

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**



**AIR RESOURCES BOARD**

**FINAL STATEMENT OF REASONS**

**PROPOSED DIESEL PARTICULATE MATTER CONTROL MEASURE FOR  
ON-ROAD HEAVY-DUTY DIESEL-FUELED VEHICLES OWNED OR OPERATED BY  
PUBLIC AGENCIES AND UTILITIES**

October 2006



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ATTACHMENT A    NONSUBSTANTIAL MODIFICATIONS OR REVERSIONS TO THE  
ORIGINALLY-NOTICED TEXT MADE TO THE REGULATION AFTER  
THE 15-DAY COMMENT PERIOD

State of California  
**AIR RESOURCES BOARD**

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

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED  
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  
Agenda Item No: 05-12-6

**I. GENERAL**

**A. The Action Taken in This Rulemaking**

In this rulemaking, the Air Resources Board (ARB or Board) is adopting a regulation requiring public agencies and privately-owned utilities to comply with a diesel particulate control measure for on-road diesel-fueled vehicles they own or operate. The control measure will require the use of best available control technology (BACT), which is defined in the regulation. It will reduce ambient PM levels and exposure to primary and secondary diesel PM, reducing the prevalence of the diseases attributed to PM and diesel PM including hospitalizations for cardio-respiratory disease, and premature deaths. ARB staff estimates that approximately 37 deaths would be avoided by the year 2020 as a result of cumulative emission reductions resulting from the regulation.

In 1998, the Board identified diesel particulate matter (PM) as a toxic air contaminant and established a goal of reducing emissions of diesel PM to the lowest practicable levels. Diesel PM is by far the largest contributor to adverse health impacts from all toxic air contaminants identified, comprising 70% of statewide risk. In 2000, the Board adopted ARB's Diesel Risk Reduction Plan (the Plan), which provides a comprehensive roadmap for reducing PM emissions from diesel-fueled engines and vehicles. The Board has already adopted several control measures recommended in the Plan, including rules for transit buses, solid waste collection vehicles, stationary engines, diesel portable equipment, transportation refrigeration units, idling controls, new cleaner exhaust standards for heavy-duty trucks and off-road equipment, and ultra-low sulfur diesel fuel in mid-2006. The regulation adopted in this rulemaking is another component of the Plan.

The rulemaking was initiated by the publication on October 21, 2005 of a notice for a December 8, 2005 public hearing to consider the adoption of the regulation. A "Staff

Report: Initial Statement of Reasons for Rulemaking” entitled “Proposed Diesel Particulate Matter Control Measure for On-road Heavy-duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities” (the Staff Report) was also released on October 21, 2005 and made available to the public upon request as required by Government Code § 11346.2.

The Staff Report contains an extensive description of the rationale for the proposal. Appendix A to the Staff Report contains the originally-proposed text of the new sections 2022 and 2022.1 of title 13 of the California Code of Regulations (CCR). These documents, including the Notice of Public Hearing, are all incorporated by reference herein. These documents were also posted on October 21, 2005 on the ARB’s Internet site for the rulemaking:  
<http://www.arb.ca.gov/regact/dpmcm05/dpmcm05.htm>.

At the December 8, 2005 hearing, the Board considered the proposed regulation and received written and oral comments. Staff also proposed several modifications at the Hearing. These modifications were suggested by staff in response to public comments made to staff after the publication of the original proposal. The modifications proposed by staff would establish criteria for a municipality or utility to qualify for low-population county status; delay the compliance schedule for Group 2 (1988-2002) engines by one year; allow extensions of compliance deadlines for Group 3 (2003-2006) engines, provided that a fleet implements 100% BACT to Group 1 (1960-1987) and Group 2 engines by 2008; allow the Executive Officer discretion to grant extended implementation phase-in for early implementation of advanced technology vehicles; and make minor changes to the recordkeeping requirements.

At the conclusion of the hearing, the Board adopted Resolution 05-64, in which it approved the originally proposed regulation with the modifications described. The Resolution directed the Executive Officer to incorporate the modifications (set forth in Attachment B to the Resolution) into the proposed regulatory text, with such other conforming modifications as may be appropriate.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt modified sections 2022 and 2022.1, title 13, 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.

The text of the proposed modifications to the originally proposed regulation was made available for a supplemental 15-day comment period by issuance of a “Notice of Public Availability of Modified Text” (15-day Notice). The notice described each modification, and the proposed title 13 CCR regulatory text, with the modifications clearly indicated, was an attachment to the Notice. The 15-day Notice and its attachment were mailed by

July 7, 2006 to all parties identified in section 44(a), title 1, CCR, along with other interested parties. The 15-day Notice and its attachment were also posted on the ARB's Internet site for the rulemaking by July 7, 2006. The documents are incorporated herein by reference. Six comments were received during the supplemental 15-day comment period.

After considering the comments submitted during the 15-day comment period, on October 4, 2006, the Executive Officer issued Executive Order R-06-005, by which she adopted new sections 2022 and 2022.1 with the modifications made available for comment and with a few additional modifications – set forth in Attachment A to this Final Statement of Reasons (FSOR) – which were either nonsubstantial or reverted to the originally proposed text in response to comments submitted during the 15-day comment period.

This FSOR updates the Staff Report by identifying and providing the rationale for the modifications made to the originally proposed regulatory text. It also contains a summary of the comments the Board received on the regulatory action during the formal rulemaking process and ARB's responses to those comments.

Update of References: Staff Report, page 68, identifies as a "Reference" a document entitled "United States Department of Energy. 2005. [www.eere.energy.gov/cleancities](http://www.eere.energy.gov/cleancities) An Internet web page listing Clean Cities alternative-fueled fleets". This document, was not in fact a document relied upon in the Rulemaking, and accordingly has not been included in the reference documents in the Rulemaking file.

## **B. Economic and Fiscal Impacts**

In developing the proposed regulation, ARB staff evaluated the potential economic impacts on private persons and businesses. The Board has determined that the proposed regulatory action will create costs, as defined in Government Code section 11346.5(a)(5) and (6), to state and local agencies whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5 (a)(3)(B), that the regulations will affect small business. The cost of implementing the proposed regulation will be significant. However, the utilities are expected to recover this cost by increasing ratepayers' fees. No adverse economic impacts on small businesses are expected.

The Board has also determined that the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. While there will be significant costs for implementation, utilities have the ability to pass the cost of compliance on to their ratepayers, therefore the regulation is not expected to have a significant adverse economic impact on businesses. These utilities compete for business within California,

therefore the regulation will not affect the ability of California businesses to compete with businesses in other states. The utility ratepayer may eventually pay higher costs for natural gas, electric or water services. The regulation will have a positive impact on California companies by providing new opportunities for the manufacture of the products needed to comply with the proposed regulation.

Finally, the Board determined that this regulatory action will create costs, as defined in Government Code section 11346.5 (a)(6), to state and local agencies that own and operate diesel-fueled vehicles whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500, Division 4, Title 2 of the Government Code). These costs are associated with bringing the vehicles owned by these agencies into compliance. Some public agencies, such as water districts, provide services on a fee basis and may eventually require ratepayers to pay higher fees, but the majority of public agencies will absorb the cost of compliance. Municipalities and utilities located in low-population counties are expected to take advantage of optional implementation schedules that allow them to extend the implementation period to spread out their compliance costs.

The proposed regulation would have a fiscal impact on municipalities statewide, but does not constitute a state mandate on local agencies and school districts for several reasons. First, this regulation does not require a new program or an expanded level of service from existing programs, but simply affects their methods for providing existing services. Second, it is not an attempt by the state to shift state responsibilities to local government entities. Finally, the regulation applies to state government entities, and also to privately-owned utilities.

The fiscal effect is based on the likelihood that regulated entities will have to add equipment to vehicles already in their fleets, and/or that new vehicles, when purchased, may cost slightly more than higher-emitting vehicles. Local public agencies (and all of the other regulated entities) should already have plans for replacing vehicles at the end of their useful lives; the fiscal effect of this regulation is the difference (if any) between lower vs. higher-emitting vehicles. The regulation provides for sufficient lead time for the regulated entities to plan their budgets accordingly, and also for compliance extensions in limited circumstances.

### **C. Consideration of Alternatives**

For reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR, ARB has determined 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 regulatory action was proposed or would be as effective or less burdensome to affected private persons than the adopted regulation.

## **II. MODIFICATIONS TO THE ORIGINAL PROPOSAL**

### **A. An Overview Of The Original Proposal**

#### **1. Scope and Applicability**

As proposed, the regulation would apply to municipalities and private utilities that own or operate one or more diesel-fueled on-road vehicles with a GVWR greater than 14,000 pounds, powered by a heavy-heavy or medium-heavy duty 1960 to 2006 MY engines. A municipality is defined in section 2020, title 13 of the California Code of Regulations (CCR) as a city, county, city and county, special district, or a public agency of the United States or the State of California, and any department, division, public corporation, or public agency of this State or of the United States, or two or more entities acting jointly, or the duly constituted body of an Indian reservation or rancheria. A utility is a new definition proposed by the regulation and is defined as a privately owned company that provides the same or similar services for water, natural gas, and electricity as a utility operated by a municipality. In most instances, in this FSOR the regulated entities are referred to as public agencies and privately-owned utilities.

#### **2. Compliance Requirements for Public Agencies and Privately-Owned Utilities**

Compliance with the originally-proposed regulation would require use of BACT, as specified, implemented according to a prescribed schedule, and recordkeeping. In addition, there were provisions for compliance extensions and special circumstances.

##### **(a) BACT**

Four different options would be established for meeting the requirement to use BACT. A first option is to use a diesel engine or power system that is certified to the 0.01 gram 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 certified to the 0.1 g/bhp-hr particulate emission standard, in conjunction with the highest level verified diesel emission control strategy (DECS). A third option is to use an alternative-fuel, heavy-duty pilot-ignition, or gasoline engine. A fourth option is to use an existing engine in conjunction with the highest level verified DECS.

##### **(b) Implementation Schedule**

The staff originally proposed two different implementation schedules. The first schedule applies to all fleets. It would begin December 31, 2006, and end December 31, 2011. The second is an optional schedule that a public agency or utility may elect to follow if it is located in a specified "low-population county" – defined as a county with a population below 125,000 as of July 1, 2005, based upon 2001 population projections by the

California Department of Finance. The purpose of the optional schedule is to reduce costs by lengthening the compliance period. The two schedules as originally proposed are set forth below:

**General Implementation Schedule for 1960 to 2006 MY Engines**

<b>Group</b>	<b>Engine MY</b>	<b>Percentage of Group to Use Best Available Control Technology</b>	<b>Compliance Deadline</b>
1 <sup>a</sup>	1960 – 1987	20	December 31, 2007
		60	December 31, 2009
		100	December 31, 2011
2	1988 – 2002	20	December 31, 2006
		60	December 31, 2008
		100	December 31, 2010
3	2003 – 2006	50	December 31, 2009
		100	December 31, 2010

<sup>a</sup> Group 1: Level 1 technology may not be used as BACT.

**Implementation Schedule for a Municipality or Utility Located in a Low-Population County**

<b>Group</b>	<b>Engine Model Years</b>	<b>Percentage of Group to Use Best Available Control Technology</b>	<b>Compliance Deadline, as of December 31<sup>st</sup></b>
1	1960 – 1987	20	2009
		40	2011
		60	2013
		80	2015
		100	2017
2	1988 – 2002	20	2008
		40	2010
		60	2012
		80	2014
		100	2016
3	2003 – 2006 (Includes dual-fuel and bi-fuel engines)	20	2011
		40	2012
		60	2013
		80	2014
		100	2015

### **(c) Compliance Extensions**

Some owners may experience conditions that would justify a compliance extension to the implementation schedule. Under the original proposal, compliance extensions to the implementation schedule could 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 specified engine or application, and having an engine that is either dual fuel or bi-fuel, is near retirement, or used an experimental (non-verified) diesel emission control strategy. Although not specifically a "compliance extension," public agencies and utilities located in low-population counties could also use an accelerated turnover option.

### **(d) Diesel Emission Control Strategy Special Circumstances**

The proposed regulations describe certain "special circumstances" where an owner would be required to upgrade to a higher level BACT or could request to use a lower level BACT.

### **(e) Recordkeeping Requirement**

Public agencies and utilities would have to keep records as required by the regulation, and make those records available for inspection during enforcement audits by ARB personnel. As originally proposed, certain records as described by section 2022.1(f) would have to be kept at the terminal where the vehicle normally resides and others must be kept in the vehicle.

## **B. Modifications to the Original Proposal**

The most significant modifications are described separately below, followed by a listing of the remaining modifications.

### **1. Circumstances Under Which Public Agencies and Utilities Not in a Low-Population County May Qualify For Treatment Under the Low-Population County Provisions**

A new provision allows 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) and the fleet revenue is not based on special district assessments or fees. A municipality or utility, other than a county fleet, may apply to the Executive Officer for consideration for low-population county status, provided the applicant meets the criteria described in the section 2022.1(c)(4)(A). A county fleet may apply to the Executive Officer for consideration for low-population county status, provided that the applicant meets the criteria described in the section 2022.1(c)(4)(B). The criteria include whether it is urbanized or not urbanized as defined in the new language, limits on population size, operation of vehicles within a defined area, and limits on the source of fleet revenue. This modification provides

flexibility that rural fleets may need to fund their compliance costs while minimizing the loss of emission benefits.

## **2. Delaying the Compliance Deadlines for the Group 2 (1988-2002 Model Year) Engines By One Year Under the General Implementation Schedule**

The compliance deadlines for the Group 2 (1988-2002 Model Year) engines have been delayed by one year. This delay will allow municipal governments the time they need to plan their compliance strategies and their budgets. With the original proposal, the compliance deadlines were 20 percent by December 31, 2006, 60 percent by December 31, 2008, and 100 percent by December 31, 2010. The new schedule (Table 1) will be 20 percent by December 31, 2007, 60 percent by December 31, 2009, and 100 percent by December 31, 2011. (Section 2022.1(c)(1).)

## **3. Alternative Compliance Schedule for Group 3 Engines**

The Board added a provision under which a public agency or utility that has implemented BACT on 100 percent of its Group 1 and Group 2 engines by December 31, 2008, may use an alternative compliance schedule for its Group 3 engines. The alternative schedule calls for 20 percent BACT by December 31, 2009, 60 percent BACT by December 31, 2011, and 100 percent BACT by December 31, 2012. (section 2022.1(d)(1)(C).)

This alternative schedule was recommended by SCE (Comment 37). This accelerated replacement option combined with a Group 3 extension will provide large fleet operators the flexibility to quickly remove hundreds of old vehicles from their fleet and then systematically retrofit and replace newer vehicles with the cleanest technology available.

## **4. Longer Implementation Phase-In Periods for Fleets That Employ Significant Quantities of Advanced Technology Vehicles to Meet BACT Requirements**

A new option was added 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 its 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. This option responds to Comment 38, and provides greater flexibility while preserving air quality benefits. (section 2022.1(d)(1)(D).)

## **5. Other Modifications**

### **(a) Scope and Applicability**

#### **Section 2022(a)**

The Scope and Applicability of the regulation was revised 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**

Language was added 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.

The definition of “retirement” or “retire” was revised to improve clarity. In the original proposal, an act (retirement or retire) was defined as an object (an engine meeting specified criteria). In the final text, the definition refers to the acts of “withdrawal” or “transfer” so that it is parallel to the terms defined.

A definition of “vehicle type” was added to clarify its use in the recordkeeping 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.

### **(b) Implementation Schedule**

#### **Section 2022.1(c)**

**(2):** New language, “or Granted Low-Population County Status” was added to the title of Table 3 to address the new provisions set in section 2022.1(c)(4).

**(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):** 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. The first equation (calculation of the number of fleet vehicles to be used to determine compliance requirements for each engine model year group) is in its own subsection.

**(5)(B):** This section has been renumbered from (4)(A) of the originally proposed regulatory text. The original language was revised 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. The original language was also revised 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. The language “equal to or” was added for clarity in determining a whole number when the fraction is 0.5.

### **(c) Compliance Extensions**

#### **Section 2022.1(d)**

**(1):** Language was modified to adjust for the Executive Officer’s approval process and the addition of 2 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):** The original language of this section was deleted to eliminate redundancy and avoid confusion. 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 not necessary.

**(1)(C):** New language was added 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 its 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.

**(2)(A)1.:** The text “or granted low-population county status” was added 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). Renumbered from (i) in the originally proposed text.

**(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). Renumbered from (ii) in the originally proposed text.

**(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. This requirement was reworded for clarity. 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. The subsections were renumbered from (i-vi) in the originally proposed text.

**(2)(B)5.:** Within section 2022.1(d)(2)(B)(5) renumbered reference from subsection (f)(1)(I) in the originally proposed text to subsection (f)(1)(K).

**(2)(B)6.:** For clarity, this section was reorganized 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. The final application deadline was modified to align with the changes in section (c)(1).

**(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):** The text “or granted low-population county status” was added to this section for the same reason given above for (2)(A)1.

## **Section 2022.1(e) Diesel Emission Control Strategy Special Circumstances**

Grammar modifications were made in section 2022.1(e) through 2022.1(e)(3)

**(4)(A):** For clarity, this section was divided into two subsections – one for any municipality or utility 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)(1) 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. The new language was added 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. The language was reworded 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)(1) 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. New language was added 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. The language was reworded 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)(1) 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. New language was added to extend the exception to a municipality or utility that has been granted low-population county status.

## **(d) Recordkeeping Requirements**

### **Section 2022.1(f)**

**(1):** The original language in this section required the municipality or utility to keep records at the terminal where the vehicle normally resides. The Board directed staff to modify the regulatory language to allow these records are kept at a central location. For this reason, this section was revised. To improve the enforceability of the regulation, this subsection was divided into two separate paragraphs. Paragraph (1) lists the records that must be kept by the public agencies and utilities. The requirements for paragraph (2) are described below.

**(1)(E):** The language of this section was modified to make it 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 or 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. The text "or has been granted low-population county status" was added to indicate that the same documentation will be required of a municipality or utility that has been granted low-population county status.

**(1)(G) through (I):** Language was modified for clarity.

**(1)(J):** This is a new section that specifies the records needed to document the retirement of a vehicle. This 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."

**(1)(K):** Renumbered from (J) in the original text. The reference to section 2022 was changed to section 2022.1 for clarity.

**(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.

**(3)(A):** The text was modified for clarity as to the definition of diesel emission control strategy family name.

**(3)(D):** The text “or has been granted low-population county status” was added to indicate that the same documentation will be required of a municipality or utility that has been granted low-population county status.

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

#### **(e) Contractor Compliance Requirement**

##### **Section 2022.1(g)**

Language was added to require a 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.

### **III. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES**

The Board received numerous written and oral comments in connection with the December 8, 2006 hearing. Additional written comments were submitted during the 15-day supplemental comment period.

Set forth below is a summary of each objection or recommendation specifically directed to the proposed regulation or to the procedures followed by ARB in proposing or adopting the regulation. Each comment is followed by the agency response explaining how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. The comments have been grouped by topic whenever possible. Comments that do not involve objections or recommendations specifically directed towards the rulemaking, or to the procedures followed by ARB in this rulemaking are generally not summarized below. Additionally, any other referenced documents are not summarized below.

#### **A. Summary of Public Comments Presented Prior to or at The Hearing and Agency Responses**

During the 45-day comment period, the Board received written comments from the following persons or entities. The identifier in the right column is used to attribute each listed comment to the person or entity submitting the comment.

Donald Jardine	Alpine Co., CA, Board of Supervisors	Alpine Co
Jack Broadbent	Bay Area Air Quality Management District	BAAQMD
W. James Wagoner	Butte County Air Quality Management District	BCAQMD
Al Upton	Butte County Public Works Department	Butte Co
Lisa Kunzman	Department. of Transportation	CALTRANS
Linda Weiner	Bay Area Clean Air Task Force	CATF

Robert Lucas	California Council for Environmental and Economic Balance	CCEEB
Mitchell Pratt	Clean Energy	CE
Diane Bailey	Natural Resources Defense Council	Coalition*
Bonnie Holmes-Gen	American Lung Association of California	Coalition
Tom Plenys	Coalition for Clean Air	Coalition
Bill Magavern	Sierra Club	Coalition
Don Anair	Union of Concerned Scientists	Coalition
V. John White	Center for Energy Efficiency & Renewable Technologies	Coalition
Kathryn Phillips	Environmental Defense	Coalition
Joel Ervice	Regional Asthma Management and Prevention Initiative	Coalition
Bill Walker	Environmental Working Group and EWG Action Fund	Coalition
Jeanne Rizzo, R.N.	Breast Cancer Fund	Coalition
Andrea Samulon	Pacific Institute	Coalition
Tiffany Schauer	Our Children's Earth Foundation	Coalition
Susan Frank	Steven and Michelle Kirsch Foundation	Coalition
Elina Green	Long Beach Alliance for Children with Asthma	Coalition
Noel Park	San Pedro Peninsula Homeowners Coalition	Coalition
Brian Berveridge	West Oakland Environmental Indicators Project	Coalition
Lee Jones	Neighborhood House of North Richmond	Coalition
Gilbert Estrada	Citizen	Coalition
Martha McClure	Del Norte County Board of Supervisors	Del Norte Co
Jed R. Mandel	Engine Manufacturers Association	EMA
Sarah Schoenbach	Form letter approx. 1,000 letters received	FL#1
Bob Johnson	Glenn County Operations Superintendent	Glenn Co
Thomas K. Mattson	County of Humboldt Department. of Public Works	Humboldt Co
Jerry Ainsworth	Citizen	J. Ainsworth
Detrich Allen	City of Los Angeles	LA City
Charles Mosher	Mariposa County Air Pollution Control District	MCAPCD
Joe Kubsh	Manufacturers of Emission Controls Association	MECA
Stephen Jacques	Modoc County Road Department	Modoc Co
Gretchen Bennitt	Northern Sierra Air Quality Management District	NSAQMD
Les Guliasi	Pacific Gas and Electric Company	PG&E
Dennis Gage	Placer County Department of Public Works	Placer Co
Raymond Miller	Southern California Alliance of Publicly Owned Treatment Works	SCAP
Howard Gollay,	Southern California Edison	SCE
Daro Quiring	City of San Diego	SD City

Bernie Orozco	Sempra Energy Utilities, San Diego Gas and Electric, and Southern California Gas Company	SEMPRA SDGE SoCalGas
Terry Parker	Citizen	T. Parker
Susan Koetting	U.S. Postal Service	USPS

\* This letter was signed by a coalition of 18 environmental and public health advocates.

Additional written comments were received on the day of the Board hearing from:

Rene Trevino	Department of Defense	DoD
Barbara Lee	Northern Sonoma County APCD	NSCAPCD
Richard Teebay	Citizen	R. Teebay
Mary Pitto	Regional Council of Rural Counties	RCRC
Roy Ashburn	Senator, California State Senate	Sen. Ashburn
Peter Rei	County of Tuolumne	Tuolumne

At the December 8, 2005 hearing, oral testimony was presented by:

Bonnie Holmes-Gen	American Lung Association	ALA
Tom Addison	Bay Area Air Quality Management District	BAAQMD
Martin Schlageter	Coalition for Clean Air	CCA
Bob Lucas	California Council for Environmental and Economic Balance	CCEEB
Todd Campbell	Clean Energy	CE
Tim Taylor	Cleaire Advanced Emission Controls	Cleaire
Diane Bailey	Natural Resources Defense Council	Coalition
Ernest Perry	County of Del Norte Board of Supervisors	Del Norte Co
Randall Friedman	Department of Defense	DoD
Major Jeremy Jungreis	Department of Defense Region IX	DoD
Bob Johnson	Glenn County Operations Superintendent	Glenn Co
Douglas Fini	County of Humboldt Department of Public Works	Humboldt Co
David Wilson	City of Los Angeles	LA City
Frank Caponi	Los Angeles County Sanitation District	LACSD
Joe Kubsh	Manufacturers of Emission Controls Association	MECA
Lawrence Odle	North Coast Unified AQMD	NCUAQMD
Barbara Lee	Northern Sonoma County APCD	NSCAPCD
Sven Thesen	Pacific Gas & Electric Company	PG&E
Dennis Gage	Placer County Department of Public Works	Placer Co
Richard Teebay	Private Citizen	R. Teebay
Mary Pitto	Regional Council of Rural Counties	RCRC
Rick Sikes	City of Santa Monica	Santa Monica
Howard Gollay	Southern California Edison	SCE
Bill Magavern	Sierra Club of California	Sierra Club
Deanna Haines	Southern California Gas Company and San Diego Gas & Electric	SoCalGas SDGE

Peter Rei  
Don Anair  
Gary Bigelow

County of Tuolumne  
Union of Concerned Scientists  
United States Postal Service

Tuolumne Co  
UCS  
USPS

## 1. General

1. Comment: The Board received general support to adopt the Fleet Rule for Public Agency and Utility Fleets. (BAAQMD, NSAQMD, MCAPCD, NSCAPCD, Placer Co, Santa Monica, CATF, CE, MECA, Cleaire, SCE, Sempra, SDG&E, SoCalGas, PG&E, SCE, CCEEB, FL#1, T.Parker, J. Ainsworth, R. Teebay, Coalition

Agency Response: The Board adopted the proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities with modifications.

2. Comment: The Board received general opposition to adopting the Fleet Rule for Public Agency and Utility Fleets. (USPS, U.S. Navy, DoD, EMA, Tuolumne Co)

Agency Response: The rationale for the regulation set forth in the Staff Report and this FSOR justify adoption of the Fleet Rule for Public Agency and Utility Fleets.

3. Comment: In the area of operational and technological issues, the Postal Service thinks the proposed rule unduly burdens government fleets. Compared to private sector fleets operating in California, the government generally has newer vehicles, equips them with the latest technological advancements that emit lower levels of pollutants, and maintains them better. (USPS)

Agency Response: A major strategy of the ARB's "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles" (Plan) is the adoption of control measures to reduce diesel PM emissions from existing diesel vehicles and equipment in on-road, off-road, and stationary applications. The Plan includes a commitment to adopt control measures for on-road public fleets and other public and private fleets.

The adopted regulation will meet the commitment in the Plan for on-road public fleets. Also, by making the proposed regulation applicable to private utilities, the regulation represents a significant step towards meeting the commitment in the Plan for on-road private fleets. Therefore the proposed regulation does not unduly burden government fleets.

As a part of the Plan, ARB has already adopted regulations for solid waste collection vehicles, both public and privately owned. ARB staff has already started the rulemaking process for a diesel PM control measure that will be applicable to private on-road fleets other than utilities. The emissions benefits from the control of private fleets are important to the attainment of ARB's goal of reducing diesel PM to the lowest practicable levels. It is because of the importance of this goal that the proposed

regulation did not exempt smaller county and city government fleets and opted instead to provide a generous implementation schedule to meet the compliance requirements of the regulation.

4. Comment: Diesel PM is only one piece of California's air pollution problem. Smog-forming precursors – nitrous oxides (NOx) and reactive organic gases (ROG) – must also be reduced if California's cities are to have any hope of achieving federal attainment deadlines for PM, NOx and ROG. (CE)

Agency Response: Staff agrees that emissions of smog forming precursors must be reduced if California is to attain state and federal air quality standards. The focus of this regulation is reduction of diesel PM, because diesel PM has been identified as a toxic air contaminant. The Board, through its adoption of the Diesel PM Plan, has made diesel PM reduction a priority. Although the primary objective of this regulation is to reduce diesel PM, the BACT alternatives of repower, replacements, and even with retrofits will result in the reduction of NOx and ROG emission reductions. Retrofit technology will reduce ROG along with diesel PM.

5. Comment: Require public agencies and utility fleets that own 50 or more vehicles to make new purchases that comply with a hierarchy of BACT standards outlined below:

1. On-road engine certified at 0.2 g/bhp-hr NOx and 0.01 g/bhp-hr PM;
  2. On-road engine certified at 1.2 g/bhp-hr NOx for 2007 and 0.01 g/bhp-hr PM;
  3. Verified Diesel Emission Control Strategies or VDECS (level 3 with 85+% PM reduction) – VDECS are required if Tier 2 or 3 engines have to be used;
  4. VDECS (level 2 device with 50+% PM reduction);
  5. VDECS (level 1 device with 25+% PM reduction).
- (CE)

Agency Response: The current regulatory structure provides for the most cost-effective options and necessary flexibility for municipalities and utilities to comply with the BACT requirements. Removing that flexibility would increase the cost of these requirements.

6. Comment: Develop performance standards that can be field tested rather than prescriptive standards. (Placer Co)

Agency Response: The BACT requirements allow for choices of options from verified diesel DECS that meet the highest achievable performance standard for the duty cycle and model year of the existing engine that the DECS is applied to. The also allow for the replacement of the existing engine with one that meets the performance standard of 0.01 grams per brake horsepower-hour. All of these options require extensive manufacturer testing and provide the consumer with a warranty on their DECS, engine and equipment. Providing a verified DECS or a certified engine eliminates costly field testing by the public or utility fleet.

## 2. Authority

7. Comment: The proposed Public Vehicle ATCM is preempted under the Clean Air Act (CAA). Specifically, CAA Section 209(a) expressly preempts all states, including California, from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicle engines. In that regard, the 2003-2006 MY model year engines at issue (along with earlier MY engines as well) are still “new” for preemption purposes, and so are still subject to the regulatory protections afforded under the CAA Section 209(a). While CAA Section 209(b) does permit ARB an opportunity to seek a waiver of federal preemption, that waiver mechanism cannot salvage the proposed Public Vehicle ATCM at issue here because: (i) ARB is not proposing to seek any such waivers from U.S. EPA; and (ii) the proposed ATCM fails to provide the regulatory lead time and stability periods that are prerequisites to the issuance of a preemption waiver. (EMA)

Agency Response: As the commenter acknowledges, CAA section 209(a) preempts states from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicle or new motor vehicle engines. Section 209(b) provides a mechanism under which, alone among the states, California may obtain a waiver of this preemption. The regulation adopted in this rulemaking, however, applies to the owners of in-use motor vehicle engines. Since the earliest compliance date for 2006 model year engines (the latest engines covered by this rulemaking) is December 31, 2009, retrofits will never be required less than about three years after the engine is sold to the operator. In all other cases, more time will have passed. The requirements accordingly apply to in-use engines, and the commenter has provided no authority for its assertion that the requirements would constitute emission standards for new motor vehicle engines under CAA section 209(a).

8. Comment: By including federal entities in its definition of “municipality,” (see Sec. 2020(b)) to which the proposed rule is applicable, ARB would apply the rule to federal governmental entities, but not to the private sector. The Postal Service views this as illegal discrimination under the partial waiver of sovereign immunity contained in the CAA. See 42 U.S.C. §§7418(a), commonly referred to as Section 118(a).

ARB is correct that §118(a) waives the sovereign immunity of the United States from application of state and local air pollution laws. It is not a broad waiver as ARB would imply, however, but a limited one, in that it requires that the federal government comply with federal and local substantive and procedural requirements and be subject to sanctions only “*in the same manner and to the same extent as any nongovernmental entity.*” The Postal Service, DoD, U.S. EPA, and the Department of Justice have interpreted this section to mean that federal entities must comply with state air pollution laws that apply equally to them as to private entities.

ARB’s assertion that the proposed rule is not discriminatory because it will be applied to private utilities is unavailing. Unlike most federal fleets, including that of the Postal Service, private utilities are highly regulated entities by state utility agencies and there

may be some justification for treating both public and private utilities in the same manner. The Postal Service, however, is not a private utility, rather its fleet supports a nationwide delivery and distribution system for U. S. mail. Only the Postal Service is authorized to transmit and deliver U.S. Mail. There are thousands of similarly situated private delivery and distribution fleets that will not be regulated under this proposed rule. In order for the proposed Diesel PM rule to apply to the federal government, ARB must also apply them to all similarly situated private fleets. (USPS)

Agency Response: The Postal Service's reading of the statute is not consistent with the statute itself and is also inconsistent with other provisions of the CAA. In cases regarding the applicability of state and local regulations to federal agencies, the courts have held that Congress has unambiguously waived sovereign immunity with respect to independent state or local air pollution requirements. In other words, the federal government has affirmatively chosen to subject itself to state and local air pollution control laws and regulations.

The Postal Service claims that the regulation will put it at a competitive disadvantage, implying that the Postal Service operates under the same market conditions as its competitors. This is not the case. The Postal Service in fact has a federally mandated monopoly on the sale of postage and has an exclusive right to use people's mailboxes. No other carrier may sell postage stamps or put materials in a recipient's mailbox. Anyone in the U.S. who wants to mail a first-class letter or bulk mail must use the U.S. Postal Service. With these exclusive rights comes the obligation to serve; in contrast, the Postal Service's competitors may choose not to deliver to locations that they deem economically unviable. These conditions necessarily mean that the Postal Service does not compete on an equal footing with competing carriers. While it may be true that the Postal Service does not receive appropriated funds from Congress for its general operations, it can go to the Postal Rate Commission to seek an increase in rates for postage and other postal services for its operating funds.

9. Comment: DoD is very limited in its ability to expend appropriated federal funds to comply with state regulations where an unequivocal waiver of federal sovereign immunity is not present. We do not believe there is a waiver of sovereign immunity for the subject regulation as it is currently drafted. In this regard, we concur with the legal analysis of the U.S. Postal Service and the authorities it has cited. The language of Section 118(a) of the CAA manifests a congressional intent that federal agencies share the same regulatory burden for reducing air pollution as similarly situated private entities. (DoD)

Agency Response: See the response to Comment 8. Additionally, we note that tactical military vehicles are exempt from this regulation.

### **3. Scope and Applicability**

10. Comment: Diesel emissions from vehicles operated by federal agencies, in particular the U.S. Postal Service, impact residents in all communities in California.

Controlling these emissions are necessary. We strongly support the proposal and the argument that the regulation covers federal fleets. (BAAQMD)

Agency Response: Comment noted. The Fleet Rule for Public Agencies and Utilities applies to federal fleets.

11. Comment: The proposed regulation applies to any municipality or utility that owns, “leases, or operates.....” Since ARB’s rule promulgation for private heavy-duty fleets will likely lag the municipal fleet regulation by several years, we are concerned about the availability of compliant vehicles for lease or rent. (SCAP)

Agency Response: A leased vehicle used by a municipality or utility to carry out its routine operations will be treated as part of the municipality’s or utility’s fleet and will be subject to those laws applicable to the municipality or utility. Heavy-duty vehicles rented or under contract to a municipality for contracted work are not subject to the Fleet Rule for Public Agencies and Utilities. Availability of rental vehicles should not be affected by this rulemaking. Starting with the 2007 model year, new vehicles with heavy-duty engines will meet the 0.01 g/bhp-hr standard that meets BACT

12. Comment: From the Staff Report we understand that emergency response vehicles as defined by Vehicle Code section 27156.2 are exempt from the proposed regulation. However, this exemption is not included in the proposed regulation. We recommend including this exemption in the regulation for clarity and completeness. (Glenn Co, BCAQMD, RCRC)

Agency Response: The scope and applicability section of the regulation was modified to include the definition of an authorized emergency vehicle as described in the California Vehicle Code, section 27156.2, as exempt from this regulation.

13. Comment: We suggest that you raise the manufacturer’s gross vehicle weight rating to 26,000 lbs. (Glenn Co, Placer Co)

Agency Response: Comment noted. As stated in the Staff Report, medium heavy-duty and heavy heavy-duty diesel trucks – that is, vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds – have the highest diesel PM emissions compared to all medium duty/light heavy-duty trucks. Thus, targeting these vehicles, as the regulation does, is a cost-effective mechanism for diesel PM reduction.

14. Comment: We are a small agency and have to go out for bid on many projects. My concern is the interpretation of the contractor compliance could be restrictively interpreted to apply this regulation to contractors. (Del Norte Co)

Agency Response: The Fleet Rule for Public Agencies and Utilities applies to any municipality or utility that owns, leases, or operates an on-road diesel-fueled heavy-duty vehicle with a 1960 to 2006 model-year medium heavy-duty or heavy heavy-duty engine and manufacturer’s gross vehicle weight rating greater than 14,000 pounds. A

“municipality” means a city, county, city and county, special district, or a public agency of the United States of America or the State of California, and any department, division, public corporation, or public agency of this State or of the United States, or two or more entities acting jointly, or the duly constituted body of an Indian reservation or rancheria. A “utility” means a privately-owned company that provides the same or similar services for water, natural gas, and electricity as a public utility operated by a municipality. Vehicles owned and operated by contractors are not subject to this regulation.

#### **4. Definitions**

15. Comment: We request that CARB change the definition of a “low-population county” from a total population of less than 125,000 to population in the unincorporated areas of less than 125,000. (BCAQMD, Glenn Co, Placer Co)

Agency Response: The Board adopted a modification that allows a municipality or utility to apply for low-population county status when the municipality or utility is not located in any of the low-population counties specifically listed in the regulation. 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 section 2022.1(c)(4).

16. Comment: Amend the definition of “low usage vehicle” so that the limits are 5,000 miles or 200 hours regardless of size. Extend the same provision for utility and city fleets. (Glenn Co)

Agency Response: Comment noted. Expanding the definition of low usage vehicle would result in the reduction of emission benefits achieved by the regulation. The Board modified the proposed regulation to provide rural counties the flexibility needed to implement the regulation. See the responses to Comments 15, 26, 27 and 30.

17. Comment: We request that the ARB consider expanding snow removal operations to include snow-related operations so that ice sanding trucks or trucks used for other storm related damage such as flooding could get the same provisions as snow removal operations. (RCRC)

Agency Response: Sand trucks, which are essentially dump trucks outfitted with a sand dispenser, can be retrofitted as readily as a dump truck. Staff understood that snow removal vehicles, in contrast to sand trucks, would be very difficult to retrofit because of the permanently affixed snow removal equipment and the way the chassis was specially designed around the engine just for snow removal operations. If these sand trucks are indeed used only occasionally for storm operations, the rule provides the option to qualify them as low usage vehicles.

#### **5. Technology Availability and Feasibility**

18. Comment: Given the short timeframe between rule approval and the various retrofit deadlines, there is concern that DECS vendors may contractually agree to provide and install retrofit kits by the appropriate deadline and then fail to meet their obligations. (PG&E, CCEEB, DoD)

Agency Response: The Board adopted a modification of the implementation schedule for Group 2 (1988-2002 MY) engines to delay compliance deadlines by one year. This one-year delay will allow municipalities and utilities the time they need to plan their compliance strategies and purchase and install retrofit kits. DECS vendors are currently available and ready to evaluate fleets. Provided that a municipality or utility evaluates its fleet and communicates with vendors in a timely fashion, ARB expects no delays in retrofit technology availability. As with any program, unexpected events do occur. When the unexpected does occur, staff will work with public agencies and utilities on a case-by-case basis.

19. Comment: Several commenters expressed concern that they will enter into a contract based on their current knowledge of controls, and a higher level DECS will become available. (Sempra, SDGE, SoCalGas, PG&E, CCEEB)

Agency Response: When a new DECS is verified, ARB posts the verification on its verification web page at <http://www.arb.ca.gov/diesel/verdev/verdev.htm>. A municipality or utility can determine from this web page if another DECS is verified for a specific engine on the date of contract for installation or installation of that device. If a municipality or utility purchases a lower level DECS within 30 days from the time the highest level verified DECS is verified or posted to ARB's web page, the municipality or utility is not held responsible for knowing this information. Also, the date a municipality or utility enters into a contract to install the current highest verified level DECS, the municipality or utility is provided up to 6 months to install the devices, even if a higher level DECS enters the market.

20. Comment: As ARB is aware, currently there is no ARB standard or ARB sanctioned method to evaluate the appropriateness of temperature dependent DECS on a particular vehicle type. To determine the appropriate DECS, companies have conducted data logging studies based on their understanding of the DECS systems requirements. We are concerned that a DECS vendor (or others) may claim that the data logging was conducted improperly and hence the DECS selection was flawed. This issue has been conveyed to staff with the similar response that "ARB will not second guess DECS selection." However, we would prefer if this interpretation was included in the regulation or at the very least in the associated guidance document. (PG&E, CCEEB)

Agency Response: After identifying the highest level DECS for an engine (see response to Comment 19), a municipality or utility works with the DECS installer to ensure that the operation or duty cycle of the engine is sufficient to meet the operational conditions of the device verification. Data logging is not required by ARB but it is recommended as a method to determine if a DECS is appropriate for a particular

vehicle and duty cycle. The municipality or utility should consult the device manufacturers and/or installers as they may have their own guidelines and appropriate data logging strategy. If the municipality or utility plans to conduct its own data logging, it should be according to a protocol to which the municipality or utility and the manufacturer agree.

21. Comment: I would suggest that you allow all levels of ARB verified emission control strategies. This will avoid the blanket compliance extensions issued for waste hauler fleets and in many cases get immediate implementations. (Glenn Co, Placer Co)

Comment: A Level 1 device is not approved for use in Group 1 trucks in the large counties. Until there is a funding mechanism for repowering and replacing covered fleets, a Level 1 device should be approved for that group of trucks. I believe a 25 to 30 percent reduction from the dirtiest engines is better than no reduction at all. (R. Teebay)

Agency Response: As explained in the Staff Report, Level 1 devices are not approved for use in Group 1 engines in large counties due to the extremely high PM emission rates of these engines and the relatively low level of PM reduction (25 percent) achieved with Level 1 devices. The municipality or utility will be required to retire or replace the vehicle if a Level 2 or 3 DECS is not verified for the vehicle a year after the final implementation date. The regulation does allow a Level 1 DECS to be used on Group 1 engines in fleets located in low-population counties or granted low-population status. This is intended to provide a certain level of PM reduction from the oldest trucks during the extended implementation period approved for those fleets. See response to Comment 30.

## **6. Warranty and Repair of DECS**

22. Comment: A DECS manufacturer may go out of business, fail to honor product warranties or otherwise refuse to or is unable to repair or replace warranted DECS. Some DECS manufacturers have required a long turn-around time to provide replacement substrates. Replacement is required when serious damage has occurred or the component cannot be properly cleaned, either condition resulting in impaired functioning of the DECS. The majority of the City's heavy-duty vehicles are involved with essential public services and removing these vehicles from active use while awaiting a substrate replacement is not an acceptable operational or economic option. It is strongly recommended that a special circumstances option be included that allows for such vehicles to continue regular operation with either the hollow DECS canister only or a reinstalled muffler unit, until such time as the replacement substrate is received and installed. (City of LA)

Agency Response: The ARB staff will work closely with the affected industry when special circumstances do arise, as staff currently does with the solid waste collection vehicle industry, to provide the flexibility to protect public health and safety. It is the responsibility of the municipality or utility to plan for and replace a DECS that fails –

whether during or outside the warranty period – as it would with any other maintenance issues with their vehicle. Within the warranty period, DECS manufacturers are required to respond within a reasonable period to correct the deficiency. Staff is developing modifications to strengthen the verification procedure regulation in the first quarter of 2007.

## **7. Biodiesel**

23. Comment: I am concerned that the Staff Report failed to recognize the provisions of SB 975 (2005), which allows the use of biodiesel blend fuels in California. My request is for the Board to include in its FSOR a clarifying statement with respect to SB 975 and the fact that biodiesel blend fuels can be utilized in California. (Sen. Ashburn)

Agency Response: This regulation does not preclude the use of biodiesel. The Board allows the use of up to 20 percent biodiesel blended with commercial diesel (a blend referred to as B20) in public fleet vehicles equipped with retrofit devices, whether or not the devices were verified to be compatible with its use, and fleets using B20 are considered to be in compliance with the regulation provided they are using a verified device. However, if the device is not verified to be compatible with B20, the ARB cannot require the device manufacturer to carry the state mandated warranty. A policy letter, issued on December 6, 2005, can be found at [http://www.arb.ca.gov/msprog/mailouts/mouts\\_05.htm](http://www.arb.ca.gov/msprog/mailouts/mouts_05.htm).

In addition, ARB has established a biodiesel working group to develop fuel specifications that could be approved by the Association of Standards and Test Methods (ASTM). The workgroup consists of a broad range of stakeholders including biodiesel producers, distributors, petroleum refiners, regulatory agencies, and biodiesel end-users. More information on this working group can be found at: <http://www.arb.ca.gov/fuels/diesel/altdiesel/altdiesel.htm>.

24. Comment: Several comments were received concerned about the lack of availability of DECS that are verified for use with biodiesel. Many commenters use diesel fuel composed of 20 percent biodiesel (B20) to meet their obligations under the Energy Policy Act (“EPACT”). There is a concern that the proposed Diesel PM rule de facto precludes the use of B20, creating a conflict with EPACT requirements. (SCAP, USPS, PG&E, CCEEB, BAAQMD)

Comment: The military is the biggest single user of biodiesel in California, both as a matter of policy from the Secretary of the Navy this June, which said that all nontactical vehicles in California will use B-20, as well as compliance both with EPACT and with federal executive orders. DoD installations in California cannot simply choose to forego the use of biodiesel. Initial indications are that the duty cycle of DoD vehicles would preclude the use of the Johnson-Mathey DECS in the majority of DoD heavy-duty diesel fleet operations. We are concerned about what will happen if device manufacturers do not step forward after January 1, 2008 when SB 975 expires. (DoD)

Agency Response: Johnson-Matthey has verified its CRT™ particulate filter system as compatible with B20. ARB is committed to working out solutions to the biodiesel issues (see the response to Comment 23). Staff is actively engaged with the device manufacturers, and from what we know of the research being conducted, we expect to see more hardware devices verified on B20 in the next few months. We think that 2008 will be more than enough time for us to facilitate the verification of devices so the military can comply without any warranty risk. Testimony by the Manufacturers of Emission Controls Association (MECA) at the Board hearing also indicates that there will be more compatibility verifications and many options available for compatible use of B-20 for retrofits before 2008. We will follow this issue very closely and if necessary, we will return to the Board before the expiration of the January 1, 2008 statutory deadline.

## **8. Low-population Counties**

25. Comment: The County of Del Norte recommends that to lessen the adverse economic impact in the very rural areas of the State that an exemption be granted to those counties with a population of less than 50,000 persons. A total of 15 counties would be exempted. ARB could also consider an alternative that would exempt rural counties with a population of less than 50,000 persons and a population density no greater than 50 persons per square mile. This would reduce the number of exempted counties to 14. (Del Norte Co)

Agency Response: This modification was analyzed by staff and found to result in the significant loss of emissions benefits; therefore staff did not recommend this modification. The Board did adopt modifications to the proposed regulation that took into consideration rural counties' economic needs. See responses to Comments 15, 26, 27 and 30.

26. Comment: The determination of "low-population" should be considered on a density basis, not on a total population basis. Several of these 23 counties currently considered for delayed implementation have much higher densities of residents than Humboldt County. It only makes sense that the higher density of residents leads to higher risk than in Humboldt County, and unfairly restricts Humboldt County simply due to our larger area. (Humboldt Co)

Agency Response: Large counties such as San Bernardino and Kern have large unpopulated areas and could potentially satisfy a low density criterion. A new provision was added that would accommodate municipalities located in areas of low density, such as rural areas, within a large population county. A municipality or utility in such an area may apply to the Executive Officer for consideration for low-population county status, provided the applicant meets the criteria described in section 2022.1(c)(4).

27. Comment: We support the addition of a separate and more lenient implementation timeframe for rural counties, recognizing that these areas with populations under 125,000 may have difficulty meeting the same compliance dates as

urban areas. We note, however, that expanding the special allowances for rural counties to those with populations of less than 300,000 would not be appropriate as many of those counties – Santa Cruz, Napa, and Merced for example – contain urban and suburban areas. (Coalition)

Agency Response: The Board did not modify the definition of “low-population county,” but it did adopt a new provision to allow municipalities and utilities in rural areas to qualify for low-population county status. The fleets granted this status may take advantage of the additional time for compliance and other special provisions granted fleets in low-population counties. This modification would provide the flexibility these rural fleets need to meet their compliance costs while minimizing loss to emission benefits.

## **9. Implementation Schedule**

28. Comment: Several comments were received recommending that the Group 2 (1988-2002 model year) engines implementation schedule be adjusted by one to two years to accommodate existing budget schedules and purchasing process at the local level. Also, the initial compliance date of 2007 aligns with the cleaner engine standards that go into effect in that year. (NSCAPCD, SCAP, Glenn Co, Placer Co)

Agency Response: The Board recognized that the original timelines were based on an earlier hearing date. As a result, the Board incorporated a one-year extension of the compliance deadlines for Group 2 (1988-2002 model year) engines. This one year delay will allow municipal governments the time they need to plan their compliance strategies and their budgets.

29. Comment: The proposed compliance timeline is significantly more restrictive than other comparable diesel emission control measures currently in the rule development stage. Moreover, because of the nature of the federal procurement cycle, it may be five to seven years before DoD would have the funding to begin the costly process of implementing BACT on its in-use fleets. Accordingly, we recommend a phase-in for Group 1 and Group 2 engines that would start in 2010 and be completed in 2015. Implementation for Group 3 engines would start in 2013 and be completed in 2015. (DoD)

Comment: The proposed measure should allow compliance in accordance with the established replacement processes. Since our average diesel vehicle is about eight years, we request that the compliance deadline be extended to December 31, 2013. (SD City)

Agency Response: Comment noted. The Board based its modifications to the proposed regulation on cost-effective emission reductions. Keeping the status quo or providing an extension of the compliance deadlines results in the loss of emission benefits from the adopted regulation. The Board did recognize the need to extend the Group 2 deadlines to accommodate the typical procurement cycles. Also, the Board

incorporated a modification that provides an option to save on retrofit costs for Group 3 engines. Section 2022.1(d)(1)(c) allows the municipality or utility to extend Group 3 compliance deadlines if they have applied BACT to 100% of Group 1 and Group 2 engines. Instead of having to retrofit Group 3 engines near the end of their useful lives, the municipality or utility can postpone the retrofit and replace the vehicle with the cleanest technology in post-2007 model year vehicles. See the responses to Comments 28 and 37.

30. Comment: ARB should implement the regulations based on normal vehicle replacement. As with most rural counties, the Humboldt County Department of Public Works has an extremely limited budget for the proper repair and maintenance of infrastructure. As most of our funding is based on state and federal funds, which can easily be diverted to other uses by the funding agencies, we do not have the ability to plan long-term funding. We replace equipment on a needs and funding available basis. The mandatory time schedule will divert funds from road repairs, which could increase the rate at which roads have to be reverted to gravel and result in an increase in dust and PM10. (Humboldt Co)

Agency Response: The Board incorporated an optional implementation schedule for low-population counties and rural communities to accommodate these communities' concerns about the cost of the regulation. The operators of these fleets have two options for compliance, both of which provide more time compared to fleets located in larger counties. These options will provide more time over which to spread compliance costs. Other special provisions which help to mitigate the impact of the regulation on these fleets include the ability to use a Level 1 diesel control strategy on the oldest vehicles (Group 1) instead of having to replace an engine.

31. Comment: The proposed implementation schedule fails to clean up the dirtiest vehicles first. More than 20 percent of the vehicles covered in this rule were manufactured before 1987, when the first PM standards phased in. These much dirtier vehicles may cause more than half the pollution from this fleet.

The proposed implementation dates would allow vehicles dating back to 1960 to be used without any pollution controls until 2011, and possibly later with potential compliance extensions. Allowing uncontrolled vehicles over half a century old to continue to operate on California roads does not make good sense. We therefore urge you to shift the implementation timeframes in this rule to 2006 for "Group 1" vehicles so that the oldest vehicles are cleaned up first, achieving the greatest emissions reductions in the near term. (CATF, Coalition)

Agency Response: Currently, there are no verified diesel emission control strategies available to the Group 1 (1960 to 1987 model year) engines. The only available technology is costly – either engine repower or vehicle replacement. For this reason, fleet operators in low-population counties and rural areas are expected to take advantage of the optional implementation schedule and the accelerated turnover option which allow them more time to develop a plan to repower or replace the vehicles.

The Board shifted the starting implementation date to from December 31, 2006 to December 31, 2007 because of the delays of bringing the item to the Board eliminated sufficient lead time and the original date would create budgetary problems for the affected fleets in all counties, not just the low-population counties and rural areas. Also, December 31, 2007 was chosen as the starting compliance date to allow owners to take advantage of the new 2007 model year engine emission standard.

32. Comment: Allow public agencies and utilities headquartered outside of low-population counties and whose vehicles operate within low-population counties to elect to follow the implementation schedule in Table 3. Also, if a vehicle is moved from a low-population county to a non-low-population county, it must comply with the Table 1 implementation schedule upon reassignment unless, however, operation will be no more than 180 days in any 365 day period. (CALTRANS)

Agency Response: The regulation is applied to a municipality's or utility's total fleet. The longer implementation schedule applied to low-population counties allows for the balance of environmental and economic needs of those low-population areas. Statewide fleets operate their vehicles throughout California, not just in low-population counties, and utilize budgets based on statewide needs. In addition, they add to diesel PM exposure in more urbanized settings. Adding an element for a portion of a fleet such as recommended would introduce considerable logistical problems to ARB's enforcement of the regulation. Therefore, staff did not believe a change to the regulation was warranted and did not recommend this as a modification to the proposed modification. The Board did not find this comment sufficiently compelling and concurred with staff.

33. Comment: We recommend staggering utilities' implementation schedules to coincide with their general rate cases. This will provide the flexibility needed for the most cost-effective compliance strategies. We also recommend staggered implementation schedules to accommodate our unique equipment that require custom engineering. Many of our vehicles were built specifically for our unique operations and will not accommodate an off-the-shelf retrofit product. The current 10-month lead time is not adequate for the re-engineering and substantial turnaround time that may be required for a complete retrofit. (Sempra, SDGE, SoCalGas)

Comment: We request a twelve to eighteen month implementation/ramp up period from the January 1, 2006 initial action date. This will allow companies to further evaluate control technology and integrate it, as appropriate, within their fleets. Furthermore, a twelve to eighteen month implementation period would enable us to align and accurately incorporate the associated retrofit and early retirement program costs in our California Public Utilities Commission rate case. Finally, this implementation period may also allow companies to evaluate and potentially utilize new Level 3 DECS that may be verified by ARB in the near future. (PG&E, CCEEB)

Agency Response: The Board incorporated modifications that include the delay of the compliance deadlines for Group 2 engines by one year (2022.1(c)(1)); a compliance extension for Group 3 engines provided the fleet implements 100% BACT to Group 1 and 2 engines by 2008 (2022.1(d)(1)(c)); and a provision that allows application to the Executive Officer for approval of an extended implementation phase-in for Group 2 and Group 3 engines if the municipality or utility employs significant quantities of advanced technology vehicles to meet BACT requirements (2022.1(d)(1)(D)). As Ms. Deanna Haines (SDG&E, So CalGas) stated in her oral testimony at the Board hearing, these changes will accommodate the utilities' requests for flexibility. (Board hearing transcript page 324.)

## **10. Compliance Extensions**

34. Comment: We urge the ARB to include a "financial hardship" extension, similar to that included in the existing Fleet Rule for Transit Agencies. We recommend that this provision allow a fleet owner of a non-revenue generating vehicle to apply for an extension by submitting written documentation of extraordinary financial constraints. The fleet owner must also specify an alternative date and means to achieve reduced diesel emissions in the request for a delay. (RCRC)

Agency Response: The Board's incorporation of the provisions for low-population counties and for municipalities and utilities granted low-population county status is responsive to this proposal. With the extended implementation schedule allowed by the regulation, these fleets can spread out their compliance costs to mitigate the economic impact of the regulation.

35. Comment: Unless the Executive Officer offers blanket exemptions due to verified device unavailability, the use of valid compliance extensions by applicants is limited for Group 1 engines, which will prompt engine re-powering or vehicle replacements after one annual compliance extension. For other groups, lack of verified control devices for specific applications may also result in eventual vehicle replacements after several rounds of annual compliance extensions. Engine re-powering and vehicle replacements can be a significant cost to municipalities. (SCAP)

Agency Response: The regulation's compliance extensions allow the municipalities and utilities flexibility in scheduling their retrofits, engine repowering and vehicle replacements. There are two types of extensions that may be granted. One is the Executive Officer's blanket one-year compliance extensions granted when there is no verified DECS available for Group 1 or Group 2 engines. These extensions allow the municipality or utility to postpone engine repowering or vehicle replacement. These blanket one-year extensions may be granted annually but they will end December 31, 2012, even if there is still no verified DECS available. The municipality or utility must then comply with the BACT requirements of section 2022.1(b).

In the second case, a DECS may be verified for an engine, but cannot be used for that engine's specific application. As correctly interpreted by the commenter, the Executive

Officer will grant only one compliance extension for a Group 1 engine. The municipality or utility may comply by engine repowering or vehicle replacement, or by retiring the vehicle – that is, by selling it outside of California, scrapping it, or converting it for use as a low usage vehicle or low-population low usage vehicle.

Municipalities and utilities located in low-population counties or granted low-population county status will have later deadlines and other options such as the accelerated turnover option to seek compliance extensions. Staff's cost estimates assumed that with the flexibility provided by the compliance extensions, the municipalities and utilities would be able to schedule their engine repowering or replacement so as to lessen the impact of compliance costs.

36. Comment: We are concerned a number of vehicles in the municipal fleets will not be able to meet the regulations because of duty cycle. And this is an especially severe situation for the Group 1 engines. Right now a Group 1 engine could only get a one-time extension. We would like to see those extensions go out to 2011 in the case of duty cycle issues. (LACSD)

Agency Response: This is not a correct interpretation of the rule. It is only after the blanket one-year extensions are no longer available that the Group 1 engine is left with the one-time extension. Since DECS are not expected to be manufactured for Group 1 engines, the blanket one-year extensions should be available until the December 31, 2012 deadline (December 31, 2018 for low-population counties). Low-population counties will also have the additional flexibility granted by the accelerated turnover option. See the response to Comment 30.

37. Comment: Add a new provision to allow extension of the implementation schedule of Group 3 engines in exchange for accelerated Groups 1 & 2 replacements. By accelerating Groups 1 and 2 replacements we will be reducing pollution sooner than originally required by the PM Measure's language. This accelerated replacement option combined with a Group 3 extension will provide Edison the flexibility to quickly remove hundreds of old vehicles from the fleet and then systematically retrofit and replace newer vehicles with the cleanest technology available. The Group 3 extension will also save Edison's customers millions in retrofit costs for many Group 3 vehicles that will now be replaced in 2011 and 2012 but under the original schedule would have needed to be retrofitted in 2010 even though they were near the end of useful life. (SCE)

Agency Response: The Board incorporated modifications that allow the delay of the final compliance deadline for Group 3 engines by two years if BACT is applied 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. This extension applies only to Group 3 vehicles. BACT installations for Group 1 and Group 2 vehicles must meet the implementation schedule until December 31, 2008 (no delays for Group 1 and Group 2 when using this compliance extension).

38. Comment: Within the world of heavy-duty vehicles, the cleanest technologies are alternative-fueled and hybrid vehicles. Hence, we request that ARB modify the proposed regulation to offer incentives or “credits” to those who have implemented and plan to implement cleaner technologies, even if the number of vehicles is small compared to the overall fleet size. (PG&E, CCEEB)

Comment: For future vehicles using advanced technology, it is suggested that ARB include a provision that the Executive Officer has discretion for a longer implementation phase-in program commensurate to the emission benefits (including examining reductions from all criteria emission species, greenhouse gas emissions and petroleum dependency) for fleets that employ advanced technology vehicles to meet BACT. The advanced technology vehicles must be demonstrated to meet or exceed the Model Year 2007 and later emission standards. (PG&E, SCE, CCEEB)

Agency Response: In response to these comments, the Board adopted modifications that allow 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-electric 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.

39. Comment: In order to calculate eligibility for a compliance extension based on early implementation, the proposed rule stipulates that a vehicle may be counted as a compliant vehicle if it meets BACT, as defined in Section 2022.1(b), as of January 1, 2005. It is unclear why this cut-off date is selected, instead of the date of rule adoption or January 1, 2006, the first year where a compliance deadline is applicable. This penalizes public agencies such as the City that have taken aggressive early action to install DECS in advance of any regulatory requirement. This eligibility date should be changed to January 1, 2006 (City of LA)

Agency Response: The language in question (section 2022.1(d)(1)(c) of the originally proposed regulation) has been deleted from the adopted regulation. The language had been left over from an early version of the regulation and was no longer necessary. The intent of the originally proposed language 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. Since section 2022.1(c)(5)(c) already allows this subtraction, the original language was deleted to eliminate redundancy and avoid confusion.

40. Comment: There is currently no provision for compliance extensions necessitated by equipment manufacturers’ delays. To address this, we suggest that ARB add an additional provision in section 2022.1(d) permitting the municipality or utility to apply for an extension to cover such cases. (PG&E, CCEEB, DoD)

Comment: A DECS manufacturer may go out of business, fail to honor product warranties or otherwise refuse to or is unable to repair or replace warranted DECS. It is recommended that section 2022.1(e)(2) be expanded to include a provision allowing up to 180 days to replace the DECS with another verified control strategy at the same level. This is the typical timeframe required for the city to undergo a competitive bid process and to execute purchase contracts. If a replacement verified control strategy at the same level is not commercially available, up to 90 days should be allotted to secure a compliance extension pursuant to section 2022.1(d)(2)(B).

Comment: Allow a compliance extension based on operational infeasibility. If a severe operational impact is demonstrated using a currently available highest verified control strategy, grant a one-year extension (renewable if operational impact continues). (CALTRANS)

Agency Response: The Board incorporated modifications to provide sufficient flexibility for municipalities and utilities to comply with the regulation. The ARB staff will work closely with the affected industry when special circumstances do arise, as staff currently does with the solid waste collection vehicle industry, to provide the flexibility to protect public health and safety. See response to Comment 22.

41. Comment: Under the proposed rule, a municipality or utility is exempt from applying BACT to an engine if the engine is scheduled to be retired within one year of the compliance deadline. Given all the complexities and variables involved in managing large municipal fleets involved with essential public services, it is recommended that the compliance extension period be expanded to 18 months, and that the public agency be permitted to withdraw a vehicle from retirement status provided a verified DECS is installed within six months of reclassification. (City of LA)

Agency Response: The regulation requires that prior to using the exemption for a vehicle that will be retired within one year, any remaining vehicles in the fleet within same model year Group must install BACT. Many commenters suggested variations on the existing regulatory framework. The adopted Fleet Rule for Public Agencies and Utilities is patterned very closely after the Fleet Rule for Solid Waste Collection Vehicles. The Board concluded that there is sufficient flexibility within the regulation to meet fleet operational needs while reducing emissions.

## **11. Retired Vehicles**

42. Comment: The City sells its retired vehicles through auction. As such the city would have no knowledge as to whether the vehicle was sold to an in-state or out-of-state buyer. The requirement to identify the disposition of retired vehicles imposes an unworkable condition on the City in its ability to properly calculate implementation requirements over time. (City of LA)

Agency Response: The seller is required to fulfill the responsibilities identified in the regulation. The seller is not required to identify the disposition of retired vehicles, only to obtain from the auction house written confirmation that the vehicle will be sold out of state and that the buyer is notified that the sold vehicle can not be operated within the State of California.

## **12. Fiscal Impacts and Funding**

43. Comment: Rural counties stated that the proposed regulation will have a significant financial impact on rural county road departments. Their fleets are already older due to budget restraints. Unlike solid waste, private sector or the utility fleets, county road departments do not have service fees or charges that they can increase to cover the costs. This is further exacerbated by recent federal and state budget actions that have already diminished discretionary transportation funding for local road maintenance programs. (RCRC, Alpine Co, Modoc Co, Tuolumne Co, BCAQMD, Butte Co, Del Norte Co, Glenn Co, Placer Co)

Agency Response: The Board understands the economic constraints on rural governments and departments and adopted provisions that address their concerns. See the responses to Comments 15, 16, 25, 26, 27, and 30. These provisions include extended compliance deadlines for low-population counties and municipalities that apply for low-population county status, a one-year delay of the first implementation deadline to accommodate their typical budgetary cycle and an optional more extended implementation schedule that gives them more flexibility and time to plan and budget for their implementation strategies. The later deadlines provided with the optional schedule will delay the requirement sufficiently that more of these fleets become eligible for incentive funds. Incentive funding is only available when an emission reduction is not required by a regulation or goes beyond the requirements of a regulation.

44. Comment: As BACT compliance requirements are phased in, surplus emission reductions calculated for Moyer and MSRC funding are progressively reduced. It is recommended that methods be identified so that the Moyer and MSRC programs may continue to provide funding to meaningfully assist public agencies with early and proactive voluntary DECS implementation, or a new funding source, such as a technology assistance fund, should be identified. (City of LA)

Comment: Funding needs to be identified for rural counties. One opportunity may be to use Carl Moyer grants, provided projects meet the cost effectiveness criteria and emissions reductions are deemed surplus at the time of application. (Butte Co)

Comment: Amend the Carl Moyer Program to allow application for funding up to the final date of implementation. (Placer Co)

Comment: Because our vehicles are used on a more limited and sometimes seasonal basis, we do not meet the minimum qualifications for participation in the Carl Moyer program, which was designed to pay for the incremental purchase cost of a new vehicle

based on a cost-effectiveness formula that we can never meet. With extremely limited resources, Alpine County would benefit from being able to participate in the fleet modernization category of the Carl Moyer Program. The Alpine County Board of Supervisors therefore requests that the ARB include public agencies in rural jurisdictions with populations of less than 25,000 as a targeted vocation. (Alpine Co)

Agency Response: These comments are beyond the scope of this regulatory action. Carl Moyer Program funding is made available for fleets that go beyond regulatory requirements and was never intended to pay for regulatory requirements. In December 2005, the Board adopted specific guidelines for the use of Carl Moyer Program funds, in accordance with statute. With this in mind, the Board did adopt modifications to the original proposal for low-population counties that choose the accelerated turnover option, to allow for the use of Moyer funds for a much longer period of time. For low-population counties the first mandatory deadline is 2020. Thus vehicles in their fleet are eligible for Moyer funding until 2015. Staff have developed guidance documents that show what projects are fundable through this program.

### **13. Recordkeeping Requirement**

45. Comment: Several commenters stated that the requirement in the regulation, as currently drafted, that records be kept at the “*terminal where a vehicle normally resides*” was not feasible because some terminals may not have computers or filing systems or be regularly staffed. They requested that records be kept at a central location, and be required to be made available in a reasonable amount of time. (SCAP, City of LA, CALTRANS, SCE)

Agency Response: The Board incorporated a modification that would allow municipalities and utilities to maintain their records at a central location and make them available by appointment, at the terminal where the vehicle normally resides.

46. Comment: Simplify the reporting requirements. Most agencies could generate the data asked for. The problem is interpreting the hundreds of pages of information that would be generated. (Placer Co)

Agency Response: As a part of the implementation of the Solid Waste Collection Vehicle Fleet Rule, staff developed example record keeping forms available electronically for the end-users’ use. Staff will develop such recordkeeping guidance for the Public and Utility Fleet rule.

47. Comment: PG&E and others are concerned that should a “better” DECS become available during the interim period of fleet owner/operator DECS negotiation and installation (post-DECS evaluation), ARB will require use of the “better” DECS. We suggest that section 2022.1(f)(1)(B) be modified to include with the reason for using a Level 1 or Level 2 DECS, the date the diesel emission control strategy determination was made. (PG&E, CCEEB)

Agency Response: Staff recognizes that there may be some delay of an operator obtaining information on the verification of a device higher than Level 1 or Level 2 before the installation of a device as BACT. Policy has been implemented to mediate this issue. (See the response to Comment 19.) When determining BACT, it is the public agency's or utility's responsibility to ensure BACT is installed within the timeframe allowed. As with the Solid Waste Collection Vehicle Rule, the regulation uses the installation date as the point for determining BACT. Thirty days between determination of BACT and purchasing provides sufficient time to finalize a purchasing contract. The municipality should maintain a copy of the contract for its records, especially if the installation of the DECS takes up to 6 months to install and if a higher level BACT DECS is verified between the contract date and the installation date.

48. Comment: The requirement that compliance status information be kept in the vehicle seems unnecessary and provides seemingly little value from an enforcement perspective. This requirement presents an added burden to public agencies with limited benefit. (City of LA)

Comment: We recommend that section 2022.1(f)(2) be deleted from the proposed regulation. Requiring onboard compliance record keeping is an administrative burden that does nothing to improve air quality. (PG&E, CCEEB)

Agency Response: ARB's dual approach for enforcement of the Fleet Rule for Public Agencies and Utilities requires vehicles to be inspected at their terminals and at roadside inspections. In order for enforcement staff to know if a vehicle is in compliance with the regulation outside the terminal location, the renumbered section 2022.1(f)(3) requirements that each vehicle carry a vehicle label with the required compliance status and retrofit information must be maintained.

49. Comment: Reduce the list of vehicle information accessible at the terminal to include only the vehicle identification number and the status as a total-fleet or low-usage vehicle. (CALTRANS)

Agency Response: Section 2022.1(f)(1) requires municipalities to maintain records in a centralized location for the fleet on each vehicle with the required compliance status and retrofit information. The information required in section 2022.1(f)(1) is required for determining a fleet's compliance and effective enforcement of the regulation.

50. Comment: Delete records required in section 2022.1f(1)(F), i.e., the affirmation of non-operation within a metropolitan area. (CALTRANS)

Agency Response: Section 2022.1(f)(1)(F) requires documentation that vehicles operated by a municipality that is located in a low-population county or has been granted low-population county status are not operated at any time in a metropolitan area, as required by the regulation. This documentation is necessary because the regulation does not afford treatment as a low-population county if the vehicle is operated in a metropolitan area.

## 14. Contractor Compliance Requirement

51. Comment: We recommend that section 2022.1(g), Contractor Compliance Requirements, be removed from the regulation as the intent of the requirement is already being met by standard business/legal contract language which includes the wording that the contractor “must be in compliance with all federal, state and local requirements.” Adding section 2022.1(g) does nothing but require the municipality or utility the unnecessary added compliance burden of modifying existing and future contracts. (PG&E, CCEEB)

Agency Response: This requirement ensures that those who are under contract with a municipality or utility are aware that they are subject to all federal, state, and local air pollution control laws and regulations applicable to the contractor. The expectation is that the contract would be modified when renewed, if necessary, and there would be no need to modify existing contracts.

52. Comment: We have a very small road department. We have to bid projects. In Del Norte County, because of our proximity, our economic tie is really to Oregon. So our bidders tend to be from Oregon. If that provision is interpreted strictly as it’s written, then we are not going to get those bidders out of Oregon. (Del Norte Co)

Agency Response: In the contractor compliance requirement, the contractor must comply with air pollution control laws and regulations applicable to the contractor, not the public or utility fleet operator. The proposed regulation is not intended to control diesel PM emissions from privately owned vehicles other than those owned by utilities or those leased by a municipality and operated by the municipality (See the response to Comment 11). The bidders from Oregon are required to comply with all federal, state, and local air pollution control laws and regulations applicable to them before the adoption of the diesel PM control measure and this obligation will not change with the adoption of the regulation.

53. Comment: Section 2022.1(h) states that “Any violations of this section may carry civil penalties...” We believe that the intent of this section, when applied to section 2022.1(g), is to hold only the contractor liable for any non-compliance. We request though that it be made very clear either in the regulation itself, or in the staff report, that only the contractor would be held liable for any non-compliance, and not the owner/operator. (SCAP)

Agency Response: This section is about compliance with the Fleet Rule for Public Agencies and Utilities. It therefore describes the responsibilities of the municipality or utility subject to the regulation. The contractor is not subject to this regulation. Section 2022.1(g) requires only that the contractor be in compliance with all federal, state, and local air pollution control laws and regulations applicable to the contractor.

## 15. Non-Compliance

54. Comment: If an agency has made a good faith effort to provide all the requisite data under the record keeping provision, and the agency is unable to comply for selected engines, it is recommended that agency be entitled to a waiver of violation under Non-compliance section 2022.1(h). Data availability problems are most common with older engines, and particularly for engine family, series and serial number information. (City of LA)

Agency Response: During the implementation phase of the solid waste collection vehicle rule, engine labeling has been an issue. Staff continues to work with engine and DECS manufacturers to ensure the engine and DECS family names are available and that durable labels are installed on the engines and on DECS. Stakeholders need this information to identify the appropriate BACT. Staff will continue to work with the regulated community to assist them in identifying the appropriate recordkeeping information and is developing tools to assist in this process.

### B. Summary of Public Comments Submitted During The 15-day Comment Period and Agency Responses

During the 15-day supplemental comment period, written comments were received from:

Gerald Orcholski	Citizen	Orcholski
Robert Lucas	California Council for Environmental and Economic Balance	CCEEB
Joseph Kubsh	Manufacturers of Emissions Controls Association	MECA
Sven Thesen	Pacific Gas and Electric	PG&E
Howard Gollay	Southern California Edison	SCE
Bernie Orozco	Sempra Utilities	Sempra
Mary Pitto	Regional Council of Rural Counties	RCRC
Susan Koetting	U.S. Postal Service (USPS)	USPS

### 1. Scope and Applicability

55. Comment: The Postal Service continues to maintain that the proposal by the ARB to apply these regulations to federal agencies, including the Postal Service, violates the CAA. By including federal entities in its definition of municipality to which the proposed rule is applicable, ARB would apply the rule to federal governmental entities, but not to the private sector. The Postal Service views this as illegal discrimination under the partial waiver of sovereign immunity contained in the CAA. See 42 U.S.C. §§7418(a), commonly referred to as Section 118(a). (USPS)

Agency Response: This comment does not specifically address the proposed modifications to the regulation text. See response to Comment 8.

56. Comment: The implementation schedule penalizes fleets that have replaced and/or updated their vehicles on a regular basis, such as the Postal Service while being lenient toward fleets which operate much older vehicles. (USPS)

Agency Response: This comment does not specifically address the proposed modifications to the regulation text. However, section 2022.1(d)(1) of the regulation provides allowances for fleets that have proactively taken steps to reduce emissions from their vehicles through early application of BACT. It also provides incentives and credits to fleets that use significant quantities of advanced technology vehicles. The fleets which operate much older vehicles tend to be located in low-population counties or rural areas. Staff agrees that the regulation provides an optional implementation schedule for those fleets that is more lenient. The rationale is provided in Resolution 05-64 for this rulemaking which states that “The optional implementation schedule provided for operators of public or utility fleets in low-population counties is appropriate to mitigate the fiscal and economic impact of the regulations on these operators, because the public fleet operators in these counties may have less access to revenue sources such as vehicle license fees, road tax, property taxes, and sales taxes than those in other areas of the state, and the utilities have fewer customers.”

## **2. Definitions**

57. Comment: The word “rolling” was deleted from the definition of “low usage vehicle” in section 2022(b)(3) but not from “low-population county low usage vehicle” (section 2022(b)(4)). What is the five year mileage or engine-hour average then based on? (RCRC)

We request that “rolling” be retained. This would be consistent with the discussion of low use vehicles in the Staff Report. (PG&E, SCE, SDGE, CCEEB)

Agency Response: In response to these comments, we have reinserted the term “rolling” into the definition of “low usage vehicle.” We agree that this would be consistent with the discussion in the Staff Report. It reflects the Board’s intention to base the five-year average mileage and engine-hour average on a rolling calendar year, which is the 12 months immediately preceding the current date. For example, if today’s date is May 3, 2006, the rolling calendar year would include the past twelve months up to and including May 3, 2005. For determining whether a vehicle qualifies as a “low usage vehicle,” the five-year average is to be based on the mileage or engine-hours recorded for the rolling five year period ending with the current date.

58. Comment: We request that language be included in the Final Statement of Reasons and guidance document to clarify the definition of “retirement.” We are concerned that a municipality or utility could be held responsible for what the next owner of a “retired” vehicle does with it. (PG&E, SCE, SDGE, CCEEB)

Agency Response: As defined in the regulation, an engine or vehicle is retired if it is withdrawn from the municipality's or utility's fleet and is either sold outside of California, scrapped, used in a low usage vehicle or a low-population low usage vehicle, or sold in California after it has BACT applied prior to sale. Simply removing the vehicle from a fleet by selling it does not meet any of the requirements for retirement unless it is sold to an owner outside of California and is no longer used in California. Also see the response to Comment 41.

### **3. Implementation Schedule**

59. Comment: At the December 8, 2005 hearing, the Board, based on the testimony of many local jurisdictions, agreed to push back the first implementation date for the Group 2 engines by one year relative to the original ARB staff proposal (push back of the 20 percent compliance date for BACT from December 31, 2006 to December 31, 2007). This in-turn has now resulted in a push back by one year in the two other implementation dates associated with Group 2 engines (for the 60 percent and 100 percent BACT compliance) as indicated in the July 7, 2006 notice of modifications to this rule.

Such last-minute changes or other delays make it more difficult for emission control technology providers to justify the necessary financial and resource commitments needed to participate in the California retrofit market. MECA recommends that a change in the first implementation date for Group 2 engines is sufficient to provide end-users with some additional budget planning time. Delays in the other two implementation dates for Group 2 engines in this rule are not necessary, and will only serve to delay the return on investment of technology developers that have made substantial financial commitments to serve the California diesel retrofit market and further delay the public health and clean air benefits of this program. (MECA).

Agency Response: The changes to the implementation schedule respond to the needs of the regulated parties. This schedule also allows manufacturers extra time to develop and certify new DECS and thus provide greater choice and maybe improved cost-effectiveness to the end users.

60. Comment: By what date do the agencies need to apply for consideration as a designated low-population county and what information will be required in the application? (RCRC)

Agency Response: No specific date is provided in the regulation. A municipality must apply and obtain approval prior to meeting the low-population counties implementation schedule. Until that time the municipality will need to follow the regular implementation time lines. Staff is drafting guidance documents and fact sheets, and has planned training seminars where further questions may be addressed.

### **4. Compliance Extensions**

61. Comment: We understand that a municipality or utility is allowed to apply for multiple compliance extensions for the same vehicle(s) such as described in sections 2022.1(d)(1)(c) and 2022.1(d)(1)(D). We request that a clarification of this issue be included in the FSOR and guidance documents. (PG&E, SCE, SDGE, CCEEB)

Agency Response: A municipality or utility can separately apply for each compliance extension available for the same vehicle. If a municipality is using advanced technology credits granted by section 2022.1(d)(1)(D), the total fleet will be evaluated as to the credit the municipality will obtain. The total length of the compliance extensions would have to meet the requirements for proportionate benefits.

For a single group extension such as that authorized by section 2022.1(d)(1)(c) – which prescribes the early implementation schedule (100 percent of Group 1 and Group 2 engines by December 31, 2008) to obtain an alternate Group 3 implementation schedule – the extension is applied solely to the group that is receiving the extension, not to the early implementation groups. In this case, the extension is solely for Group 3 vehicles, Group 1 and Group 2 must meet their normal implementation schedule. Staff is drafting guidance documents and fact sheets, and has planned training seminars where further questions may be addressed.

62. Comment: We do not understand the need to revise the deadline date for informing the Executive Officer of intent to comply with the accelerated turnover option? The original July 31, 2008 date is still prior to the first compliance deadline of December 31, 2008 for low-population counties, identified in the Implementation Schedule. The additional year to clarify which path the agency intends to follow affords the agency additional time to evaluate new available technologies that will become available during the year and be able to make a better decision on which pathway to take. (RCRC)

Agency Response: The original July 31, 2008 deadline date for informing the Executive Officer of intent to comply with the accelerated turnover option has been restored.

## **5. Recordkeeping Requirement**

63. Comment: The low usage vehicle and low-population county low usage vehicle are based on miles **or** hours but in Section 2022.1(f) (1) (E), the new language for reporting requirements refers to mileage **and** engine hours. (RCRC)

Agency Response: The language of this section has been corrected to refer to “mileage or engine hours” to be consistent with the definition of low usage vehicle and low-population county low usage vehicle in the originally proposed regulation. Municipalities will need to maintain hours of operation if the vehicle’s engine is use in a power-to-operate or idling operation.

64. Comment: The proposed revision of the labeling requirement is not clear and may not work with all vehicle types. We propose this section be reverted to the original language. (PG&E, SCE, SDGE, CCEEB)

Agency Response: In response to this comment, the labeling requirement will be restored to the language of the originally proposed regulation.

65. Comment: We understand that records may be kept at a centralized location rather than at vehicle terminal. Per section 2022.1(f)(2), records are only required at vehicle terminals upon appointment with ARB inspectors. We request that this interpretation be reiterated in the Final Statement of Reasons and the guidance document. (PG&E, SCE, SDGE, CCEEB)

Agency Response: The commenter's interpretation is correct. The title of section 2022.1(f)(1) was modified for clarity.

66. Comment: We agree with the intent of section 2022.1(f)(1)(J), which specifies the records needed to document the retirement of a vehicle. The majority of our equipment, when retired, is sold at auction. We request that the Final Statement of Reasons and guidance document include clarification of this recordkeeping requirement. (PG&E, SCE, SDGE, CCEEB)

Agency Response: The responsibilities of the municipality or utility are clearly stated in section 2022.1(f)(1)(J). The auctioneer in this case would be the "recipient" identified in the regulation. If the party selling the engine completes all of the documentation required by the regulation and obtains from the buyer written confirmation that the destination of the engine will qualify it as a retired engine, then the seller has met the requirements of the regulation. The guidance documents will address this issue in detail.

## **6. Contractor Compliance Requirements**

67. Comment: We understand that the language that we use in our contracts such as "contractor must be in compliance with all federal, state and local laws and regulations." To confirm this, we request that the Final Statement of Reasons and guidance document affirming our understanding. (PG&E, SCE, SDGE, CCEEB)

Agency Response: This language is acceptable as it reflects the requirements of the regulation.

## **7. Other**

68. Comment: I cannot tell you how often I see school buses emitting highly visible emissions. This Control measure is very much needed. I completely agree with its passage. (Orcholski)

Agency Response: Comment noted. This regulation does not affect emissions from school buses, but affects heavy-duty diesel vehicles operated by school districts. Diesel exhaust emissions from school buses are controlled through the Lower- Emission School Bus Program.

## **ATTACHMENT A**

### **NONSUBSTANTIAL MODIFICATIONS OR REVERSIONS TO THE ORIGINALLY-NOTICED TEXT MADE TO THE REGULATION AFTER THE 15-DAY COMMENT PERIOD**

The final regulation text in the Final Regulation Order reflects the modified text issued on July 7, 2006 with the Notice of Public Availability of Modified Text, with the subsequent nonsubstantial modifications or reversions to the originally-notice text described below.

Page 1, section 2022(b)(3), definition of “low usage vehicle”: In response to Comment No. 57, the word “rolling” was reinserted in the phrase “5 year rolling mileage or engine-hour average,” to read as it had in the originally proposed text, which had previously been available for comment.

Page 2, section 2022(b)(5), definition of “retirement” or “retire”: The definition was revised to improve clarity without affecting the intended meaning. In the original proposal, an act (retirement or retire) was defined as an object (an engine meeting specified criteria). In the final modified text, the definition refers to the acts of “withdrawal” or “transfer” so that it is parallel to the terms defined.

Page 2, section 2022(b)(6), definition of “total fleet”: Additional outlining language was added for clarity and the footnote at the end was moved to follow the period.

Page 3, section 2022.1(a)(1): “BACT” was inserted after best available control technology as the acronym used for this term.

Page 4, section 2022.1(b)(3): The punctuation was modified for clarity and “2004 – 2006” was changed to “2004-2006”.

Page 4, section 2022.1(c)(1): The reference used in footnote a was changed from “section 2700” to “section 2020” which provides the definitions for sections 2022 and 2022.1.

Page 6, section 2022.1(c)(3) and Table 4: The text, “or Granted Low-Population County Status” was added to the original text titles to be consistent with all sections applicable to municipalities that are granted low population county status.

Page 7, section 2022.1(c)(5)(A): A period was added at the end of the text of footnote 2.

Page 9, section 2022.1(d)(1): The text, “the municipality or utility” was added after the last “and” in the paragraph to improve clarity.

Page 9, section 2022.1(d)(1)(D): The text, “MY” was replaced with “model year” for clarity.

Page 10, section 2022.1(d)(2)(A)2: The text, “or Granted Low-Population County Status” was added to the original text to be consistent with all sections applicable to municipalities that are granted low population county status.

Page 10, section 2022.1(d)(2)(B): “Municipality or Utility Application for Compliance Extension”: For clarity and consistency, the subsection “(d)” was changed to “(d)(2)” and the application deadline requirement was changed from six months to “no later than July 31” to be consistent with the July 31 application deadline specified section 2022.1(d)(2)(B)(6) for the same application.

Page 11, section 2022.1(d)(2)(B)6: The subsection headings in (d)(2)(B)6.a. and b. were italicized to be consistent with other subsection headings.

Page 12, section 2022.1(d)(6): In response to Comment # 62, the date of July 31, 2007 was replaced with the original regulatory text date of July 31, 2008, which had previously been available for comment.

Page 13, section 2022.1(e)(1)(A) and (B): For consistency, “level” was changed to “Level.”

Page 14, section 2022.1(f)(1), *Records to be Kept For Inspection*: (1): In response to Comment No. 65 and to improve clarity, the phrase “at the Terminal” was removed from the heading of the section; since the phrase does not appear in the text of the regulation it did not in any event have regulatory effect.

Page 15, section 2022.1(f)(1)(E): In response to Comment No. 63 and to maintain consistency with the definitions of “low usage vehicle” and “low-population county low usage vehicle,” the regulatory language added as part of the 15-day changes was modified from “mileage and engine hours” to “mileage or engine hours.”

Page 16, section 2022.1(f)(3), *Records Kept in the Vehicle*: In response to Comment No. 64, the final regulatory language restores the originally proposed text.

Page 16, section 2022.1(f)(3)(C): For consistency in requirements and with the definitions of low usage vehicle or low-population county low usage vehicle, staff added language to the originally proposed text. The text was modified from “vehicle’s mileage” to “vehicle’s mileage or hours” and the date of reporting was changed from January 1 to December 31 to be consistent with the criteria used in definitions of low usage vehicle and low-population low usage vehicle and all other reporting and labeling requirements.

Page 17, section 2022.1(h)(2), *Non-Compliance*: The referenced paragraph requiring records has been changed from (f)(2) to (f)(3) to maintain consistency with modifications made in section 2022.1(f).