

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-11-016

**ADOPTION OF AMENDMENTS TO THE REGULATIONS FOR
IN-USE OFF-ROAD DIESEL-FUELED FLEETS AND OFF-ROAD
LARGE SPARK-IGNITION ENGINE FLEET REQUIREMENTS**

WHEREAS, on December 17, 2010, the Air Resources Board (the Board or ARB) conducted a public hearing after issuance of a Notice of Public Hearing (45-Day Notice) to consider the adoption of amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets" (Off-Road regulation), title 13, California Code of Regulations (Cal. Code Regs.), sections 2449 through 2449.3 and the Regulation for Off-Road Large Spark-Ignition Engine Fleet Requirements (LSI Fleet regulation), title 13, Cal. Code Regs, sections 2775 through 2775.2;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project that may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified that outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report or negative declaration (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's regulatory program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, ARB's certified regulatory program provides that when an action contemplated by the Board may have a significant effect on the environment, ARB staff shall prepare a staff report that shall contain a description of the proposed action, an assessment of anticipated significant long or short-term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts, which shall include a discussion of feasible mitigation measures and alternatives to the proposed action;

WHEREAS, concurrent with publication of the 45-Day Notice, ARB issued an Initial Statement of Reasons (Staff Report) that included an environmental analysis that addressed potential long and short-term environmental impacts related to the proposed

amendments given California's severe recession and its impact on operation of heavy-duty vehicle emission sources;

WHEREAS, at the December 17, 2010 public hearing, the Board respectively adopted Resolutions 10-47 and 10-48 for the amendments to the Off-Road and LSI Fleet regulations (copies of which are attached hereto as Attachments 1 and 2), which directed the staff to modify the initially proposed amendments that were part of the 45-Day Notice, consistent with the resolutions and the suggested modifications presented by staff in Attachment B to the respective resolutions;

WHEREAS, Resolutions 10-47 and 10-48 further directed the Executive Officer to make the modifications to the initially proposed amendments to the respective regulations available for public comment for a period of 15 days, that he consider written comments submitted during the 15-day comment period, make such further modifications as may be appropriate in light of the comments received, and that he should return to the Board for further consideration if he determines that this is warranted;

WHEREAS, Resolutions 10-47 and 10-48 also directed the Executive Officer to prepare and approve written responses to comments received, including comments raising significant environmental issues, as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and Cal. Code Regs., title 17, section 60007, determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time addressing the serious economic recession and its impact on industry and residents of the State, make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental effects, and take final action to adopt the proposed amendments to the Off-Road and LSI Fleet regulations, as modified in the publicly noticed 15-day changes;

WHEREAS, on August 22, 2011, ARB issued the modified regulations, reflecting the amendments considered by the Board and other conforming modifications, which were made available for public comment for a period of 15 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 (15-Day Notice);

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of 15-day comment period and oral comments were received as part of the testimony taken at the December 17, 2010 Board hearing, and among the comments received for the amendments to the Off-Road and LSI Fleet regulations were comments that raised potentially significant environmental issues; and

WHEREAS, pursuant to the Board's direction in Resolutions 10-47 and 10-48, ARB staff has summarized and prepared written responses to comments raising significant environmental issues regarding the amendments to the Off-Road and LSI Fleet

regulations, the comments and responses of which are set forth in the Final Statement of Reasons for this rulemaking (a copy of which is attached hereto as Attachment 3).

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolutions 10-47 and 10-48 are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared for the amendments to the Off-Road and LSI Fleet regulations were prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising significant environmental issues as set forth in Attachment 3.

IT IS FURTHER ORDERED that after fully considering the amendments as modified by the 15-Day Notice, the environmental analysis, and the full record before me, I find:

The amendments to the Off-Road and LSI Fleet regulations will not result in any adverse impacts to the environment, and therefore, no mitigation measures, findings or statement of overriding considerations are required;

ARB adopted the Off-Road regulation in 2007/2008 and subsequently amended the regulation in 2008/2009 to, among other things, reduce the public's health risk exposure to diesel particulate matter (PM), an identified toxic air contaminant, and meet the national ambient air quality standards (NAAQS) established by U.S. EPA for PM 2.5 and ozone by 2014 and 2023 respectively;

ARB adopted the LSI Fleet regulation in regulation in 2006/2007 to, among other things, achieve criteria pollutant emission reductions and meet the national ambient air quality standards (NAAQS) established by U.S. EPA for PM 2.5 and ozone as expeditiously as practicable;

The severe, long-lasting recession experienced in the United States and California, specifically, has impacted the number of off-road diesel and LSI fleet vehicles operating in California, and the consequent emissions from these vehicles is less than ARB forecasted when the Off-Road and LSI Fleet regulations were first considered for adoption;

The regulations, as amended, herein, in conjunction with other emission control measures set forth in the State Implementation Plan (SIP) will achieve emission reductions greater than the emission reductions that California needs to meet its NAAQS emission reduction obligations; and

Given the revised inventory and the lower emissions caused by the recession, the amendments to the Off-Road and LSI Fleet regulations will not cause emissions to exceed the emission reduction targets of the SIP or the forecasted emission levels that were anticipated by the regulations when initially adopted and subsequently amended; therefore, the amendments herein will not have a significant adverse environmental effect on air quality.

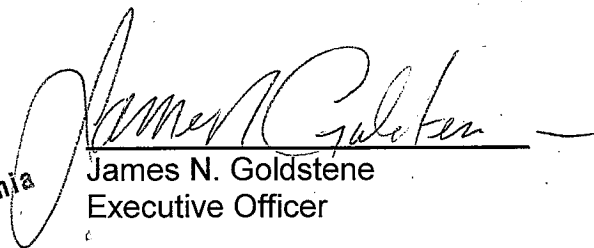
IT IS FURTHER ORDERED, the amendments to Cal. Code Regs., title 13, sections 2449, 2449.1, 2449.2, and repeal of section 2449.3, as set forth in the Final Regulation Order, which is attached hereto as Attachment 4, and the amendments to Cal. Code Regs., title 13, sections 2775, 2775.1, and 2775.2, as set forth in the Final Regulation Order, which is attached hereto as Attachment 5, are adopted.

IT IS FURTHER ORDERED that the adopted regulatory text may be further revised with nonsubstantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

Executed this 28 day of October 2011, at Sacramento, California.

FILED
OCT 28 2011

Resources Agency of California
Attachments



James N. Goldstene
Executive Officer