on California highways with refrigerated carriers. The amendments also affect owners of TRUs that are equipped with electric standby, and TRU original equipment manufacturers, dealers, repair shops, lessors and lessees, and engine rebuilders.

Extend ULETRU Compliance Date for MY 2001 and Older TRU Engines That Complied With the LETRU In-Use Performance Standard by December 31, 2008

This amendment extends the ULETRU compliance date by one year for those MY 2001 and older TRU engines that complied with the LETRU in-use standard by December 31, 2008. This amendment serves to restore competitive fairness to those businesses that elected to comply with the original TRU regulation during 2008 through 2010, although other businesses opted to defer their compliance efforts given the uncertainty resulting from U.S. EPA's delay in issuing ARB an authorization to enforce the regulation. This amendment accordingly extends the current ULETRU compliance deadline for qualifying TRU engines from December 31, 2015, until December 31, 2016.

Extend ULETRU Compliance Deadline for MY 2003 and Older TRU Engines That Complied With the LETRU In-Use Performance Standard by December 31, 2009 or December 31, 2010

At the Board's November 18, 2010 public hearing to consider the 2010 amendments to the TRU ATCM, the Board directed staff to evaluate industry's request that the current seven-year operational life for TRUs be extended up to three additional years. Industry's request would therefore extend the ULETRU compliance dates for MY 2004 and newer model TRU engines by up to three years. Staff evaluated the public health risk near distribution centers using updated TRU engine activity information and the current U.S. EPA-sanctioned air dispersion model, and determined that the public health risk at the current seven-year operational life for TRUs still results in potential cancer risk levels of concern in communities near facilities where TRUs congregate. Extending the operational life of TRUs would only increase these risks. Accordingly, staff is not recommending that the current operational life for MY 2004 and newer TRU engines be extended.

However, staff is proposing to extend the ULETRU compliance date by one year for MY 2003 and older TRU engines that complied with the LETRU in-use performance standard by specified dates (December 31, 2009 for MY 2001 and MY 2002 TRU engines; December 31, 2010 for MY 2003 TRU engines). This amendment operates in conjunction with the amendment described immediately above, so that MY 2001 and older engines that complied with the LETRU standard by December 31, 2008, could qualify for a total of a two-year extension from the ULETRU standard compliance date.

This amendment provides economic relief to owners who had to take action during the height of the recession. Furthermore, the amendment only has a minimal emissions impact since most of the affected in-use TRU engines are already controlled to LETRU levels and the near-source public health risk impacts associated with those emissions is minimal.

Clarify Operational and Recordkeeping Requirements, and Require Automated Electronic Recordkeeping of Hybrid Electric, Electric-Standby (E/S) Equipped, and Hybrid Cryogenic TRUs

The TRU ATCM currently allows TRU owners to utilize hybrid electric, hybrid cryogenic, and electric-standby (E/S) equipped TRUs as compliance options, and refers to these as the "Alternative Technology" compliance options. This option applies if such TRUs are operated in a manner that eliminates diesel engine operations at the facilities where TRUs operate. When staff established the Alternative Technology compliance provision in the original TRU ATCM, it intended that owners using this option needed to document, via recordkeeping, that TRU engine operations at facilities were in fact eliminated. However, manual records submitted by owners have been incomplete and inconsistent. The amendments therefore specify the information required to be provided in manual records.

The amendments clarify that Alternative Technology compliant TRUs are allowed to operate under diesel engine power from the time they enter the facility fence line or property line until they are parked, from a parking spot to the gate upon leaving the facility, and while being moved to and from loading docks to parking spots by yard hostlers. Engine run time within a facility fence line is limited to no more than five minutes each time the unit moves within the facility fence line or property boundary.

The amendments also clarify, that to qualify as an Alternative Technology, facilities in California where E/S-equipped TRUs are based must have electric power plugs located where TRU equipped trucks are parked for the initial van chill-down and while awaiting dispatch and at the loading spaces. These power plug requirements also apply to any nonretail facility in California where an E/S-equipped TRU truck picks up or delivers goods if the van load includes perishable goods. At retail delivery and pick-up points, including but not limited to restaurants, grocery stores, convenience stores, and cafeterias, TRU engine run time is allowed, but is limited to no more than 30 minutes per delivery/pick-up point. Electric power plugs are required at retail delivery and pick-up points if more than 30 minutes of TRU engine run time is necessary. Finally, hybrid electric or E/S TRUs must be equipped with non-resettable hour meters that record both engine and shore-powered electric motor run time (separately). This will facilitate hour meter reading records that are required.

The amendments phase-in electronic recordkeeping for hybrid electric and E/S TRUs. At least 50 percent of an owner's fleet of hybrid electric or E/S-equipped TRUs, that have passed an in-use compliance deadline, must be equipped with electronic tracking systems by December 31, 2012. The remainder of those units must be equipped with

electronic tracking systems by December 31, 2013. In addition, 100 percent of an owner's hybrid electric or E/S-equipped TRUs that have a December 31, 2013, in-use compliance date must also meet the electronic tracking system requirement. Every year thereafter, all of hybrid electric or E/S-equipped units that are required to meet an in-use standard by the end of the year are required to meet the electronic tracking system requirement. The electronic tracking systems must provide automated Global Positioning System (GPS) tracking, engine run time monitoring, recordkeeping and reporting. Staff believes that the use of automated tracking and reporting systems will result in improved enforceability and labor savings that more than pay for the capital and operating costs of such systems. Finally, the amendments require out-of-state owners that elect to use the Alternative Technology compliance option to register those TRUs in ARBER (in-state owners are already required to register all of their units).

Requirements That Freight Brokers and Forwarders, Shippers, and Receivers Ensure That the Carriers They Hire Use California-Compliant TRUs

This amendment requires a business entity that arranges, hires, contracts for, or dispatches the transport of perishable goods in TRU-equipped trucks, trailers, shipping containers, or railcars to require the carriers they hire or contract with to only dispatch equipment with TRUs that comply with the TRU ATCM's in-use standards if they travel on California highways or railways. That business entity is also required to provide the driver with their company contact information and a bill of lading that includes shipper, carrier, and receiver information. The driver, in turn is required to provide this information to an ARB inspector, upon request.

Limited Exemption for Mobile Catering Service TRUs

This amendment provides a limited exemption to mobile catering companies for TRUs that are used during emergencies, such as TRUs on refrigerated trucks and trailers that are used to feed emergency responders, such as firefighters suppressing wildfires. The exemption allows qualifying mobile catering services to defer compliance with the in-use performance standards until January 2025.

Clarifying Requirements for Repowering a TRU With a New Replacement Engine or a Rebuilt Engine

The amendments clarify that new or rebuilt replacement engines used to repower a TRU must meet more stringent emissions standards than the TRU's original engine, and are subject to the TRU ATCM's in-use standards that are based on the new or rebuilt replacement engine's model year or effective model year.

Current-tier new replacement engines must use the engine model year shown on the engine emissions label to determine the in-use standard that must be met and the in-use compliance deadline. Prior-tier new replacement engines must use the effective model year of the engine, as defined, to determine the in-use standard that must be met and the in-use compliance deadline.

The amendments require rebuilt replacement engines to meet the requirements of a new section of the TRU ATCM (section 2477.16) that clarifies federal and State requirements applicable to TRU engines. The amendments also clarify that when a rebuilt engine meets a prior-tier new engine emissions standard, the effective model year is used, which is the last year that the tier standard was in effect. However, if a rebuilt engine meets a tier standard for new engines that is currently in effect, then the model year, for the purposes of the TRU ATCM is the year that the engine was rebuilt. Section 2477.16 also includes supplemental label requirements that include the model year.

Clarifying TRU Dealer Requirements to Allow California Dealers to Acquire Non-compliant TRUs and to Transmit Registration Information to the Ultimate Purchaser

The amendments allow dealers doing business in California to purchase, receive, or acquire and possess non-compliant TRUs in California under certain circumstances (e.g., to accept non-compliant trade-ins when TRU owners buy new or newer compliant TRUs).

The amendments also require dealers that sell new units or replacement engines, whether new or rebuilt, to pass a registration information document to the ultimate purchaser at point of sale. The registration information document comes with the new unit or new replacement engine from the TRU original equipment manufacturer, or from the rebuilt engine supplier. If a new replacement engine is not supplied with a registration information document, then the dealer must provide a registration information document, which includes all of the engine information needed to register the unit in ARBER.

Provide Extensions When Compliance Technology is Not Available or Based on Delays Due to Private Financing, Equipment Manufacture Delays, or Installer Delays

The amendments authorize the Executive Officer to grant up to an one-year extension of a compliance deadline if no compliance technology is available for a specific TRU or TRU gen set within six months of a compliance date, or a one-time extension, not to exceed four months, if financing, delivery, or installation is delayed. These amendments provide flexibility in addressing issues related to Verified Diesel Emissions Control Strategies (VDECS) and other compliance options which may not be fully available on the market immediately prior to a compliance date.

Clarify Exemptions for Obviously Non-Operational Equipment and Refrigeration Systems Not Powered by Integral Diesel Engines

The amendments clarify that obviously non-operational TRUs and TRU gen sets are exempt from certain subsections of the TRU ATCM, and that transport refrigeration systems that are not driven by an integral diesel internal combustion engine are exempt from the TRU ATCM.

Clarify Prohibitions on Selling Non-Compliant TRUs

The amendments extend the prohibitions of selling non-compliant TRUs to any person selling such non-complaint units. Auctioneers and motor carriers are now expressly included in the section prohibiting persons from intentionally or negligently importing, delivering, purchasing, or otherwise acquiring non-compliant new or used TRU or TRU gen set engines. The amendments also require a seller of a non-compliant unit to disclose to a potential buyer located outside of California that the unit is not compliant with the in-use requirements and cannot be legally operated in California. In addition, the amendments also prohibit an owner of a TRU equipped with an Alternative Technology, such as electric standby, from selling it, without disclosing in writing that it must be used in a way that qualifies it as an Alternative Technology.

Clarify and Streamline Requirements for Lessors and Lessees

The amendments formalize policies that staff developed in conjunction with companies that lease or rent TRU-equipped trucks and trailers which streamline issues related to the ARBER registration requirements, Operator Reports, and the in-use standards.

Allow Use of Unit Manufacture Year Instead of Engine Model Year to Determine Compliance Requirements and Dates

The amendments allow the year that a TRU was manufactured, instead of the TRU engine model year, to be used in determining the applicable in-use performance standards and the related compliance deadline, provided that the difference between the unit manufacture year and the engine model year is no more than one year. If the difference between the unit manufacture year and model year is greater than one year, the engine model year must be used to determine compliance dates. However, the engine model year must be used when determining VDECS compatibility and must also be entered into the space for engine model year when registering the TRU in ARBER.

Allow the Use of Unique Identification Numbers Instead of Affixing an ARB Identification Number (IDN)

The TRU ATCM currently requires owners of California-based TRUs to apply for ARB Identification Numbers (IDN) and affix or paint the IDNs onto the TRU or TRU generator set (gen set) housing. ARB IDNs are voluntary for out-of-state-based units. The amendments will allow the use of Bureau International des Containers (BIC) codes, or

reporting marks in place of ARB IDNs, provided: the owner applies for an ARB IDN if the unit is California-based, the BIC Code or reporting mark is unique for each piece of equipment, and the BIC-Code or reporting mark meets the same readability specifications currently required for ARB IDNs.

Additional Requirements for TRU Original Equipment Manufacturers (OEMs)

The amendments require TRU OEMS that plan to equip TRUs with flexibility engines to: notify ARB at least 12 months in advance of the first flexibility engine installation in production; beginning 120 days after the effective date of the regulation, provide a supplemental engine emissions label for each flexibility engine installed in new TRUs and attach this label to the engine in an easily accessible place; and provide a written disclosure with new TRUs, notifying the ultimate purchaser when a TRU is equipped with a flexibility engine, the effective model year of the engine, the ULETRU compliance deadline, and that the effective model year must be entered for the model year when the unit is registered in ARBER. These written disclosures may be included with the documentation that is shipped with the TRU and must include instructions to dealers telling them they are required by California law to notify the ultimate purchaser of these disclosures prior to sale and to pass these written disclosures to the ultimate purchaser at point of sale.

Beginning 120 days after the effective date of the amendments, TRU OEMs are also required to provide, for prior-tier replacement engines, supplemental engine emissions labels for each new replacement engine they supply. This label must list all of the engine information needed to register the equipment in ARBER (if the engine manufacturer's emissions control label does not provide this information). Additionally, TRU OEMs are required to provide written disclosure with each prior-tier engine supplied. This written disclosure must be passed on to interested buyers, notifying them that they are buying a prior-tier replacement engine that was manufactured to meet a less stringent prior-tier emissions standard than is currently required. This notification must also provide the effective model year of the prior-tier replacement engine and the ULETRU compliance deadline. Finally, the OEMs are required to provide a registration information document with each prior-tier replacement engine they supply that must be passed on to the end user. The registration information document must include all of the engine information needed to register the equipment in ARBER and must be consistent with the information that is on the engine emissions label and supplemental engine label.

Beginning 120 days after the effective date of the amendments, the amendments require TRU OEMs to provide, for current-tier replacement engines and new TRUs and TRU gen sets, a registration information document with each current-tier replacement engine or new TRU or TRU gen set they supply that must be passed on to the end-user. This document must include all of the engine information needed to register the equipment in ARBER and must be consistent with the registration information that is on the engine emissions label and supplemental engine label. As an alternative to

providing the registration information document, the OEM may provide a web-based on-line look-up system for registration information, subject to Executive Officer approval.

Additional Requirements for Dealers and Repair Shops

The amendments require dealers and repair shops to pass the registration information documents, which are supplied with new units, new replacement engines, and rebuilt engines, to the end-user. If a registration information document is not included with a replacement engine, the dealer or repair shop must provide it or a print-out from the OEM's on-line look-up system. Also, if the TRU or TRU gen set is equipped with a flexibility engine, the dealer must notify the ultimate purchaser of the written disclosure provided by the OEM prior to sale, and must pass the OEM's written disclosure to the ultimate purchaser at point of sale.

Additional Requirements for Engine Rebuilders

The amendments require engine rebuilders to follow the federal and State engine rebuild practices of 40 CFR sections 89.130 and 1068.120, and title 13, CCR section 2423(l), and provide the supplemental rebuilt engine labels including engine model, engine effective MY (if prior-tier standard is met) or model year (if current-tier standard is met), and horsepower rating. Supplemental engine labels must be affixed to the rebuilt engine in a readily accessible location in accordance with 40 CFR section 89.110 (for Tier 2), or 40 CFR section 1039.135 (for Tier 4i).

Engine rebuilders are required to provide, within 30 days of request, documentation and engineering arguments demonstrating that they have complied with the engine rebuilding practices of 40 CFR sections 89.130 and 1068.120, and title 13 CCR section 2423(l). This technical demonstration must be completed, signed, and stamped by a licensed mechanical engineer with knowledge of the design and function of diesel engines and the control of their emissions. As part of the evaluation of the demonstration, the Executive Officer may require an emissions test to be conducted if the documentation and engineering arguments are not found to be satisfactory.

Engine rebuilders are also required to provide a registration information document with each rebuilt engine that provides all of the engine information required under section 2477.5(e), with instructions to the dealer or repair shop to pass this document through to the end-user. The information on the registration information document must be consistent with the information that is on the supplemental engine label.

Clarify Registration Requirements, Consistent with ARBER Screens

During implementation, staff learned that additional information was needed to validate the registration information that was required by the original regulation. Staff believes that most of the additional data elements fall within the umbrella of existing data requirements and they are currently implemented in ARBER; however, adding them specifically, clarifies the requirements and improves enforceability. Therefore, the

amendments add registration information requirements to section 2477.5(e), which are consistent with current ARBER registration screens.

With the above-described amendments, the TRU ATCM continues to substantially decrease diesel PM and NO_x emissions, but defers a small portion of emissions one or two years toward the end of the in-use standards phase-in (2016-2018).

Fifteen-Day Modifications

Subsequent to the hearing, staff proposed modifications to the regulatory text that largely clarify the regulation's provisions and provide regulated entities additional flexibility to comply with the regulation. The most significant of these post-hearing modifications were:

- Providing owners or operators that request extensions to an ULETRU compliance date, a mobile catering company exemption, a compliance extension for in-use performance standards based on unavailability of compliance technology, a compliance extension for in-use performance standards based on delays due to private financing, equipment manufacturer delays or installer delays, an ULETRU extension for compliance with LETRU, and an application for safe passage requirement for noncompliant equipment traveling in California the option to submit such requests to the Executive Officer electronically through ARB's ARBER website.

- Modify section 2477.13(a)(3) to require an OEM to provide a written disclosure to be shipped with the TRU or TRU gen set if a TRU or TRU gen set is equipped with a flexibility engine. The modification also requires the OEM to instruct the dealer that sells the TRU or TRU gen set that they are required by California law to notify the ultimate purchaser of this disclosure prior to sale, and to pass the OEM-provided written disclosure to the ultimate purchaser at point of sale.

- Add new sections 2477.13(c)(2)(D) and 2477.13(c)(3)(D) to allow TRU or TRU gen set OEMs to request Executive Officer approval of an alternative web-based, on-line look-up system to provide registration information to TRU and TRU gen set owners. The Executive Officer must find the alternative to be at least as effective as the originally proposed amendment, which required the OEM to provide a registration information document with each new TRU or TRU gen set.

- Modify section 2477.14(a)(2) to require dealers to provide a print-out of the registration information from the OEM's web-based look-up for a new replacement engine or rebuilt replacement engine if the OEM does not provide the registration information document with the new replacement engine or rebuilt replacement engine and instead obtains approval from the Executive Officer for the alternative under section 2477.13(c)(3)(D) to provide registration information through a web-based look-up.

- Add new section 2477.14(a)(4) to require TRU and TRU gen set dealers to notify the ultimate purchaser, prior to sale, of the OEM's disclosure that a new TRU or TRU gen set is equipped with a flexibility engine, and to require dealers to pass the OEM's written disclosures, under section 2477.13(a)(3), that the TRU or TRU gen set is equipped with a flexibility engine, to the ultimate purchaser at point of sale.

- Add new subsection (e) to section 2477.3 to provide an exemption for certain noncompliant, non-operating refrigerated railcar TRUs passing through California, provided the Executive Officer has previously approved a written compliance plan, submitted by the railway carrier. The written compliance plan would clearly identify the monitoring, recordkeeping, and reporting procedures that the railway carrier would implement and utilize to ensure non-compliant TRUs on refrigerated railcars will not operate at any time while in California. The compliance plan would include, without limitation: the procedures for tracking and recording routes and dates of travel within California of each non-compliant TRU, information identifying each non-compliant TRU, a description of the automated monitoring and recordkeeping system for reporting the TRU "engine on" and "engine off" status, and the procedure for expeditiously reporting violations observed or discovered by the railway carrier to ARB. A statement would be required, signed by an authorized railroad representative, declaring that the railway carrier agrees to be bound by the compliance plan. Compliance verification records would be maintained for three years and would be provided to authorized enforcement personnel upon request.

- Add section 2477.3(f), to exempt a railway carrier from the owner or owner/operator requirements of section 2477.5 for refrigerated railcar TRUs that are owned by third parties, where the railway carrier is only moving the refrigerated equipment for a customer. This exemption would not apply if the rail carrier is leasing the TRU, in which case the lessee requirements of section 2477.12 would apply to the rail carrier. This exemption would also only apply if the railway carrier or its agent is only fueling, monitoring to assure proper operation, keeping in operation, arranging repairs at the request of the owner, or restarting the TRU or TRU gen set engine after an unscheduled shut-down or repair, and is not performing any of the other activities listed under the definition of 'operate.'

Comparable Federal Regulations: There are no federal regulations comparable to the TRU ATCM for in-use TRUs. Under FCAA section 213, U.S. EPA is without authority to adopt in-use standards for off-road (non-road) engines.[1]

[1] The California term "off-road" and the federal term "nonroad" refer to the same sources and are used interchangeably.

Section 209(e)(1) of the CAA conclusively preempts states, including California, from adopting requirements for new off-road engines less than 175 hp that are used in farm or construction equipment. Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off-road engines and equipment not conclusively preempted by section 209(e)(1), so long as California applies for and receives authorization from the Administrator of U.S. EPA. TRU engines are not used in farm and construction equipment and are thus not preempted. California requested and received authorization from U.S. EPA for the initially adopted TRU ATCM in January 2009.[2] Similarly, ARB will submit a request for confirmation that the amended regulations are within the scope of the existing waiver of federal preemption pursuant to section 209(e)(2) of the Clean Air Act.

[2] 74 Fed Reg 3030 (January 16, 2009).