

State of California
AIR RESOURCES BOARD

Resolution 05-47

September 15, 2005

Agenda Item No.: 05-8-6

WHEREAS, sections 39002 and 39003 of the Health and Safety Code charge the Air Resources Board (ARB or Board) with the responsibility for systematically attacking the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Board to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state and, in sections 39002 and 39003 of the Health and Safety Code, has charged the Board with the responsibility of systematically addressing the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 43013, 43101, and 43104 of the Health and Safety Code authorize the Board to adopt motor vehicle emission standards, in-use performance standards, and test procedures which it finds to be necessary, cost-effective, and technologically feasible;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emission reductions possible from motor vehicle sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, section 43806 of the Health and Safety Code directs the Board to adopt emission standards and procedures applicable to new engines used in publicly owned and privately owned public transit buses;

WHEREAS, the United States Environmental Protection Agency has promulgated emission standards and programs to reduce emissions from urban transit buses, and those standards and programs can be found in title 40 of the Code of Federal Regulations, parts 85 and 86;

WHEREAS, section 43102 of the Health and Safety Code provides that the Board shall not certify a new motor vehicle or motor vehicle engine unless the vehicle or engine

meets the emission standards adopted by the ARB pursuant to part 5, division 26 of the Health and Safety Code;

WHEREAS, section 43105 of the Health and Safety Code provides that no new motor vehicle or engine required under part 5, division 26 of the Health and Safety Code to meet emission standards shall be sold to the ultimate purchaser, ordered or delivered for sale to the ultimate purchaser, or registered in this state if the manufacturer has violated emission standards or test procedures and has failed to take corrective action, which may include recall of vehicles or engines, specified by the Board in accordance with its regulations;

WHEREAS, section 43700 of the Health and Safety Code declares that reductions of emissions from diesel powered vehicles, to the maximum extent feasible, are in the best interests of air quality and public health;

WHEREAS, section 43701(b) of the Health and Safety Code requires the Board to adopt regulations that require heavy-duty diesel vehicles to utilize emission control equipment and alternative fuels to reduce emissions to the greatest extent feasible;

WHEREAS, section 39667 of the Health and Safety Code directs the Board to achieve the maximum possible reduction in public exposure to toxic air contaminants by establishing emission standards for vehicular sources, including new and in-use motor vehicles and fuels;

WHEREAS, on August 27, 1998, following extensive scientific review and public hearings, and consistent with the conclusions of the Scientific Review Panel and the Office of Environmental Health Hazard Assessment, the Board formally identified particulate matter (PM) emissions from diesel-fueled engines as a toxic air contaminant, and on September 28, 2000, approved a plan to reduce risk from diesel pollution by reducing harmful PM emissions from diesel engines;

WHEREAS, the Board, through the adoption of Resolution 98-49 on September 24, 1998, called on state, local, and federal agencies to join together to "clean the fleet," supported immediate and continuing efforts to replace diesel-fueled school and public urban transit buses with low-emission alternative-fuel buses, including the provision of necessary infrastructure and technical training, and directed the staff to distribute this resolution to multiple affected parties;

WHEREAS, Health and Safety Code section 43004 provides that unless expressly exempted, the exhaust emission standards for gasoline powered motor vehicles shall apply to motor vehicles that have been modified or altered to use a fuel other than gasoline or diesel;

WHEREAS, the State Legislature in Health and Safety Code section 40447.5(a) authorized the South Coast Air Quality Management District (District or SCAQMD) to

regulate public and certain commercial operators of fleets of 15 or more vehicles operating in the District;

WHEREAS, the Board supports the State Legislature's intent that the District has the authority to regulate public and certain commercial operators of fleets of 15 or more vehicles operating in the District;

WHEREAS, Health and Safety Code section 39602 designates the Board as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, at a public hearing on February 24, 2000, the Board adopted Resolution 00-2 to achieve near-term and long-term emission reductions from urban transit buses through a multifaceted fleet rule designed to reduce emissions of oxides of nitrogen (NOx) and diesel PM by mandating a lower fleet average of NOx emissions; by requiring engines to be retrofitted with devices to reduce diesel PM emissions by at least 85 percent; by requiring engine manufacturers to significantly reduce the allowable emissions from certified bus engines; by requiring that transit agencies switch to low sulfur (less than 15 parts per million) diesel fuel; and by requiring transit agencies to purchase specified percentages of zero emission buses;

WHEREAS, the Board, through Resolution 00-2, directed the Executive Officer to work with transit agencies during implementation of the regulations, including provisions of the fleet rule, and to report to the Board regularly on transit agencies' progress in implementing the regulations;

WHEREAS, at a public hearing on October 24, 2002, the Board adopted Resolution 02-30 revising the diesel PM reduction program to ensure that every transit agency fleet will have significantly lower in-use diesel PM emissions by 2007 or 2009, depending on fuel path; removing the prohibition for transit agencies on the diesel path from purchasing alternative-fueled engines with NOx emissions in excess of 0.5 grams per brake-horsepower hour (g/bhp-hr) to encourage the use of alternative fuel; adopting new interim certification procedures for hybrid-electric vehicles in the urban bus and heavy-duty vehicle classes to account for the emission benefits of the hybrid-electric bus technology; and making other changes as necessary to ensure emission reductions from urban buses operated by transit agencies;

WHEREAS, at a public hearing on June 24, 2004, the Board adopted Resolution 04-19 revising the zero emission bus demonstration project requirements and timetable, and adding provisions that would allow manufacturers to sell diesel hybrid-electric buses certified to a 2004-2006 model year exhaust emission standard of 1.8 g/bhp-hr NOx and 0.01 g/bhp-hr PM and that would allow transit agencies on the diesel path to purchase diesel hybrid electric buses so long as they satisfy requirements to reduce NOx emissions from their other buses;

WHEREAS, at a public hearing on February 24, 2005, the Board adopted Resolution 05-15 to achieve emission reductions from transit fleet vehicles by

mandating a lower fleet average of NOx emissions and establishing the diesel PM reduction program to ensure that every transit agency fleet will have significantly lower in-use diesel PM emissions and NOx emissions by 2010;

WHEREAS, ARB's Fleet Rule for Transit Agencies has been contained in section 1956.2, title 13, California Code of Regulations, but the amendments approved at the February 24, 2005 public hearing will move the fleet rule provisions to section 2023.1, title 13, California Code of Regulations when ultimately approved by the Office of Administrative Law;

WHEREAS, the staff has identified a potential regulatory action under which all transit agencies operating within the SCAQMD would be required to follow the alternative-fuel compliance path, pursuant to the amendments to section 2023.1(a), title 13, California Code of Regulations, as set forth in Attachment A hereto (the amendments to sections 1956.1 and 1956.8 shown in Appendix A to the Staff Report: Initial Statement of Reasons are not addressed by this Resolution);

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the environmental impacts of this regulatory action;

WHEREAS, the Board has considered the impact of this regulatory action on the economy of the state;

WHEREAS, the Board finds that no alternative considered would be more effective, or equally effective and less costly, in achieving the regulatory objectives sought than the amendments in this regulatory action;

WHEREAS, the ARB staff conducted public workshops on April 7 and 27, 2005 on this regulatory action, as well as public outreach meetings and several focused stakeholder meetings throughout the rulemaking process, in order to include the public and affected stakeholders in the process for regulatory development;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, based on the information in the public record, including the staff report and testimony provided at the hearing, the Board finds that:

1. Diesel heavy-duty vehicles operated by transit agencies, on a per vehicle basis, contribute relatively high emissions of oxides of nitrogen (NOx) and particulate

- matter (PM) and operate in the more heavily congested areas where air quality is critical and direct exposure to diesel particulates occurs for large numbers of people;
2. Excessive diesel PM emissions are a significant source of toxic air contaminants, comprising approximately 70 percent of all toxic air contaminant emissions in California;
 3. The Fleet Rule for Transit Agencies required each transit agency to make a non-revocable election to follow either the diesel path or the alternative-fuel path as of January 1, 2001 and all but six transit agencies in the SCAQMD are required to purchase alternative-fuel urban buses;
 4. The amendments adopted herein to ARB's Fleet Rule for Transit Agencies mandates the six diesel path transit agencies in the SCAQMD to chose the alternative path in order to have the state rule achieve the alternative fuel objectives of Health and Safety Code section 40447.5(a);
 5. Five of the six diesel path transit agencies already have plans to purchase alternative fuel urban buses;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board finds that the amendment of title 13, CCR, section 2023.1(a) would not adversely impact the environment, but would help in the attainment and maintenance of the national and state ambient air quality standards for ozone, NOx, and PM;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

1. The amendments will achieve reductions of approximately 0.13 ton per day in 2010 and 0.10 ton per day in 2020 of oxides of nitrogen, thereby providing an air quality benefit;
2. The cost-effectiveness of the amendments is estimated to be \$10,784 per ton (\$5.39 per pound);

WHEREAS, the Board approved Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into the ARB's programs consistent with the directives of State law, and while these Policies apply to all communities in California, the Board recognizes that environmental justice issues have been raised more in the context of low-income and minority communities; and

WHEREAS, the Board has determined that the proposed regulation would not adversely affect the environment, but rather help ensure measurable emission benefits are

achieved in the District, and should not adversely impact any community in the District, especially low-income or minority communities.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the amendment of section 2023.1(a), title 13, California Code of Regulations, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulatory amendments adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the amendments adopted herein to the California emission standards and test procedures will not cause the California requirements to be inconsistent with section 202(a) of the federal Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the United States Environment Protection Agency (U.S. EPA) pursuant to section 209(b) of the federal Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall forward the amended regulations to the U.S. EPA with a request, as appropriate, for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the federal Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 05-47, as adopted by the Air Resources Board.

_____/s/_____
Lori Andreoni, Clerk of the Board

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September 15, 2005

Identification of Attachment to the Resolution

Attachment A: Proposed amendment to the Fleet Rule for Transit Agencies, section 2023.1(a), title 13, California Code of Regulations, as attached hereto as Attachment A) (from page A-11 of Proposed Regulation Order that was Appendix A to the Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Exhaust Emission Standards For 2007-2009 Model-Year Heavy-Duty Urban Bus Engines and the Fleet Rule for Transit Agencies, released July 29, 2005.)

Attachment A to Resolution 05-47

Amend section 2023.1(a), title 13, California Code of Regulations, to read as follows:

§ 2023.1. Fleet Rule for Transit Agencies – Urban Bus Requirements

- (a) To encourage transit agencies that operate urban bus fleets to purchase or lease lower emission alternative-fuel buses, while also providing flexibility to such fleet operators to determine their optimal fleet mix in consideration of such factors as air quality benefits, service availability, cost, efficiency, safety, and convenience, two paths to compliance with this fleet rule are available: the alternative-fuel path and the diesel path.
- (1) Transit agencies must choose their compliance path, and shall notify ARB of their intent to follow either the diesel or the alternative-fuel path, by January 31, 2001. Reporting requirements for that notification are set forth in subdivisions (a) and (b) of section ~~1956.4~~ 2023.4, title 13, CCR.
- (2) A transit agency within the jurisdiction of the South Coast Air Quality Management District may elect to change its compliance path from the diesel path to the alternative-fuel path, provided that the transit agency notifies the Executive Officer of the change by January 31, 2004, and provided that the transit agency is in compliance with all requirements of section ~~1956.2~~ 2023.1, including specific requirements of the diesel path, on or before January 1, 2004. Reporting requirements for this notification are set forth in ~~paragraph (b)(3) of section 1956.4~~ 2023.4(b)(3), title 13, CCR.
- (3) A new transit agency that is a successor to an existing transit agency or that has been created from a merger of two or more transit agencies or parts of two or more transit agencies must have the same compliance path as the transit agency or agencies out of which it is formed.
- (4) A transit agency within the jurisdiction of the South Coast Air Quality Management District shall follow the alternative-fuel path. If the transit agency had previously stated its intent to follow the diesel path, the change to the alternative-fuel path shall be effective on [Insert effective date of subsection] .

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NOTE: Authority cited: Sections 39600, 39601, 39667, 43013, 43018 and 43101(b), Health and Safety Code. Reference: Sections 39002, 39003, 39017, 39500, 39650, 39667, 40000, 43000, 43000.5, 43013, 43018, 43701(b), 43801 and 43806, Health and Safety Code; and sections 233 and 28114, Vehicle Code.