

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF 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

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of a diesel control measure for on-road heavy-duty diesel-fueled vehicles owned or operated by public agencies or utilities. Municipalities and privately owned utilities have responsibilities under the proposal. This notice summarizes the proposed control measure. The staff report presents the control measure in greater detail.

DATE: December 8, 2005

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 8, 2005, and may continue at 8:30 a.m., December 9, 2005. This item may not be considered until December 9, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before December 8, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 2022 and 2022.1 in article 4 within chapter 3, division 3, title 13, California Code of Regulations (CCR).

Background: In 1998, ARB identified diesel particulate matter (PM) as a toxic air contaminant. In 2000, the Board adopted a comprehensive plan to reduce PM emissions from diesel-fueled engines and vehicles. The Diesel Risk Reduction Plan includes control measures for on-road public fleets and other public and private fleets.

Proposed Action: Diesel vehicles owned and operated by public agencies and utilities are a concern because they operate in residential communities on a regular basis that increases the communities' risk of exposure to toxic emissions and oxides of nitrogen. The proposed regulations would require that these fleets reduce their diesel emissions through application of best available control technology as specified. Sections 2022 and 2022.1 comprise the control measure for these vehicles.

If adopted, the emission reductions obtained from the proposed regulations will result in lower ambient PM levels and reductions in exposure to primary and secondary diesel PM. Lower ambient PM levels and reduced exposure, in turn, would result in reducing the prevalence of the diseases attributed to PM and diesel PM, including reduced hospitalizations for cardio-respiratory disease and reduced premature deaths. ARB staff estimates that approximately 37 deaths would be avoided by the year 2020 as a result of cumulative emission reductions in primary and secondary PM obtained through the regulations being proposed.

1. Scope and Applicability

The proposed regulations apply to municipal and utility vehicle owners and require the reduction of diesel PM emissions from 1960 to 2006 model year engines in on-road diesel-fueled heavy-duty vehicles with a manufacturer's gross vehicle weight rating greater than 14,000 pounds.

2. Compliance Requirement for Municipalities and Utilities

Compliance with the proposed regulations requires use of best available control technology, as specified, implemented according to the prescribed schedule, and record keeping. In addition, there are provisions for compliance extensions and special circumstances.

Best Available Control Technology

Four different options would be established for meeting the requirement to use best available control technology. A first option is to use a diesel engine or power system that is certified to the 0.01 grams per brake horsepower-hour (g/bhp-hr) particulate emission standard. New diesel engines available in 2007 will meet this standard. A second option is to use an engine or power system that is certified to the 0.1 g/bhp-hr particulate emission standard in conjunction with the highest level verified diesel emission control strategy available. A third option is to use an alternative fuel engine, heavy-duty pilot ignition engine or gasoline engine. A fourth option is to use the highest level diesel emission control strategy or system verified by ARB for a specific engine.

Implementation Schedule

Staff proposes two implementation schedules. The first schedule applies to all fleets. It begins December 31, 2006, and ends December 31, 2011. The second schedule is

optional for municipalities or utilities located in specified “low population counties.” It begins December 31, 2008, and ends December 31, 2017. The optional implementation schedule was provided since these fleets typically have less access to revenue sources such as vehicle license fees, taxes, etc. and for utilities fewer customers.

Compliance Extensions

Some owners may experience conditions that would justify a compliance extension to the implementation schedule. Staff is proposing that compliance extensions to the implementation schedule be granted for the following: early implementation for a specified portion of an owner’s fleet, lack of a verified diesel emission control strategy for a specific engine or application, and having an engine that is either dual fuel or bi-fuel, is near retirement, or uses an experimental (non-verified) diesel emission control strategy. Although not specifically a “compliance extension,” an accelerated turnover option is included in this section of the regulations for municipalities or utilities located in low population counties.

Special Circumstances

The regulations describe certain “special circumstances” where an owner would be required to upgrade to a higher level best available control technology or could request to use a lower level best available control strategy.

Record Keeping Requirement

Staff proposes a requirement that specific records pertaining to compliance be kept at the terminal and in the vehicle. Each owner must keep these records for the life of the vehicle while it operates in California.

COMPARABLE FEDERAL REGULATIONS

Although the United States Environmental Protection Agency (U.S. EPA) sets emission standards for new diesel, alternative fuel, and gasoline on-road heavy-duty engines, U.S. EPA does not separately regulate public agency and utility engines. Federal emission standards for new engines are codified in title 40, Code of Federal Regulations, part 86.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement Of Reasons (ISOR) for the proposed action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the Board's website listed below, or may be obtained from the Board's Public Information Office, ARB, Visitors and Environmental Services Center, 1001 I Street, 1st Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on December 8, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will also be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to Ms. Sharon Lemieux, Lead Staff, by email to sclermieu@arb.ca.gov or by phone at (626) 575-7067, or to Ms. Kathleen Mead, Manager, by email to kmead@arb.ca.gov or by phone at (916) 324-9550.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. 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, will be available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/dpmcm05/dpmcm05.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.

The Executive Officer has determined that the proposed regulatory action will create costs or savings, as defined in Government Code section 11346.5(a)(6), for a state agency or in federal funding to the state, as discussed in the "Fiscal Impact on State Government" section below.

The Executive Officer has determined that the proposed regulatory action will result in nondiscretionary costs for local agencies or school districts, but will not impose a mandate, as defined in Government Code section 11346.5(a)(5), whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, on local agencies or school districts, as discussed in the "Fiscal Impact on Local Government" section below.

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 regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The Executive Officer has made an initial determination that the proposed 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 ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Fiscal Effect On State Government

Two separate fiscal effects may pertain at the state government level: costs to state agencies that own diesel vehicles to bring the vehicles into compliance, and costs for ARB to implement and enforce the regulations.

According to DMV registration data, the State of California owns approximately 1,275 diesel-fueled vehicles as of 2004; however, this number is expected to grow to approximately 1,311 heavy-duty diesel vehicles by 2006. The estimated discounted cost increase for state agencies in FY 2006-2007 would be \$218,000, based on phasing-in an estimated 179 vehicles. The estimated total discounted cost for the state to bring these vehicles into compliance with the regulations over the 17-year life of the regulations is \$8,991,000.

The ARB estimates that three staff will be required to enforce the regulation and to provide guidance for implementation. The cost for three additional ARB staff is approximately \$300,000 annually. Staff anticipates the need for added staff beginning in FY 2005.

Fiscal Effect on Local Government

The proposed regulations would result in significant costs for local public agencies statewide that own and operate diesel-fueled vehicles. Local public agencies operate an estimated 22,839 vehicles subject to this regulation. The local agencies would be required to apply best available control technology to these vehicles as described above to reduce the particulate matter emitted to the maximum extent feasible. There is no cost associated with implementation during the current FY 2005. The total discounted cost increases for FY 2006-2007 is \$2,030,000. The total estimated discounted cost for local agencies over the 17-year life of the regulation is \$156,614,000.

The costs to local public agencies would not be reimbursable state mandated costs pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code because the proposed regulations do not mandate a new program or mandate a higher level of service for an existing program, and because the fees apply

generally to private utility companies as well, and therefore do not impose unique requirements on local government agencies.

Economic Impact of Businesses

The adoption of the proposed regulatory action may have an economic impact on private utilities that provide natural gas, electricity or water services if those businesses are unable to increase their rates for the services. However, since a variety of compliance methods are provided in the rule, utilities may not experience any adverse economic impacts because they have the ability to recover costs through rate increases. Staff estimates a total of 209 private utilities with 4,140 vehicles will be impacted by the regulations. The total estimated discounted cost for private utilities for FY 2006-2007 is \$368,000. The total discounted statewide cost for private utilities from FY 2006 to 2023 is \$28,390,000. Adoption of the proposed rule will not affect the ability of California businesses to compete with businesses in other states.

Businesses that provide technologies or services mandated under this proposal, such as engines, diesel emission control systems, or installation services, may experience significant economic benefit from the regulation. Some, but not all, of the businesses are located in California.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will affect the creation or elimination of jobs within the State of California, the creation of new businesses, or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

Finally, the Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.53(e), on private persons or businesses directly affected resulting from the proposed action. The Executive Officer has also determined that the proposed regulatory action will affect small businesses.

Costs to the Public

If the entire cost of the regulation were passed on to the residents of California, the cost per capita would be approximately \$0.35 annually (or \$6.00 per person total) over the period 2006 to 2022.

Consideration of Alternatives

The Executive Officer has considered proposed alternatives that would lessen the adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for agencies.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received by **no later than 12:00 noon, December 7, 2005** and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: **dpmcm05@listserv.arb.ca.gov** and received at the ARB **no later than 12:00 noon, December 7, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, December 7, 2005**.

The Board requests, but does not require, that 30 copies of any written statement be submitted at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of the staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, and 39658 of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39655, 39656, 39657, 39658, 39659, 39660, 39661, 39662, 39664, 39665, 39667, 39669, 39674, 39675, 43000, 43013, 43018, 43101, 43102, 43104, 43105 and 43700 of the Health and Safety Code.

HEARING PROCEDURES

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

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 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 the Board's Public Information Office, 1001 "I" Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/
Catherine Witherspoon
Executive Officer

Date: October 11, 2005