

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A CLEAN ON-ROAD SCHOOL BUS REGULATION FOR SCHOOL BUSES OPERATING IN THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of a regulation for school buses operating in the South Coast Air Quality Management District (SCAQMD or District). Both owners of public and private school bus fleets and private companies under contract to a school district are affected by this proposal. This notice summarizes the proposed control measure. The staff report presents the control measure in greater detail.

DATE: September 15-16, 2005

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 East Copley Drive
Diamond Bar, California 91765

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 15, 2005, and may continue at 8:30 a.m., September 16, 2005. This item may not be considered until September 16, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before September 15, 2005, to determine the day on which this item will be considered.

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

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 2024 and 2024.1 of article 4 within chapter 1, division 3, title 13, California Code of Regulations (CCR).

Background: The Air Resources Board (ARB or the Board) is the state agency responsible for protecting public health and the environment from the harmful effects of air pollution. The ARB has the sole responsibility for controlling emissions from vehicular sources, except as otherwise provided by law.

The SCAQMD is the sole and exclusive local agency within the South Coast Air Basin and the desert portion of Riverside County in the Salton Sea Air Basin with responsibility for comprehensive air pollution control. The South Coast Air Basin has been designated as a serious nonattainment area for particulate matter (PM) and an extreme nonattainment area for ozone. In 1987, the Legislature enacted Health and Safety Code section 40447.5, which authorizes SCAQMD to adopt regulations that require operators of 15 or more public and commercial fleet vehicles, when adding or replacing vehicles, to purchase vehicles that are capable of operating on methanol or other equivalently clean-burning alternative fuel.

Under its Clean Fleets program, SCAQMD adopted seven fleet rules during the years 2000 and 2001. These rules were developed to gradually shift public agencies and certain private entities to lower emissions by requiring them to acquire alternative fuel vehicles whenever an operator with 15 or more vehicles purchased or leased vehicles for replacement or addition to its fleet. One of the seven rules is Rule 1195 for Clean On-Road School Buses.

Shortly after the District adopted its fleet rules, the Engine Manufacturers (EMA) and the Western States Petroleum Association (WSPA) sued the District in federal court challenging its authority to adopt the rules. In April 2004, the United States Supreme Court ruled that it appears likely that at least certain aspects of the fleet rules were preempted by section 209(b) of the federal Clean Air Act. The Supreme Court remanded the case back to the federal District Court to determine whether some parts of the fleet rules could be characterized as state purchasing decisions and, if so, whether preemption applied. In response to this decision, SCAQMD requested that ARB submit the District's rules to the United States Environmental Protection Agency (U.S. EPA) for a waiver of preemption pursuant to section 209(b) of the Clean Air Act. The ARB requested public comment and consulted with U.S. EPA regarding the legal requirements for obtaining a waiver for a rule adopted by a local government. The ARB staff concluded that the fleet rules, as written and adopted by SCAQMD, would not receive a section 209(b) waiver because these rules have not been adopted by ARB as state regulations (applicable within the boundaries of SCAQMD).

When the State Legislature adopted Health and Safety Code section 40447.5, it intended that SCAQMD have the authority to adopt and implement clean fuel fleet rules. Accordingly, ARB staff has reviewed the information and prepared the present proposal, which through the state rulemaking process, is meant to support the intent of the State Legislature.

Meanwhile, on May 5, 2005, the federal District Court ruled that, under the "market participant" doctrine, the SCAQMD fleet rules are not preempted to the extent they apply to purchasing decisions made by state and local governmental entities. However, the District Court has not yet addressed questions of whether the fleet rules are preempted as they apply to private entities under contract with state or local governments or to used or leased vehicles. It is also possible that EMA or WSPA could appeal the "market participant" decision.

Proposed Actions: The ARB and the local air districts recognize that emissions from diesel-fueled engines and vehicles are a serious public health concern, particularly for school age children who are more susceptible to their harmful health effects. The proposed regulation would require school districts, private schools, and private companies that contract with school districts to provide school bus services, to purchase/lease school buses powered by the cleanest engines available when adding or replacing school buses in the fleet. Proposed sections 2024 and 2024.1, title 13, CCR, would comprise the clean on-road school bus regulation for school buses operating in SCAQMD.

1. Scope and Applicability

The proposed regulation establishes requirements that apply beginning in the 2005 model year when school buses are purchased or leased by public and private school bus fleets that operate 15 or more buses within SCAQMD. Sufficient funding through grants or other sources external to the school bus fleet's budget must be available to fully cover the cost difference between a school bus purchase that would be made in the absence of the regulation and the school bus purchase or lease that meets the proposal's emission criteria. If this funding is not available, the school bus fleet operator may apply for an exemption from these requirements.

The proposed regulation also requires that operators of public and private school bus fleets of 15 or more buses install verified diesel emission control methods on at least 25 percent of their in-use diesel buses for which a method is available each year, beginning January 1, 2006. Sufficient grants or other sources external to the school bus fleet's budget must be available to cover the cost and installation of the verified diesel emission control method.

A school bus is defined as any vehicle that is used for the specific purpose of carrying students between home and school and to school activities. This applies to students through the twelfth grade. A medium-duty school bus is any school bus having a gross vehicle weight rating of 6,000 to 14,000 pounds. A heavy-duty school bus is any school bus with a gross vehicle weight rating of over 14,000 pounds.

2. Purchase and Lease Requirements for Newly Manufactured Vehicles

The regulatory proposal places purchase and lease requirements on operators of school bus fleets of 15 or more medium- and/or heavy-duty school buses. This proposal requires that when adding to or replacing medium- and heavy-duty school buses with new buses in an existing fleet, fleet operators must purchase or lease new school buses equipped with engines meeting a set of standards which have been given the designation of best engine selection/technology (BEST). The BEST criteria for newly manufactured medium- and heavy-duty vehicles are described in the following two paragraphs.

BEST for Medium-duty School Buses: The BEST criterion for the purchase or lease of a newly manufactured medium-duty school bus is that the bus be equipped with a non-diesel engine certified as Ultra Low Emission Vehicle (ULEV) or cleaner.

BEST for Heavy-duty School Buses: The BEST criteria for the purchase or lease of a newly manufactured heavy-duty school bus include emission standards for both NO_x and PM that require increasingly cleaner vehicles as the program progresses. The standards for 2005-2006 model-year engines would require certification to a NO_x plus non-methane hydrocarbon (NMHC) standard of 1.8 grams per brake horsepower-hour (g/bhp-hr) and to a PM standard of 0.03 g/bhp-hr. For purchases or leases of new school buses with 2007-2009 model-year engines, certification to 0.2 g/bhp-hr maximum NO_x family emission limit (FEL) and to a 0.01 g/bhp-hr maximum PM standard is required. At this time, only alternative-fueled engines are expected to be able to meet 0.2 g/bhp-hr NO_x FEL. For 2010 and later model-year school bus purchases and leases, the engine must be certified to the NO_x standard of 0.2 g/bhp-hr and the PM standard of 0.01 g/bhp-hr that will apply to all alternative fuel and diesel fuel heavy-duty engines.

3. Purchase and Lease Requirements for Pre-Owned School Buses

When school bus fleet operators purchase or lease a pre-owned heavy-duty school bus, the regulatory proposal will require that they purchase or lease a school bus that has been repowered with a new engine that meets the BEST criteria. When school bus fleet operators purchase or lease a pre-owned medium-duty school bus, the regulatory proposal will require that they purchase or lease a school bus with an engine certified to the Low Emission Vehicle (LEV) emission levels or cleaner.

4. Exemptions

The regulatory proposal provides exemptions from the purchase or lease requirements for several reasons. The lack of availability of external funding to pay for the incremental costs of a cleaner vehicle is the first and primary reason for granting an exemption.

Exemptions are also available based on hardship due to difficulty in the practical application of the regulatory proposal's purchase or lease requirements. Exemptions may be granted based on the lack of availability of alternative-fuel refueling facilities or lack of funding for installation of refueling facilities. Exemptions may also be granted based on the non-availability of the required bus size for a fixed route, the allowance for buses required for field trips, and the occasion when an urgent need arises for the rapid acquisition of additional buses due to unforeseen circumstances. Additionally, there is a provision for the merger of two private bus fleets or the case where one fleet purchases another. In such cases, the transfer of ownership of school buses due to the merger or fleet purchase will not be subject to the purchase requirements if both fleets were already operating within SCAQMD at the time of the purchase or merger.

An exemption for a pre-owned bus could be granted if the oldest school bus in the operator's existing fleet is scrapped or permanently removed from operation in the fleet. The pre-owned school bus that is added to the fleet would have to be equipped with a verified diesel emission control method if (i) the bus is eligible for such a control method, and (ii) grants or external funding are available for the incremental cost of the verified diesel emission control method.

5. Diesel Emission Control Methods for School Buses in the South Coast Air District

The regulatory proposal includes a provision to reduce emissions from in-use diesel school buses operating in fleets. Pursuant to current regulations, ARB verifies emission control methods designed to be used in retrofitting certified heavy-duty engines. The proposal would require that operators of public and private school bus fleets of 15 or more buses install verified diesel emission control methods on at least 25 percent of their buses for which a method is available each year, beginning January 1, 2006. The control method installed must be the highest level of emission control that has been verified for the specific engine on which it will be used. If the emission control method is a fuel-based verified method, then the school bus operator must continue to use the fuel-based method as long as the bus is being operated in the fleet. If the operator wishes to discontinue using the fuel-based method, the operator must apply to SCAQMD to change to another verified method for the remaining operating life of the bus.

6. Record-Keeping Requirement for Fleet Operators

The proposed regulatory action includes provisions requiring record-keeping for purposes of compliance, auditing, and enforcement. Specifically, fleet information including manufacturer, model, model year, and fuel type must be made available to the District upon request to demonstrate compliance. Other records to be retained by the fleet operator include proof supporting exemptions and purchase records for fuel and fuel additives that are elements of an emission control strategy.

7. Administration and Non-Compliance

Under the proposal, SCAQMD's Executive Officer would be responsible for administering the regulation, including consideration of requests for exemptions. The Executive Officer or his/her designee may bring an action for civil penalties as specified in state law and regulations, including, but not limited to, Health and Safety Code section 39674, for any violation of this regulation.

8. Emission Benefits of the Proposal

The purpose of the proposed regulation is to reduce emissions from school buses, and to support the State Legislature's grant of authority to SCAQMD to adopt clean fuel fleet

rules. The proposed regulation seeks to close the possible emission gap created by the United States Supreme Court's decision. Staff's proposal would reduce approximately 0.04 tons of NOx per day and 0.001 ton per day of PM in SCAQMD by 2010.

COMPARABLE FEDERAL REGULATIONS

Although U.S. EPA sets emission standards for diesel and gasoline engines, U.S. EPA does not separately regulate school buses or school bus fleet operators. Federal emission standards for engines are codified in title 40, Code of Federal Regulations, part 86.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report, which includes the Initial Statement of Reasons (ISOR) for the proposed action and a summary of the economic and environmental impacts of the proposal. The staff has also prepared a Technical Support Document (TSD) that summarizes technology available and feasible for compliance with the proposal.

Copies of the staff ISOR, TSD, and the full text of the proposed regulatory language may be accessed on the Board's website listed below, or may be obtained from the Board's Public Information Office, Air Resources Board, Visitors and Environmental Services Center, 1001 I Street, 1st Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on September 15, 2005.

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

Inquiries concerning the substance of the proposed regulation may be directed to Ms. Krista Fregoso, Air Pollution Specialist, by email at kfregoso@arb.ca.gov or by phone at (916) 445-5035, or to Ms. Renee Kemena, Manager, by email at rkemena@arb.ca.gov or by phone at (916) 327-7214.

Further, the agency representative and designated back-up contact person to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Ms. Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, ISOR, and all subsequent regulatory documents, including FSOR when completed, will be available on ARB's Internet site for this rulemaking at <http://www.arb.ca.gov/regact/scschl05/scschl05.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will create costs or savings to a state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary savings to local agencies.

1. Fiscal Effect On State Government

No increased cost is expected to the State upon the adoption of this proposed regulation. Funds provided by the State to reimburse school districts for their costs have already been allocated for these types of expenditures.

2. Fiscal Effect on Local Government

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on school districts. There are 129 public school districts in SCAQMD and of these, 65 have bus fleets containing 15 or more buses. The purchase requirements mandated in this proposal are entirely contingent on the availability of external funding. Therefore, the only cost to the affected school districts is for the minimal record-keeping requirements that aid in determining compliance with the proposed regulations.

Under Education Code section 17920 et seq., state mandated programs placed on public schools must be funded. Consequently, the incremental implementation cost for this regulatory proposal will be funded by public grants and funds external to the school bus fleet's fiscal budget. It is estimated that the cost of this regulation would be approximately \$5.3 to \$6 million in the current fiscal year (July 2005 to June 2006), and approximately the same in the following fiscal years through 2009.

3. Need for Reporting Requirements

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), ARB's Executive Officer has found that the reporting requirements of the regulation which apply to school districts and private companies under contract to a school district are necessary for the health, safety, and welfare of the people of the State of California.

4. Fiscal Impact on Businesses

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on businesses. The businesses directly affected by this regulatory proposal are

private fleets of school buses that operate within SCAQMD and have 15 or more buses. These fleets include one private school fleet and 12 private contractor school bus fleets that provide services to public schools. Because the proposed regulation is structured to exempt school bus fleets from requirements if external funding is not available, the staff believes there will be no significant impact on small businesses. In addition, the proposed regulation exempts fleets with fewer than 15 buses, making it even less likely that small businesses will be impacted.

Businesses indirectly affected by the regulatory proposal are school bus manufacturers, diesel and alternative-fueled engine manufacturers, diesel retrofit-equipment manufacturers, alternative fuel providers, and alternative-fuel-refueling equipment manufacturers and installers.

The adoption of the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. Businesses that provide technology or services mandated under this proposal, such as engines, emission control systems, alternative-fuel refueling equipment, or installation services, may experience significant economic benefit from this rule. Some, but not all, of those businesses are located in California.

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

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.5(a)(9) on representative private persons or businesses in reasonable compliance with the proposed action.

5. Costs to the Public

School buses in SCAQMD are owned and operated by school districts and private companies under contract to a school district. Grant money for the incremental cost of purchasing school buses and installing infrastructure, such as fueling stations, must be available to purchase buses required by this proposed regulation. Without available external funding, the school bus fleet operator is exempted from the requirements of this proposed regulation. The total lifetime cost of this regulation has been estimated at \$28.4 to \$30.1 million based on the five-year period (through the 2009 model-year) that the school-bus-fleet operator requirements will differ from ARB's current standards for medium- and heavy-duty vehicles.

6. Consideration of Alternatives

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

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, September 14, 2005**, and addressed to the following:

Postal mail is to be sent to:

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

Electronic mail is to be sent to: **scsch105@listserv.arb.ca.gov** and received at ARB **no later than 12:00 noon, September 14, 2005**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB **no later than 12:00 noon, September 14, 2005**.

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

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39658, 43013 and 43018 of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39658, 39667, 43000, 43010, 43013, 43018, 43101, 43102, 43104, 43105 and 43700 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon
Executive Officer

Date: July 19, 2005

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at www.arb.ca.gov.