

State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE
AIRBORNE TOXIC CONTROL MEASURE FOR IN-USE DIESEL-FUELED
TRANSPORT REFRIGERATION UNITS (TRU) AND TRU GENERATOR SETS, AND
FACILITIES WHERE TRUs OPERATE**

Public Hearing Date: October 21, 2011
First Public Availability Dates: February 28, 2012 – March 14, 2012
Second Public Availability Date: June 15, 2012
Deadline for Public Comment: July 2, 2012

At its October 21, 2011, public hearing, the Air Resources Board (ARB or Board) considered proposed amendments to the Airborne Toxic Control Measure (ATCM) for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM), title 13, California Code of Regulations section 2477 and adopted new sections 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, and 2477.21, which are designed to provide flexibility, improve enforceability, improve compliance rates, and clarify existing requirements. Information regarding the initially proposed amendments to the TRU ATCM can be found in the Initial Statement of Reasons (ISOR) at the following link: <http://www.arb.ca.gov/regact/2011/tru2011/tru2011.htm>

The Board's Action

At the October 21, 2011 hearing, the Board adopted Resolution 11-35 that covered the amendment to California Code of Regulations (CCR), title 17, section 2477 and the proposed adoption of sections 2477.1 to 2477.21, that were initially proposed by staff and described in the Notice of Public Hearing (45-Day Public Notice) and Staff Report, which were initially published on August 31, 2011. Modifications were suggested by staff in a document entitled "Staff's Suggested Modifications to the Original Proposal" that was distributed at the hearing and that was Attachment B to the Resolution.¹

Consistent with Government Code section 11346.8, the Board delegated to the Executive Officer authority to take final action on the proposed amendment to the CCR, title 17, section 2477, and to adopt new sections 2477.1 to 2477.21, as proposed by staff, and to determine if additional modifications to the originally proposed amendment

¹ This document was inadvertently identified as Attachment D to Resolution 11-35 at the October 21, 2011 public hearing, but the text of this document clearly indicates that it presents staff's suggested modifications to the originally proposed amendments to the regulatory text set forth in Appendix A to the Staff Report: Initial Statement of Reasons (released August 31, 2011).

and adoption of sections 2477.1 to 2477.21 are appropriate, and if the Executive Officer does so determine, to make the modified regulatory language available for public comment for a period of 15 days before taking final action to adopt the amendments. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Resolution 11-35 further 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 the California Code of Regulations, title 17, section 60007, to determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, to make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental impacts, and to take final action to adopt the proposed amendment to, and proposed adoption of California Code of Regulations, title 13, sections 2477 to 2477.21, as proposed for modification of any subsequent publicly noticed 15-day change notices.

The regulatory documents for this rulemaking, including Resolution 11-35, are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2011/tru2011/tru2011.htm>

This notice is an announcement of the opening of a second 15-day comment period in which the public may provide comments on additional proposed modifications to the TRU ATCM.

Summary of Additional Proposed Modifications

Attachment 1 to this notice contains the text of title 13, California Code of Regulations sections 2477, 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, and 2477.21 that shows the proposed second 15-day modifications to the originally proposed amendments to section 2477 and the proposed adoption of sections 2477.1 to 2477.21 of the TRU ATCM.

- I. Modifications to Regulatory Text of title 13, California Code of Regulations (CCR) sections 2477 through 2477.21 Being Made Available for Comment**
 - A. Exemption for Noncompliant, Non-Operating Refrigerated Railcar TRUs Passing Through California, if Certain Conditions and Criteria are Met [13 CCR section 2477.3]**

Comments were received regarding noncompliant TRUs on refrigerated railcars that travel through California without operating. For example, railroads occasionally need to move such noncompliant TRUs on empty refrigerated railcars from Arizona to Oregon or Washington. Allowing such noncompliant TRUs to pass through California if they are not operated would avoid having to route them around California borders over a much longer and more costly route. These TRUs are already equipped with electronic tracking systems that can be used to monitor the TRU location, date and time using global positioning systems (GPS), and automated recorders to capture the engine run status (e.g. “engine on” or “engine off”). Existing trackside readers and data acquisition and storage systems can collect this data and use it to demonstrate that the TRU engines never operate while inside of California.

Subsection (e) is proposed to be added to 13 CCR, section 2477.3 to provide an exemption for such TRUs, provided the Executive Officer has previously approved a written compliance plan, submitted by the railway carrier. The written compliance plan would clearly identify the monitoring, recordkeeping, and reporting procedures that the railway carrier would implement and utilize to ensure noncompliant TRUs on refrigerated railcars will not operate at any time while in California. The compliance plan would include, without limitation: the procedures for tracking and recording routes and dates of travel within California of each noncompliant TRU, information identifying each noncompliant TRU, a description of the automated monitoring and recordkeeping system for reporting the TRU “engine on” and “engine off” status, and the procedure for expeditiously reporting violations observed or discovered by the railway carrier to ARB. A statement would be required, signed by an authorized railroad representative, declaring that the railway carrier agrees to be bound by the compliance plan. Compliance verification records would be maintained for three years and would be provided to authorized enforcement personnel upon request.

B. Add an Exemption for a Railway Carrier Exempting Them from the Owner or Owner/Operator Requirements of Section 2477.5 for Any TRU or TRU Gen Set that is Not Owned by the Railway Carrier [13 CCR section 2477.3(f)]

The TRU ATCM's in-use performance standards in section 2477.5 apply to owners or operators of TRUs that operate a TRU or TRU gen set in California. The 2011 TRU Amendments added language to the definition of “operate” to make it clear that a TRU or TRU gen set that is operable (capable of being operated) shall be considered to operate if it is in California.

Comments were received regarding railway carriers that move refrigerated railcars owned by third parties (any party other than the railroad). A railway carrier may be under contract to perform some activities that presently fall under the definition of “operate”, such as fuel, monitor, or keep in operation; and, may perform these activities on behalf of the owner to ensure safe transit of their customers’ perishable goods. For example, if there is a derailment, or other kind of delay in movement, the railway carrier may monitor the TRUs’ fuel levels and refuel them if necessary. But railway carriers do not load or unload perishable goods being transported and do not set the equipment operating programs of these third party TRUs.

Staff is proposing to add section 2477.3(f), to exempt a railway carrier from the owner or owner/operator requirements of section 2477.5 for refrigerated railcar TRUs that are owned by third parties, where the railway carrier is only moving the refrigerated equipment for a customer. This exemption would not apply if the rail carrier is leasing the TRU, in which case the lessee requirements of section 2477.12 would apply to the rail carrier. This exemption would also only apply if the railway carrier or its agent is only fueling, monitoring to assure proper operation, keeping in operation, arranging repairs at the request of the owner, or restarting the TRU or TRU gen set engine after an unscheduled shut-down or repair, and is not performing any of the other activities listed under the definition of ‘operate.’

It is not staff’s intent to exempt rail carriers from the freight broker and freight forwarder requirements of section 2477.8 if the rail carrier is the business entity that hires, contracts for, or dispatches the transport of perishable goods in TRU-equipped or TRU gen set-equipped trucks, tractor-trailers, shipping containers, or railcars on California highways or railways. For example, if a rail carrier, its parent company, or subsidiary arranges drayage at the ends of the rail leg of perishable food transport, the freight broker or freight forwarder requirements of section 2477.8 would apply to the rail carrier.

Submittal of Comments

Written comments will only be accepted on the modifications described in this notice and may be submitted by postal mail or electronic mail submittal as follows:

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 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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachment

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 ARB's website at www.arb.ca.gov.