

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF A DIESEL PARTICULATE
MATTER CONTROL MEASURE FOR ON-ROAD HEAVY-DUTY DIESEL-FUELED
VEHICLES OWNED OR OPERATED BY PUBLIC AGENCIES AND UTILITIES**

Public Hearing Date: December 8, 2005
Public Availability Date: July 7, 2006
Deadline for Public Comment: July 24, 2006

At its December 8, 2005 public hearing, the Air Resources Board (the Board or ARB) approved the adoption of sections 2022 and 2022.1 of title 13 of the California Code of Regulations (CCR). The approved regulation is a diesel particulate control measure that will reduce public exposure to diesel particulate matter (PM) emissions from on-road heavy-duty diesel-fueled vehicles owned or operated by public agencies or utilities by requiring the use of best available control technology (BACT), which is defined in the proposed rule. The proposed regulation supports the Diesel Risk Reduction Plan, which was adopted by the Board on September 30, 2000.

The Board's Action

At the hearing, the Board adopted Resolution 05-64 in which it approved the originally proposed regulation with several modifications (Attachment B of the Resolution). These modifications had been suggested by staff in response to public comments made to staff after the original proposal was published. Resolution 05-64 and its Attachment B are available online at the ARB's internet site for this rulemaking at <http://www.arb.ca.gov/regact/dpmcm05/dpmcm05.htm>. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period.

Subsequent to the hearing, staff identified other conforming modifications that were needed to provide flexibility to fleet operators and to clarify the requirements of the regulation.

The modifications approved by the Board and the staff's post-hearing modifications are summarized below.

Summary of Proposed Modifications

Section 2022(a) Scope and Applicability

Staff revised the Scope and Applicability of the regulation to make clear that the

regulation (sections 2022 and 2022.1) would not apply to vehicles that meet the definition of an authorized emergency vehicle as described in the California Vehicle Code, section 27156.2.

Section 2022(b) Definitions

Staff also added language to the definition of “low usage vehicle” to indicate that a vehicle may not qualify as a “low usage vehicle” if it does not have a properly functioning device to measure usage.

A definition of “vehicle type” was added to clarify its use in the record keeping requirement of section 2022.1(f)(1)(A). The different vehicle types identified in the new language correspond to the vehicle types that must be identified on the labels kept in the vehicle.

Section 2022.1(c) Implementation Schedule

(1): Staff modified the implementation schedule for Group 2 (1988-2002 model year (MY)) engines to delay compliance deadlines by one year. This one year delay will allow municipal governments the time they need to plan their compliance strategies and their budgets. With the original proposal, the schedule was 20 percent by 2006, 60 percent by 2008, and 100 percent by 2010. The new schedule (Table 1) will be 20 percent by 2007, 60 percent by 2009, and 100 percent by 2011.

(4): Recognizing that rural fleets may face funding challenges similar to those of low population counties, staff addressed this issue in new language added as section 2022.1(c)(4) in the revised regulatory text. The new provision would allow a municipality or utility to seek to qualify for low population county status when the municipality or utility is not located in any of the low population counties specifically listed in Table 2 of section 2022.1(c)(2). The municipality or utility may apply to the Executive Officer for consideration for low population county status, provided the applicant meets the criteria described in the new section. The criteria specify requirements for location – whether it is urbanized or unurbanized as defined in the new language; limits on population size; and limits on the source of fleet revenue.

(5): Renumbered from (4) of the originally proposed regulatory text. This section has also been reorganized so that each equation is in its own subsection.

(5)(A): Staff placed the first equation (calculation of the number of fleet vehicles to be used to determine compliance requirements for each engine model year group) in its own subsection (A). The section has been reorganized to make the calculation instructions more accessible to the reader. The original language has also been revised to clarify the definition of the terms used in the equation.

(5)(B): This section has been renumbered from (4)(A) of the originally proposed regulatory text. Staff also revised the original language to clarify the definition of the terms used in the equation for calculating the total number of vehicles in an engine model year group that are required to be in compliance by the applicable compliance

deadline. The section has also been reorganized to make the calculation instructions more accessible to the reader.

(5)(C): This section has been renumbered from (4)(B) of the originally proposed regulatory text. Staff also revised the original language to clarify the definition of the terms used in the equation for calculating the number of additional vehicles to be brought into compliance at each applicable compliance deadline following the first compliance deadline. The section has also been reorganized to make the calculation instructions more accessible to the reader.

(5)(D): renumbered from (4)(C) of the originally proposed regulatory text.

(5)(E): renumbered from (4)(D) of the originally proposed regulatory text.

Section 2022.1(d) Compliance Extensions

(1)(B): The compliance deadlines for the Group 2 early implementation schedule have been extended by one year to be consistent with the revised implementation schedule in Table 1 in section 2022.1(c)(1).

(1)(C): Staff deleted the original language of this section because it was not necessary. The originally proposed language would have given a municipality or utility credit for vehicles that met BACT requirements, as defined in section 2022.1(b), as of January 1, 2005. This language remained from an early version of the regulation. The intent was to allow a municipality or utility that had previously met BACT requirements – for example, by converting to an alternative fuel – to subtract this vehicle out of the calculation for additional vehicles required to be brought into compliance for a given calendar year. However, section 2022.1(c)(5)(B) already allows this subtraction. Therefore, the original language was deleted to eliminate redundancy and avoid confusion.

(1)(C): Staff added new language to replace the deleted (1)(C). The new language indicates that a municipality or utility may delay the final compliance deadline for Group 3 engines by two years in exchange for applying BACT to 100 percent of their Group 1 and Group 2 engines by December 31, 2008. With this option, the implementation schedule for Group 3 engines would be 20 percent BACT by December 31, 2009, 60 percent BACT by December 31, 2011, and 100 percent BACT by December 31, 2012.

(1)(D): Staff added a new option that allows a municipality or utility to apply to the Executive Officer for credits or for an extended implementation schedule for their Group 2 and Group 3 engines, if their fleets employ significant quantities of advanced technology vehicles (for example, hybrid vehicles) to meet BACT. The advanced technology vehicles must meet or exceed the MY 2007 and later engine emission standards and significantly reduce greenhouse gas emissions and petroleum use. The applications will be evaluated to ensure that there is no loss of emissions benefits with the applicant's proposal.

(2)(A)1.: Staff added the text “or granted low population county status” where appropriate for consistency with the new provision in section 2022.1(c)(4) that would allow a municipality or utility to seek to qualify for low population county when the municipality or utility is not located in one of the low population counties specifically listed in Table 2 of section 2022.1(c)(2).

(2)(A)2.: The compliance deadlines for the Group 2 engines based on no verified emission control strategy have been extended by one year to be consistent with the revised implementation schedule in Table 1 in section 2022.1(c)(1).

(2)(B): This section originally required the applicant to apply a diesel emission control strategy to each engine as required by the implementation schedule, before requesting a compliance extension. For clarity, staff reworded this requirement. The revised language will require demonstration of compliance or intent to comply with applicable deadlines for the remaining vehicles in the fleet before the municipality or utility can request a compliance extension.

(2)(B)6.: For clarity, staff reorganized this section into 2 subsections – one for the deadlines for any municipality or utility and the other for the deadlines for a municipality or utility either located in a low population county or granted low population county status.

(2)(B)6.a.: This section contains only the application deadlines for a compliance extension and the final compliance deadline for a municipality or utility. The exceptions for a municipality utility located in a low population county have been deleted. The application deadline and the final compliance deadline for Group 2 engines have been extended by one year to be consistent with the revised implementation schedule in Table 1 in section 2022.1(c)(1).

(2)(B)6.b.: This section contains only the application deadlines for a compliance extension and the final compliance deadlines for a municipality utility that is either located in a low population county or granted low population county status.

(6): Staff added the text “or granted low population county status” for the same reason given above for (2)(A)(i). To correct an error in the original regulation, the deadline for informing the Executive Office of intent to use the Accelerated Turnover Option has been changed from July 31, 2008 to July, 31, 2007.

Section 2022.1(e) Diesel Emission Control Strategy Special Circumstances

(4)(A): Staff divided this section into two subsections – one for any municipality and the other for a municipality or utility either located in a low population county or granted low population county status.

(4)(A)1.: This subsection contains the limitation on the use of a Level 1 diesel emission control strategy on a Group 1 engine. This limitation has not changed from (4)(A) of the original regulation.

(4)(A)2.: This is a new subsection that contains the exception to the limitation in (4)(A)(i) above. This exception has not changed from (4)(A) of the original regulation where it applied to a municipality or utility located in a low population county. Staff added new language to extend the exception to a municipality or utility that has been granted low population county status.

(4)(B)1.: This subsection contains the limitation on the use of a Level 1 diesel emission control strategy on a Group 2 engine. The ten-year time limit has not changed from the original language. There was some ambiguity in the original language that applied to the diesel emission control strategies that would not be allowed as a replacement at the end of the ten-year time limit. Staff reworded the language to make clear the intent of the original regulation to prohibit the replacement of a Level 1 diesel emission control strategy at the end of the ten-year limit with another Level 1 diesel emission control strategy.

(4)(B)2.: This is a new subsection that contains the exception to the limitation in (4)(B)(i) above. This exception has not changed from (4)(B) of the original regulation where it applied to a municipality or utility located in a low population county. Staff added new language to extend the exception to a municipality or utility that has been granted low population county status.

(4)(C)1.: This subsection contains the limitation on the use of a Level 1 diesel emission control strategy on a Group 3 engine. The five-year time limit has not changed from the original language. There was some ambiguity in the original language that applied to the diesel emission control strategies that would not be allowed as a replacement at the end of the five-year time limit. Staff reworded the language to make clear the intent of the original regulation to prohibit the replacement of a Level 1 diesel emission control strategy at the end of the five-year limit with another Level 1 diesel emission control strategy.

(4)(C)2.: This is a new subsection that contains the exception to the limitation in (4)(C)(i) above. This exception has not changed from (4)(C) of the original regulation where it applied to a municipality or utility located in a low population county. Staff added new language to extend the exception to a municipality or utility that has been granted low population county status.

Section 2022.1(f) Record Keeping Requirement

(1): The original language in this section required the municipality or utility to keep records at the terminal where the vehicle normally resides. Staff recognizes that many municipalities and utilities do not maintain these records at the terminals, and that these records are kept instead at a central location. For this reason, staff revised the language of this section. Also, to improve the enforceability of the regulation, staff restructured this subsection into two separate subsections – (1) and (2) – with subsection (1) listing the records that must be kept by the public agencies and utilities. The requirements for subsection (2) are described below.

(1)(E): Staff updated the recordkeeping requirements of this section to make them

consistent with the definitions given in section 2022(b) for low usage or low population county low usage vehicles. The original text required only annual mileage records. With the revision, the municipality or utility must now also keep annual records of engine hours as well as records to document the vehicle's five-year mileage and engine hours. The initial year has been changed from 2006 to 2007 to be consistent with the revised implementation schedule in Table 1 in section 2022.1(c)(1).

(1)(F): This section requires documentation by a municipality or utility located in a low population county that the vehicle is not operated at any time in a metropolitan area. Staff added the text "or has been granted low population county status" to indicate that the same documentation will be required of a municipality or utility that has been granted low population county status.

(1)(J): This is a new section that specifies the records needed to document the retirement of a vehicle. Staff believes that this post-hearing modification is needed to ensure that credit toward meeting the BACT implementation schedule through retirement of a vehicle will be granted only for those vehicles that meet the regulation's definition of "retirement."

(2): This is a new subsection that describes the responsibilities of the public agencies and utilities to make the required records available for inspection. The records must still be made available at the terminal. However, the new language accommodates those public agencies and utilities that keep records at a central location by permitting them to make the records available to the ARB representative at the terminal by appointment.

(3): Renumbered from (2) of the originally proposed text. This section has also been modified to specify the location of the records to be kept in the vehicle. The label containing the required information must be affixed to the lower end of the inside of the window behind the driver. The option of "another readily accessible location" is no longer available. With this change the location will be accessible and known to both the driver and ARB staff.

(4): Renumbered from (3) of the originally proposed text.

Section 2022.1(g) Contractor Compliance Requirement

Staff added language requiring the contractor to be in compliance with all applicable federal and local air pollution control laws in addition to the original requirement for compliance with California air pollution control laws. This helps to make the contractor aware that compliance with California state air pollution control laws and regulations does not mean automatic compliance with federal and local regulations.

The Modified Text Being Made Available and the Public Comment Process

Modified text being made available: Attachment 1 to this notice contains the proposed regulatory text showing the modifications to the originally proposed text. Additions to the originally proposed language are shown in underline and deletions are shown in ~~strikeout~~.

The Resolution (05-64) and its Attachment B and Attachment 1 are available online at the ARB's internet site for this rulemaking at <http://www.arb.ca.gov/regact/dpmcm05/dpmcm05.htm> . Printed copies may be obtained by contacting Ms. Gloria Lindner, Mobile Source Control Division, at (916) 323-2803, or email at glindner@arb.ca.gov.

Comments and Subsequent Action: In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt sections 2022 and 2022.1, title13, CCR, after making the modified text available to the public for comment for a period of at least 15 days. The Board conditioned this directive with the instruction that the Executive Officer shall consider the written comments regarding the modified text that 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.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile 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>

Facsimile submittal: (916) 322-3928

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three 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 modifications to the text of the regulations shall be considered by the Executive Officer.

Attachment