

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

**Addendum to the  
Final Statement of Reasons for Rulemaking**

AMENDMENTS TO THE PUBLIC TRANSIT BUS FLEET RULE AND  
EMISSION STANDARDS FOR NEW URBAN BUSES

Public Hearing Date: January 27, 2000  
Continued to: February 24, 2000  
Agenda Item No.: 00-1-2  
Addendum Prepared: January 23, 2001

This addendum to the Final Statement of Reasons (FSOR) describes modifications made by the Air Resources Board (ARB or Board) to amendments to the Public Transit Bus Fleet Rule and Emission Standards for New Urban Buses. The ARB is submitting this addendum to the FSOR for insertion in Office of Administrative Law (OAL) File Number 00-1208-035 for four purposes.

First, the ARB provided substitute pages with nonsubstantive changes for OAL to insert into the regulation. These changes are set forth in the transmittal letter to OAL, dated January 23, 2001, and are incorporated by reference herein.

Second, the OAL requested us to explain why External Scientific Peer Review, as set forth in section 57004 of the Health and Safety Code (HSC), is not required for these regulations. The purpose of the External Scientific Peer Review entity is to prepare a written report that evaluates the scientific basis of the proposed rule. In accordance with the HSC section 57004(a)(2), however, these regulations have a technical, rather than scientific, basis and are not subject to the requirement of HSC section 57004. While the difference between the two concepts may not be immediately apparent, an example is illustrative. A scientific peer review is provided for the scientific basis of the identification of a substance as a toxic air contaminant (TAC). Once identified, controls are assessed to reduce the risks associated from the TAC; this is a technical analysis and is not subject to scientific peer review.

Third, the ARB wishes to augment its explanations for certain comments received during the rulemaking process and responded to in the FSOR. Our further explanations will improve clarity and provide corrections in appropriate cases.

1. The Board, in Resolution 00-2, February 24, 2000, directed the Executive Officer, "prior to approval of the first exemption for a transit agency on the diesel path" from the requirements of 13 CCR section 1956.2(d)(4) to "bring the application to the Board for consideration." (page 4, Paragraph 10). The regulation was not amended to refer to Board consideration because the Executive Officer will act in accordance

with section 1956.2(d)(7) in the event an exemption is warranted. The purpose of bringing the first application to the Board was discussed at length at the February 24, 2000 hearing (T. 40 et. seq.) and reflects great interest in the matter by the Engine Manufacturers Association and others. The Board is committed to and interested in advanced NOx after-treatment technology, and took great pains to ensure that any exemption from certain NOx emission standards would be premised upon a demonstration that the transit agency receiving the exemption would achieve not just equivalent, but greater, NOx emission benefits through the year 2015. Under HSC sections 39516 and 39517, the ARB's Executive Officer is authorized to "perform and discharge, under the direction and control of the state board, the powers, duties, purposes, functions, and jurisdiction vested in the state board...." Nevertheless the Board retains an active interest in matters that have been delegated to the Executive Officer and often chooses to hear such matters for informational purposes, to set policy, and to give direction to the Executive Officer. (This explanation augments our response to Comment 105 on page 63.)

2. Title 13, CCR, section 1956.2(f)(6) authorizes transit agencies that are required to install a retrofit device for particulate matter control to "be eligible for a one-year delay in complying with the retrofit requirements, upon submittal of documentation of device unavailability to the ARB...." While this language can be read to permit either a single one-year delay or more than one delay if the condition of device unavailability is met, the only logical reading is to allow for multiple delays if the specified condition is met. Statutes and regulations should be read to effectuate their purposes and not lead to absurd results. Here, it would not make sense to require compliance with the retrofit requirement if a retrofit device is not available, so limiting the delay to a simple one-year period despite device unavailability would not facilitate the retrofit objective, would be arbitrary and capricious, and is not the Board's intent. (This explanation augments our response to comment number 113 on page 68 of the FSOR.)
3. The ARB's retrofit certification procedures applicable to heavy-duty vehicles, including urban buses, are contained in the document entitled "California Certification and Installation Procedures for Alternative Fuel Retrofit Systems for Motor Vehicles Certified for 1994 and Subsequent Model year," adopted March 11, 1993 and last amended on September 25, 1997. The FSOR had an incorrect last amended date of April 26, 1995. The ARB does not yet have a separate certification process for zero-emission bus technology yet. When we do adopt one by formal rulemaking, it may be for the bus engine or it may be for the entire bus. While any certification process for fuel cell technology is likely to be engine-based, there may be other zero-emission bus technologies that we will want to certify as a system. While we could have expanded our definition to refer to "engine or bus", we intend to address the issue fully as we approach 2008, when the ZEV purchase requirements become applicable. A formal notice and hearing will precede adoption of certification requirements." (This explanation augments comment 131 on page 76)

4. The regulation defines "zero-emission bus" as one that "produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) under any and all possible operational modes and conditions." (13, CCR, section 1956.3(a)) In the text the word "any" could conceivably refer to "any single criteria pollutant" or to "all" criteria pollutants. The latter reading is correct.

The purpose of the regulations is to clean the fleet of urban transit buses. A bus with zero emissions of only one pollutant could (and most often would) have emissions of other criteria pollutants. The entire thrust of the regulatory action is to reduce both NOx and particulate matter, the two criteria pollutants emitted in the highest quantity from buses. A bus that spews out particulate matter, even if it emits no NOx, could under no circumstances logically be considered a "zero-emission bus." The regulation must be interpreted logically and in the context of the objective of the regulatory scheme. Justice would be done to neither if what is called a "zero-emission bus" were defined to allow emissions of criteria pollutants. Thus, use of the word "any" means "all" criteria pollutants, with the effect that only buses that emit no criteria pollutants qualify as zero-emission buses. (this explanation augments our response to comment 134 on page 77 of the FSOR.)

Fourth, the ARB did not include pages 6 through 114 of the transcript from the January 27, 2000 hearing because those pages did not pertain to this rulemaking.