

State of California
AIR RESOURCES BOARD

Executive Order G0-10-58
July 2010

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorizes the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 39003 of the Health and Safety Code charges the Board with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution; and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the State;

WHEREAS, sections 39666 and 39667 of the Health and Safety Code authorizes the Board to adopt regulations and measures to reduce emissions of toxic air contaminants from vehicular and nonvehicular sources;

WHEREAS, sections 43013 and 43018 of the Health and Safety Code directs the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources, including marine vessels to the extent permitted by federal law, to attain State air quality standards by the earliest practicable date;

WHEREAS, chapter 3.2 commencing with section 39625 of the Health and Safety Code established the Proposition 1B: Goods Movement Emission Reduction Program (Program) to implement the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, also known as Proposition 1B, which authorizes one billion dollars (\$1,000,000,000) in bond-funded incentives for ARB to reduce emissions associated with the movement of freight along California's trade corridors;

WHEREAS, on March 25, 2010, in Resolution 10-18, the Board adopted updated Program Guidelines, including overall funding targets, priorities for the use of Fiscal Year (FY) 2007-08, 2008-09 and FY2009-10 funds, project specifications, and project implementation deadlines;

WHEREAS, in Resolution 08-6 adopted on May 22, 2008 and Resolution 08-12 adopted on February 28, 2008 for FY2007-08 funds, the Board approved lists of primary local agency projects with corresponding Program funding amounts, and directed the Executive Officer, or his or her designee, to enter into grant agreements with those local agencies and to take any other action the Executive Officer deemed necessary to implement those projects;

WHEREAS, for FY2007-08 funds, ARB staff executed twenty-one grant agreements for the primary local agency projects in June 2008, consistent with Resolutions 08-6 and 08-12, and the local agencies began work to implement these grants; these grant agreements required the local agencies to complete the projects on a specified schedule that accelerated the maximum timelines in State law;

WHEREAS, State law (Health and Safety Code section 39626.5(b)) provides up to two years for local agencies receiving Program awards from ARB to obligate those funds via contracts with equipment owners, creating a June 2010 deadline to obligate the FY2007-08 funds;

WHEREAS, the California Department of Finance issued Budget Letter 08-33 on December 18, 2008, directing all State entities implementing General Obligation bond programs (including Proposition 1B) to cease authorizing any new grants or obligations for bond projects, to suspend all projects, and to instruct all grant recipients not to enter into any new agreements or contracts that would be funded from bond monies;

WHEREAS, in a letter dated December 23, 2008, the Executive Officer instructed local agencies implementing Program grant agreements to suspend entering into any new equipment project contracts or expending funds for existing contracts because ARB is not authorized to approve payments until such time as ARB has access to bond funds;

WHEREAS, in Spring 2009, ARB received \$111 million in upfront proceeds from the March and April bond sales and authorized a subset of projects utilizing these FY2007-08 funds to restart while other projects remained suspended pending availability of additional funds;

WHEREAS, in Fall 2009, ARB received \$139 million in upfront proceeds from October bond sales and authorized the remainder of the projects utilizing these FY2007-08 funds to restart;

WHEREAS, the local agencies were specifically prohibited from implementing the FY2007-08 Program grants for a 6-14 month period until ARB received the funding to restart all of the projects;

WHEREAS, the local agencies cannot reasonably meet the original schedules in the grant agreements and the two-year statutory deadline to obligate funds because they were prohibited from acting for 6-14 months during this 24-month period;

WHEREAS, based on contract and case law, ARB legal and Program staff believe that the 6-14 month period of formal suspension caused by the bond freeze should not be included when counting the two years allowed the local agencies under statute; this application of the law would allow local agencies additional time past June 30, 2010 to get the FY2007-08 funds under contract and still meet the statutory requirements;

WHEREAS, ARB staff shared its legal analysis of this issue and recommended remedy with the Department of Finance, which concurred with the recommendation to extend the deadline for local agencies to obligate Program FY2007-08 funds by up to six months, if needed based on the source category and the timing for project restart;

WHEREAS, in Resolution 10-18, adopted on March 25, 2010, the Board affirmed the existing authority of ARB staff to interpret or clarify the Program Guidelines and delegated to the Executive Officer, or his or her designee, the authority to adopt changes to the Program Guidelines that he or she deems necessary to enable effective implementation of the Program, provided that such changes are consistent with statute and the goals established by the Board. The Board also directed staff to identify those changes when the Board considers the next comprehensive update to the Program Guidelines;

WHEREAS, the Executive Officer finds sufficient need and justification to authorize staff to amend the appropriate FY2007-08 grant agreements to allow local agencies up to December 31, 2010, to obligate FY2007-08 funds via contracts with equipment owners;

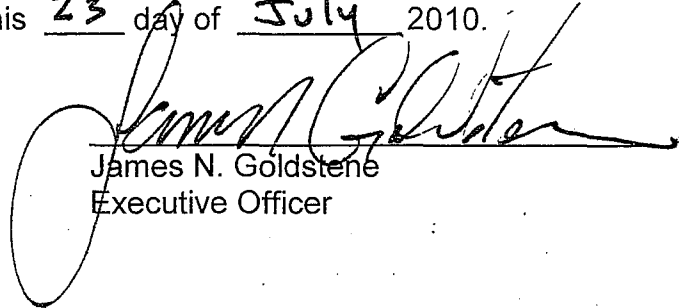
WHEREAS, the Board adopted the Statewide Drayage Truck Regulation in December 2007 and the Statewide Truck and Bus Regulation in December 2008, which establish compliance dates for truck upgrades. Such dates then define when Program-funded upgrades must be completed to deliver the early or extra emission reductions required by the Program;

WHEREAS, the Board directed staff to bring back proposed amendments to the Statewide Truck and Bus Regulation that respond to lower projected truck emissions due to the impact of the recession so that the Board may consider the potential to reduce the requirements or extend the compliance deadlines in both regulations and still meet California's air quality needs. The Board is scheduled to consider such regulatory amendments in late 2010; and

WHEREAS, the Executive Officer finds that the combination of the delay in bond fund availability and upcoming Board consideration of potential extensions in the regulatory compliance deadlines for trucks indicate that the defined early period to complete truck upgrades funded with FY2007-08 Program monies should be extended and clearly defined by ARB staff.

NOW, THEREFORE, BE IT ORDERED that pursuant to the delegation of authority by the Board in Resolution 10-18, the Executive Officer hereby adopts the modifications to the Program Guidelines shown in Attachment A for implementation of local agency projects awarded FY2007-08 funds.

Executed in Sacramento, California this 23 day of July 2010.



James N. Goldstene
Executive Officer

ATTACHMENT A
CHANGES TO PROPOSITION 1B: GOODS MOVEMENT
EMISSION REDUCTION PROGRAM GUIDELINES
July 2010

**LIMITED EXCEPTIONS TO THE PROGRAM GUIDELINES FOR THE IDENTIFIED
PROJECTS RECEIVING FISCAL YEAR 2007-08 FUNDS**

Other Trucks - All Agencies

- **Schedule for Local Agencies to Obligate and Liquidate Funds to Equipment Owners.** ARB staff may amend grant agreements to authorize local agencies to sign Program contracts through December 31, 2010 as necessary and appropriate. The local agencies must make final payment on completed projects and liquidate all of the project funds by the earlier of December 31, 2011 or the date on the amended grant agreement.
- **Operation of Upgraded Truck in Advance of Regulatory Requirements and Use of Averaging Prohibitions.** ARB staff may amend grant agreements to allow Program funding for eligible non-drayage truck retrofits, repowers, and replacements completed by December 31, 2011, regardless of the schedule in the current Statewide Truck and Bus Regulation for the project applicant's fleet size or the existing truck engine model year. These Program-funded truck projects cannot be used in the equipment owner's fleet averaging, or Best Available Control Technology (BACT) percentage limits calculations for purposes of compliance with the Statewide Truck and Bus Regulation until December 31, 2013 for retrofits and until December 31, 2014 for replacements and repowers.

**Other Trucks - Electrification Infrastructure – South Coast District – Grant
G07GMLT2**

- **Schedule for Local Agencies to Obligate and Liquidate Funds to Equipment Owners.** ARB staff may amend this grant agreement to authorize the District to sign a Program contract through December 31, 2010 for an electrification infrastructure truck stop project that meets eligibility requirements. The District must make final payment on the completed project and liquidate all of the project funds by the earlier of December 31, 2013 or the date on the amended grant agreement.

Trucks Serving Ports and Rail Yards – South Coast and San Diego

- **Schedule for Local Agencies to Obligate and Liquidate Funds to Equipment Owners.** ARB staff may amend grant agreements to authorize local agencies to continue to sign contracts to obligate funds through September 30, 2010 for replacement truck projects that meet eligibility requirements, regardless of the project applicant's fleet size or the existing truck engine model year. All trucks must be operational and all project funds liquidated by the earlier of June 30, 2011 or the date on the amended grant agreement.

Trucks Serving Ports and Rail Yards - Bay Area District - Grant G07GMBP1

- **Schedule for Retrofit Funding.** ARB staff may amend this grant agreement to authorize the District to fund retrofits installed by July 17, 2010 on less than 20 trucks that are active in the Bay Area's supplemental drayage truck grant process due to a delay in the manufacturer's delivery of the retrofit equipment for installation.

Locomotives and Rail Yards – South Coast and Sacramento

- **Schedule for Local Agencies to Obligate and Liquidate Funds to Equipment Owners.** ARB staff may amend grant agreements to authorize local agencies to sign Program contracts through December 31, 2010 as necessary and appropriate. The local agencies must make final payment on completed projects and liquidate all of the project funds by the earlier of December 31, 2012 or the date on the amended grant agreement.

GENERAL MODIFICATIONS TO THE PROGRAM GUIDELINES

Trucks

- **Pre and Post Inspections – Use of Contractors.** Authorize local agencies to initiate and maintain a contract or Memorandum of Understanding (MOU) with a third party contractor to perform equipment project pre-inspections or post-inspections (but not both). The local agency shall conduct and document at least one of these equipment project inspections on each truck without the use of a third party contractor. The local agency shall ensure all Program pre-inspection and post-inspection requirements are met and retains legal responsibility for full compliance with the Program Guidelines and grant agreement, regardless of the use of contractors.

Local agencies wishing to use contractors for inspections shall submit copies of the proposed contracts or MOUs with the names of all contractors to ARB staff for review at least seven working days prior to executing the contract or MOU. If ARB staff finds that the proposed contractor, contract, or MOU is unacceptable because it cannot reasonably be expected to satisfy all of the Program requirements, ARB shall notify the local agency in writing within the seven working days. ARB staff may not expend

project funds for any trucks inspected by contractors under contracts or MOUs unacceptable to ARB staff. No response from ARB within the seven days shall be considered concurrence with the local agency proposal.

- **Direct Payment to Vendor for Truck Replacements.** Authorize local agencies to issue a check made payable to two parties prior to the verified representative of the dealer or manufacturer taking physical custody of the old equipment. This is only authorized if the agreement with the verified representative includes the requirement that the check cannot be endorsed until the dealer has physical custody of the old equipment and has agreed to ensure that the old equipment is delivered to a contracted dismantler within 30 calendar days of the issuance of the check.