

**State of California
California Environmental Protection Agency
AIR RESOURCES BOARD**

**PUBLIC HEARING TO ADOPT A PARTICULATE MATTER EMISSIONS
MEASUREMENT ALLOWANCE FOR CALIFORNIA'S HEAVY-DUTY DIESEL IN-USE
COMPLIANCE REGULATION**

FINAL STATEMENT OF REASONS

October 2011

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

**PUBLIC HEARING TO ADOPT A PARTICULATE MATTER EMISSIONS
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IN-USE COMPLIANCE REGULATION**

Public Hearing Date: June 23, 2011
Agenda Item No.: 11-4-1

I. General

In this rulemaking, the Air Resources Board (ARB or Board) approved amendments to the particulate matter (PM) emissions measurement allowance in California's existing heavy-duty in-use compliance testing (HDIUT) regulation and test procedures.

This rulemaking was initiated by the May 4, 2011 publication of a notice for public hearing on June 23, 2011 (45-day Notice) and Staff Report: Initial Statement of Reasons for Rulemaking ("Staff Report"), entitled "Public Hearing to Adopt a Particulate Matter Emissions Measurement Allowance for California's Heavy-Duty Diesel In-Use Compliance Regulation." The Staff Report, which is incorporated by reference herein, describes the rationale for the proposal.

At its June 23, 2011 public hearing, the Board approved regulatory amendments to California's existing HDIUT regulation and test procedures, originally adopted in September 2006. These amendments would modify the measurement allowance for the PM emissions in the HDIUT program. The amendments included modifications to the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles." These amendments were intended to be identical to the modifications adopted by the United States Environmental Protection Agency (U.S. EPA), and would result in identical California and federal test protocols for testing 2007 and newer heavy-duty diesel engines (HDDE).

The main component of this rulemaking is as follows:

The measurement allowance value to be used for PM is 0.006 grams per brake horsepower-hour, when conducting heavy-duty diesel in-use compliance testing using portable emission measurement systems (PEMS).

This measurement allowance value would be added to the PM emissions measured with PEMS to compensate for testing uncertainties when performing compliance testing on heavy-duty trucks during normal over-the-road operation.

No written or verbal comments were received for these regulatory amendments during the 45-day public comment period or during the public hearing on June 23, 2011. At the conclusion of the hearing, the Board adopted Resolution 11-19, approving the proposed amendments to the regulation. In Resolution 11-19, the Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate, and if no additional modifications were appropriate, the Executive Officer was directed to take final action to adopt the regulation, as set forth in Attachments A and B of the Resolution. Resolution 11-19 and its attachments are available at ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2011/hdiuc11/hdiuc11.htm>. No modifications were proposed to the originally proposed regulatory text. Since no additional modifications were made and no comments were received, the Executive Officer issued Executive Order R-11-013, adopting the amendments to title 13, California Code of Regulations, section 1956.8 and to the incorporated California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles.

This Final Statement of Reasons updates the Staff Report by identifying the actions taken by the Board following the release of the Staff Report and makes clear that no written or oral comments were received during the rulemaking process.

Incorporation of Test Procedures and Federal Regulations. The amended test procedures are incorporated by reference in title 13, California Code of Regulations (CCR), section 1956.8. The test procedures in turn incorporate HDDE test procedures adopted by U.S. EPA and are contained in title 40, Code of Federal Regulations (CFR), Part 86, and Part 1065.

Title 13, CCR, section 1956.8 identifies the incorporated ARB document by title and date. The ARB document is readily available from ARB upon request and was made available in the context of this rulemaking in the manner specified in Government Code section 11346.5(b). The CFR is published by the Office of the Federal Register, National Archives and Records Administration, and is therefore reasonably available to the affected public from a commonly known source.

The test procedures are incorporated by reference because it would be impractical to print them in the CCR. Existing ARB administrative practice has been to have the test procedures incorporated by reference rather than printed in the CCR because these procedures are highly technical and complex. They include the "nuts and bolts" engineering protocols and laboratory practices required for certification of regulated engines and equipment, and have a very limited audience. Because ARB has never printed complete test procedures in the CCR, the affected public is accustomed to the incorporation format utilized therein. ARB's test procedures as a whole are extensive and it would be both cumbersome and expensive to print these lengthy, technically complex procedures with a limited audience in the CCR. Printing portions of ARB's test

procedures that are incorporated by reference would be unnecessarily confusing to the affected public.

The test procedures incorporate portions of the CFR because ARB requirements are substantially based on the federal regulations. Manufacturers typically certify vehicles and engines to a version of the federal emission standards and test procedures that have been modified by state requirements. Incorporation of the federal regulations by reference makes it easier for manufacturers to know when the two sets of requirements are identical and when they differ. Each of the incorporated CFR provisions is identified by date in ARB's test procedure documents.

Fiscal Impacts. The Board has determined that this regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies.

The Executive Officer has determined that this regulatory action will 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. The amendments would apply to all manufacturers of HDDEs and make California requirements consistent with federal requirements. None of the manufacturers of HDDEs is located in California. No impact on engine manufacturers is expected as U.S. EPA has already adopted the same regulation. No impact on private businesses or persons is expected. Also, there is no impact expected on PEMS manufacturers.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. Any impact on business in California is expected to be slight and positive and is already covered by the adoption of the HDIUT regulation in September 2006.

The Executive Officer has determined, pursuant to title 1, CCR, section 4, that the regulatory action will not affect small businesses, as there will be no incremental costs associated with this regulation in addition to those already needed to comply with federal regulation.

Consideration of Alternatives. No other alternatives to these amendments were evaluated since this improved measurement allowance was needed for the implementation of the manufacturer-run HDIUT program starting with 2007 model year engines.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

ARB did not receive any written or verbal comments during the 45-day public comment period or during the Board hearing on June 23, 2011.