

## **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATIONS FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS AND OFF-ROAD LARGE SPARK IGNITION ENGINE FLEET REQUIREMENTS**

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 its regulations for In-Use Off-Road Diesel-Fueled Fleets (off-road regulation), California Code of Regulations (CCR), title 13, sections 2449 through 2449.3, and for Large Spark Ignition Engine Fleet Requirements (LSI fleet regulation), CCR, title 13, sections 2775 through 2775.2. This notice summarizes the specific amendments being proposed. The Staff Report: Initial Statement of Reasons (ISOR) presents the proposed amendments for both regulations and information supporting the adoption of the amendments in greater detail.

DATE: December 16, 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., December 16, 2010, and may continue at 8:30 a.m., on December 17, 2010. This item may not be considered until December 17, 2010. Please consult the agenda for the hearing, which will be available at least 10 days before December 16, 2010, to determine the day on which this item will be considered.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

#### **Off-Road Regulation**

*Sections Affected:* Proposed amendments to California Code of Regulations, title 13, sections 2449, 2449.1, 2449.2, and 2449.3, the regulation for In-Use Off-Road Diesel Vehicles.

#### *Regulation Background*

The off-road regulation was originally approved by the Board on July 26, 2007, and became effective on June 15, 2008. Additional amendments were approved by the Board on December 11, 2008, and January 26, 2009, and became effective on January 8, 2010, and January 1, 2010, respectively. On February 20, 2009, the Governor signed Assembly Bill 8 2X (AB 8 2X) in which the Legislature added section

43018.2 to the Health and Safety Code, directing ARB to amend the off-road regulation. The Board approved the AB 8 2X amendments and additional minor amendments to the off-road regulation on July 23, 2009. The AB 8 2X became effective on December 3, 2009 (the AB 8 2X amendments were exempt from the Administrative Procedure Act and OAL review); the additional amendments approved by the Board in July 2009, became effective on August 15, 2010.

The off-road regulation is intended to significantly reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NOx) from over 150,000 in-use off-road diesel vehicles that operate in California and consequently significantly reduce the public's exposure to these pollutants and their byproducts. The off-road regulation is structured to achieve these environmental benefits by requiring fleet owners of in-use off-road diesel vehicles to modernize their fleets by accelerating the use of cleaner engines and exhaust retrofits in their vehicles. The off-road regulation was designed to support the Diesel Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, which was adopted by the Board on September 30, 2000, as well as the 2007 State Implementation Plans (SIP) for the South Coast and San Joaquin Valley air basins.

The scope of the off-road regulation is far reaching, affecting dozens of vehicle types used in thousands of fleets, in industries as diverse as construction, air travel, manufacturing, landscaping, and ski resorts, as well as public agencies. The off-road regulation affects, among others, the warehouse with one diesel forklift, the landscaper with a fleet of a dozen diesel mowers, the county that maintains rural roads, the landfill with a fleet of dozers, as well as the large construction firm or government fleet with hundreds of diesel loaders, graders, scrapers, and rollers. To punctuate the scope of the off-road regulation, as of September 20, 2010, 8,815 fleets have reported over 150,000 vehicles to the Diesel One-stop Online Reporting System (DOORS), the reporting system for the off-road regulation.

The off-road regulation's requirements vary depending on the size of the fleet and on the age of its vehicles. Fleets are defined in the off-road regulation as small, medium, or large based on their total statewide horsepower (hp). The off-road regulation requires that the largest fleets, which have the most significant emissions, meet the most stringent requirements. The smallest fleets and local municipal fleets located in low-population counties are required to meet less stringent provisions.

In general, the off-road regulation requires owners to modernize their fleets by replacing engines with newer, cleaner ones (repowering), replacing vehicles with newer vehicles equipped with cleaner engines, retiring older vehicles, operating higher emitting vehicles less often (designating them as low-use vehicles), or by applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere.

To meet the PM and NOx emission reduction requirements, fleets have the option of meeting fleet average emissions targets, or meeting the Best Available Control Technology (BACT) requirements. The PM BACT requirements consist of installing

retrofits that have been approved by ARB as verified diesel emission control strategies (VDECS) on 20 percent of their maximum horsepower in each year of compliance. To meet the NOx BACT requirements, large and medium fleets must turnover eight percent of their maximum horsepower in each year of compliance until 2015, after which there is a 10 percent turnover requirement. Small fleets are not required to meet the NOx emission reduction requirements.

In April 2010, the Board directed staff to consider the impact of the recession and emission inventory changes from both on-road and off-road diesel vehicles operating in the state. The Board also directed staff to provide regulatory relief to fleets affected by the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use On-Road Diesel-Fueled Vehicles (on-road regulation) at title 13, CCR, section 2025 and/or the off-road regulation such that any appropriate economic relief could be targeted most cost effectively between the two regulations, and staff could ensure the combined emissions benefits achieved by the two regulations would continue to meet state implementation plan (SIP) requirements for the combined SIP categories.

On April 22, 2010, staff presented a preliminary update to the Board on the emissions inventory used to develop the off-road regulation, as well as a summary of the impact of the recession on emissions from off-road vehicles. Based on this new information, the Board asked staff to draft changes to the regulation that will mitigate the potential effects of an unfavorable economy on affected businesses, while recognizing the need to protect public health, meet federal clean air deadlines, and continue moving forward even through uncertain times.

In summer and fall of 2010, staff also worked with representatives from the Associated General Contractors of America (AGC), and came to an agreement with AGC in October 2010 to include a number of provisions in staff's proposal, including delaying initial compliance dates to no earlier than 2014 and raising the low-use threshold.

Finally, in December 2008, by Resolution 08-43, the Board approved amendments to bring two-engine cranes under the off-road regulation. In January 2010, by Resolution 10-2, the Board approved amendments to include two-engine water well drilling rigs within the scope of the off-road regulation.

#### *Description of Proposed Regulatory Action*

The first section below describes the more major modifications to the off-road regulation. The next section describes additional minor modifications and clarifications proposed by staff to clarify or simplify regulatory provisions.

#### Major Amendments

Staff's proposed major amendments to the off-road regulation are described in more detail in the sections below.

### *1. Delay Initial Compliance Dates*

Staff is proposing to modify section 2449.1(a) to delay the initial compliance date of the off-road regulation for all fleets as described below:

- Large fleets: from March 1, 2010, to January 1, 2014,
- Medium fleets: from March 1, 2013, to January 1, 2017, and
- Small fleets: from March 1, 2015, to January 1, 2019.

Throughout the regulation, staff is proposing to modify dates to reflect the fact that compliance dates would be on January 1 rather than March 1 of each year.

### *2. New Combined PM and NOx Fleet Average Requirements*

Staff is proposing to combine the PM and NOx fleet average targets in sections 2449.1 and 2449.2. The fleet average targets would be based on the fleet's NOx fleet average. However, the combined fleet average targets would be adjusted and shifted so as to require the appropriate amount of actions to reduce emissions (i.e., such that fleets that meet the NOx targets in the current regulation, but exceed the PM targets, would still be required to take some actions to reduce emissions). Considering the proposed new singular fleet average, section 2449.2 would be deleted completely. By combining the PM and NOx requirements, the regulation would become significantly less complicated as fleets will only have to meet a single annual fleet average. The targets in section 2449.3 for the Surplus Off-road Opt-in for NOx (SOON) program would also be revised to be more consistent with the amended fleet targets.

In addition, staff is proposing to change the final compliance date for large and medium fleets to January 1, 2024 (from March 1, 2020), and for small fleets to January 1, 2029 (from March 1, 2025). Since staff is proposing to remove the PM requirements of the regulation, there will be no final PM compliance requirements.

Staff is also proposing to modify section 2449.1(a)(1)(A)1. to increase the stringency of the final fleet average targets. This will result in fleets having to turn over additional older, dirtier vehicles such that a greater proportion of their vehicles are equipped with Tier 4i and Tier 4 engines. By lowering the final fleet average targets, additional emission reductions will be realized.

### *3. Modify the Best Available Control Technology (BACT) Requirements*

Staff is proposing to combine the PM and NOx BACT requirements in sections 2449.1 and 2449.2. The combined BACT requirements would require annual actions on no more than 4.8 to 10 percent of a fleet's horsepower (depending on year) in each year the fleet did not meet the fleet average target.

All fleets would have the following compliance options for meeting the proposed combined BACT requirements:

- Replace older vehicles with new or cleaner, used vehicles;
- Replace diesel vehicles with electric or alternative fuel vehicles;
- Repower older engines with Tier 2 or higher engines;

- Retire vehicles from fleet;
- Designate vehicles as permanent low-use; or
- Install verified diesel emission control strategies (VDECS).

Staff's proposal would reduce the overall annual requirements as well as allow fleets the option to choose installing exhaust retrofits, turning over their oldest vehicles to newer, cleaner vehicles, or some combination thereof.

#### *4. Credit Provisions*

Staff's proposal is intended to allow fleets to maintain credits for actual efforts already made to reduce emissions and to further incentivize early actions by fleets, as described below.

In addition, the Board may consider additional amendments to provide fleets flexibility to take credit for actions to reduce emissions between the off-road regulation and the on-road regulation.

#### Extend Double Retrofit Credit Period

Staff is proposing to amend section 2449.2(a)(2)(A)2. (now moved to 2449.1(a)(2)(A)2.a.ii.) to extend the period during which a fleet may receive double credit for the installation of a VDECS until 12 months prior to the initial compliance deadline for that fleet. The impact of this proposal would be to incentivize continued progress toward cleaner air and support clean technology. It would encourage critical near term reductions of diesel PM and also helps ensure the investment that businesses and the State have made in retrofit technology is not lost due to the delay in the start of the fleet requirements.

In addition, the Board may consider additional amendments to further incentivize retrofitting prior to fleets' initial compliance deadlines.

#### Changes to Other Credit Provisions

Staff's proposal is intended to allow fleets to maintain credits for actual efforts already made to reduce emissions; however, credits would be adjusted to reflect the delay of compliance start dates. Staff is proposing to amend section 2449.1(a)(2)(A)2.a.v. to reduce each fleet's early retirement credits by 50 percent and provide that fleets may not use early retirement credits granted per section 2449.1(a)(2)(A)2.a.v. to satisfy all or part of their BACT requirements for the March 1, 2014, compliance date. Also, because reduced activity credits were scheduled to expire on March 1, 2011, if not used, per AB 8 2X, and because the proposed amendments would delay the initial requirements for fleets until January 1, 2014, staff is proposing to remove the regulatory language implementing reduced activity credits.

## 5. Increase Low-Use Threshold

Staff is proposing to explicitly identify and define the two types of low-use vehicles within the regulation as either year-by-year low use or permanent low use, and to increase the low-use threshold in section 2449.1(a)(2)(A)6 for both permanent low-use vehicles and year-to-year vehicles from 100 hours annually to 200 hours annually. Increasing the low-use threshold would provide additional relief, by exempting additional vehicles and increasing the cost effectiveness of the regulation by focusing turnover and retrofit requirements on vehicles that operate greater hours.

## 6. New Provisions for Fleets Under 500 Horsepower

Staff is proposing a new provision (section 2449(e)(17)) to allow fleets with under 500 horsepower to choose to comply with the BACT requirements of the regulation solely by phasing out their Tier 0 and Tier 1 vehicles over a prescribed schedule between 2019 and 2029. Compliance for these fleets using this phase-out schedule would be optional, as these fleets could instead opt to meet the fleet average requirements or the BACT requirements. This provision would provide a very streamlined and relaxed compliance path for the owners of the smallest fleets.

## 7. Additional Minor Amendments

Staff is proposing a number of minor amendments to clarify the off-road regulation, simplify compliance, and provide consistency with the major amendments discussed above. These proposed changes include, but are not limited to:

Captive Attainment Area Fleet Definition - modify the definition to designate these fleets as small fleets, regardless of their total horsepower.

Modify post-2007 flexibility engine definition - simplify the reporting requirements for Post-2007 flexibility engines.

Alternative Fuel and Hybrid Provisions - remove electric vehicle horsepower from the fleet's total horsepower calculation, which will also remove this horsepower from all BACT calculations, and incentivize the use of hybrid off-road vehicles by allowing fleets to use a lower emission factor(s) for hybrid equipment used in a fleet.

Remove Hours in Fleet Average Provision –delete this provision since no fleets have taken advantage of it or plan to.

New Fleet Requirements - clarify that upon purchasing vehicles or bringing vehicles into the state for the first time, a fleet must meet the following requirements:

- Large or Medium fleets: Require a large or medium fleet to meet the fleet average target for the closest future *large fleet* compliance date upon initial formation or upon entrance into the state after the effective date of the proposed amendments.

- Small fleet: Require a small fleet to meet the fleet average target for the closest future small fleet compliance date upon initial formation or upon entrance into the state after the effective date of the proposed amendments.

For any size fleet, the fleet would be required to meet either the fleet average target or comply with the BACT requirements by the next applicable compliance date.

Adding Vehicle Requirements - amend the adding vehicle requirements:

- Beginning January 1, 2012, large and medium fleets would be allowed to add only vehicles with only Tier 2 or higher engines; beginning January 1, 2016, the restrictions would apply to small fleets; and
- Beginning January 1, 2018, large and medium fleets would be allowed to add only vehicles with Tier 3 or higher engines; beginning January 1, 2021, the restrictions would apply to small fleets.

These revised requirements would apply to all fleets (regardless of compliance path) and to all horsepower categories, providing additional clarity and simplification to the regulation.

Compliance after the Final Target Date - clarify that the turnover and retrofit exemptions do not expire after the final compliance date.

Reporting Dates - change the reporting dates to make them more consistent with the changes and delays to the compliance dates.

Labeling - require equipment identification numbers (EIN) on both sides of a vehicle, instead of just on the right (starboard) side. Additionally, staff is proposing to require captive attainment area fleets to label their vehicles with EINs that are green with white letters (instead of red with white letters) if they choose to take advantage of the captive attainment area fleet provision.

Order of Turnover - simplify the order of turnover provisions by only requiring fleets to turn over all Tier 0 and Tier 1 vehicles before they can count other higher tiered vehicles in meeting the fleet's BACT requirements.

15 Percent Turnover Exemption - clarify that if a fleet has more than 15 percent of its vehicles retrofitted before March 1, 2011, the fleet may choose any of those vehicles to be counted under this exemption and be exempt from turnover, as long as the 15 percent cap is not exceeded and the exempted vehicle(s) continue to be equipped with the installed VDECS.

In addition to the above, the Board may consider amending the off-road regulation to cover other two engine vehicles, as appropriate, for reasons similar to its past decisions to include two-engine cranes and well drilling rigs within the regulation's scope.

## **LSI Fleet Regulation**

*Sections Affected:* Proposed amendments to CCR, title 13, sections 2775(c), 2775.1(d)(1)(D), 2775.2(b), and 2775.2(e)(1)(A), the Large Spark-Ignition (LSI) Engine Fleet Requirements regulation.

### *Regulation Background*

At its October 22, 1998, public meeting, ARB approved the Off-Road LSI Engine Regulation (LSI Regulation) with the adoption of California Code of Regulations, title 13, sections 2775 through 2775.2. The LSI Regulation established new engine emission standards and test procedures for manufacturers of off-road spark-ignited engines of 25 horsepower or greater (greater than 19 kilowatts).

On May 12, 2006, the ARB approved a second LSI rulemaking. The rulemaking included modifications to the existing emission standards and test procedures to make them more stringent. The rulemaking also included fleet requirements for operators of in-use LSI fleets (the LSI fleet regulation) and verification procedures for manufacturers of LSI retrofit emission control systems (retrofit kits).

The intent of the LSI new engine emission standards and fleet requirements was to reduce hydrocarbon and oxides of nitrogen (HC+NO<sub>x</sub>) emissions from the nearly 90,000 pieces of LSI equipment sold into and operating in the state by accelerating the introduction of new zero- and near zero-emissions equipment and the retrofit or retirement of uncontrolled in-use equipment, respectively.

### Applicability

The new engine emission standards and test procedures apply to LSI engines used in airport ground support equipment (GSE), forklifts, generator sets, mining equipment not otherwise primarily used in the construction industry, off-highway recreational vehicles, refrigeration units less than 50 horsepower, industrial (non-road) sweeper/scrubbers, industrial tow tractors (tugs), turf care equipment, and other industrial equipment.

The LSI fleet regulation affects any operator of four or more forklifts, sweepers/scrubbers, tugs, and GSE, the four largest categories of LSI engine equipment. These vehicles are found in thousands of fleets in California, in industries as diverse as manufacturing, wholesale, transportation and utilities, retail, services, and construction, as well as public agencies.

### Regulatory Requirements

The 1998 rulemaking required LSI engine manufacturers to certify 25 percent of their new engines to a 3.0 gram per brake horsepower-hour (g/bhp-hr) combined HC+NO<sub>x</sub> standard beginning with the 2001 engine model year. The percentage increased by 25 percent each subsequent model year so that 100 percent of the engines were



emission-controlled by the 2004 model year. To achieve this standard, manufacturers relied upon the same emission control technologies used in automotive engines – three way catalytic converters, electronic fuel/air controllers, and oxygen sensors. The 3.0g /bhp-hr standard represented a 75 percent reduction in emissions versus LSI engines with no emission controls.

The 2006 rulemaking required manufacturers to certify their new LSI engines to a 2.0 g/bhp-hr HC+NO<sub>x</sub> standard effective January 1, 2007 and a 0.6 g/bhp-hr standard effective January 1, 2010. The latter standard represents a 95 percent emission reduction versus uncontrolled LSI engines.

The 2006 rulemaking also required operators of in-use fleets to achieve specific HC+NO<sub>x</sub> fleet average emission level standards that are more stringent with fleet size and time. The standards are also more stringent for forklifts than they are for non-forklift LSI equipment. The stringency of the standards reflects the availability of retrofit devices for LSI equipment as well as the greater ability of large fleets to incorporate zero- and near zero-emission new and used equipment into their operations.

### *Description of Proposed Regulatory Action*

Staff is proposing several minor changes and clarifications to the LSI fleet regulation. The minor changes include: (1) extending the limited hours of use provisions, (2) broadening compliance extension flexibility, (3) adding definitions, and (4) clarifying definitions and modifying record keeping requirements.

### Proposed Amendments

#### *1. Limited Hours of Use Provision*

Staff proposes to amend section 2775.1(d)(1)(D) to extend the limited hours of use (LHU) exclusion for LSI equipment operated fewer than 251 hours per year. Currently, LHU equipment may be excluded from fleet average emission level standard calculations, but only until January 1, 2011. After that date, LHU equipment that has been retrofitted to a 3.0 g/bhp-hr standard may continue to be excluded from fleet average emission level standard calculations. If not retrofitted, the LHU piece of equipment may have to be retired or replaced, resulting in a significant economic impact on some operators. Staff proposes to extend the LHU provisions for equipment operated no more than 200 hours per year and intends to clarify that operators desiring to exclude equipment under the LHU provisions must use non-resettable hour meters.

#### *2. Compliance Extension Provision*

Staff proposes to amend section 2775.2(e)(1)(A) to extend the length of compliance extensions. Currently, an LSI equipment operator may request a one-year compliance extension in cases where retrofit emission control devices (retrofit kits) are not available for a given engine/equipment combination. After that time, if no retrofit kit has become

available, the operator is expected to retire or replace their piece of equipment to come into compliance with their fleet average emission level standards. However, replacement is not an economically feasible option for specialized LSI equipment with either very large engine displacements or an Underwriters Laboratories (UL) issued LPS/GS (propane/gas) safety designation. Staff proposes to allow a two-year compliance extension with a provision for an additional two years in the event of non-availability of retrofit kits. After the extension(s) expire(s), the operator may no longer exclude the LSI equipment from the fleet average emission level standard and may have to retire or replace it to achieve the standard. Staff also proposes to clarify an incomplete reference in section 2775.2(e)(1)(A) to “subsections 2775.1(a), (c), and (d).

### *3. Modified Definitions*

Agricultural Operations - The “Agricultural Operations” definition would also clarify that forestry and nursery operations are considered agricultural operations. The “Fleet Average Emission Level” definition would also clarify two items for fleet average emission level standards calculations: (1) the default emission rate for uncontrolled LSI equipment is 12.0 grams HC+NOx per brake horsepower-hour, and (2) electric equipment of less than 19 kilowatts power may be included in calculations as long as it performs, with similar efficiency, the same function as an LSI engine-powered piece of equipment subject to the standards.

Airport Ground Support Equipment or GSE - “GSE” currently means any LSI engine or electric-powered equipment contained in the 24 categories of equipment included in section B.3 of Appendix 2 of the South Coast Ground Support Equipment Memorandum of Understanding, dated November 27, 2002. Two of these categories are “carts” and “other,” which, for the purposes of electric-powered equipment, can be interpreted very broadly. Under the proposal, staff would eliminate the “other” category and limit the “cart” category so that it only allows electric carts into fleet average emission level standards calculations if they perform the work equivalent of an LSI engine-powered cart. These proposed modifications bring the definition in line with the original intent of the LSI fleet regulation.

Baseline Inventory - The “Baseline Inventory” definition currently states that this inventory should reflect all equipment owned at the time of the inventory. The intent of the regulation was that the baseline inventory should reflect all operated equipment subject to the fleet average emission level requirements. Staff proposes to clarify that the baseline inventory requirement applies to all operated LSI equipment by replacing the word “owned” with the word “operated.”

Operator - The “Operator” definition currently states that “operator” includes a person whose usual and customary business is the rental or leasing of LSI engine equipment for any equipment not solely possessed or used for rental or leasing. The intent of the regulation was to allow rental equipment companies and equipment dealers some de minimis level of use of their rental and used equipment fleet vehicles without triggering

the fleet average emission level standards requirements. Staff proposes to modify the “operator” definition to stipulate a de minimis usage level that reflects this intent.

#### *4. Record-keeping Requirements*

Staff proposes to modify the record-keeping requirements in section 2775.2(b) of the existing regulation. This section requires operators to record identifying and emissions information for each piece of LSI equipment in their fleet. It also requires them to obtain product delivery tickets or a like surrogate, if obtainable, stipulating that the fuel they are using meets motor vehicle grade propane specifications. The ARB added this second requirement in an attempt to force operators to put pressure on their fuel suppliers to provide uncontaminated and low-olefin (propene) content motor vehicle grade fuel. However, operators have been unable to obtain this documentation from their fuel suppliers. Staff proposes to remove the fuel quality record-keeping requirement. Staff also proposes to clarify the ARB’s intent that the record-keeping requirement apply to each piece of LSI equipment and that serial numbers be recorded for both engines and equipment.

### **COMPARABLE FEDERAL REGULATIONS**

#### **Off-Road Regulation**

The United States Environmental Protection Agency (U.S. EPA) has promulgated federal emission standards for new non-road engines. However, no federal standards have been promulgated addressing emission reductions from in-use diesel vehicle engines.

Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off-road engines and equipment not expressly subject to federal preemption, so long as California applies for and receives authorization from the Administrator of U.S. EPA. California submitted its initial request for authorization on August 12, 2008, and filed a supplemental request on February 11, 2010. EPA conducted hearings on the requests on October 27, 2008, and April 14, 2010. The requests for authorization are presently pending.

#### **LSI Fleet Regulation**

In 2002, the U.S. EPA followed California’s lead and adopted emission standards for new LSI engines (Volume 67, Federal Register, page 68242, November 8, 2002; title 40, Code of Federal Regulations, part 1048). As the preamble to the federal regulations notes, the federal regulations extend California’s 1998 standards for new LSI engines to the rest of the United States in 2004 through 2006 and adopt more stringent standards for new LSI engines beginning in 2007.

In 2006, the ARB harmonized with the federal standards for new 2007 through 2009 model year LSI engines, but went a step further adopting more stringent California new

engine standards that became effective January 1, 2010. The ARB also adopted fleet average emission level standards for operators of LSI engine-powered equipment. The federal regulations do not impose the more stringent 2010 new engine standards. They additionally do not impose requirements on fleet operators or on in-use engines.

Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off-road engines and equipment not expressly subject to federal preemption, so long as California applies for and receives authorization from the Administrator of U.S. EPA. California's request for authorization was submitted on December 10, 2008; the request for authorization is presently pending.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory actions, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Proposed Amendments to the Regulations for In-Use Off-Road Diesel Fueled Fleets and Off-Road Large Spark-Ignition Fleet Requirements."

Copies of the ISOR and the full text of the proposed regulatory language for both the off-road regulation and the LSI fleet regulation, 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 December 16, 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 ARB's website listed below.

Inquiries concerning the substance of the proposed off-road regulation amendments may be directed to the designated agency contact persons, Ms. Kim Heroy-Rogalski, Manager of the Off-Road Implementation Section, at (916) 327-2200, or Ms. Elizabeth Yura, Off-Road Implementation Staff, at (916) 323-2397.

Inquiries concerning the substance of the proposed LSI fleet regulation amendments may be directed to the designated agency contact persons, Ms. Elise Keddie, Manager of the ZEV Implementation Section, at (916) 323-8974, or Mr. Mark Williams, ZEV Implementation Staff, at (916) 327-5610.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. 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 ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/offroadlsi10/offroadlsi10.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 regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5), the Executive Officer has determined that the proposed regulatory actions would not create any costs to or mandates on any local agency or school district that is reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500).

Pursuant to Government Code sections 11346.5(a)(6), the Executive Officer has determined, based on estimates prepared in accordance with instruction adopted by the Department of Finance, that the amendments to the off-road regulation or the LSI fleet regulation would not create additional costs to any State agency or 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), create other nondiscretionary costs on local agencies, and affect costs or savings in federal funding to the State.

The proposed amendments to both regulations will provide significant relief from compliance requirements, and are expected to decrease the compliance costs for both public and private fleets alike; it is not expected that any of the proposed amendments will increase compliance costs for fleets.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts, other than the aforementioned savings, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Additionally, as stated above, the proposed amendments to both regulations are expected to decrease compliance costs for fleets, which will result in a cost savings for fleets.

Pursuant to Government Code section 11346.5(a)(8), the Executive Officer has made an initial determination that the proposed regulatory actions 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 sections 11346.5(a)(10) and 11346.3(b), the Executive Officer has further determined that the proposed regulatory actions will overall decrease the elimination of jobs within the State of California, and decrease the elimination of existing businesses within the State of California. The amendments to both regulations are expected to provide significant relief to affected fleets and, therefore, will not have an adverse affect on California businesses.

Although these proposed amendments are not expected to adversely impact the economy overall, these modifications could have a negative economic impact on retrofit manufacturers and installers, and firms that provide repowers or new or used vehicles because they would receive fewer orders in the next few years. However, the off-road regulation will still provide incentives that are intended to encourage early retrofitting, repowering, and replacement, and the LSI fleet regulation does not preclude a fleet from voluntarily cleaning up there fleet, which could help mitigate potential impacts on retrofit and repower jobs and businesses.

A detailed assessment of the economic impacts of the proposed regulatory actions and their effect on California businesses can be found in the ISOR.

In accordance with Government Code section 11346.3, except as stated above with respect to retrofit manufacturers and installers, and firms that provide repowers or new or used vehicles, by providing significant relief to affected fleets, the Executive Officer has determined that the proposed regulatory actions would overall positively affect the number of jobs created or, at least, decrease the number of jobs eliminated within the State of California; positively affect the number of new businesses created or, at least, decrease the number of existing businesses eliminated within the State of California, and positively affect the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory actions can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed off-road regulatory action would affect small businesses. It is expected that the proposed amendments to the off-road regulation will result in an overall cost savings to small businesses. However, as stated above, the amendments could have a negative economic impact on small businesses associated with retrofit manufacturing and installation because they would receive fewer orders in the next few years. The proposed LSI fleet regulatory action would not affect small businesses as they are already exempt from the requirements of the LSI fleet regulation.

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 regulations 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 actions, the Board must determine that no reasonable alternatives 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 actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

### **SUBMITTAL OF COMMENTS**

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on November 1, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after November 1, 2010 and received **no later than 12:00 noon on December 15, 2010**, and must be 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 the webpage provided above for electronic submittal is for comments on the following on-road and off-road regulations:

- Truck and Bus
- Drayage Truck
- Tractor-Trailer GHG
- Off-Road
- Large Spark Ignition

To ensure that all comments are properly considered and responded to, please identify in the subject heading of each comment letter the regulation(s) for which comments are being submitted.

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**

### **Off-Road Regulation**

This regulatory action is proposed under that authority granted in Health and Safety Code sections 39002, 39003, 39500, 39600, 39601, 39602, 39602.5, 39650, 39656, 39658, 39659, 39665, 39667, 41511, 43000, 43000.5, 43013, 43018, and 43018.2. This action is proposed to implement, interpret and make specific 39002, 39003, 39500, 39600, 39601, 39602, 39602.5, 39650, 39656, 39658, 39659, 39665, 39667, 41511, 43000, 43000.5, 43013, 43018, and 43018.2.

### **LSI Fleet Regulation**

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39002, 39003, 39500, 39600, 39601, 43000, 43011, 43013, 43017, 43018, 43600, and 43700. This action is proposed to implement, interpret, and make specific sections 43000, 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43106, 43150, 43151, 43152, 43153, 43154, 43204, 43205, 43205.5, 43210, 43210.5, 43211, and 43212.

## **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

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 and 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 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**

Special accommodation or language needs can be provided for any of the following:

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



To request these special accommodations or language needs, 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.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

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

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

#### CALIFORNIA AIR RESOURCES BOARD

/s/

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James N. Goldstene  
Executive Officer

Date: October 19, 2010

*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](http://www.arb.ca.gov).*