

ADDENDUM

to the

FINAL STATEMENT OF REASONS

ADOPTION OF THE HEAVY-DUTY DIESEL ENGINES SOFTWARE UPGRADE REGULATION (CHIP REFLASH)

This Addendum to the Final Statement of Reasons (FSOR) for the Adoption of the Heavy-Duty Diesel Engines Software Upgrade Regulation (Chip Reflash) lists, describes, and provides reasoning for the nonsubstantive changes that the Air Resources Board (ARB or Board) made to the proposed regulatory text last noticed for comment January 13-28, 2005. Many of these changes are also described at FSOR pp. 3-5. All of these changes were made in response to concerns raised by the Office of Administrative Law and are reflected in the Final Regulation Order. The changes made do not materially alter any requirement, right responsibility, condition, prescription, or other regulatory element of any CCR provisions.

Corrections to Engine Listing

1. Corrected typographical errors in Section 2011 (b)(5). The listing of Cummins' Low NOx Rebuild Engines contained three errors which were corrected as indicated below:

Cummins 1993 - 1998 N14 CPL 1573 original SC "1259" was changed to original SC "1569"

Cummins 1993 - 1998 N14 CPL 1573 Low NOx SC "1047" was changed to Low NOx SC "10471"

Cummins 1993 - 1998 N14 CPL 1844 Original SC "10100" was changed to Original SC "10110"

Rationale: These changes reflect corrections of errors found in manufacturer-submitted information. The corrected language further describes engines eligible for, and therefore required to, reflash with kits as defined in Section 2011(b)(4). These changes thus do not materially alter any requirement because there is no change to the number or type of engines that must be reflashed.

2. Clarified the list of Low NOx Rebuild Engines in Section 2011 (b)(5). The listing of Mack's Low NOx Rebuild Engines was modified to include additional information to more accurately identify eligible engines. The modifications are:

A new column was added within the "Notes" column with the heading "EPA Family Name (FN) or V-MAC Data File Part No. (DF)" to more accurately identify eligible Mack Low NOx Rebuild Engines.

"Mack 1994 - 1998" Engine Model EM7-275 ESN "4B through 8R" was changed to "Mack Trucks 1997 - 1998" Engine Model EM7-275 ESN "7A through 8R" FN or DF "FN: VMK728EJDAW and WMKXH11.9E53"

"Mack 1994 - 1998" Engine Model EM7-300 ESN 4B through 8R was changed to "Mack Trucks 1994 - 1998" Engine Model EM7-300 ESN 4B through 8R FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-300 ESN "4B through 8R" was changed to "Mack Trucks 1997" Engine Model E7 - 300 ESN "7A through 7Y" FN or DF "FN: VMK728EJDAZW"; "Mack Trucks 1998" Engine Model E7-300 ESN "8A through 8R" FN or DF "FN: WMKXH11.9E53"

"Mack 1994 - 1998" Engine Model E7-310/330 ESN "4B through 8R" was changed to "Mack Trucks 1997" Engine Model E7-310/330 ESN "7A through 7Y" FN or DF "FN: VMK728EJDAZW"; "Mack Trucks 1998" Engine Model E7-310/330 ESN "8A through 8R" FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-330/350 ESN "4B through 8R" was changed to "Mack Trucks 1996" Engine Model E7-330/350 ESN "6A through 6Y" FN or DF "DF: 1MS548P11, 1MS559P11"; "Mack Trucks 1997 - 1998" Engine Model E7-330/350 ESN "7A through 8R" FN or DF "All"

"Mack 1994 – 1998" Engine Model E7-350 ESN 4B through 8R was changed to "Mack Trucks 1994 - 1998" Engine Model E7-350 ESN 4B through 8R FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-355/380 ESN "4B through 8R" was changed to "Mack Trucks 1996 - 1998" Engine Model E7-355/380 ESN "6A through 8R" FN or DF "All"

The line "Mack 1994 – 1998, Engine Model E7-375, ESN 4B through 8R" was deleted.

"Mack 1994 - 1998" Engine Model E7-400 ESN "4B through 8R" was changed to "Mack Trucks 1994 - 1995" Engine Model E7-400 ESN "4B through 5Y" FN or DF "DF: 1MS536P7, 1MS541P7, 1MS543P7"; "Mack Trucks 1996 - 1998" Engine Model E7-400 ESN "6A through 8R" FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-427 ESN "4B through 8R" was changed to "Mack Trucks 1994" Engine Model E7-427 ESN "4B through 4Z" FN or DF "All"; "Mack Trucks 1995 - 1996" Engine Model E7-427 ESN "5A through 6Y" FN or DF "DF: 1MS536P8, 1MS543P8, 1MS548P8, 1MS549P8, 1MS559P8"; "Mack Trucks 1997 - 1998" Engine Model E7-427 ESN "7A through 8R" FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-454 ESN "4B through 8R" was changed to "Mack Trucks 1994 - 1995" Engine Model E7-454 ESN "4B through 5Y" FN or DF "All"; "Mack Trucks 1996" Engine Model E7-454 ESN "6A through 6Y" FN or DF "DF: 1MS548P9, 1MS559P9"; "Mack Trucks 1997 - 1998" Engine Model E7-454 ESN "7A through 8R" FN or DF "All"

"Mack 1994 - 1998" Engine Model E7-460 ESN "4B through 8R" was changed to "Mack Trucks 1997 - 1998" Engine Model E7-460 ESN "7A through 8R" FN or DF "All"

Rationale: These changes reflect corrections of errors found in manufacturer-submitted information. The corrected language further describes engines eligible for, and therefore required to, reflash with kits as defined in Section 2011(b)(4). For example, the original (previously noticed) descriptions in some cases described engines that did not exist for a particular model year. The reflash obligations in Section 2011(c) exist for engines as defined in the prefatory language of Section 2011(b)(5), with the list following thereafter being illustrative of the covered engines. These changes thus do not materially alter any requirement because there is no change to the number or type of engines that must be reflashed.

Implementation Dates

3. No change.

Rationale: ARB had proposed to modify the implementation date in Sections 2011 (d)(1) and (d)(2). See FSOR pp. 4-5. In response to OAL concerns that this would be a substantive change, the original (previously noticed) dates have been retained. While providing additional time may have been more convenient for some affected persons, the original and now final implementation dates remain viable.

Label Location

4. Section 2011(c)(5)(C) has been reworded to read “The label must be readily visible upon opening the engine compartment;”

Rationale: This change better reflects the Board’s intent for label locations to follow existing label location practice under the Consent Decrees and Settlement Agreements, and provides a clearer description of the functional requirements thereunder.

Existing Legal Obligations

5. Section 2011(g) is removed.

Rationale: The ARB is responding to OAL concerns that declaring existing legal obligations is itself a legal conclusion that does not serve a separate purpose in the regulation and is therefore unnecessary. The ARB is satisfied that the Settlement Agreements speak for themselves and provide the same substantive result as would the regulatory language removed.

Demonstration of Correction

6. The introductory portion of Section 2186(a) was changed to “Demonstration of Correction. The owner must demonstrate correction of the vehicle by submitting to the Air Resources Board documents demonstrating compliance with (1) or (2):”

Rationale: This change clarifies that (1) or (2) are separate types of documentation with separate required items, as listed.

7. The introductory portion of Section 2186(b) was changed to “Statement of Correction. The owner must also submit to the Air Resources Board documents demonstrating compliance with (1) or (2) or (3):”

Rationale: This change clarifies that (1), (2), and (3) are separate types of documentation with separate required items, as listed.

8. Section 2186(c) was removed.

Rationale: This responds to OAL concerns that the proposed form had not been properly incorporated by reference in this rulemaking.

9. Section 2186(d) was returned to its current numbering as 2186(c).

Rationale: This is a change without regulatory effect as defined in Title 1, California Code of Regulations, Section 100(a)(1).

Other Typographical and Formatting Changes

10. Corrected typographical error in Section 2011 (a). A semicolon at the end of Section 2011 (a) was replaced with a colon to read "Applicability. This section 2011 applies to Low NOx Rebuild Engines, as defined, operating in the State of California that are either:"

Rationale: This is a simple typographical change that better conforms to the grammatical convention of using a colon followed by list items separated by semi-colons.

11. Corrected typographical error in Section 2011 (b)(6). The definition name of "Low NOx Engine Manufacturer" was revised to "Low NOx Rebuild Engine Manufacturer."

Rationale: The word "Rebuild" was inserted to conform to the multiple uses of the corrected phrase throughout, which in turn is derived from the definition in the Settlement Agreements. The record demonstrates that there is no confusion as to which manufacturer's engines are at issue.

12. Corrected typographical error in Section 2011 (c)(2). The word "manufacturer's" was changed to "Manufacturer's."

Rationale: This is a simple typographical change that conforms the case used here to that used in the Definition ((b)(6)).

13. Corrected typographical error in Section 2011 (c)(7). The term "Low NOx Rebuild Manufacturers" was revised to "Low NOx Rebuild Engine Manufacturers'."

Rationale: The word "Rebuild" was inserted to conform to the multiple uses of the corrected phrase throughout, which in turn is derived from the definition in the Settlement Agreements. The record demonstrates that there is no confusion as to which manufacturer's engines are at issue.

14. In the "NOTE: Reference" following Section 2192, Section 43016 was underlined to reflect its addition as a referenced section in this rulemaking.

Rationale: This is a change without regulatory effect as defined in Title 1, California Code of Regulations, Section 100(a)(5).