

This conceptual document is intended to share CARB's draft approach to the potential amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation. As this is conceptual in nature, this document is not considered official proposed regulatory language and is only being used to foster discussion with stakeholders.

Language in the blue boxes is intended to summarize the intent of the potential changes to the regulation. Proposed modifications to the existing regulation are shown below the blue boxes in underline to indicate possible additions and strikeout to indicate possible deletions, compared to the existing regulatory language

## FINAL REGULATION ORDER

### REGULATION FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS

Amend new section 2449, 2449.1, 2449.2, and 2449.3, title 13, article 4.8, chapter 9, California Code of Regulations, to read as follows:

[Note: The text set forth below is new language in "normal type" proposed to be added to the California Code of Regulations.]

#### § 2449 General Requirements for In-Use Off-Road Diesel-Fueled Fleets

##### (a) Purpose

The purpose of this regulation is to reduce oxides of nitrogen (NO<sub>x</sub>), diesel particulate matter (PM), and other criteria pollutant emissions from ~~in-use off-road diesel-fueled~~ vehicles subject to this regulation.

##### (b) Applicability

(1) Except as provided in subsection (b)(2) below, this regulation applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

(2) The regulation also applies to the following:

(A) Workover rigs, as defined in section 2449(c)(62), are subject to this regulation.

(B) Both engines of two-engine cranes, and two-engine water-well drilling rigs, as defined in sections 2449(c)(56) and (c)(58), respectively,

that contain an auxiliary engine having a rated brake hp of 50 or greater ( $\geq 50$  bhp) are subject to this regulation.

**(C)** Both engines of two-engine vehicles, as defined in section 2449(c)(57), that were designed to be driven either on-road or off-road and contain an auxiliary engine  $\geq 50$  bhp are subject to this regulation provided that:

1. The two-engine vehicle is not already subject to the Fleet Rule for Public Agencies and Utilities, title 13, CCR, sections 2022 and 2022.1;
2. The two-engine vehicle is not a two-engine sweeper, as defined in the Truck and Bus regulation, title 13, CCR, section 2025; and
3. The two-engine vehicle does not have a Tier 0 auxiliary engine.

**(D)** This regulation applies to any person who sells a vehicle subject to this regulation within California.

The intent of these potential provisions is to add prime contractors and public works awarding bodies as regulated entities under the regulation. Requirements for these entities would be in section 2449(i).

**(E)** This regulation applies to any prime contractor, as defined in section 2449(c)(66), who performs work in California involving the use of vehicles subject to this regulation.

**(F)** This regulation applies to any public works awarding body, as defined in section 2449(c)(69), that awards public works contracts, as defined in section 2449(c)(68), within California for work in California involving the use of vehicles subject to this regulation.

**(G)** ~~**(E)**~~ Persons who provide financing in the form of "finance leases," as defined in California Uniform Commercial Code Section 10103(a)(7), for vehicles subject to this regulation in-use off-road diesel-fueled vehicles, do not "own" such vehicles for the purposes of this regulation.

~~**(H)**~~ ~~**(G)**~~ The following are not subject to this regulation:

1. Locomotives;
2. Commercial marine vessels;
3. Marine engines;
4. Recreational off-highway vehicles;
5. Combat and tactical support equipment;
6. Stationary equipment;

7. Portable engines, except for auxiliary engines included in subsections (b)(2)(B) and (b)(2)(C) above;
8. Equipment or vehicles used exclusively in agricultural operations;
9. Implements of husbandry;
10. Two-engine street sweepers that are subject to the Truck and Bus Regulation, title 13, CCR, section 2025;
11. Two-engine vehicles that are subject to the Fleet Rule for Public Agencies and Utilities, title 13, CCR, sections 2022 and 2022.1;
12. Two-engine vehicles, that are not two-engine cranes or two-engine water-well drilling rigs, that have Tier 0 auxiliary engines;
13. Equipment subject to the Regulation for Mobile Cargo Handling equipment at Ports and Intermodal Rail Yards, title 13, CCR, section 2479; and
14. Off-road diesel vehicles owned and operated by an individual for personal, non-commercial, and non-governmental purposes.

### (c) Definitions

(1) **“Agricultural operations”** means (1) the growing or harvesting of crops from soil (including forest operations) and the raising of plants at wholesale nurseries, but not retail nurseries), or the raising of fowl or animals for the primary purpose of making a profit, providing a livelihood, or conducting agricultural research or instruction by an educational institution, or (2) agricultural crop preparation services such as packinghouses, cotton gins, nut hullers and processors, dehydrators, and feed and grain mills. Agricultural crop preparation services include only the first processing after harvest, not subsequent processing, canning, or other similar activities. For forest operations, agricultural crop preparation services include milling, peeling, producing particleboard and medium density fiberboard, and producing woody landscape materials.

For purposes of this regulation, a vehicle that is used by its owner for both agricultural and nonagricultural operations is considered to be a vehicle engaged in agricultural operations, only if over half of its annual operating hours are for agricultural operations.

(2) **“Airport ground support equipment”** (GSE) is mobile diesel-fueled off-road compression ignition vehicles used to service and support aircraft

operations. GSE vehicles perform a variety of functions, including but not limited to: aircraft maintenance, pushing or towing aircraft, transporting cargo to and from aircraft, loading cargo, and baggage handling. GSE vehicles include equipment types such as baggage tugs, belt loaders, and cargo loaders.

**(3) "Alternative diesel fuel"** means any fuel used in a compression ignition engine that is not a reformulated diesel fuel, as defined in title 13, CCR, sections 2281 and 2282, and does not require engine or fuel system modifications for the engine to operate, although minor modifications (e.g., recalibration of the engine fuel control) may enhance performance. Examples of alternative diesel fuels include, but are not limited to, biodiesel, Fischer-Tropsch fuels, and emulsions of water in diesel fuel. A diesel fuel containing a fuel additive will be treated as an alternative diesel fuel unless:

- (A) the additive is supplied to the vehicle or engine fuel by an on-board dosing mechanism, or
- (B) the additive is directly mixed into the base fuel inside the fuel tank of the vehicle or engine, or
- (C) the additive and base fuel are not mixed until engine fueling commences, and no more additive plus base fuel combination is mixed than required for a single fueling of a single engine or vehicle.

**(4) "Alternative fuel"** means natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely on diesel fuel. "Alternative fuel" also means any of these fuels used in combination with each other or in combination with other non-diesel fuels.

**(5) "Best available control technology"** (BACT) means Verified Diesel Emission Control Strategy (VDECS) and turnover requirements in section 2449.1(b).

**(6) "Captive attainment area fleet"** means a fleet or fleet portion, as defined under section 2449(c)(20), in which all of the vehicles in the fleet or fleet portion operate exclusively within the following counties: Alpine, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Monterey, Plumas, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Trinity, Tehama, Yuba, and the portion of Sonoma County that lies within the boundaries of the North Coast Air Basin. A fleet or identified fleet portion that operates one or more vehicles outside the counties and area listed above is not a captive attainment area fleet. Captive attainment area fleets shall be treated as small fleets even if their total max hp exceeds 2,500 hp. All fleets owned by the United States, the State of California, or agencies thereof (i.e., an agency in the judicial, legislative, or executive branch of the federal or state government) are considered to be large fleets (per section 2449(c)(24)(A)), and vehicles

owned by such fleets, regardless of whether they operate exclusively within the above counties and area, are not part of a captive attainment area fleet.

**(7) "Carryover BACT credit"**, as calculated under section 2449.1(b)(8), means a way of tracking turnover or VDECS installations accomplished in excess of the BACT requirements. Fleets may take credit for such excess turnover or VDECS installations to do less turnover or VDECS installations in later years.

**(8) "Combat and tactical support equipment"** means equipment that meets military specifications, is owned by the U.S. Department of Defense and/or the U.S. military services or its allies, and is used in combat, combat support, combat service support, tactical or relief operations or training for such operations.

**(9) "Common ownership or control"** means being owned or managed day to day by the same person, corporation, partnership, or association. Vehicles managed by the same directors, officers, or managers, or by corporations controlled by the same majority stockholders are considered to be under common ownership or control even if their title is held by different business entities.

**(10) "Compression ignition engine"** means an internal combustion engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. The regulation of power by controlling fuel supply in lieu of a throttle is indicative of a compression ignition engine.

**(11) "Dedicated snow removal vehicle"** means a vehicle that is operated exclusively to remove snow from public roads, private roads, or other paths from which snow must be cleared to allow on-road vehicle access. Dedicated snow removal vehicles must have permanently affixed snow removal equipment such as a snow blower or auger and may include, but are not limited to, motor graders, loaders, and snow blowers.

**(12) "Diesel fuel"** has the same meaning as defined in title 13, CCR, sections 2281 and 2282.

**(13) "Diesel particulate filter"** means an emission control strategy that reduces diesel particulate matter emissions by directing all of the exhaust through a filter that physically captures particles but permits gases to flow through. Periodically, the collected particles are either physically removed or oxidized (burned off) in a process called regeneration.

**(14) "Diesel particulate matter"** (diesel PM) means the particles found in the exhaust of diesel-fueled compression ignition engines. Diesel PM may agglomerate and adsorb other species to form structures of complex physical and chemical properties. The Air Resources Board (ARB) has identified diesel PM as a toxic air contaminant.

**(15) "Emergency operation"** means helping alleviate an immediate threat to public health or safety. Examples of emergency operation include repairing or preventing damage to roads, buildings, terrain, and infrastructure as a result of

an earthquake, flood, storm, fire, other infrequent act of nature, or terrorism. Routine maintenance or construction to prevent public health risks does not constitute emergency operation.

**(16) "Emission factor"** means NO<sub>x</sub> emission rate in grams per brake-horsepower hour (g/bhp-hr) as shown in Appendix A. Engines certified to Family Emission Limits and flexibility engines must still use the emission factors in Appendix A.

**(17) "Equipment identification number"** means a unique identification number assigned by ARB to each vehicle in an owner's fleet subject to this regulation. All reporting and recordkeeping will link vehicle data with this number.

**(18) "Executive Officer"** means the Executive Officer of the ARB or his or her authorized representative.

**(19) "Family emission limit" (FEL)** means an emission level that is declared by the manufacturer to serve in lieu of an emission standard for certification purposes and for the averaging, banking, and trading program, as defined in title 13, CCR, section 2423.

**(20) "Fleet"** means all applicable off-road vehicles and engines as described in section 2449(b) owned by a person, business, or government agency that are operated within California and are subject to the regulation. A fleet may consist of one or more vehicles. A fleet does not include vehicles that have never operated in California.

"Fleet portions" – means that part of a fleet for which daily operations and dispatching are managed by different responsible officials because they are part of different subsidiaries, divisions, or other organizational substructures of a parent company, corporation or agency, which owns or controls the operations of the subsidiary, division, or organizational substructure, and the parent company, corporation, or agency elects to have some or all the fleet portions comply with the performance requirements separately and be reported separately. A fleet may have some fleet portions that meet the definition of captive attainment area fleet and some fleet portions that do not. However, the total max hp of the vehicles under common ownership or control of the parent company, corporation, or agency determines the fleet size. Once a fleet begins to comply and report separately as fleet portions, the fleet portions must continue to comply and report separately, and the fleet portions must meet the adding vehicle requirements in section 2449(d)(6) just as if they were separate fleets.

**(21) "Fleet average index"** means an indicator of a fleet's overall emission rate. The fleet average index for a specific fleet is determined by summing (adding) the product of the max hp of each engine times the emission factor, and dividing by the fleet's total max hp.

**(22) "Fleet average target rate"** means the fleet average that a specific fleet must meet in a compliance year in order to show compliance with the fleet average requirements. The fleet average target rate varies depending on a fleet's hp distribution. The fleet average target rate for a specific fleet for each compliance year is determined by summing (adding) the product of the max hp of each engine times the target, and dividing the resulting sum by the fleet's total max hp.

**(23) "Fleet owner"** means, except as qualified below, the person who owns and has possession of the vehicles in the fleet.

"Rental or Leased Fleets" – Vehicles that are owned by a rental or leasing company and that are leased by the same lessee for a period of one year or more may be excluded from the rental company fleet and included in the fleet of the lessee only if such arrangement is delineated in the written lease agreement.

Vehicles that are rented or leased for a period of less than one year must be included in the fleet of the rental or leasing company. Off-road vehicles and engines subject to this regulation that are owned by a lessor and leased to a lessee under a "lease" as defined in California Uniform Commercial Code, section 10103(a)(10), for a duration of at least one year, dated prior to the effective date of these regulations, are considered part of the fleet of the lessee rather than the lessor.

**(24) "Fleet size category"** means fleets are classified by size as described below. A fleet must meet large fleet requirements if the total vehicles under common ownership or control would be defined as a large fleet. A fleet must meet medium fleet requirements if the total vehicles under common ownership or control would be defined as a medium fleet. Individual federal or state agencies may report as separate fleets, but all vehicles owned by agencies of the United States or the State of California agencies must meet the large fleet requirements. Permanent and year-by-year low-use vehicles, dedicated snow-removal vehicles, and vehicles used solely for emergency operations need not be included in the total max hp used to classify fleets by size.

**(A) "Large fleet"** – A fleet with a total max hp (as defined below) greater than 5,000 hp. A fleet must meet large fleet requirements if the total vehicles under common ownership or control would be defined as a large fleet. All fleets owned by the United States, the State of California, or agencies thereof (i.e., an agency in the judicial, legislative, or executive branch of the federal or state government) will

be considered as a unit whole and must meet the large fleet requirements.

**(B) "Medium fleet"** – A fleet that is not a small or large fleet.

**(C) "Small fleet"** – A fleet with total max hp of less than or equal to 2,500 hp that is owned by a business, non-profit organization, or local municipality, a local municipality fleet in a low population county irrespective of total max hp, a non-profit training center irrespective of total max hp, or a captive attainment area fleet irrespective of total max hp.

**(25) "Flexibility engine"** means an engine certified to the implementation flexibility standards in title 13, CCR, section 2423(d).

"Post-2007 flexibility engine" – A flexibility engine certified on or after January 1, 2007. Such flexibility engines are generally labeled as follows by the engine manufacturer:

"THIS ENGINE COMPLIES WITH CALIFORNIA EMISSION REQUIREMENTS UNDER 13 CCR 2423(d)..." or

"THIS ENGINE CONFORMS TO CALIFORNIA OFF-ROAD COMPRESSION-IGNITION ENGINE REGULATIONS UNDER 13 CCR, 2423(d)."

**(26) "Forest operations"** means (A) forest fire prevention activities performed by public agencies, including but not limited to construction and maintenance of roads, fuel breaks, firebreaks, and fire hazard abatement or (B) cutting or removal or both of timber, other solid wood products, including Christmas trees, and biomass from forestlands for commercial purposes, together with all the work incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for falling trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following forest removal activities. Forest operations include the cutting or removal of trees, tops, limbs and or brush which is processed into lumber and other wood products, and or for landscaping materials, or biomass for electrical power generation. Forest operations do not include conversion of forestlands to other land uses such as residential or commercial developments.

**(27) "Hour meter log"** means a log of the hours that a vehicle operated directly taken from the vehicle's hour meter.

**(28) "Implement of husbandry"** is as defined in California Vehicle Code (Veh.Code) division 16.

**(29) "Local municipality"** means a city, county, city and county, special district, or other public agency, or two or more public entities acting jointly, or the duly



constituted body of an Indian reservation or rancheria. Agencies of the United States of America or the State of California, and departments, divisions, public corporations, or public agencies of this State or of the United States are not considered local municipalities.

**(30) "Low-population county local municipality fleet"** means a fleet owned by a local municipality (as defined above) that is located in a county as defined in title 13, CCR, section 2022(b)(4) and identified in section 2022.1(c)(2), Table 2, or, using the criteria set forth in title 13, CCR, section 2022.1(c)(4), a local municipality not located in a low-population county that has requested and has received Executive Officer approval to be treated like a municipality in a low-population county. Fleets owned by such local municipalities shall be treated as small fleets even if their total max hp exceeds 2,500 hp.

**(31) "Maximum power"** (max hp) means the engine's net horsepower (hp) or net flywheel power certified to Society of Automotive Engineers (SAE) Method J1349 or International Organization for Standardization (ISO) Method 9249. If the engine's net hp or net flywheel power certified to SAE Method J1349 or ISO Method 9249 is not readily available, another net hp or net flywheel power from the manufacturer's sales and service literature or hp from the engine label may be used.

**(32) "Model year"** has the same meaning as defined in title 13, CCR, section 2421(a)(387).

**(33) "Vehicle" "Motor vehicle"** has the same meaning as motor vehicle as defined in Veh. Code section 415.

**(34) "New fleet"** means a fleet that is acquired or that enters California on or after January 1, 2012. Such fleets may include new businesses or out-of-state businesses that bring vehicles into California for the first time on or after January 1, 2012.

**(35) "Non-profit training center"** means an entity that operates a program for training in the use of off-road vehicles and that (A) is a community college program that trains students in the use of off-road vehicles or (B) qualifies as a non profit or not for profit organization under title 26 Internal Revenue Code section 501(a), (c)(3), (c)(5), or (c)(6). Any vehicles that are not used for an off-road training program are not considered part of a non-profit training center and must be considered a separate fleet.

**(36) "Off-highway vehicle"** is defined in Veh. Code division 16.5.

**(37) "Operator log"** means a log of the hours that a vehicle operated taken from records of vehicle operator hours.

**(38) "Oxides of nitrogen"** (NO<sub>x</sub>) means compounds of nitric oxide, nitrogen dioxide, and other oxides of nitrogen. Nitrogen oxides are typically created during combustion processes and are major contributors to smog formation and acid deposition.

**(39) "Permanent low-use vehicle"** means a vehicle that a fleet owner has designated as operating less than 200 hours a calendar year, for all years subsequent to the designation. For example, if a fleet designates a vehicle as permanent low-use at any point in 2014, that vehicle can only be used less than 200 hours in any calendar year from 2015 onwards. To be considered a permanent low-use vehicle, the fleet owner must submit the engine hours of operation from a functioning non-resettable hour meter.

**(A) Vehicles used outside California** – Vehicles that operate both inside and outside of California can meet the permanent low-use vehicle definition if they are used less than 200 hours per year in California.

**(B) Emergency operation hours** – Hours used for emergency operations are not counted when determining permanent low-use status.

**(C) Future increase in hours** – Except as set forth in (F) below, ~~o~~ Once designated as permanent low-use, a vehicle may only be used up to 200 hours per year by the fleet unless the vehicle meets the adding vehicles requirements in section 2449(d)(6). If the vehicle meets the adding vehicle requirements, the fleet may increase the use to 200 hours or more per year, and report the updated status of the vehicle to remove the low-use designation.

**(D) No obligation** – A fleet is not obliged to designate a vehicle whose use drops below 200 hours per year as a permanent low-use vehicle. If such a vehicle is not designated as permanent low-use, its use may increase to 200 hours or more per year in subsequent years without meeting the adding vehicles requirements in section 2449(d)(6).

**(E) Two-engine vehicles** – Both engines of two-engine vehicles must each operate less than 200 hours per year in order for the vehicle to be considered a permanent low-use vehicle.

In response to stakeholder feedback, the intent of this potential provision is to allow the three-year rolling average to be utilized under the permanent low-use provision, to provide fleets with additional flexibility when a vehicle is designated as permanent low-use.

**(F) Three-year rolling average** – Beginning January 1, 2024, a vehicle operated only in California for three consecutive years and owned by the same owner during that period may be considered permanent low-use if it is operated an average of 200 hours or fewer per year during the three-year period.

**(40) "Queuing"** means the intermittent starting and stopping of a vehicle while the driver, in the normal course of doing business, is waiting to perform work or

a service, and when shutting the vehicle engine off would impede the progress of the queue and is not practicable. Queuing does not include the time a driver may wait motionless in line in anticipation of the start of a workday or opening of a location where work or a service will be performed.

**(41) "Registered and driven safely on-road"** means a vehicle meets the requirements to be registered for on-road operation in Veh. Code division 3, chap. 1, article 1, sections 4000 et seq. (i.e., required to be registered or could be registered), and the requirements to be driven safely on-road in "Equipment of Vehicles" requirements in Veh. Code division 12, chap. 1, sections 24000 et seq. and "Size, Weight, and Load" requirements in Veh. Code division 15, sections 35000 et seq. Having a California Special Construction Equipment plate as defined in California Veh. Code sections 565 and 570 does not constitute registration.

**(42) "Replacement"** means the addition of off-road diesel vehicles to a fleet that had retired one or more off-road diesel vehicles of an equivalent hp in a given year.

**(43) "Repower"** means to replace the engine in a vehicle with another engine meeting a subsequent engine emissions standard (e.g., replacing a Tier 0 engine with a Tier 2 or later engine).

**(44) "Responsible official"** means one of the following:

- (A)** For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
- (B)** For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
- (C)** For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA).

**(45) "Retire or retirement"** means removal of an engine from fleet service, so that the engine is not subsequently operated by the fleet in the State of California. To retire an engine, the vehicle with the engine may be moved outside of California, sold to another fleet (in or outside California), or scrapped. The return of a rented or leased vehicle by a fleet to a rental or leasing company is not considered to be a retirement. Similarly, the rental or leasing of a vehicle by a rental or leasing company does not count as a retirement for the rental or leasing company.

- (46) **"Snow removal operations"** means removing snow from public roads, private roads, or driveways.
- (47) **"Specialty vehicle"** means a vehicle for which no used vehicle with a cleaner engine that can serve an equivalent function and perform equivalent work is available.
- (48) **"Tier 0 engine"** means an engine not subject to the requirements in title 13, CCR, section 2423; Title 40, Code of Federal Regulations (CFR), Part 89; or Title 40, CFR, Part 1039.
- (49) **"Tier 1 engine"** means an engine subject to the Tier 1 new engine emission standards in title 13, CCR, section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 1 Family Emission Limits (FEL) listed in title 13, CCR, section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).
- (50) **"Tier 2 engine"** means an engine subject to the Tier 2 new engine emission standards in title 13, CCR, section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 2 FEL listed in title 13, CCR, section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).
- (51) **"Tier 3 engine"** means an engine subject to the Tier 3 new engine emission standards in title 13, CCR, section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 3 FEL listed in title 13, CCR, section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).
- (52) **"Tier 4 Final engine"** means an engine subject to the final after-treatment-based Tier 4 emission standards in title 13, CCR, section 2423(b)(1)(B) and/or Title 40, CFR, Part 1039.101. This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 4 FEL listed in title 13, CCR, section 2423(b)(2)(B) and/or Title 40, CFR, Part 1039.101.
- (53) **"Tier 4 Interim engine"** means an engine subject to the interim Tier 4 emission standards (also known as transitional) in title 13, CCR, section 2423(b)(1)(B) and/or Title 40, CFR, Part 1039.101. This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 4 FEL listed in title 13, CCR, section 2423(b)(2)(B) and/or Title 40, CFR, Parts 1039.102 and 1039.104(g).
- (54) **"Total maximum power"** (total max hp) means the sum of the max hp for all of a fleet's engines that are subject to this regulation. Permanent and year-by-year low-use vehicles, dedicated snow-removal vehicles, and vehicles used solely for emergency operations shall not be included in the sum.
- (55) **"Turnover"** means retiring a vehicle, designating a vehicle as a permanent low-use vehicle, repowering a vehicle with a higher tier engine, or rebuilding the engine to a more stringent emissions configuration. Rented or leased

vehicles that are returned to a rental or leasing company do not count as turnover for the lessee. Similarly, vehicles leased or rented out by a rental or leasing company do not count as turnover for the rental or leasing company.

**(56) "Two-engine crane"** means a mobile diesel-powered machine with a hoisting mechanism mounted on a specially constructed truck chassis or carrier; one engine provides motive power, and a secondary (auxiliary) engine 50 bhp or greater that is used to lift and move materials and objects.

**(57) "Two-engine vehicle"** means a specially constructed on-road or off-road mobile diesel-powered vehicle that was designed by the original equipment manufacturer to be equipped with two diesel engines: one engine provides the primary source of motive power of the vehicle while the second engine is an auxiliary engine 50 bhp or greater that is permanently attached and integrated into the design of the vehicle to perform a specific function, which may include providing auxiliary power to attachments, performing special job functions, or providing additional motive power. A two-engine vehicle does not include a vehicle where the auxiliary engine is not integrated into the design of the vehicle such as, but not limited to, a vehicle with an air compressor or a vehicle with an auxiliary engine that powers tools.

**(58) "Two-engine water-well drilling rig"** means a mobile diesel-powered drilling rig owned by a water well drilling contractor with a current, valid C-57 license issued by the Contractors State License Board of California and used exclusively to drill water wells with a drilling mechanism mounted on a specialty constructed truck chassis or carrier; one engine provides motive power, and a secondary (auxiliary) engine 50 bhp or greater that is used to power the drilling mechanism.

**(59) "Verified diesel emission control strategy" (VDECS)** means an emissions control strategy that has been verified pursuant to the "Verification Procedures, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emission from Diesel Engines" (Verification Procedure), title 13, CCR, sections 2700-2710. VDECS can be verified to reduce PM emissions, or NO<sub>x</sub> emissions, or both.

**(A) "Highest level PM VDECS"** means the highest level VDECS verified by ARB to reduce PM under its Verification Procedure. The highest level is determined solely based on verified diesel PM reductions, not based on verified NO<sub>x</sub> reductions. VDECS can be verified to achieve Level 1 diesel PM reductions (at least 25 percent), Level 2 diesel PM reductions (at least 50 percent), or Level 3 diesel PM reductions (at least 85 percent). All Level 3 diesel PM devices are higher than all Level 2 diesel PM devices. Level 1 PM devices are never considered highest level PM VDECS for the purpose of this regulation. "Plus" designations do not matter; that is, a Level 3 Plus is the same diesel PM level as Level 3; and Level 2 Plus is the

same diesel PM level as Level 2. A PM VDECS shall be considered the highest level PM VDECS only if (1) it can be used without impairing the safe operation of the vehicle as demonstrated per section 2449(e)(8), and (2) the diesel emission-control strategy manufacturer and authorized diesel emission-control strategy dealer agree it can be used on a specific engine and vehicle combination without jeopardizing the original engine warranty in effect at the time of application.

**(B) "VDECS verified to reduce NOx"** means VDECS verified by ARB to reduce NOx under its Verification Procedure. NOx VDECS are not verified by Level, but are verified by the percent reduction in NOx emissions from the engine achieved by the VDECS. See also definition of Verified Percent NOx Reduction.

**(60) "Verified percent NOx reduction"** means the verified percent reduction in NOx emissions from the engine achieved by the VDECS verified to reduce NOx.

**(61) "VDECS failure"** means the condition of a VDECS not achieving the emissions reductions to which the VDECS is verified. Such a condition could be due to inappropriate installation, damage, or deterioration during use. If a Level 3 VDECS is emitting visible smoke, it shall be assumed to have failed.

**(62) "Workover rig"** means a mobile self-propelled rig used to perform one or more remedial operations, such as deepening, plugging back, pulling and resetting liners, on a producing oil or gas well to try to restore or increase the well's production.

**(63) "Year-by-year low-use vehicle"** means a vehicle that operated in California less than 200 hours during the preceding 12-month calendar year. For example, when reporting in 2014, the hours of use between January 1, 2013 and December 31, 2013 would be used to determine year-by-year low-use status. To be considered a year-by-year low-use vehicle, the fleet owner must annually submit engine operation data from a functioning non-resettable hour meter.

**(A) Vehicles used outside California** – Vehicles that operate both inside and outside of California can meet the year-by-year low-use vehicle definition if they are used less than 200 hours per year in California.

**(B) Three-year rolling average** – A vehicle operated only in California for the previous three years and owned by the same owner during that period will be considered year-by-year low-use if it operated on average less than 200 hours per year during that previous three-year period.

**(C) Emergency operation hours** – Hours used for emergency operations are not counted when determining year-by-year low-use status.

**(D)(E) Two-engine vehicles** – Both engines of two-engine vehicles must each operate less than 200 hours per year in order for the vehicle to be considered a year-by-year low-use vehicle.

The intent of these potential provisions is to include new definitions under the regulation in order to define new terms used in the potential amendment concept. These will be arranged alphabetically in the definitions above, but for the purpose of this draft document we have combined all the new definitions in one section.

**(64) "Designated Official"** means a person designated by the responsible official as the person responsible for providing the required information to the California Air Resources Board under section 2449(g) on behalf of the responsible official for the fleet. The statements of the Designated Official to CARB under this regulation shall be deemed to be statements of the fleet.

**(65) "DOORS Fleet ID Number"** means the number CARB assigns to each fleet when a fleet initially reports to CARB.

**(66) "Prime Contractor"** means the entity who is required to obtain a license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and is the original contractor on any construction, project, improvement, work or other activity. The prime contractor contracts directly with the awarding authority or owner. A prime contractor can never be considered a subcontractor.

**(67) "Public Incentive Funds"** means any funding provided by public entities to fleets via a grant, voucher, contract, or loan program that includes limitations in which the funding cannot be used for regulatory benefit or credit.

**(68) "Public Works"** means work performed for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public lands or improvement of any kind, or at the direction of a public agency.

**(69) "Public Works Awarding Body"** means any public agency (state, county, city, school board, water district, etc.), or official thereof, that awards or enters into a contract for public works.

**(70) "Renewable Diesel, R100, or R99"** means a diesel fuel substitute produced from non-petroleum renewable sources, including vegetable oils and animal fats, that meets the federal registration requirements for fuels and fuel additives and American Society for Testing Materials (ASTM) specification

D975, which are incorporated by reference herein.

(71) "Subcontractor" means any person or entity who has a contract with the prime contractor or another subcontractor, or for the benefit of a Public Works Awarding Body, but does not have a contract directly with an awarding authority or owner, for work involving the use of vehicles in section 2449(b). A subcontractor is not considered a prime contractor.

(72) "Zero-emission vehicle" means a vehicle that produces zero emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under any and all possible operational modes and conditions.

#### **(d) Performance Requirements**

Fleets that are subject to fleet average requirements in section 2449.1(a) may include vehicles and systems used in place of diesel vehicles in their fleet average index and target rate calculations as described in subsection (1) below. Each fleet must meet the performance requirements in subsections (2) to (9) below. There are differing requirements for large, medium, and small fleets. As stated in section 2449(c)(20), fleet portions may comply with the performance requirements separately and be reported separately. Captive attainment area fleets, non-profit training centers, and fleets owned by low-population county local municipalities are subject to the small fleet requirements, even if their total max hp exceeds 2,500 hp. Section 2449(d)(3) describes requirements for fleets that change in size.

**(1) Vehicles and Systems Used in Place of Diesel Vehicles** – Fleets with electric, alternative fuel, or gasoline-powered vehicles may include such vehicles in their fleet average index and target rate calculations as follows:

##### **(A) Alternative Fuel and Gasoline-Powered Vehicles**

1. Fleets may include an alternative fuel or gasoline-powered vehicle with a max hp 25 hp or greater or that replaced a diesel vehicle with max hp 25 hp or greater in their fleet average index if all of the following conditions are met:

- a. The owner can demonstrate it serves a function and performs the work equivalent to that of diesel vehicles and is used for a purpose for which diesel vehicles are predominantly used,
- b. The vehicle is used predominantly outdoors,



- c. The vehicle is not already included in the fleet average emission level requirements for Large Spark Ignition Engine Fleets in title 13, Section 2775.1; and
- d. The owner must demonstrate that it is certified to a NO<sub>x</sub> standard less than or equal to the Tier 1 NO<sub>x</sub> standard for the same hp in title 13, CCR, section 2423(b)(1)(A) and is less than or equal to the NO<sub>x</sub> emissions of a diesel engine of the same model year and hp.
- e. If the vehicle is a gasoline-powered vehicle, the owner must identify the diesel vehicle that the gasoline-powered vehicle replaced and maintain records documenting the function of the diesel vehicle replaced and the gasoline-powered replacement vehicle, and the dates of sale and purchase for both vehicles.

2. Fleets may include a diesel vehicle with a max hp 25 hp or greater that has been repowered with an alternative fueled or gasoline-powered engine in their fleet average index and target rate calculations.

3. For the purposes of compliance with section 2449.1(a):

a. **Alternative fuel vehicles** – Each alternative fuel vehicle, or diesel vehicle that has been repowered with an alternative fuel engine, shall use an emission factor equal to the NO<sub>x</sub> emission standard to which its engine is certified in g/bhp-hr. If the alternative fuel vehicle or engine is not certified to a NO<sub>x</sub> emission standard, the owner may apply to the Executive Officer to use an emission factor. In the application, the owner must demonstrate that the chosen emission factor is appropriate and not exceeded by the alternative fuel vehicle.

b. **Gasoline-powered vehicles** – Each gasoline powered vehicle, or vehicle that has been repowered with a gasoline-powered engine, shall use an emission factor equal to the gasoline-powered vehicle's or engine's HC+NO<sub>x</sub> certified emission standard in g/bhp-hr multiplied by 0.95.

4. Fleets may include a diesel vehicle with a max hp 25 hp or greater that has been converted to alternative fuel or gasoline-power in their fleet average index and target rate calculations. The emission factor remains the same as the emission factor for the diesel vehicle.

## (B) Electric Vehicles

1. Fleets may include an electric vehicle with a max hp 25 hp or greater or that replaced a diesel vehicle with max hp 25 hp or greater in their fleet average index if all the following conditions are met:

- a. The owner can demonstrate it serves a function and performs the work equivalent to that of diesel vehicles and is used for a purpose for which diesel vehicles are predominantly used;
- b. The electric vehicle is used predominately outdoors; and
- c. Except as provided in section 2449(d)(1)(B)(2)(a), the electric vehicle is not already included in the fleet average emission level requirements for Large Spark Ignition Engine Fleets in title 13, section 2775.1.

2. For the purposes of compliance with sections 2449.1(a), electric vehicles shall be credited as follows:

**a. GSE Electric Vehicles Purchased Prior to January 1, 2007** – Electric airport GSE vehicles with a max hp of 25 hp or greater or that replaced a diesel vehicle with max hp 25 hp or greater purchased prior to January 1, 2007, may be partially counted in the fleet average calculations as follows:

- i. Max Hp for Electric Vehicles – For an electric vehicle that replaced a diesel vehicle in the owner's fleet, the max hp of the diesel vehicle replaced may be used as the electric vehicle's max hp. Otherwise, the electric vehicle's own max hp rating shall be used.
- ii. Include such vehicle's max hp as the max hp in calculating the fleet average index and target rate in section 2449.1(a), along with an emission factor of 0.

**b. Non-GSE Electric Vehicles Purchased Prior to January 1, 2007** – Electric vehicles with a max hp of 25 hp or greater purchased prior to January 1, 2007 that replaced a diesel vehicle with max hp 25 hp or greater, may be counted in the fleet average calculations as follows:

- i. Max Hp for Electric Vehicles – For an electric vehicle that replaced a diesel vehicle in the owner’s fleet, the max hp of the diesel vehicle replaced may be used as the electric vehicle’s max hp. Otherwise, the electric vehicle’s own max rating shall be used.
- ii. Include such vehicle’s max hp as the max hp in calculating the fleet average index and target rate in section 2449.1(a), along with an emission factor of 0.

The intent of the potential changes to the provisions below is to ensure other zero-emission technologies beyond solely electric are allowed under this provision.

**c. Electric Vehicles or Zero-Emission Vehicles Purchased on or after January 1, 2007**

- i. Max Hp for Electric Vehicles – For an electric vehicle that replaced a diesel vehicle in the owner’s fleet, the max hp of the diesel vehicle replaced may be used as the electric vehicle’s max hp. For an electric vehicle added to the fleet that did not replace a diesel vehicle, the fleet owner may apply to the Executive Officer to use the max hp of a diesel vehicle that serves the same function and performs equivalent work to that of the electric vehicle. In making his or her determination, the Executive Officer will approve the use of the minimum max hp of a diesel vehicle that would be required to perform the same functions and equivalent work. If no request to the Executive Officer is received, the electric vehicle’s own max hp rating shall be used.
- ii. Double Credit for Electric in 2014-2016 – For compliance dates in 2014 through 2016, the max hp of all electric vehicles purchased on or after January 1, 2007 may be doubled in determining the max hp that is used in calculating the fleet average index. An emission factor of 0 may be used. The max hp of each electric vehicle is included but not doubled in the calculation of fleet average target rate.
- iii. Single Credit for Electric in 2017 and Later – For compliance dates in year 2017 and later, the max hp of all electric vehicles purchased on or after January 1, 2007 is used in determining the max hp that is

used in calculating the fleet average index and target rate. An emission factor of 0 may be used.

iv. Single Credit for Zero-Emission in 2024 and Later – For compliance dates in year 2024 and later, the max hp of all zero-emission vehicles purchased on or after January 1, 2007 is used in determining the max hp that is used in calculating the fleet average index and target rate. An emission factor of 0 may be used.

3. Electric vehicles need not be included when determining fleet size, or when calculating the required hp for the BACT requirements in section 2449.1(b).

### **(C) Stationary or Portable System Used to Replace Mobile Diesel Vehicle**

Fleet owners may apply to the Executive Officer to include electric portable or electric stationary systems that replace mobile diesel vehicles, such as an electric conveyor system used to replace diesel haul trucks at a mine, in the fleet average calculations. The system may be considered in the fleet average calculations by including the max hp of the diesel vehicles replaced in the calculations of the fleet average index and target rate above, along with an emission factor of 0. In order to count such a system, all the following conditions must be met:

1. The owner must demonstrate that it replaced an off-road diesel fueled vehicle subject to this regulation on or after January 1, 2007, and
2. The system is not already counted toward the fleet average emission level requirements for Large Spark Ignition Engine Fleets in title 13, CCR, section 2775.1 or for portable diesel engine fleets in title 17, CCR, section 93116.3.

### **(D) Hybrid Off-Road Vehicles**

Fleets may include a hybrid off-road diesel vehicle with a max hp 25 hp or greater in their fleet average index and target rate calculation. The emission factor for the hybrid vehicle shall be equal to the NO<sub>x</sub> emission standard to which its engine is certified in g/bhp-hr. If a fleet owner wishes to use different emission factor, other than the standard to which the engine is certified, the owner may apply to the Executive Officer to use an alternative emission factor. The Executive Officer shall approve the alternative emission factor if, in the fleet owner's application, the

owner demonstrates that the chosen emission factor is appropriate and not exceeded by the hybrid vehicle.

**(2) Idling** – The idling limits in section 2449(d)(2) shall be effective and enforceable immediately upon this regulation being certified by the Secretary of State. Fleets must meet the following idling limits.

**(A) Idling Limit** – No vehicle or engines subject to this regulation may idle for more than 5 consecutive minutes. Idling of a vehicle that is owned by a rental company is the responsibility of the renter or lessee, and the rental agreement shall so indicate. The idling limit does not apply to:

1. idling when queuing,
2. idling to verify that the vehicle is in safe operating condition,
3. idling for testing, servicing, repairing or diagnostic purposes,
4. idling necessary to accomplish work for which the vehicle was designed (such as operating a crane),
5. idling required to bring the machine system to operating temperature, and
6. idling necessary to ensure safe operation of the vehicle.

**(B) Written Idling Policy** – As of March 1, 2009, medium and large fleets must also have a written idling policy that is made available to operators of the vehicles and informs them that idling is limited to 5 consecutive minutes or less.

**(C) Waiver** – A fleet owner may apply to the Executive Officer for a waiver to allow additional idling in excess of 5 consecutive minutes. The Executive Officer shall grant such a request upon finding that the fleet owner has provided sufficient justification that such idling is necessary.

The intent of the potential changes to the provision below is to clarify implementation practices.

**(3) Changing Fleet Size** –

**(A)** Small fleets that become medium or large fleets must meet the medium or large fleet requirements, respectively, on the compliance reporting date two years subsequent to the year they became a medium or large fleet.

**(B)** Large fleets that become medium fleets may meet either the medium or large fleet requirements on the next compliance reporting date. Large

fleets that become small fleets may meet either the small or large fleet requirements on the next compliance reporting date.

(C) Medium fleets that become small fleets may meet either the small or medium fleet requirements on the next compliance reporting date.

Medium fleets that become large fleets must meet the large fleet requirements on the compliance reporting date two years subsequent to the year they became a large fleet.

The intent of the potential changes to the provisions below is to ensure that newly reported fleets are subject to the same requirements as new fleets.

#### (4) New and Newly-Reported Fleets

(A) ~~New Large and medium fleets~~ – New and newly-reported large and medium fleets must meet the next large fleet average requirement in section 2449.1(a)(1) immediately on purchasing vehicles subject to the regulation, ~~or bringing such vehicles into the State of California for the first time,~~ or reporting the fleet to CARB for the first time, whichever occurs first, on or after January 1, 2012. New and newly reported fleets do not have the option of complying with the BACT requirements in section 2449.1(b) when they enter the State for the first time. For the next applicable compliance date that must be met, the new fleet can choose to meet either the fleet average requirements, or comply with the BACT requirements of section 2449.1(b). For example, if a medium fleet enters the State of California on January 1, 2012, it must meet the January 1, 2014, large fleet average requirements immediately upon entering the State. However, the next applicable compliance date for this fleet is not until the first medium fleet compliance date of January 1, 2017, at which time, the fleet may fulfill the compliance requirements by meeting either the fleet average requirements or the BACT requirements.

(B) ~~New sSmall fleets~~ – New and newly-reported small fleets must meet the fleet average requirements in section 2449.1(a)(2) for the next small fleet compliance date immediately upon purchasing vehicles subject to the regulation, ~~or bringing such vehicles into the State of California for the first time,~~ or reporting the fleet to CARB for the first time, whichever occurs first, on or after January 1, 2012. New and newly reported small fleets do not have the option of complying with the BACT requirements in section 2449.1(b) when they enter the State for the first time. For the next applicable compliance date that must be met, the new fleet can

meet either the fleet average requirements, or comply with the BACT requirements.

**(C) All new fleets** – New and newly-reported fleets must comply with the idling requirements in section 2449(d)(2), and the adding vehicle requirements in section 2449(d)(6), immediately upon purchasing vehicles subject to the regulation, or upon bringing such vehicles into the State, or upon reporting the fleet to CARB for the first time, whichever occurs first. New and newly reported fleets must report vehicles subject to the regulation to ARB within 30 days of purchasing or bringing such vehicles into the State, in accordance with the requirements in section 2449(g).

## **(5) Fleet Ownership Transferred**

**(A) New fleet owner** – If ownership of a fleet a or fleet portion, which is complying and reporting separately per section 2449(c)(20), is transferred to a new fleet owner who did not own a fleet before the transfer of ownership and the fleet or fleet portion was meeting the BACT requirements in lieu of the fleet average requirements before the transfer, the fleet may continue to meet the BACT requirements and is not required to meet the fleet average requirements in section 2449.1(a) or adding vehicle requirements in section 2449(d)(6) as new fleets are required to do. If a new fleet owner who did not own a fleet before acquires a fleet or fleet portion that did not previously comply with the regulation, or acquires a fleet portion that is not complying and reporting separately per section 2449(c)(20), it must meet the new fleet requirements in section 2449(d)(4) above.

**(B) Existing fleets** – Existing fleets may acquire other fleets or fleet portions which are complying and reporting separately per section 2449(c)(20), without condition if the existing fleet and the acquired fleet were in compliance with the individual fleet requirements. If existing fleets acquire a fleet or fleet portion that did not previously comply with the regulation, or they acquire a fleet portion which is not complying and reporting separately per section 2449(c)(20), they must meet the requirements for adding vehicles in section 2449(d)(6) when adding the entire fleet or fleet portion.

**(C) Existing BACT credits** – If ownership of a fleet or fleet portion, which is complying and reporting separately per section 2449(c)(20), is transferred to a new fleet owner and the transferred fleet or fleet portion had BACT credits, the new fleet owner may maintain the BACT credits of the acquired fleet if the acquired fleet or fleet portion continues to comply and report separately. The new fleet owner may keep the acquired fleet separate from the rest of the vehicles owned for the

purposes of maintaining credits even if the vehicles are under common ownership or control. If the new fleet owner combines the acquired fleet or fleet portion for compliance and reporting purposes with the rest of his vehicles, the acquired fleet or fleet portion shall maintain only the credits accumulated from retrofits and repowers, and all other BACT credits shall expire immediately.

**(6) Adding Vehicles** – With the exception noted below for fleets owned by lessors of vehicles, the requirements in (A) through (CH) below apply to all fleets. Fleets owned by lessors are not subject to (A) through (CH) for vehicles owned by the lessor and returned to the lessor fleet at the end of a lease if the vehicles were included in the fleet of the lessee for the compliance year in question. Vehicles returned to a lessor fleet must, however, be included in the lessor fleet’s fleet average demonstration on subsequent compliance dates. For the purposes of this requirement, a vehicle may be assumed to meet the engine emission standard tier in effect for the model year of the engine.

**(A) Ban on adding Tier 0s** – Effective upon the United States Environmental Protection Agency (U.S. EPA) issuing authorization for this regulation, a fleet may not add a vehicle with a Tier 0 engine to its fleet. The engine tier must be Tier 1 or higher.

**(B) Ban on adding Tier 1s** – Beginning January 1, 2012, for large and medium fleets, a fleet may add a vehicle with a Tier 1 engine if and only if the vehicle has an equipment identification number (EIN) that ARB assigned to the vehicle prior to January 1, 2012, and both the fleet selling and the fleet purchasing the vehicle with the Tier 1 engine must have reported to ARB by January 1, 2012, or have entered the State of California for the first time after January 1, 2012. Beginning on January 1, 2013, for large and medium fleets, and January 1, 2016, for small fleets, a fleet may not add any vehicle with a Tier 1 engine. The engine tier must be Tier 2 or higher.

**(C) Ban on adding Tier 2s** – Beginning January 1, 2018, for large and medium fleets, and January 1, 2023, for small fleets, a fleet may not add a vehicle with a Tier 2 engine to its fleet. The engine tier must be Tier 3 or higher.

The intent of these potential provisions is to extend the adding vehicle provisions to prevent fleets from adding Tier 3 and Tier 4 interim vehicles into their fleet.

**(D) Ban on adding Tier 3s** – Beginning [upon adoption], for large, medium, and small fleets, a fleet may not add a vehicle with a Tier 3 engine to its fleet. The engine tier must be Tier 4 interim or higher.



**(E) Ban on adding Tier 4 interims** – Beginning January 1, 2024, for large and medium fleets, and January 1, 2028, for small fleets, a fleet may not add a vehicle with a Tier 4 interim engine to its fleet. The engine tier must be Tier 4 final or higher.

The intent of this potential provision is to introduce new restrictions on adding older on-road engines that are subject to this regulation.

**(F) Ban on adding vehicles powered by model year 2006 or earlier on-road engines** – Beginning January 1, 2024 for large and medium fleets, and January 1, 2028 for small fleets, a fleet may not add a vehicle powered by a model year 2006 or earlier on-road engine to its fleet. A vehicle powered by an on-road engine being added to the fleet would need to be powered by an on-road engine that is model year 2007 or later.

The intent of this potential provision is to extend the adding vehicle restriction for Tier 0 engines to several of the special provisions listed in section 2449(e).

**(G) Ban on adding Tier 0s to special provisions** – Beginning January 1, 2024, for large, medium, and small fleets, a fleet may not add a vehicle with a Tier 0 engine to its fleet as a vehicle designated as a dedicated snow removal vehicle, a vehicle used for emergency operations, or a job corps vehicle as described in section 2449(e).

The intent of this potential provision is to ensure that all vehicles being added to fleets are California-certified or certified to a California-equivalent emission standard starting in 2028.

**(H) Beginning January 1, 2028, for large, medium, and small fleets, a fleet may not add any model year 2028 or later engine or vehicle of any Tier to its fleet unless the engine is California-certified or certified to the California-equivalent emission standards applicable to model year 2028 and later equipment. This requirement also applies to model year 2028 and later replacement engines produced under the provisions of 40 CFR §1068.240. Except as required or allowed by federal law, this requirement does not apply to new engines smaller than 175 horsepower that are used in construction equipment or vehicles, or used in farm equipment or vehicles.**

**(7) VDECS Installation** – Before installing a VDECS on a vehicle, the fleet owner must ensure that:

- (A) The VDECS is verified for use with the engine and vehicle, as described in the Executive Order for the VDECS.
- (B) Use of the vehicle is consistent with the conditions of the Executive Order for the VDECS.
- (C) The diesel emission control strategy is installed in a verified configuration.
- (D) The engine on which the VDECS is to be installed is tuned up so that it meets engine manufacturer’s specifications prior to VDECS installation.
- (E) The VDECS label will be visible after installation.

**(8) VDECS Maintenance and Removal** – If a fleet owner installs a VDECS to meet the requirements in section 2449.1, the VDECS must be kept installed until the VDECS fails or is damaged unless the requirements below are met. Requirements for VDECS failure or damage are in section 2449(e)(1). The owner of a vehicle with a VDECS must ensure all maintenance on the VDECS and engine is performed as required by the respective manufacturers.

**(A) Removal for safety or visibility purposes** – If a fleet removes a VDECS for safety or visibility purposes, and that VDECS has not failed and is not damaged, the fleet may keep the BACT credit earned under section 2449.1(b) for the installation of the removed VDECS. If the fleet could not meet an applicable fleet average target for the most recent compliance date without the removed VDECS, the fleet owner must bring the fleet back into compliance within 90 days of the removal of the VDECS.

**(B) Removal for other purposes** – If a fleet removes a VDECS for reasons other than safety or visibility purposes, and that VDECS has not failed and is not damaged, the fleet must forfeit any BACT credit earned under section 2449.1(b) from the installation of the removed VDECS. If the fleet could not meet an applicable compliance requirements under section 2449.1 for the most recent compliance date without the removed VDECS and the forfeited BACT credit, the fleet must bring the fleet back into compliance within 90 days of the removal of the VDECS.

**(9) Compliance After the Final Target Date** –

Commencing respectively on January 1, 2023, for large and medium fleets, and on January 1, 2028, for small fleets, if a fleet does not meet the applicable fleet average target rate for the final target date in section 2449.1(a), the fleet must continue to meet the BACT requirements in section 2449.1(b) and report

annually each year until it does so. BACT carryover credit earned in previous years prior to the final target date cannot be used to meet compliance after the final target date.

In response to stakeholder feedback, the intent of this potential provision is to allow fleets that turn over equipment as a result of the operational backstops on tier 0-2 equipment to be allowed to use any additional BACT credit generated by those actions to meet their BACT requirements subsequent to the final fleet average target year.

BACT carryover credit earned after the final target date can be used in subsequent years to meet the BACT requirements in section 2449.1(b).

Vehicles exempt from BACT under sections 2449.1(b)(2) and (3) are exempt from the requirements of this paragraph.

#### **(e) Special Provisions/Compliance Extensions**

**(1) VDECS Failure** – In the event of a failure or damage of a VDECS, the following conditions apply:

**(A) Failure or Damage During the Warranty Period.** If a VDECS fails or is damaged within its warranty period and it cannot be repaired, the fleet owner must replace it with the same level VDECS or higher for the vehicle within 90 days of the failure.

**(B) Failure or Damage Outside the Warranty Period.**

1. **Before Final Target Date** – If a VDECS fails or is damaged outside of its warranty period before January 1, 2023 for large and medium fleets, or before January 1, 2028 for small fleets, and cannot be repaired, and if the fleet could not meet an applicable fleet average target for the most recent compliance date without the failed VDECS, the fleet owner must replace the failed or damaged VDECS within 90 days of its failure, with the highest level VDECS available for the engine at time of failure.

2. **After Final Target Date** – If a VDECS fails or is damaged outside of its warranty period on or after January 1, 2023 for large and medium fleets, or on or after January 1, 2028 for small fleets, and cannot be repaired, the fleet owner must replace the failed or damaged VDECS within 90 days of its failure with the highest level

VDECS available for the engine at time of failure, regardless of whether the fleet met the applicable fleet average requirement for the most recent compliance date.

## **(2) Fuel-based Strategy VDECS –**

**(A)** If a fleet owner determines that the highest level VDECS for a large percentage of his fleet would be a Level 2 fuel verified as a diesel emission control strategy, and implementation of this VDECS would require installation of a dedicated storage tank, then the fleet owner may request prior approval from the Executive Officer to allow use of the level 2 fuel-based strategy across its fleet.

**(B)** Waiver for Discontinuation of Fuel Verified as a Diesel Emission Control Strategy. If a fleet owner has relied upon a fuel verified as a diesel emission control strategy to meet an applicable fleet average requirement and has to discontinue use of the fuel due to circumstances beyond the fleet owner's control, the fleet owner may apply to the Executive Officer no later than 30 days after discontinuing use of the fuel for a compliance waiver of up to two years to provide it time to return to compliance with the applicable fleet average requirement. The Executive Officer then has 30 days to act upon the request. Fleets that did not meet the applicable fleet average requirement in the most recent compliance year may not apply for this waiver.

**(3) Exemption for Vehicles Used for Emergency Operations –** Vehicles used solely for emergency operations are exempt from the performance requirements in sections 2449(d), 2449.1, and 2449.2 but still must be labeled and reported, and meet the adding vehicle requirements in accordance with sections 2449(f), and 2449(g), and 2449(d)(6)(G). Vehicles used solely for emergency operations need not be included when calculating fleet average indices or target rates, when determining fleet size, or when calculating the required hp for the BACT requirements in section 2449.1(b).

Owners of vehicles brought into California for emergency operations that last longer than three months must report such entry to ARB and request an equipment identification number within three months of entering the State. Vehicles used solely for emergency operations and that stay in California for less than three months do not have to be labeled. For vehicles used both for emergency operations and for other purposes, hours of operation accrued when the vehicle is used for emergency operations do not need to be included when determining whether the vehicle meets the permanent or year-by-year low-use vehicle definition.

**(4) Special Provisions for Snow Removal Vehicles** – Dedicated snow removal vehicles are exempt from the performance requirements in sections 2449(d), 2449.1, and 2449.2, but still must be labeled and reported, and meet the adding vehicle requirements in accordance with sections 2449(f), and 2449(g), and 2449(d)(6)(G). Dedicated snow removal vehicles need not be included when calculating fleet average indices or target rates, when determining fleet size, or when calculating the required hp for the BACT requirements in section 2449.1(b). Publicly owned vehicles used exclusively to support snow removal operations, but which do not meet the dedicated snow removal vehicle definition (such as a loader without a special snow removal attachment), are exempt from the performance requirements in sections 2449(d), 2449.1, and 2449.2, but still must be labeled and reported, and meet the adding vehicle requirements in accordance with sections 2449(f), and 2449(g), and 2449(d)(6)(G).

**(5) Use of Experimental Diesel Emission Control Strategies** – If a fleet owner wishes to use an experimental, or non-verified, diesel emission control strategy, the owner must first obtain approval from the Executive Officer for a compliance extension. To obtain approval, the owner must demonstrate either that (A) a VDECS is not available or not feasible or not safe for their vehicle or application, or (B) that use of the non-verified strategy is needed to generate data to support verification of the strategy. The owner or operator shall keep documentation of this use in records as specified by the Executive Officer. The application must include emissions data and detailed control technology description demonstrating the experimental control achieves at least a Level 2 diesel PM emission reduction. If the application demonstrates that the strategy achieves at least 50 percent reductions in diesel PM, it may be treated like a Level 2 VDECS. If the application demonstrates that the strategy achieves at least 85 percent reductions in diesel PM, it may be treated like a Level 3 VDECS. If the application demonstrates that the strategy achieves a NOx reduction over 15%, the NOx reduction may be counted.

Upon approval by the Executive Officer, each vehicle engine with the experimental strategy will be allowed to operate for a specified time period necessary to make a determination that the experimental strategy can achieve the projected emissions reductions. The vehicle equipped with the experimental strategy will be considered to be in compliance during the specified time period. A fleet owner who participates in an experimental diesel emission control program approved by the Executive Officer may retain carryover BACT credits actually accumulated during the experiment, regardless of whether the experiment achieved the projected emissions reductions or whether the strategy is eventually verified. If a strategy installed in an experimental diesel emission control program approved by the Executive

Officer fails to be verified or is removed, it will no longer count in the fleet's fleet average calculations. The fleet owner must bring the fleet into compliance prior to the expiration of the experimental diesel emission control strategy extension.

**(6) Compliance Extension for Equipment Manufacturer or Installer Delays –** A fleet owner who has purchased new equipment (including VDECS) or vehicles in order to comply with this regulation, will be excused from immediate compliance if the new equipment or vehicles have not been received due to manufacturing or installer delays as long as all the conditions below are met:

- (A) The equipment or vehicle was purchased, or the fleet owner and seller had entered into contractual agreement for the purchase, at least two months prior to the required compliance date, or – for a VDECS purchased to replace a failed or damaged VDECS – the fleet owner and seller had entered into contractual agreement for the purchase within 60 days of the VDECS failure.
- (B) Proof of purchase, such as a purchase order or signed contract for the sale, including engine specifications for each applicable piece of equipment, must be maintained by the fleet owner and provided to an agent or employee of ARB upon request.
- (C) The new equipment or vehicles are immediately placed into operation upon receipt.
- (D) Documentation from the manufacturer or the installer that there is a delay, such that the equipment or vehicle will be received or installed after the compliance date.

**(7) Exemption for Permanent and Year-by-year Low-Use Vehicles –** Permanently designated and year-by-year low-use vehicles are exempt from the performance requirements in sections 2449(d)(3) through 2449(d)(5) and 2449(d)(7) through 2449(d)(9), 2449.1, and 2449.2(d), but still must meet the idling limits in section 2449(d)(2), and be labeled and reported in accordance with sections 2449(f) and (g), and meet the operational backstop requirements in section 2449.1(c). Permanent and year-by-year low-use vehicles need not be included when calculating fleet average indices or target rates, when determining fleet size, or when calculating the required hp for the BACT requirements in section 2449.1(b).

The intent of this potential provision is to sunset the year-by-year low-use designation under the regulation.

No vehicle will be considered a year-by-year low-use vehicle on or after January 1, 2024.

Vehicles that formerly met the permanent low-use vehicle definition, but whose use increases to 200 hours per year or greater must meet the adding vehicles requirements in section 2449(d)(6) and be included in the fleet average calculation by the next compliance date. For example, a formerly designated permanent low-use engine that exceeds 200 hours per year between January 1, 2015 and December 31, 2015 must be included in the fleet average indices and target rates reported in 2016, and must also meet the adding vehicle requirements for that year. Vehicles that formerly met the year-by-year low-use vehicle definition, but whose use increases to 200 hours per year or greater do not have to meet the adding vehicles requirements in section 2449(d)(6), but must be included in the fleet average calculations by the next compliance date.

**(8) VDECS That Impairs Safe Operation of Vehicle** – A fleet owner may request that the Executive Officer find that a VDECS shall not be considered the highest level VDECS available because (A) it cannot be safely installed or operated in a particular vehicle application, or (B) its use would make compliance with federal or state requirements for safety or health, or an ongoing local air district permit condition, such as for use of a diesel oxidation catalyst, technologically infeasible. If a VDECS manufacturer states that there is no safe or appropriate method of mounting its VDECS on the requesting party's vehicle, then the VDECS will not be considered safe. The Executive Officer shall accept the official findings of the responsible federal or state agency (i.e., the federal or state agency that promulgates safety requirements) that compliance with the requirements of this regulation would make compliance with the federal and state safety or health requirements technologically infeasible. In the absence of such a declaration by the VDECS manufacturer or official findings of a responsible federal or state agency, the requesting party shall provide other documentation to support its claims. Documentation must include published reports and other findings of federal, state or local government agencies, independent testing laboratories, engine or equipment manufacturers, or other equally reliable sources. The request will only be approved if the requesting party has made a thorough effort to find a safe method for installing and operating the VDECS, including considering the use of mirrors, various locations for VDECS mounting, and use of an actively regenerated VDECS. The Executive Officer shall review the documentation submitted and any other reliable information that he or she wishes to consider and shall make his or her determination based upon the totality of the evidence. Upon finding that a VDECS cannot be installed without violating the safety standards prescribed under federal or state requirements for safety or health, the Executive Officer shall issue a determination that there is no highest level VDECS available. The

Executive Officer shall inform the requesting party, in writing, of his or her determination, within 60 days of receipt of the request. Parties may appeal the Executive Officer's determination as described in (A) and (B) below. During the appeal process described in (A) and (B) below, the requesting party may request the administrative law judge to stay compliance until a final decision is issued. If the stay is granted and the Executive Officer denies the requesting party's request, the requesting party has six months from the date of the Executive Officer's final written decision to bring his or her fleet back into compliance.

**(A) Appeals – Hearing Procedures –**

1. Any party whose request has been denied may request a hearing for the Executive Officer to reconsider the action taken by sending a request in writing to the Executive Officer. A request for hearing shall include, at a minimum, the following:
  - a. Name of the requesting party;
  - b. Copy of the Executive Officer's written notification of denial;
  - c. A concise statement of the issues to be raised, with supporting facts, setting forth the basis for challenging the denial (conclusory allegations will not suffice);
  - d. A brief summary of evidence in support of the statement of facts required in c. above; and
  - e. The signature of an authorized person requesting the hearing.
2. A request for a hearing shall be filed within 30 days from the date of issuance of the notice of the denial.
3. A hearing requested pursuant to this section shall be heard by a qualified and impartial hearing officer appointed by the Executive Officer. The hearing officer may be an employee of the ARB, but may not be any employee who was involved with the denial at issue. In a request for reconsideration, the hearing officer, after reviewing the request for hearing and supporting documentation provided under paragraph 1. above, shall grant the request for a hearing if he or she finds that the request raises a genuine and substantial question of law or fact.
4. If a hearing is granted, the hearing officer shall schedule and hold, as soon as practicable, a hearing at a time and place determined by the hearing officer.



5. Upon appointment, the hearing officer shall establish a hearing file. The file shall consist of the following:

- a. The determination issued by the Executive Officer which is the subject of the request for hearing;
- b. The request for hearing and the supporting documents that are submitted with it;
- c. All documents relating to and relied upon by the Executive Officer in making the initial determination to deny the requesting party's original claim; and
- d. Correspondence and other documents material to the hearing.

6. The hearing file shall be available for inspection by the applicant at the office of the hearing officer.

7. An applicant may appear in person or be represented by counsel or by any other duly-authorized representative.

8. The ARB may be represented by staff or counsel familiar with the regulation and may present rebuttal evidence.

9. Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to relying in the conduct of serious affairs. No action shall be overturned based solely on hearsay evidence, unless the hearsay evidence would be admissible in a court of law under a legally recognized exception to the hearsay rule.

10. Declarations may be used upon stipulation by the parties.

11. The hearing shall be recorded either electronically or by a certified shorthand reporter.

12. The hearing officer shall consider the totality of the circumstances of the denial, including but not limited to, credibility of witnesses, authenticity and reliability of documents, and qualifications of experts. The hearing officer may also consider relevant past conduct of the applicant including any prior incidents involving other ARB programs.

13. The hearing officer's written decision shall set forth findings of fact and conclusions of law as necessary.

14. Within 30 days of the conclusion of a hearing, the hearing officer shall submit a written proposed decision, including proposed finding as well as a copy of any material submitted by the hearing participants as part of that hearing and relied on by

the hearing officer, to the Executive Officer. The hearing officer may recommend to the Executive Officer any of the following:

- a. Uphold the denial as issued;
- b. Modify the denial; or
- c. Overturn the denial in its entirety.

15. The Executive Officer shall render a final written decision within 60 working days of the last day of hearing. The Executive Officer may do any of the following:

- a. Adopt the hearing officer's proposed decision;
- b. Modify the hearing officer's proposed decision; or
- c. Render a decision without regard to the hearing officer's proposed decision.

**(B) Appeals – Hearing Conducted by Written Submission.** In lieu of the hearing procedure set forth in (A) above, an applicant may request that the hearing be conducted solely by written submission. In such case the requestor must submit a written explanation of the basis for the appeal and provide supporting documents within 20 days of making the request. Subsequent to such a submission the following shall transpire:

1. ARB staff shall submit a written response to the requestor's submission and documents in support of the Executive Officer's action no later than 10 days after receipt of requestor's submission;
2. The applicant may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised;
3. If the applicant submits a rebuttal, ARB staff may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised; and
4. The hearing officer shall be designated in the same manner as set forth in section 2449(e)(8)(A)3. above. The hearing officer shall receive all statements and documents and submit a proposed written decision and such other documents as described in section 2449(e)(8)(A)13. above to the Executive Officer no later than 30 working days after the final deadline for submission of papers. The Executive Officer's final decision shall be mailed to the applicant no later than 60 days after the final deadline for submission of papers.

5. The Executive Officer shall render a final written decision within 60 working days of the last day of hearing. The Executive Officer may do any of the following:

- a. Adopt the hearing officer's proposed decision;
- b. Modify the hearing officer's proposed decision; or
- c. Render a decision without regard to the hearing officer's proposed decision.

**(9) Compliance Flexibility for Delays in Availability of Tier 3 or Tier 4**

**Vehicles** – If the Executive Officer finds that there is a delay in availability of vehicles with engines meeting the Tier 3 or Tier 4 interim or final emission standards so that vehicles with Tier 3 or Tier 4 interim or final engines to meet a fleet's needs are not available or not available in sufficient numbers or in a sufficient range of makes, models, and sizes, then the Executive Officer may grant an extension to the fleet from the requirements in section 2449.1. If such a delay affects a group of fleets, the Executive Officer may issue an extension to all fleets with similar characteristics. Any such delay must be documented based on verifiable information from the fleet regarding its vehicle needs and/or verifiable information from the equipment manufacturer, engine manufacturer, distributor, and/or dealer regarding the unavailability of appropriate vehicles with Tier 3 or Tier 4 interim or final engines.

**(10) Exemption for Vehicles Awaiting Sale** – Vehicles in the possession of dealers, financing companies, or other entities who do not intend to operate the vehicle nor offer the vehicle for hire, that are operated only to demonstrate functionality to potential buyers, or to move short distances while awaiting sale, or for maintenance purposes are exempt from all the requirements in sections 2449, 2449.1, and 2449.2, but must meet the sales disclosure requirements in section 2449(l).

**(11) Exemption for Vehicle Used Over Half the Time for Agriculture** – A vehicle that is used by its owner for agricultural operations for over half of its annual operating hours but that is not used exclusively for agricultural operations is exempt from the performance requirements in section 2449(d), 2449.1, and 2449.2, but still must be labeled and reported in accordance with sections 2449(f) and (g). Vehicles used exclusively for agricultural operations are completely exempt from the performance, labeling, and reporting requirements. A vehicle that is rented or leased for use by others is exempt only if it is exclusively used for agricultural operations.

**(12) Exemption for Vehicles Used Solely on San Nicolas or San Clemente**

**Islands** – Vehicles used solely on San Nicolas or San Clemente Islands are exempt from all requirements in section 2449, 2449.1, and 2449.2. If the land

use plans for the islands are changed to allow use by the general public of the islands, this exemption shall no longer be applicable.

**(13) Exemption for Job Corps Vehicles** – Vehicles used by the Job Corps nonprofit apprenticeship training program are exempt from the performance requirements in sections 2449(d), 2449.1, and 2449.2 but still must be labeled, and reported, meet the adding vehicle requirements, and meet the operational backstop requirements in accordance with sections 2449(f), and 2449(g), 2449(d)6(G), and 2449.1(c).

**(14) Two-Engine Vehicles** – For purposes of the rounding provisions in section 2449.1(b)(5), if a two-engine vehicle is subject to this regulation, under section 2449(b), neither engine in the two-engine vehicle is required to be turned over until the hp required to be turned over under section 2449.1(b) is at least half the sum of the max hp of the primary and auxiliary engine in the two-engine vehicle.

**(15) On-road Registered Vehicles with Off-road Engines** – If a workover rig or other on-road registered vehicle subject to this regulation with an off-road engine is repowered and will be registered and driven on-road, it must be repowered with an on-road certified engine of the same model year or newer as the engine being replaced.

**(16) Fleets with 500 hp or less** – Fleets with 500 hp or less total max hp may meet the optional compliance schedule listed below in Table 1 instead of the small fleet requirements in 2449.1(a)(2) and 2449.1(b). This percent of engine hp must be met or exceeded, and the rounding provisions in section 2449.1(b)(5) do not apply. For compliance with this section, all vehicles in the fleet must be included; no vehicles qualify for the exemptions listed in section 2449(e).

**Table 1 – Optional Compliance Schedule for Fleets with 500 HP or Less**

<b>Compliance Date: January 1 of Year</b>	<b>Percent of Fleet (by hp) Which Must Have a Tier 2 or Higher Engine</b>
<b>2019</b>	25
<b>2022</b>	50
<b>2026</b>	75
<b>2029</b>	100

Fleets with 500 hp or less may choose to comply with either the above optional compliance schedule or the small fleet requirements. If the fleet alternates from the BACT schedule to the optional compliance path above, the fleet must comply with the most recent past requirements of the optional compliance schedule. For example, a fleet switching to the optional compliance schedule

above in 2025 must meet the 2022 requirements of the optional compliance schedule immediately upon switching to the optional compliance schedule. A fleet switching to the fleet average or BACT requirements from the optional compliance schedule must begin meeting the fleet average or BACT requirements for small fleets on the next compliance date for small fleets. If a fleet grows larger than 500 hp, that fleet must begin meeting the fleet average or BACT requirements for small fleets on the next compliance date for the applicable fleet size category.

In response to stakeholder feedback, the intent of this potential provision is to provide a delayed implementation schedule for the operational backstop provisions for the smallest fleets covered under this regulation. More details are provided in section 2449.1(c), with the entire operational backstop proposal.

Fleets with 500 hp or less may meet the operational backstop requirements in section 2449.1(c)(5) instead of the small fleet operational backstop requirements in section 2449.1(c)(3).

**(17) Public Incentive funds for purchases, repowers, or retrofits –** Notwithstanding sections 2449, 2449.1 and 2449.2, the purchase of a replacement vehicle, repower, or a retrofit with public incentive funds shall be counted toward the fleet average or BACT requirements in accordance with funding program guidelines applicable to the particular source of public incentive funds used for the purchase. This may in some cases limit credit to single rather than double credit.

#### **(f) Labeling**

All vehicles with engines subject to the regulation must be labeled with an ARB-issued equipment identification number (EIN). Electric and alternative fuel vehicles, stationary or portable systems, and gasoline-powered vehicles used to replace diesel vehicles under section 2449(d)(1) must also be labeled with an ARB-issued EIN. ARB will issue a unique EIN to the fleet owner for each vehicle subject to the regulation in response to the initial reporting described in section 2449(g)(1) and, for vehicles added in the 30 days before the annual reporting date, the annual reporting described in section 2449 (g)(2). Vehicles with two engines that provide motive power will receive two EINs. Vehicles with two engines where one provides motive power and the other is an auxiliary engine will receive one EIN. All owners of vehicles subject to the regulation must comply with the following labeling requirements.

**(1) Application for EIN for added vehicle** – Notwithstanding the requirements for vehicles used for emergency operations in section 2449(e)(3), if a fleet owner adds a vehicle to his California fleet or brings a vehicle into California from outside the State, the fleet owner has 30 days from the date of purchase or the date the vehicle enters California to apply to ARB for an EIN or, if the vehicle already has an EIN, to inform ARB of the purchase using forms approved by the Executive Officer for submittal of required reporting information. If the reporting date under section 2449(g)(2) occurs before 30 days after purchase, the annual reporting may serve as the application for an EIN.

Applications for an equipment identification number shall be submitted electronically per the guidelines approved by the Executive Officer for electronic data reporting, or mailed or delivered to ARB at the address listed immediately below:

California Air Resources Board  
Mobile Source Control Division (In-Use Off-road Diesel)  
P.O. Box 2815  
Sacramento, CA 95812.

**(2) Affixing Equipment Identification Number** – Within 30 days of receipt of the ARB-issued EIN, fleet owners shall permanently affix or paint the EIN(s) on the vehicle in clear view according to the following specification:

**(A)** The EIN shall be white on a red background, unless the vehicle is part of a captive attainment area fleet, in which case the EIN shall be white on a green background.

**(B)** The EIN shall be located in clear view on both sides of the outside of the vehicle approximately 5 feet above the ground, or, if the vehicle is not 5 feet tall, lower on the vehicle.

**(C)** Each character shall be at least 3 inches (7.6 centimeters) in height and 1.5 inches (3.8 centimeters) in width.

**(D)** The EIN shall be maintained in a manner that retains its legibility for the entire life of the vehicle.

**(E)** Vehicles reported to ARB prior to January 1, 2013, may apply a label to the right (starboard) side of the vehicle only, except that the vehicle must have an identical EIN label placed on the left (port) side of the vehicle before January 1, 2013.

**(F)** Vehicles that are part of a captive attainment area fleet and reported to ARB prior to January 1, 2013, may be labeled with an EIN that is in white on a red background, except that the vehicle must have the EIN label replaced by one displaying white on a green background, on each

side of the vehicle, before January 1, 2013.

### (g) Reporting

Reporting is required for each and every fleet. Large and medium fleets may report separately for different divisions or subsidiaries of a given company or agency. Fleet owners may submit reporting information using forms (paper or electronic) approved by the Executive Officer.

All information and documentation submitted to CARB under section 2449(g) is deemed to be submitted under the penalty of perjury.

**(1) Initial reporting** – All fleet owners must submit the information in section 2449(g)(1)(A) through (H) to ARB by their initial reporting date. In the initial reporting, fleet owners must report information regarding each vehicle subject to this regulation that was in their fleet on March 1, 2009. Systems or non-diesel fueled vehicles that are used in place of a vehicle that would be subject to this regulation must also be reported. The initial reporting date for large fleets is April 1, 2009. The initial reporting date for medium fleets is June 1, 2009. The initial reporting date for small fleets is August 1, 2009. Notwithstanding the aforementioned reporting dates, the initial reporting date for two-engine vehicles is March 1, 2012. Reports must include the following information:

#### (A) Fleet Owner –

The intent of the potential changes to these provisions is to make it clear that we are not asking for personal identifiable information such as social security numbers, but instead are looking for the federal employer identification numbers.

1. Fleet owner's name;
2. Corporate parent name (if applicable);
3. Corporate parent Federal Employer Identification Number~~taxpayer identification number~~ (if applicable);
4. Company Federal Employer Identification Number~~taxpayer identification number~~;
5. Address;
6. The Responsible official's legal person~~name~~;
7. The Responsible official's job person~~title~~;
8. Contact name;
9. Contact phone number;
10. Contact email address (if available);

11. Whether the fleet owner is a low population county local municipality fleet;
12. Whether the fleet owner has an approval from the Executive Officer to be treated as if in a low-population county;
13. Whether the fleet owner is a non-profit training center;
14. Whether the fleet has an idling policy documented and
15. Whether the fleet is using a fuel-based strategy as an emissions control strategy;
16. Whether the fleet is a captive attainment area fleet.

**(B) Vehicle List** – A list of each vehicle subject to this regulation along with the following information for each vehicle:

1. Vehicle type;
2. Vehicle manufacturer;
3. Vehicle model;
4. Vehicle model year;
5. Vehicle serial number (i.e., for workover rigs and on-road two-engine vehicles, vehicle identification number);
6. Whether the vehicle is a permanent or year-by-year low-use vehicle;
7. If the vehicle is a permanent or year-by-year low-use vehicle, whether the vehicle was operated outside of California during the previous compliance year;
8. Whether the vehicle is a specialty vehicle;
9. Whether the vehicle is a vehicle used solely for emergency operations;
10. Whether the vehicle is a dedicated snow removal vehicle;
11. Whether the vehicle is used for agricultural operations for over half of its annual operating hours;
12. Whether the vehicle is an electric vehicle that replaced a diesel vehicle;
13. Whether the vehicle has had a VDECS installed, or been repowered, or replaced with Surplus Off-road Opt-in for NOx program funding and, if so, the start and end dates of the contract period;
14. Whether the vehicle has had a VDECS installed, or been repowered, or replaced with Carl Moyer program funding;
15. Whether the vehicle has had a VDECS installed through a demonstration program, and - if so - which program;
16. EIN if it has already been assigned;
17. License plate number, if vehicle has a license plate;



18. Whether the vehicle has a VDECS safety exemption per section 2449(e)(8);
19. Whether the vehicle is exempt from the BACT requirements per section 2449.1(b)(2)(E) for the early installation of a highest level PM VDECS.

**(C) Engines** - For each engine that powers a vehicle listed per section 2449(g)(1)(B), or is an auxiliary engine in a two-engine vehicle that is subject to this regulation per section 2449(b), report the following information.

1. Engine manufacturer;
2. Engine model;
3. Engine family (if any);
4. Engine serial number;
5. Engine model year;
6. Engine max hp;
7. Engine displacement;
8. Whether the engine is a repower and – if so – date repowered;
9. Whether the engine is a flexibility engine;
10. Whether the engine is certified to on-road standards, or an engine certified by ARB or U.S. Environmental Protection Agency to a lower emission standard than shown in Appendix A, the emission standard to which the engine is certified and the certification Executive Order or certificate number;
11. Whether the engine has been rebuilt to a more stringent emissions configuration.

**(D) Verified Diesel Emission Control Strategies** – For each VDECS that is installed on an engine listed per section 2449(g)(1)(C) report the following information.

1. VDECS manufacturer;
2. VDECS family;
3. Verification level;
4. Verified percent NO<sub>x</sub> reduction (if any);
5. Date installed;
6. VDECS serial number.

**(E) Non-Diesel Vehicle Used in Place of a Diesel Vehicle** – For each electric, zero-emission, alternative fueled, or gasoline fueled vehicle, report the information listed in sections 2449(g)(1)(B)1. through

2449(g)(1)(B)5., section 2449(g)(1)(B)12., and sections 2449(g)(1)(C)1. through 2449(g)(1)(C)6. as well as

1. Date purchased;
2. If the vehicle replaced a diesel vehicle in the fleet, the hp of the diesel vehicle replaced and the date replaced;
3. If not electric, the emission factor;

**(F) Stationary or Portable Systems Used in Place of a Diesel Vehicle –**

For stationary or portable systems that are used in place of a diesel vehicle, report the following information:

1. Description of the system;
2. Type and number of vehicles that would otherwise be used;
3. Hp of the vehicle(s) that would otherwise be used;

**(G) Credit for Early Actions –** Fleet owners claiming credit for early action must report information required under sections 2449(g)(1)(B)1. through 2449(g)(1)(B)5. and sections 2449(g)(1)(C)1. through 2449(g)(1)(C)6. for each vehicle for which credit is claimed. As appropriate, the following information must also be reported:

1. For each vehicle within the fleet that was repowered with a Tier 1 or newer engine prior to March 1, 2009, the date of repower;
2. For each vehicle within the fleet that had the highest level PM VDECS installed prior to March 1, 2009, the date of installation and whether Carl Moyer Incentive Program funding was used to pay for the VDECS;
3. Fleet owners claiming early credit for retirement or replacement of any vehicles under section 2449.1(b)(14) or 2449.1(b)(16) must report information on each and every vehicle within the fleet between March 1, 2006, and March 1, 2010, as required under sections 2449(g)(1)(B)1. through 2449(g)(1)(B)5. and sections 2449(g)(1)(C)1. through 2449(g)(1)(C)6. as well as the date of any purchase and/or retirement between March 1, 2006 and March 1, 2010.

The intent of the potential changes to the provision below is to clarify that public incentive funds, as defined in the definition section, is the only intended funding subject to this requirement.

**(H) Equipment Purchased, Repowered, Retrofitted, or Otherwise Funded or Partially Funded Using Public Incentive Funds** – For owners of equipment or vehicles that were purchased, repowered or retrofitted using public incentive funds and where funding program guidelines or contracts include criteria that limit funded projects from receiving regulatory benefit or credit, in addition to the information provided in sections 2449(g)(1)(A) through (D), the fleet owner must provide the following information for each vehicle:

1. Date the public incentive funding contract term began;
2. Date the public incentive funding contract term ends;
3. Program providing the funding; and
4. Contract terms specifying the limitations for receiving regulatory benefit or credits for the funded equipment.

**(2) Annual Reporting and Responsible Official Affirmation of Reporting** – All fleet owners must review and update the information submitted under section 2449(g)(1) annually, and submit the information in section 2449(g)(2)(A) through (C) to ARB by the reporting date of each subsequent reporting year. The reporting date for all fleets is March 1. Fleet owners must report information regarding each vehicle subject to this regulation as it was on December 31 of the year prior to the reporting year (for example, by March 1, 2018, fleets must report each vehicle as it was at the end of the day on December 31, 2017). Large fleets must report annually each year from 2012 to 2023. Medium fleets must report annually each year 2016 to 2023. Small fleets must report annually each year from 2018 to 2028. Any fleet that fails to meet the fleet average target rate for the final target date in section 2449.1(a) must continue to report annually each year until it does so. Any fleet that operates permanent or year-by-year low-use vehicles must continue to report annually for each permanent or year-by-year low-use vehicle for as long as the fleet owns or operates the vehicle. Fleets may use forms (paper or electronic) approved by the Executive Officer for submittal of the required reporting information.

**(A) Responsible Official Affirmation of Reporting** – Each year that annual reporting is required, a fleet shall submit to ARB an affirmation, signed by a responsible official or a designated official~~designee thereof of the fleet~~, that the information reported is accurate and that the fleet is in compliance with the regulation. The affirmation must be submitted on a form (paper or electronic) approved by the Executive Officer. If a designated official~~designee~~ signs the affirmation of reporting, a written statement signed by the responsible official designating the designated official~~designee~~ must be attached to the affirmation of reporting and submitted to ARB. This written statement designating the designated

official designee must only be attached the first time a particular designated official designee signs the affirmation of reporting. If a new different designated official designee is appointed at a later time, another written statement signed by the responsible official designating a new that different designated official designee must be submitted. If the fleet is a captive attainment area fleet, the affirmation must certify that the fleet's vehicles did not operate outside the counties listed in 2449(c)(6) in the prior year. If the responsible official or designated official designee is the same for several fleets or fleet portions, the responsible official or designated official designee has the option of submitting a single affirmation for all of these fleets or fleet portions, as long as the single affirmation appropriately identifies each fleet covered by the affirmation.

**(B) Changes Since Last Reporting** – If any information reported per section 2449(g)(1) has changed since either the initial or last annual report filed with ARB or any other reporting required under section 2449(g), the fleet owner must, in its next annual report identify such changes. Such changes include vehicles removed from the fleet, vehicles added to the fleet through purchase or by bringing into California, vehicles newly designated as permanent or year-by-year low-use or specialty vehicles, repowers, VDECS installed, and VDECS removed. If there are no changes, the fleet shall indicate that there have been no changes since the last report.

The intent of the potential changes to the provisions below is to require photographic evidence when reporting low-use hour meters and, in response to stakeholder feedback, to update the language to allow for permanent low-use vehicles to utilize a three-year rolling average with proper reporting.

**(C) Engine Hour Meter Readings** – Engine hour meter readings must be reported for each engine in the following cases in (C)(1)-(4), below. Each report must include a photo of the engine hour meter showing the engine hour at the time of the reading being reported.

1. Year-by-Year Low-Use Vehicles Reporting Requirements

- a. For vehicles that fleet owners intend to designate as year-by-year low-use, report two engine hour meter readings, one from on or before January 1 of the prior year and one from on or after December 31 of the prior year, and the dates of reading. If using the three-year rolling average definition of year-by-year low-use, report two hour meter readings, one from on or before

January 1 of the first year of the three year period and one from on or after December 31 of the third year.

b. No year-by-year low-use vehicle reporting will be required on or after January 1, 2024.

## 2. Permanent Low-Use Vehicles Reporting Requirements

a. For vehicles that fleet owners intend to designate as permanent low-use vehicles, report one engine hour meter reading from on or before January 1 of the current year. For each year thereafter, report the engine hour meter reading from on or after December 31 of the prior year. For vehicles for which fleets are using the three-year rolling average definition of permanent low-use, report two hour meter readings: one from on or before January 1 of the first year of the three-year period and one from on or after December 31 of the third year of the three-year period.

## 3. Other Low-Use Reporting Requirements

a. Permanent and year-by-year low-use vehicles used in emergency operations must report the total hours used in emergency operations. Additionally, for vehicles designated as permanent or year-by-year low-use that operate both inside and outside California, the fleet owner shall submit a log that contains the following information.

b. Each date the vehicle entered California and the hour meter reading upon entry;

c. Each date the vehicle exited California and the hour meter reading upon exit.

The intent of the potential provision below is to require fleets that replace, change, or alter an hour meter on a low-use vehicle to report those alterations to CARB.

d. If a vehicle hour meter on a permanent or year-by-year low-use vehicles is replaced or changed or altered in any way, the fleet must notify CARB of the replacement or changes made during the following engine hour reporting period. Reporting of replacements or changes must include the hour meter

replacement and/or change date, the hour meter reading of the replaced meter on the date of replacement and/or change, and the hour meter reading of the replacement and/or changed meter at the time of reporting.

#### 4. (2) Agricultural Operations Reporting Requirements

- a. For vehicles that are used in agricultural operations, the fleet owner shall report two engine hour meter readings, one from on or before January 1 of the prior year and one from on or after December 31 of the prior year, and the dates of such readings. Also the fleet owner shall report the total number of hours the vehicle has been used in non-agricultural use.

The intent of this potential provision is to require fleets to affirm that they are using renewable diesel per the requirements in section 2449.1(e).

**(D) Renewable Diesel Use Reporting** – Starting on January 1, 2024, in each year that annual reporting is required, a fleet shall submit to CARB an affirmation signed by its responsible official or designated official that the fleet complied with the performance requirements outlined in section 2449.1(e).

**(3) New Fleet Reporting** – New fleets must submit the information in section 2449(g)(1)(A) through (H) to ARB for vehicles subject to the regulation within 30 days of purchase or bringing such vehicles into the State. Beginning the first January 1 that is more than 30 days after the date of purchase or bringing a vehicle into the State, new fleets must comply with the annual reporting requirements in section 2449(g)(2).

**(4) Selling Vehicles** – Any person selling a vehicle with an engine subject to this regulation in California must notify ARB within 30 days from the date the vehicle was sold. If the reporting date under section 2449(g)(2) occurs within 30 days of the vehicle being sold, the annual reporting may serve as the notification to ARB that the vehicle was sold.

#### **(h) Record Keeping**

Fleet owners must maintain copies of the information reported under section 2449(g), as well as the records described in section 2449(h) below, and provide them to an agent or employee of the ARB within five business days upon request. Records must be kept at a location within the State of California.

**(1) Changes Since Last Reporting Period** – Documentation of any additions, deletions, or changes to the fleet since the last reporting. Documentation may

include bills of sale, purchase orders, or other documentation.

**(2) Vehicles Not Yet Labeled** – For newly purchased or acquired vehicles or vehicles recently brought into the State that have not yet been labeled per section 2449(f)(2), records must be kept of the vehicle purchase date or the date the vehicle entered the State.

**(3) Engines Rebuilt to a More Stringent Emissions Configuration** – Records of engines that are rebuilt to a more stringent emissions configuration in accordance with Title 40, CFR, Part 89.130 and Part 1068.120 must be kept as long as the engine remains in operation. For a fleet to claim credit for rebuild to a more stringent emissions configuration of a Tier 1 engine rated at or above 37 kW that is exempt from the requirements in Title 40, CFR, Part 89.130 and title 13, CCR, section 2423(l), the Tier 1 engine must be rebuilt in accordance with the rebuild practices of those sections and the fleet must keep the records that would have been required if the engine were not exempt from those requirements. Records must include the following information:

- (A) The name of the company that performed the rebuild, address, contact name, and contact phone number for that company;
- (B) An invoice, or proof of purchase of the engine rebuild;
- (C) The date(s) the engine upgrade was performed;
- (D) All records required under Title 40, CFR, Part 1068.120 or, for engines exempt from Title 40, CFR, Part 1068.120, the records that would be required if the engine were not exempt;
- (E) All records required under title 13, CCR, section 2423(l) or, for engines exempt from 13, CCR, section 2423(l), the records that would be required if the engine were not exempt.

**(4) VDECS Failure** – Records of any VDECS failure and replacement.

**(5) VDECS Removal** – Records of any VDECS removed from a vehicle, including the date and reason for removal.

**(6) VDECS Serial Numbers** – Records of the serial numbers of the VDECS installed on each vehicle.

**(7) Manufacturer Delay** – For any vehicles or VDECS for which the fleet owner is utilizing the equipment manufacturer delay provision in section 2449(e)(6), proof of purchase, such as a purchase order or signed contract for the sale, including engine specifications for each applicable piece of equipment or vehicle.

**(8) Records Pertaining to Executive Officer Approval** – Records of Executive Officer approval of any of the following:

- (A) A waiver to allow additional idling in excess of 5 consecutive minutes;

- (B) Upon discontinuation of a fuel verified as a diesel emission control strategy, approval for up to two years additional time to come back into compliance with the applicable fleet average requirement;
- (C) A finding that a VDECS shall not be considered the highest level VDECS available due to safety concerns;
- (D) Approval to use the max hp of a diesel vehicle that serves the same function as an electric vehicle;
- (E) Approval of an alternative fuel vehicle emission standard;
- (F) Approval of a vehicle designation as a specialty vehicle;
- (G) Approval of an experimental diesel control strategy;
- (H) Approval to grant an extension to the fleet from the requirements when Tier 3 or Tier 4 (interim or final) vehicles are not available;
- (I) Approval to use a fuel strategy as an emissions control strategy as in section 2449(e)(2);

**(9) Credit for Early Retirement or Replacement** – Each fleet owner that claims credit for the retirement or replacement of vehicles from March 1, 2006, to March 1, 2010, under sections 2449.1(b)(14) or 2449.1(b)(16) shall maintain records substantiating the fleet’s claim of previous ownership for those vehicles.

The intent of this potential provision is to require renewable diesel purchasing records to be kept by the fleets.

**(10) Renewable Diesel Usage** – Each fleet must document its fuel purchases to demonstrate compliance with the renewable diesel performance requirements outlined in section 2449.1(e). Such documentation may include receipts of fuel purchases, fueling contracts, or other documentation that demonstrates compliance with section 2449.1(e)(1). Such documentation shall be maintained according to section 2449.1(h)(11).

Fleets must also maintain records in accordance with the requirements defined in section 2449.1(e)(2) if at any point renewable diesel becomes unavailable.

The intent of the potential changes to the provision below is to extend the record retention end date until 2037.

**(11) (10) Record Retention** – Each fleet owner shall maintain the records for each vehicle subject to the regulation and for the overall fleet as long as the owner has a fleet or until January 1, ~~2030~~2037, whichever is earlier. If vehicle ownership is transferred, the seller shall convey the vehicle records, including vehicle data under section 2449(g)(1)(B), engine data under section 2449(g)(1)(C), and VDECS data under section 2449(g)(1)(D), to the buyer. If



fleet ownership is transferred, the seller shall convey the fleet records, including fleet data, under sections 2449(g)(1)(A) through (H) to the buyer. Any person selling a vehicle with an engine subject to this regulation in California must maintain records of the disclosure of regulation applicability required by section 2449(l) for three years after the sale.

The intent of the potential provisions below is to add additional requirements for prime contractors under this regulation. Fleets would be required to obtain Off-Road Vehicle Certificates from CARB. Prime contractors would be required to collect these vehicle certificates for each vehicle operating on their job site, and report to CARB if any vehicle that does not have an Off-Road Vehicle Certificate or an EIN label is brought onto the job site. Furthermore, prime contractors could not allow noncompliant vehicles to operate on the job site.

### **(i) Prime Contractor Requirements**

Prime Contractors, as defined in section 2449(b)(65), are subject to the requirements described in section 2449(i)(1) – (2) below. These requirements take effect on June 1, 2024.

#### **(1) Record Keeping and Review**

- a. Prior to hiring a fleet subject to this regulation, a prime contractor must obtain a copy of the fleet's Certificate of Reported Compliance, as described in section 2449(n).
- b. During the entirety of a job, the prime contractor must obtain Off-Road Diesel Vehicle Certificates for all vehicles on the job site. The prime contractor must perform and document a review of the Off-Road Diesel Vehicle Certificates, as outlined in section 2449(i)(1)(b)(i) – (iv) below. The prime contractor shall review the certificates and vehicles on the job site to:
  - i. Ensure the EIN noted on the certificate and the EIN label affixed to the vehicle entering the job site match,
  - ii. Ensure the vehicle make noted on the certificate and the vehicle make of the vehicle entering the job site match,
  - iii. Ensure the vehicle model noted on the certificate and the vehicle model of the vehicle entering the job site match, and
  - iv. Ensure the effective date on the certificate is valid at the time the vehicle is performing work at the job site.
- c. If, for any vehicle, the fleet does not provide its Off-Road Diesel Vehicle Certificate to the prime contractor or the review by the prime contractor reveals discrepancies between the fleet's submitted Off-Road Vehicle Certificate and the vehicle on the job site, the prime

contractor must deny entry of that vehicle onto the job site and cannot allow that vehicle to perform any work on the job site until either the fleet provides its Off-Road Diesel Vehicle Certificate or the fleet cures the discrepancies between the fleet's submitted Off-Road Diesel Vehicle Certificate and the vehicle on the job site.

- d. If the fleet can provide dated bill or receipt of sale that the vehicle was purchased within the 60 days before the vehicle is to be brought on the job site, the prime contractor must obtain this documentation and can allow the vehicle onto the job site to perform work during that 60-day period only. Once the vehicle purchase date has exceeded 60 days from the date of sale on the bill or receipt of sale, the prime contractor must obtain the Off-Road Diesel Vehicle Certificate or the prime contractor must prohibit the vehicle from entering the job site or performing any work for the job.
- e. The prime contractor must collect new Certificates of Reported Compliance, as defined in section 2449(n), and Off-Road Diesel Vehicle Certificates, as defined in section 2449(o), for all fleets and vehicles subject to this regulation that are doing work on a project for the prime contractor on June 1 of each year for the duration of each project for which the vehicle is doing work.
- f. The prime contractor must retain all records they collect under this regulation in accordance with section 2449(i)(1), either electronically or in hard copy, for a minimum of three years after project completion.

## **(2) Other Requirements**

- a. The prime contractor must report to CARB, in a format determined by CARB, any vehicle subject to this regulation that the prime contractor discovers does not have an Off-Road Diesel Vehicle Certificate, does not have an EIN label, or has discrepancies between the fleet's submitted Off-Road Diesel Vehicle Certificate and the vehicle on the job site. The report must include, at a minimum, the vehicle owner's name, business name, business address, email, and phone number; vehicle information, such as make and model; and the location of the job site.
- b. The prime contractor must report to CARB, in a format determined by CARB, any fleet subject to this regulation that the prime contractor discovers does not have a Certificate of Reported Compliance as defined in section 2449(n). The report must include, at a minimum, the fleet name, email, address, and phone number; DOORS ID; and the location of the job site.

- c. Upon request by CARB at the job site, the prime contractor must immediately disclose ownership information of all vehicles subject to this regulation operating at the job site.
- d. Upon request by CARB, the prime contractor must provide records within five business days of the request.
- e. The requirements of section 2449(i) do not apply to emergency operations and the prime contractor must retain records verifying work is performed for emergency operations.

The intent of these potential provisions is to require public works awarding bodies to ensure fleet-level compliance prior to awarding any public works awards, and to require public works awarding bodies to report to CARB basic project-level information for public works projects using vehicles subject to this regulation.

#### **(j) Public Works Awarding Bodies Requirements**

Public works awarding bodies are subject to the requirements described in section 2449(j)(1) – (3) below. These requirements take effect on January 1, 2024.

(1) Prior to awarding a public works contract for a public works project in California, a public works awarding body must obtain copies of the Certificate of Reported Compliance, as described in section 2449(n), for each fleet participating in the bid or used to determine the bid and retain these records for three years. No public works awarding body shall select a bid for which it does not have a Certificate of Reported Compliance for each fleet participating in the bid or used to determine the bid.

(2) All public works awarding bodies must report, in a format to be determined by CARB, at a minimum, the following project information to CARB for all public works contracts that are required to report to the Department of Industrial Relations under California Labor Code Division 2 Part 7 Chapter 1 Article 2 Section 1773.3 and that include the operation of any vehicles subject to this regulation:

- a. The Department of Industrial Relations project number;
- b. Information on the prime contractor and all subcontractors working on the public works project, which must include:
  - i. The contractor's company name,
  - ii. DOORS ID (if applicable), and
  - iii. Contact Information, including legal name, email, and phone number;
- c. The location of the public works project;

- d. The Public Works Awarding Body's contact information, including legal name, email, and phone number;
- e. The estimated start date and end date of the project; and
- f. The public works awarding body shall report any modifications to any of the above information within 5 days.

(3) The reporting described in section 2449(j)(2)(a) – (e) above must be reported to CARB within 30 days of the public work award and in no event later than the first day in which a contractor has workers employed upon the public work.

### **(k) (i) Right of Entry**

For the purpose of inspecting off-road vehicles and their records to determine compliance with these regulations, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where off-road vehicles are located or off-road vehicle records are kept.

### **(l) (j) Disclosure of Regulation Applicability**

Any person selling a vehicle with an engine subject to this regulation in California must provide the following disclosure in writing to the buyer on the bill of sale, "When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>."

### **(m) (k) Penalties**

Any person who fails to comply with the performance requirements of this regulation, who fails to submit any information, report, or statement required by this regulation, or who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2, 42400.3.5, 42402, 42402.1, 42402.2, 42402.4, 42403, and 43016, 43027, and 43030 of the Health and Safety Code. In assessing penalties, the Executive Officer will consider factors, including but not limited to the willfulness of the violation, the length of time of noncompliance, whether the fleet made an attempt to comply, and the magnitude of noncompliance.

#### **(n) (f) ARB Certificate of Reported Compliance**

After the initial reporting required by section 2449(g)(1) and the annual reporting and responsible official affirmation of reporting required by section 2449(g)(2) is received by ARB, if the report and affirmation indicates that the fleet is in compliance with the requirements of the Regulation for In-Use Off-Road Diesel-Fueled Fleets, ARB will provide the fleet with a Certificate of Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets.

The intent of these provisions is to provide fleets with certificates that show vehicle-level compliance for all vehicles subject to this regulation, to facilitate the prime contractor requirements outlined in section 2449(i) above.

#### **(o) CARB Off-Road Diesel Vehicle Certificates**

(1) An Off-Road Diesel Vehicle Certificate will be created for each individual vehicle that is reported to CARB and is in a fleet that is compliant with this regulation as of March 1 of each year.

(2) Each Off-Road Diesel Vehicle Certificate will include, at a minimum, the name of the fleet in which the vehicle is reported, the DOORS ID of the fleet in which the vehicle is reported, the effective date of the certificate, the vehicle make, the vehicle model, the vehicle's engine tier, the operational backstop date for vehicles with Tier 0 to Tier 2 engines, the compliance status of the fleet in which the vehicle is reported, whether the vehicle is a special provision vehicle as described in 2449(e), and whether a vehicle is using the optional zero-emission provision described in 2449.1(d).

(3) If a fleet is in compliance with the requirements of this regulation and reports a vehicle addition to its fleet, then an Off-Road Diesel Vehicle Certificate will be created for that new vehicle upon reporting.

(4) After the initial reporting required by section 2449(g)(1) and the annual reporting and responsible official affirmation of reporting required by section 2449(g)(2) for a fleet have been received by CARB, if the report and affirmation indicate that the fleet is in compliance with the requirements of the Regulation for In-Use Off-Road Diesel-Fueled Fleets and if there is no open notice of violation or citation, CARB will provide the fleet with Off-Road Diesel Vehicle Certificates for all the off-road diesel vehicles in that fleet. The Off-Road Diesel Vehicle Certificate shall not be used as evidence of compliance in any enforcement action, civil or criminal case, or any other proceeding. If CARB later discovers that the fleet or vehicle was not in compliance at the time CARB issued the applicable Off-Road Diesel Vehicle Certificate, CARB may rescind the Off-Road Diesel Vehicle Certificate and notify prime contractors and public

works awarding bodies who may be using that vehicle or fleet in their projects.

(5) No fleet may submit an Off-Road Diesel Vehicle Certificate to a prime contractor or public works awarding body when the fleet has reason to believe that the fleet or a vehicle within the fleet is not in compliance with this regulation, that the Off-Road Diesel Vehicle Certificate may have been obtained by reporting false information, or that the Off-Road Diesel Vehicle Certificate is no longer valid or genuine.

### **(p) (m) Severability**

If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of section 2449, 2449.1, or 2449.2 of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

NOTE: Authority cited: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39658, 39659, 39665, 39667, 39674, 39675, 40000, 41511, 42400, 42400.1, 42400.2, 42400.3.5, 42402, 42402.1, 42402.2, 42402.4, 42403, 43000, 43000.5, 43013, 43016, 43018, and 43018.2, Health and Safety Code. Reference: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39657, 39658, 39659, 39665, 39667, 39674, 39675, 40000, 41511, 42400, 42400.1, 42400.2, 42402.2, 43000, 43000.5, 43013, 43016, 43018, and 43018.2, Health and Safety Code.

### **§ 2449.1 Performance Requirements**

Each fleet must meet the fleet average requirements in this section before January 1 of each year or demonstrate that it met the BACT requirements as described in section 2449.1(b).

Each fleet must meet all applicable operational backstop requirements described in section 2449.1(c) beginning January 1, 2024, and must meet the renewable diesel requirements described in section 2449.1(e) beginning January 1, 2024.

Captive attainment area fleets, and fleets owned by non-profit training centers or low-population county local municipalities are subject to the small fleet requirements, even if their total max hp exceeds 2,500 hp. Section 2449(d)(3) describes requirements for fleets that change size.

#### **(a) Fleet Average Requirements**

For each compliance date, a fleet must demonstrate that its fleet average index was less than or equal to the calculated fleet average target rate.

The equation for calculating fleet average target rate is below:

Fleet average target rate = [SUM of (max hp for each engine in fleet multiplied by the target for each engine in fleet) for all engines in fleet] divided by [SUM of (max hp) for all engines in fleet]

where the target in g/bhp-hr is shown in Tables 3 and 4 below. To find the target for each engine, read the value for the appropriate row based on the compliance year and the appropriate column based on the engine's max hp from Table 3 for medium and large fleets, and Table 4 for small fleets.

The equation for calculating fleet average index is below:

Fleet average index = [SUM of (max hp for each engine in fleet multiplied by emission factor multiplied by the VDECS Factor for each engine in fleet) for all engines in fleet] divided by [SUM of (max hp) for all engines in fleet] where emission factor in g/bhp-hr is shown in Appendix A, and the VDECS factor is shown in Table 2 below.

**Table 2 – VDECS Factor**

VDECS	VDECS Factor
No VDECS Installed or Level 1 VDECS	1
Level 2 PM VDECS, not highest level	0.82
Level 2 PM VDECS, not highest level, with NOx Reduction	1 Minus (0.18 + (Verified Percent NOx Reduction Divided by 170))
Highest Level PM VDECS	0.7
Highest Level PM VDECS with NOx Reduction	1 Minus (0.3 + (Verified Percent NOx Reduction Divided by 170))
NOx Reduction only	1 Minus (Verified Percent NOx Reduction Divided by 170)

(1) Fleet Average Targets for Large and Medium Fleets – Table 3 shows the targets used to calculate the fleet average target rate for each compliance date for large and medium fleets.

(2) Table 3 – Large and Medium Fleet Targets for Each Max Hp Group  
For Use in Calculating Fleet Average Target Rates [g/bhp-hr]

Compliance Date: January 1 of Year	25-49 hp	50-74 hp	75-99 hp	100-174 hp	175-299 hp	300-599 hp	600-750 hp	>750 hp
2014 (Large Fleets Only)	5.8	6.5	7.1	6.4	6.2	5.9	6.1	7.2
2015 (Large Fleets Only)	5.6	6.2	6.7	6	5.8	5.5	5.6	6.8
2016 (Large Fleets Only)	5.3	5.8	6.2	5.5	5.3	5.1	5.2	6.5
2017	5.0	5.4	5.5	4.9	4.7	4.5	4.6	6.0
2018	4.7	5.0	4.8	4.3	4.1	4.0	4.0	5.5
2019	4.4	4.6	4.1	3.7	3.5	3.4	3.4	5.0
2020	4.1	4.2	3.4	3.1	2.9	2.8	2.9	4.5
2021	3.8	3.8	2.7	2.5	2.3	2.2	2.3	4.0
2022	3.5	3.4	2.0	1.9	1.7	1.7	1.7	3.5
2023	3.3	3.0	1.4	1.3	1.5	1.5	1.5	3.4

(3) Fleet Average Targets for Small Fleets – Table 42 shows the targets used to calculate the fleet average target rate for each compliance date for small fleets.

Table 4 – Small Fleet Targets for Each Max Hp Group  
For Use in Calculating Fleet Average Target Rates [g/bhp-hr]

Compliance Date: January 1 of Year	25-49 hp	50-74 hp	75-99 hp	100-174 hp	175-299 hp	300-599 hp	600-750 hp	>750 hp
2019	5.8	6.5	7.1	6.4	6.2	5.9	6.1	7.2
2020	5.6	6.2	6.7	6.0	5.8	5.5	5.6	6.8
2021	5.3	5.8	6.2	5.5	5.3	5.1	5.2	6.5
2022	5.0	5.4	5.5	4.9	4.7	4.5	4.6	6.0
2023	4.7	5.0	4.8	4.3	4.1	4.0	4.0	5.5
2024	4.4	4.6	4.1	3.7	3.5	3.4	3.4	5.0
2025	4.1	4.2	3.4	3.1	2.9	2.8	2.9	4.5
2026	3.8	3.8	2.7	2.5	2.3	2.2	2.3	4.0
2027	3.5	3.4	2.0	1.9	1.7	1.7	1.7	3.5
2028	3.3	3.0	1.4	1.3	1.5	1.5	1.5	3.5

**(b) BACT Requirements**

Each year, a fleet must determine if it will be able to meet the fleet average requirements in section 2449.1(a) for the next January 1 compliance date, and if not, it must meet the BACT requirements in section 2449.1(b)(1) below prior to the January 1 compliance date.



A fleet may meet the BACT requirements by performing turnover or installing VDECS as described in section 2449.1(b)(10) below. Vehicles exempt from the performance requirements under section 2449(e) cannot be used to generate BACT credits.

**(1) BACT Rate** – If a fleet does not meet the fleet average target rate in section 2449.1(a), it must demonstrate that during the calendar year prior to the compliance date, it has earned the amount of BACT credit (in hp) necessary to meet or exceed the minimum BACT requirements specified for that compliance date. The minimum BACT requirements (in hp) for each compliance date equal: (The BACT rate (percent shown below in (A) through (C) for the compliance date), multiplied by the total max hp of the fleet as reported on the previous reporting date)

For example, if a large fleet does not meet the January 1, 2014, fleet average target rate, the fleet must demonstrate that it had accumulated enough BACT credit between January 1, 2013 and December 31, 2013, to satisfy the BACT requirements for January 1, 2014. The BACT requirements for January 1, 2014, for a large fleet equals the BACT rate for that compliance date (4.8 percent for 2014, as shown below in subsection (A)) multiplied by the fleet's max hp as reported by the previous reporting date, March 1, 2013.

Any carryover BACT credit previously accrued may be applied towards the BACT requirements in a later year as specified in the sections below. The required BACT rate for each compliance date is described below in (A) through (C).

**(A) Large fleets –**

1. 2014: 4.8 percent
2. 2015 to 2017: 8 percent
3. 2018 to 2023: 10 percent

**(B) Medium fleets -**

1. 2017: 8 percent
2. 2018 to 2023: 10 percent

**(C) Small fleet –**

- 2019 to 2028: 10 percent

**(2) Exemptions from BACT for Medium and Large Fleets** – For medium and large fleets, a vehicle is exempt from the BACT requirements of section 2449.1(b)(1) if it qualifies for one or more of the exemptions set forth in section 2449(e) or meets one of the conditions listed in section (A) through (E) below.

A fleet that does not meet the fleet average target in section 2449.1(a)(1) must meet the BACT requirements with the vehicles that do not qualify for an exemption under either section 2449(e) or this section, provided that nothing shall require a fleet to apply a VDECS to any vehicle. Where all of the vehicles in a fleet qualify for an exemption under either this section or section 2449(e), the fleet is exempt from the BACT and fleet average requirements in that year. The exemptions set forth in this section do not lower the total max hp on which the BACT requirements are calculated.

**(A)** On the compliance date, the vehicle is less than 10 years old from the date of manufacture.

**(B)** The vehicle meets all of the following specialty vehicle criteria:

1. The fleet has turned over all other vehicles first,
2. No repower is available for the specialty vehicle, as demonstrated to the Executive Officer,
3. A used vehicle with a cleaner engine is not available to serve a function and perform the work equivalent to that of the specialty vehicle, as demonstrated to the Executive Officer, and
4. The specialty vehicle has the highest level PM VDECS installed.

**(C)** The vehicle had a Level 2 or 3 PM VDECS installed within the last six years and such VDECS was highest level PM VDECS at the time of the installation.

**(D)** The vehicle's engine is equipped with an original equipment manufacturer diesel particulate filter that came new with the vehicle, or the vehicle has a Tier 4 interim or Tier 4 final engine.

**(E)** The vehicle has the highest level PM VDECS installed prior to January 1, 2013, except that this exemption may be applied to no more than 15 percent of a fleet's total hp as of December 31, 2012.

1. If before January 1, 2013, the fleet has installed the highest level PM VDECS on more than 15 percent of the fleet's December 31, 2012, total hp, the fleet may apply this exemption to any vehicles with the highest level PM VDECS installed, as long as the total hp of those vehicles does not exceed the 15 percent exemption threshold established in section (E) above.
2. The highest level PM VDECS must remain on the vehicle in order to maintain this exemption. If a VDECS fails, the fleet must replace the VDECS in accordance with section 2449(e)(1) to maintain this exemption for the vehicle.

**(3) Exemptions from BACT for Small Fleets** – For small fleets, a vehicle is exempt from the BACT requirements of section 2449.1(b)(1) if it qualifies for one or more of the exemptions set forth in section 2449(e) or meets one of the conditions listed in section (A) through (E) below. A fleet that does not meet the fleet average target in section 2449.1(a)(2) must meet the BACT requirements with the vehicles that do not qualify for an exemption under either section 2449(e) or this section, provided that nothing shall require a fleet to apply a VDECS to any vehicle. Where all of the vehicles in a fleet qualify for an exemption under either this section or section 2449(e), the fleet is exempt from the BACT and fleet average requirements in that year. The exemptions set forth in this section do not lower the total max hp on which the BACT requirements are calculated.

**(A)** On the compliance date, the vehicle is less than 10 years old from the date of manufacture.

**(B)** The vehicle meets all of the specialty vehicle criteria described above in section 2449.1(b)(2)(B).

The intent of removing this provision is to no longer allow fleets to keep vehicles indefinitely when no VDECS are available.

~~**(C)** There is no highest level VDECS available for the vehicle's engine as of 10 months prior to the compliance date (i.e., there is no Level 2 or 3 VDECS, or there is no Level 2 or 3 VDECS which can be used without impairing the safe operation of the vehicle as demonstrated per section 2449(e)(8)).~~

**(C)** ~~**(D)**~~ The vehicle's engine is equipped with an original equipment manufacturer diesel particulate filter that came new with the vehicle, or the vehicle has a Tier 4 interim or Tier 4 final engine.

~~**(DE)**~~ The vehicle's engine has already been retrofitted with a Level 2 or 3 VDECS that was the highest level PM VDECS available at the time of installation. An engine with a Level 2 VDECS that was not the highest level VDECS at the time of installation does not qualify for this exemption.

**(4) Order of BACT Requirements** – All Tier 0 and Tier 1 engines in a fleet, except those in vehicles that qualify for an exemption from the BACT requirements, must be turned over before the turnover of any other higher tier engines may be counted toward the BACT requirements in section 2449.1(b)(1) or toward accumulating carryover BACT credit. A fleet may, however, receive carryover BACT credit per section 2449.1(b)(10) and 2449.1(b)(15) for a VDECS installed on an engine, regardless of the engine's tier.

**(5) Rounding** – If the hp to meet BACT requirements under section 2449.1(b)(1) is less than half of the max hp of the lowest hp engine in the fleet that is subject to the BACT requirements, the next engine is not required to be turned over or have a VDECS applied to it. However, on the next year's compliance date, any hp not accounted for due to this rounding provision must be added to the BACT requirements under section 2449.1(b)(1). Once the required hp equals or exceeds half of the max hp of the next engine in the fleet that is subject to the BACT requirements, the next engine must be turned over or have a VDECS applied to it.

**(6) Delay Tier 2 Turnover** – All vehicles with a Tier 2 or higher engine are exempt from the BACT requirements through January 1, 2015 (i.e., the first turnover of or VDECS installations on Tier 2 or higher engines would be required between January 1, 2015 and December 31, 2015), provided that all Tier 0 and Tier 1 vehicles in the fleet owner's fleet that do not qualify for an exemption under section 2449.1(b)(2) have been turned over.

**(7) Delayed Requirements for Early Compliance** – Large fleets are exempt from the January 1, 2014 performance requirements if the sum of the fleet's BACT credits on March 1, 2010 exceeded 8 percent of the fleet's March 1, 2009 hp. To determine eligibility, ARB will take the sum of: "Credit for Early Repowers and Rebuilds to More Stringent Emissions Standards" gained under 2449.1(b)(13) plus "Credit for Early Replacement" gained under 2449.1(b)(14) plus "Double Credit for Early VDECS Installations" gained under 2449.1(b)(15) plus "Credit for Early Reduced Fleet HP" gained under 2449.1(b)(16) plus BACT credit gained for turnover from March 1, 2009, through February 28, 2010, that was not accounted for under sections 2449.1(b)(16). If the sum of these credits exceeds (Total max hp of the fleet on March 1, 2009 multiplied by 0.08), then the fleet will not be required to meet either the January 1, 2014, fleet average or the January 1, 2014, BACT requirements. This provision shall not have the effect of reducing any credit that any fleet would otherwise have the right to receive in 2014 or in any subsequent year, even if such credit provided all or part of the basis for a finding that such fleet had BACT credits on March 1, 2010, in excess of 8 percent of such fleet's hp on March 1, 2009.

**(8) Accumulating Carryover BACT Credit** – Beginning on January 1, 2013 for large fleets, on January 1, 2016 for medium fleets, and on January 1, 2018 for small fleets, a fleet will accumulate carryover BACT credit each year it exceeds the BACT requirements specified in section 2449.1(b)(1). The amount of carryover BACT credit (in hp) accumulated is equal to: (The amount of BACT credit earned in the calendar year prior to January 1 of the year for which the carryover BACT credit is being calculated) minus (the amount of BACT credit needed to fulfill the BACT requirements on January 1 of the year for which the carryover BACT credit is being calculated).

**(9) Using Carryover BACT Credit** – Except as provided in section 2449.1(b)(16), accumulated carryover BACT credit may be applied to meeting the BACT requirements of section 2449.1(b)(1) in a later year. The amount of carryover BACT credit used to meet the BACT requirements in any one year is subtracted from the accumulated carryover BACT credit total, with the remainder being available for use in subsequent years. The amount of BACT credit earned in a calendar year plus the amount of carryover BACT credit used must equal or exceed the minimum BACT requirements described in section 2449.1(b)(1).

**(10) BACT Credit Earned for Turnover, PM VDECS, and NOx VDECS** – Beginning on January 1, 2013 for large fleets, on January 1, 2016 for medium fleets, and on January 1, 2018 for small fleets, BACT credit is earned as follows:

(A) For turnover, as specified in section 2449(c)(55), BACT credit (in hp) equals:

(Max hp of the vehicle that was turned over).

(B) For a highest level PM VDECS, BACT credit (in hp) equals:

(Max hp of the vehicle to which the highest level PM VDECS was applied).

PM VDECS that are not the highest level PM VDECS receive no BACT credit.

(C) For a VDECS verified to reduce NOx but that is not highest level PM VDECS, BACT credit (in hp) equals:

(Verified Percent NOx Reduction divided by 60 percent) multiplied by (Max hp of the vehicle to which the NOx VDECS was applied).

(D) For a VDECS verified to reduce NOx and that is also the highest level PM VDECS, or for a VDECS verified to reduce NOx installed on an engine that also has a highest level PM VDECS that is verified separately, BACT credit (in hp) equals:

(Verified Percent NOx Reduction divided by 120 percent) multiplied by (Max hp of the vehicle to which the NOx VDECS was applied).

This credit is applied in addition to credit for installing the highest level PM VDECS per section 2449.1(b)(10)(B) above.

**(11) Excess PM VDECS Credits Used for Compliance with Off-Road and Truck and Bus Regulations** – For the same fleet owner, excess PM VDECS credits granted in The Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road regulation) may be used in the Truck and Bus regulation (title 13, CCR section 2025) and excess PM VDECS credits granted in the Truck and Bus regulation may be used in the Off-Road regulation before January 1, 2017. Starting January 1, 2017, no credits may be transferred between the regulations.

**(A) Off-Road generated credits used to comply with the Truck and Bus regulation** – Except for low-use vehicles (as defined in sections 2449(c)(39) and (63)) and vehicles that are exempt under section 2449(e), vehicles subject to the Off-Road regulation that have Level 3 PM VDECS installed on one or more engines may generate excess PM VDECS credits to comply with the Truck and Bus regulation (title 13, CCR, section 2025), as follows:

**1. Excess compliance credits under the Off-Road regulation** – Beginning January 1, 2013, for large fleets, and on January 1, 2016, for medium fleets, if a fleet earns BACT credit in a calendar year that exceeds the BACT requirements for that year, the excess BACT credit earned (i.e., the amount of BACT credit earned above the BACT requirements for that year, in hp) from the installation of Level 3 PM VDECS may be applied towards compliance with the Truck and Bus regulation per section 2025 as follows:  
(Excess PM VDECS credits to apply towards the Truck and Bus regulation = [(Total max hp of excess engines with the Level 3 PM VDECS installed) divided by 300] truncated to a whole number).

If, in an applicable compliance year, no BACT credit is earned through the installation of Level 3 PM VDECS (for example, if no vehicles are retrofitted with Level 3 devices that calendar year), no excess PM VDECS credit will be earned.

The Excess PM VDECS credit earned above may be applied towards the Truck and Bus regulation each year until the vehicle that generated the excess PM VDECS credit is 1) needed for compliance with sections 2449.1(a) or (b), or 2) is retired, sold, scrapped, or otherwise removed from the California fleet.

If the equation above, before truncation, does not result in a whole number, any remaining hp with Level 3 PM VDECS not used to generate excess PM VDECS credit (i.e., the truncated amount) may be used as carryover BACT credit towards compliance with the Off-Road regulation, or may be accumulated to generate excess PM VDECS credits in future years.

**2. Early PM VDECS installations** – If any small, medium, or large fleet installs Level 3 PM VDECS by the deadlines shown in section 2449.1(b)(15), the fleet has the option to either (1) accumulate double carryover credit to be used towards the BACT requirements of the Off-Road regulation (per section 2449.1(b)(1)),

or (2) to apply single PM VDECS credit towards compliance with the Truck and Bus regulation.

**3. Compliance with the Off-Road regulation** – Fleet owners that use excess PM VDECS credits towards for compliance with the Truck and Bus regulation (as specified in section (11)(A)1. and 2. above) shall not count their Level 3 PM VDECS in the fleet average index calculations in section 2449.1(a) (i.e., the VDECS Factor is 1 for these vehicles or engines with the excess Level 3 PM VDECS), and no BACT credit can be accrued that can be used towards compliance with the Off-Road regulation for those VDECS. Once the excess PM VDECS credit can no longer be applied to the Truck and Bus regulation, the Level 3 PM VDECS that were used to generate the expired excess PM VDECS credit can be returned to the fleet average index calculations in section 2449.1(a).

**(B) Excess Truck and Bus regulation credits used to comply with the Off-Road regulation** – For each vehicle that generates an excess PM VDECS credit per Truck and Bus regulation, a one-time PM VDECS credit may be applied towards compliance with the Off-Road regulation, as follows:

(Excess PM VDECS credit that can be applied towards the Off-Road regulation (i.e., BACT credit, in hp, to apply towards the Off-Road regulation) = (Excess PM VDECS credits from the Truck and Bus regulation) multiplied by 300).

For each additional vehicle that generates a new excess PM VDECS credit, another one-time excess PM VDECS credit can be applied towards the Off-Road regulation. Once it is determined, under the Truck and Bus regulation, that a vehicle can no longer generate excess PM VDECS credits, the BACT credit earned through this provision, if not previously used, will expire and can no longer be used by the fleet towards compliance with the Off-Road regulation.

**(12) Beginning BACT Credit** –

All fleets may earn and accumulate BACT credits for taking early actions in accordance with subparagraphs (13) through (18) below, but with the exception of such credits for taking early action, all fleets begin with zero carryover BACT credit on January 1, 2013. To claim credit, fleets must submit to ARB and retain records as described in sections 2449(g) and (h).

**(13) Credit for Early Repowers and Rebuilds to More Stringent Emissions Standards** –

Credit for early repowers can only be claimed for engines that remain in the fleet on the compliance date that the credit is taken. Fleets that

have repowered their vehicles with Tier 1 or higher engines or rebuilt the engine from a lower Tier to a Tier 1 or more stringent emissions standard before March 1, 2009, will accumulate a carryover BACT credit (in hp) equal to: (the max hp of the vehicles repowered and the engines rebuilt in accordance with the preceding).

Fleets that repower their Tier 0 or Tier 1 vehicles with Tier 2 or higher engines, or rebuild the engines in their Tier 0 or Tier 1 vehicles to a Tier 2 or more stringent emissions standard, prior to the following deadlines, will accumulate a carryover BACT credit (in hp) equal to the max hp of the vehicles repowered and the engines rebuilt in accordance with the preceding:

- (A) Large fleets: January 1, 2013
- (B) Medium fleets: January 1, 2016
- (C) Small fleets: January 1, 2018

**(14) Credit for Early Replacement** – Fleets that have replaced their Tier 0 vehicles with Tier 1 or higher vehicles at an average rate greater than 8 percent of total max hp per year between March 1, 2006 and March 1, 2009 will accumulate carryover BACT credit (in hp) equal to: [(Total max hp of Tier 0 vehicles retired between March 1, 2006 and March 1, 2009) minus (Total max hp of Tier 0 vehicles added between March 1, 2006 and March 1, 2009) minus (2 times the total “Credit for Early Reduced Hp” claimed under section (16) below)] minus [(Total max hp of fleet on March 1, 2007 multiplied by 0.08) plus (Total max hp of fleet on March 1, 2008 multiplied by 0.08) plus (Total max hp of fleet on March 1, 2009 multiplied by 0.08)]. Tier 0 vehicles repowered with newer engines are counted under (13) above and shall not be counted under this section.

**(15) Double Credit for Early VDECS Installations** – If fleets install a highest level PM VDECS or a VDECS verified to reduce NO<sub>x</sub>, prior to January 1, 2013 for large fleets, January 1, 2016 for medium fleets, and January 1, 2018 for small fleets, fleets will accumulate carryover BACT credit as follows:

- (A) For a highest level PM VDECS, BACT credit (in hp) equals:  
2 multiplied by the (Max hp of the vehicle to which the highest level PM VDECS was applied).  
PM VDECS that are not the highest level PM VDECS receive no BACT credit.
- (B) For a VDECS verified to reduce NO<sub>x</sub> but that is not highest level PM VDECS, BACT credit (in hp) equals:  
2 multiplied by (Verified Percent NO<sub>x</sub> Reduction divided by 60 percent)



multiplied by the (Max hp of the vehicle to which the NOx VDECS was applied).

(C) For a VDECS verified to reduce NOx and that is also the highest level PM VDECS, or for a VDECS verified to reduce NOx installed on an engine that also has a highest level PM VDECS that is verified separately, BACT credit (in hp) equals:

2 multiplied by the (Verified Percent NOx Reduction divided by 120 percent) multiplied by (Max hp of the vehicle to which the NOx VDECS was applied).

This credit is applied in addition to credit for installing the highest level PM VDECS per section 2449.1(b)(15)(A) above.

**(16) Credit for Early Reduced Fleet Hp** – Fleets that reduce overall hp from March 1, 2006, to March 1, 2010, accumulate carryover BACT credit (in hp) equal to 0.5 multiplied by the following: [(Total max hp of the fleet on March 1, 2006, including low-use vehicles) minus (Total max hp of the fleet on March 1, 2010, including low-use vehicles)].

In accordance with section 2449.1(b)(9), large fleets may use any such credit to meet the BACT requirements in section 2449.1(b)(1) beginning with the January 1, 2015 BACT requirements, or in any subsequent year. Notwithstanding section 2449.1(b)(9), large fleets may not use credit from this provision to meet the BACT requirements in section 2449.1(b)(1) for the initial compliance year for large fleets, which is the January 1, 2014, compliance deadline. For example, if a fleet accumulated BACT credit by reducing hp from March 1, 2006, to March 1, 2010, and also accumulated BACT credit from repowers during the same period, the fleet could apply the repower credit toward their January 1, 2014, BACT requirements, but could not apply the credit from reduced hp under this provision to their January 1, 2014, BACT requirements. The fleet could apply the credit from reduced hp under this provision to their January 1, 2015, BACT requirements, as well as any future year until such credits are expended.

**(17) Credit for 2010 to 2011 Reduced Fleet Hp** – Fleets that reduce their overall hp from March 1, 2010, through February 28, 2011, will accumulate carryover BACT credit (in hp) equal to:

(Total max hp of the fleet on March 1, 2010, including low-use vehicles) minus (Total max hp of the fleet on February 28, 2011, including low-use vehicles).

**(18) Credit for Interim Replacement and Retirement** – Fleets that replace or retire over 8 percent of the fleet's total max hp in Tier 0 and Tier 1 vehicles in any one year during the specified periods below will accumulate carryover BACT credit (in hp) equal to:

(Combined total of max hp of Tier 0 and Tier 1 vehicles retired over the year) minus (Combined total of max hp of Tier 0 or Tier 1 vehicles added over the year) minus [(Total max hp of fleet at the end of the year) multiplied by 0.08]. In

each year, the replacement or retirement of vehicles will be summed from January 1 through December 31 of that year, excepting 2011, during which the replacement or retirement will be summed from March 1 through December 31. Fleets shall exclude vehicles repowered or rebuilt to a more stringent emissions standard in each year (that earned BACT credit per section 2449.1(b)(13)), from all such calculations. For the purposes of this provision, Tier 0 and Tier 1 vehicles that are replaced must be replaced with Tier 2 or higher vehicles in order to accumulate BACT credit.

(A) Large fleets: March 1, 2011 through December 31, 2012

(B) Medium fleets: March 1, 2011 through December 31, 2015

(C) Small fleets: March 1, 2011 through December 31, 2017

The intent of the potential provisions below is to prevent the operation of vehicles subject to this regulation with tier 0 to tier 2 engines in the State of California. These provisions will also prevent the operation of vehicles powered by older on-road engines. The implementation years by fleet size are currently the same as what was presented at the kick-off workshop in May 2021, but one notable change in response to stakeholder feedback is for fleets less than 500 hp--there is a delayed schedule provided for the operational backstop on Tier 2 vehicles for these ultra-small fleets.

Vehicles that are registered as emergency use, dedicated snow removal, 50-99% agriculture, and other special provision vehicles that are exempt from 2449.1 will be exempt from these operational backstop requirements as well. One notable difference is a separate operational backstop requirement for low-use and jobs corps vehicles in section (c)(4) below.

### **(c) Operational Backstop Requirements**

All fleets must comply with the operational backstop requirements described in sections 2449.1(c)(1) through (3) below.

Any special provision vehicles, as described in section 2449(e), with an engine that is subject to these operational backstops must be designated as a special provision vehicle by December 31 of the year prior to the operational backstop's effective date.

#### **(1) Operational Backstop for Large Fleets**

- a. Beginning on January 1, 2024, a large fleet shall not operate a vehicle with a Tier 0 engine or a model year 1994 or earlier on-road engine in California.

- b. Beginning on January 1, 2026, a large fleet shall not operate a vehicle with a Tier 1 engine or a model year 1999 or earlier on-road engine in California.
- c. Beginning on January 1, 2028, a large fleet shall not operate a vehicle with a Tier 2 engine or a model year 2003 or earlier on-road engine in California.

(2) Operational Backstop for Medium Fleets

- a. Beginning on January 1, 2026, a medium fleet shall not operate a vehicle with a Tier 0 engine or a model year 1994 or earlier on-road engine in California.
- b. Beginning on January 1, 2028, a medium fleet shall not operate a vehicle with a Tier 1 engine or a model year 1999 or earlier on-road engine in California.
- c. Beginning on January 1, 2030, a medium fleet shall not operate a vehicle with a Tier 2 engine or a model year 2003 or earlier on-road engine in California.

(3) Operational Backstop for Small Fleets

- a. Beginning on January 1, 2028, a small fleet shall not operate a vehicle with a Tier 0 engine or a model year 1994 or earlier on-road engine in California.
- b. Beginning on January 1, 2030, a small fleet shall not operate a vehicle with a Tier 1 engine or a model year 1999 or earlier on-road engine in California.
- c. Beginning on January 1, 2032, a small fleet shall not operate a vehicle with a Tier 2 engine or a model year 2003 or earlier on-road engine in California.

(4) Operational Backstop for Permanent Low-Use Vehicles and Jobs Corps Vehicles

Beginning on January 1, 2036, no fleet shall operate a vehicle designated as permanent low-use or as a jobs corps vehicle with a Tier 0 engine or a model year 1994 or earlier on-road engine in California.

(5) Optional Operational Backstop for Fleets with 500 HP or Less

Fleets that choose to comply with the requirements of 2449(e)(16) are not subject to the small fleet operational backstop requirements in section 2449.1(c)(1) – (4) above. Instead, beginning on January 1, 2036, these fleets shall not operate a vehicle with a Tier 2 engine or a model year 2003 or earlier on-road engine in California.

The intent of the provisions below is to provide a regulatory incentive, via a delayed implementation of the operational backstops, for fleets planning to incorporate zero-emission vehicles into their fleet. The provisions below are not applicable for vehicles receiving Carl Moyer Program incentive funding.

**(d) Delay of Operational Backstops for Addition of Zero-Emissions Vehicles**

Effective January 1, 2024, for each zero-emission vehicle added to a fleet, the fleet may delay the operational backstop in section 2449.1(c) applicable to one vehicle with a Tier 1 or Tier 2 engine for two years, if all of the following conditions are met:

**(1) Requirements for zero-emission vehicle:**

- a. The owner can demonstrate that the zero-emission vehicle added to its fleet will be operated by the fleet, performs a function and work equivalent to that of diesel vehicles, and is used for a purpose for which diesel vehicles are predominantly used in the fleet;
- b. The zero-emission vehicle added to the fleet is used predominately outdoors;
- c. The zero-emission vehicle added to the fleet has a maximum power rating of 25 hp or greater;
- d. The zero-emission vehicle added to the fleet must be purchased and placed in-service prior to the year in which the operational backstop for the vehicle with a Tier 1 or Tier 2 engine will take effect and remains in the fleet for the two years that the Tier 1 or Tier 2 engine is receiving the delay of the operational backstop.
- e. The vehicle is labeled in accordance with section 2449(f); and
- f. The zero-emission vehicle is of similar max power rating to the vehicle with a Tier 1 or Tier 2 engine to which the delay in operational backstop will apply, and within the following categories: 25-174 hp, 175-599 hp, 600 hp and above.

**(2) For each zero-emission vehicle, fleets must report the following information to CARB, in a format determined by CARB, by December 31 of the year prior to the year in which the operational backstop for the vehicle with a Tier 1 or Tier 2 engine will take effect:**

- a. Vehicle type;
- b. Vehicle manufacturer;
- c. Vehicle model;
- d. Vehicle model year;
- e. Vehicle serial number;
- f. Motor manufacturer;
- g. Motor model;

- h. Motor model year;
  - i. Motor serial number;
  - j. Max Power Rating;
  - k. Purchase date; and
  - l. The in-service date.
- (3) Fleets must verify the information in section 2449.1(d)(A)2. above remains accurate and report any changes to the operation of the zero-emission vehicle, including out of service date if the vehicle leaves the fleet, in accordance with the annual reporting requirements in section 2449(g)(2).
- (4) Fleets must report to CARB, in a format determined by CARB, which vehicle with a Tier 1 or Tier 2 engine to which the delay in operational backstop will apply by December 31 of the year prior to the year in which the operational backstop for the vehicle with a Tier 1 or Tier 2 engine will take effect. This vehicle must be reported in the fleet to CARB prior to January 1, 2023 to be eligible for the delay of the operational backstop. If the fleet is a new fleet, it must be reported in accordance with section 2449(g)(3).

The intent of the potential provisions below is to require the use of R99 renewable diesel in all vehicles subject to this regulation, with some exemptions listed within the provisions. This also includes some recordkeeping and reporting requirements related to the use of renewable diesel.

#### **(e) Renewable Diesel Requirements**

- (1) Starting on January 1, 2024, all fleets subject to this regulation are required to use R99 renewable diesel fuel in all vehicles subject to this regulation, subject to the exemptions provided in section 2449.1(e)(2) below.
- (2) The following fleets are exempt from the renewable diesel requirements in section 2449.1(e)(1):
- a. Any fleet that is designated as a captive attainment area fleet, as described in section 2449(c)(6); and
  - b. Any fleet that is comprised entirely of vehicles with Tier 4 final engines or model year 2007 or newer on-road engines.
- (3) If at any point renewable diesel becomes unavailable within a 25-mile radius from the fleet's job site, storage site, or regular driving route, and a fleet wishes to assert inability to comply with section 2449.1(e)(1) due to this unavailability, the fleet must have documentation showing the unavailability of renewable diesel within a 25-mile radius from the fleet's job site, storage site, or regular driving route and their attempts to obtain renewable diesel. This documentation may include, but is not limited to, communications from fuel

providers, contract bids, or maps of fueling stations near a job site. If renewable diesel is unavailable, fleets must make reasonable attempts to obtain renewable diesel, at a minimum, on a quarterly basis or when vehicles move to a new job site.

If the Executive Officer finds that renewable diesel is unavailable, then the Executive Officer may grant a fleet an extension to comply with the renewable diesel requirements in section 2449.1(e)(2). If such unavailability affects a group of fleets, the Executive Officer may issue an extension to all fleets with similar characteristics. Any such unavailability must be documented with independently verifiable information demonstrating the unavailability of renewable diesel from the fleet in accordance with the recordkeeping requirement in section 2449(h)(10), from the fuel provider, or from the fuel distributor.

NOTE: Authority cited: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 40000, 41511, 43000, 43000.5, 43013, 43016, 43018, and 43018.2,- Health and Safety Code.  
Reference: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39657, 39658, 39659, 39665, 39667, 43000, 43000.5, 43013, 43016, 43018, and 43018.2, Health and Safety Code.

## § 2449.2 Surplus Off-Road Opt-In for NOx (SOON) Program

### (a) Purpose

The purpose of this section is to achieve additional reductions of oxides of nitrogen (NOx) emissions from ~~in-use off-road diesel fueled~~ vehicles subject to this regulation in California. The reductions must be surplus to those that would otherwise be achieved through implementation of title 13, California Code of Regulations, sections 2449, and 2449.1, Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road regulation).

### (b) Applicability

**(1) District Applicability** – Section 2449.2 applies to any air quality management district or air pollution control district (jointly referred to hereafter as air district) whose governing board elects to opt into the provisions of this section as set forth in section 2449.2(f) below.

**(2) Fleet Applicability** – Section 2449.2 applies to a fleet that:

**(A)** Operates individual vehicles within the air district;

**(B)** As of January 1, 2008, on a statewide level, consisted of more than 40 percent Tier 0 and Tier 1 vehicles, and;

**(C)** Has a statewide fleet with maximum power (max hp) greater than 20,000 horsepower (hp), excluding the hp from engines in two-engine vehicles and the hp from single engine cranes formerly subject to the Cargo Handling Equipment Regulation.

### (c) Definitions

The definitions in title 13, CCR, section 2449(c) apply, along with the following definitions:

**(1) "Contract period"** means the period of time in which the vehicle participates in the program and is under contract to the air district to achieve additional emission reductions.

**(2) "Operated within the district"** means a vehicle that currently operates within the boundaries of the air district and, during the three years immediately prior to the solicitation deadline, operated at least one hundred hours per year and operated more hours within the boundaries of the air district than in any other district.

**(3) "Project"** means actions on one vehicle to reduce NOx emissions, such as retrofit, repower, or vehicle replacement, for which funding is requested.

(4) **"Solicitation"** means a public announcement by the air district, requesting that fleets submit grant applications to the air district to participate in emission reduction incentive programs under this section.

(5) **"Solicitation deadline"** means the last day, as provided in the solicitation, that an application may be physically received by the air district.

#### (d) Requirements

(1) If an air district, having held a public hearing and opted into the SOON program and made the program mandatory per section 2449.2(e)(9), issues a solicitation for applications for funding under the SOON program, and if the solicitation so requires, a fleet that meets the applicability criteria of subsection (b) on the date of the solicitation must, before the solicitation deadline, do the following:

**(A) Report to District and ARB** – File a report, in a format approved by the Executive Officer, of all information required under section 2449(g) with the air district and ARB on its statewide fleet and that part of the fleet that has operated within the air district, as defined in section (c)(2) above. If the solicitation deadline is before April 1, 2009, the fleet must provide information regarding the fleet as it existed on January 1, 2008. If the solicitation deadline is on or after April 1, 2009, the fleet must provide the information that was reported to ARB on the most recent March 1 reporting date.

**(B) Calculate fleet average index** – Determine the fleet average index for vehicles that operated within the air district for the year in which the solicitation deadline occurs according to the formula in section 2449.1(a).

**(C) Calculate SOON fleet average target rate** – Determine the SOON fleet average target rate for vehicles that operated within the air district for the year in which the solicitation deadline occurs according to the formula in section 2449.1(a), and using the SOON targets set forth in Table 5 below. If there is no SOON fleet average target rate for the year in which the solicitation deadline occurs, the nearest future target rate shall be used.



**Table 5 – SOON Targets for Each Max Hp Group  
For Use in Calculating SOON Fleet Average Target Rates [g/bhp-hr]**

<b>Compliance Date: January 1 of Year</b>	<b>25-49 hp</b>	<b>50-74 hp</b>	<b>75-99 hp</b>	<b>100-174 hp</b>	<b>175-299 hp</b>	<b>300-599 hp</b>	<b>600-750 hp</b>	<b>&gt;750 hp</b>
2011	5.6	6.2	6.7	6.0	5.4	5.1	5.3	6.4
2014	5.8	6.5	7.1	6.4	3.9	3.7	3.7	5.3
2017	5.0	5.4	5.5	4.9	2.2	2.2	2.2	4.3
2020	4.1	4.2	3.4	3.1	1.4	1.3	1.4	3.4
2023	3.3	3.0	1.4	1.3	0.7	0.7	0.7	2.7

**(D) Apply for funding** – Except as provided in section 2449.2(d)(2) and 2449.2(e)(3) below, a fleet for which the fleet average index, as calculated in section 2449.2(d)(1)(B), is greater than the SOON fleet average target rate, as calculated in section 2449.2(d)(1)(C), must apply for SOON funding. The application submitted must be completed according to the guidelines and conditions established under the solicitation and, if the necessary NOx retrofits, repower, or vehicle replacements are available, must indicate how NOx retrofits, repowers, or vehicle replacements for which funding is requested will bring the fleet average index for vehicles that operated within the air district from where it would have been under compliance with section 2449.1 to less than or equal to the SOON fleet average target rate calculated in section 2449.2(d)(1)(C). The application must also indicate whether the fleet wants the application to be given high priority for SOON program funding by the district. The funding priority shall be determined under the air district guidelines developed per section 2449.2(f)(2).

**(E) Achieve NOx reductions** – Fleets that receive SOON program funding must complete the actions for which they were funded per the conditions of the solicitation. Fleets that do not receive requested SOON program funding are not required to take actions beyond compliance with Off-Road regulation, as specified in sections 2449 and 2449.1.

**(2) Fleets not meeting the applicability provisions** – A fleet that operates individual vehicles within the air district, but does not meet the applicability provisions of sections 2449.2(b)(2)(B) and 2449.2(b)(2)(C), are not required to file a report with the ARB or the air district under section 2449.2(d)(1). It is also not required to apply for funding under subsection (d)(1)(D), but may file a report with ARB or the air district under section 2449.2(d)(1) and apply for funding if the fleet average index calculated for its fleet operating within the air district exceeds the SOON fleet average target rate, and the fleet would like to qualify for funding. If the air district approves the fleet’s application for funding, the

fleet must achieve the NO<sub>x</sub> reductions as set forth in subsection (d)(1)(E). Participating in the SOON program in one year does not obligate the fleet to participate in subsequent years.

**(3) Air districts that opt into the SOON program** – Districts must prioritize requested projects based on the optimum NO<sub>x</sub> cost-effectiveness and on whether the fleet requesting the SOON program funding has requested high priority for SOON program funding. Air districts must report to ARB, in a format approved by the Executive Officer, all projects funded under the SOON program, including the equipment identification number of all vehicles funded.

#### **(e) Special Provisions**

##### **(1) Accounting for the Off-Road Regulation –**

(A) Reductions achieved through the SOON program must be surplus, over the entire contract period, to those required by the Off-Road regulation, sections 2449 and 2449.1 above.

(B) During the contract period, vehicles equipped with NO<sub>x</sub> retrofits, repowered with new engines, or that have been replaced using SOON program funding, cannot use this lower emission rate to calculate the fleet average index and target rate, and BACT credit under section 2449.1. Instead, for the purposes of calculating the fleet average index and target rate, and BACT credit under section 2449.1, these vehicles must be reflected as if the actions taken under the SOON program did not occur. Actions taken using SOON program funding may be used for determining compliance under section 2449.1 after the completion of the SOON program project contract period for that vehicle. For example, if a Tier 0 vehicle is repowered with a Tier 3 engine with SOON program funds, for purposes of compliance with section 2449.1, that vehicle is still treated as if it were a Tier 0 until the end of the contract period for the SOON program project.

(C) If a fleet pays for a VDECS that is installed concurrently with a repower or vehicle replacement funded with SOON program funding, the fleet may count the VDECS toward determining compliance under section 2449.1. If a fleet's vehicle is repowered using SOON program funding with a Tier 4 engine that comes with an original engine manufacturer diesel particulate filter, and if the fleet pays a portion of the repower costs such that it offsets the cost of an equivalent VDECS, the fleet may count the original engine manufacturer diesel particulate filter towards determining compliance under section 2449.1.

**(2) Turnover in section 2449.1** - A fleet may apply to the Executive Officer for an extension from the requirements in section 2449.1(b) if, using the accounting provisions in section 2449.2(e)(1), section 2449.1(b) would require, prior to January 1, 2014, a fleet to turn over vehicles that are Tier 2 or better. The exemptions in sections 2449.1(b)(2), (b)(3), and (b)(6) for vehicles less than 10 years old and Tier 2 vehicles do not apply to the SOON program.

**(3) Compliance plans** – In addition to a SOON program application, a fleet applying for SOON program funding must prepare and submit to the air district a compliance plan, in the format described in the district guidelines, laying out the actions it is required to take under section 2449.1 and the actions for which it is applying for funding under section 2449.2. Compliance plans must demonstrate that in the absence of any actions taken to satisfy section 2449.2, the fleet will be able to meet the requirements of section 2449.1 through the remaining actions set forth in the plan.

**(4) Surplus** – Participation in the SOON program does not reduce the actions required for any fleet to comply with any requirements in the Off-Road regulation under section 2449.1.

**(5) Tracking devices** – An air district may require any vehicle repowered, retrofitted, or replaced with incentive money through the SOON program to be equipped with a vehicle location device (per the air district's guidelines and conditions for receiving funding) to ensure that the vehicle is used in the air district for the required percent of operating hours.

**(6) Particulate Matter Retrofits** –

(A) If a fleet has a vehicle that has been retrofitted within the last six years with a Level 2 or 3 VDECS, which was the highest level VDECS at the time of retrofit, the fleet may but is not required to apply for SOON funding for that vehicle.

(B) A fleet that receives SOON funding to repower or replace a vehicle is not required to install the highest level VDECS along with the repower or replacement.

**(7) Funding Guidelines** – Projects funded under the SOON program with Carl Moyer program money must be administered consistent with applicable Carl Moyer program guidelines, except as noted in section 2449.2(e)(6)(B). If a project is funded from other sources, the SOON program must be administered consistent with any applicable guidelines. The air district shall develop guidelines for administration of the SOON program, as provided in section 2449.2(f)(2).

**(8) Vehicles Scheduled to Leave District** – A fleet that has operated within the air district, as defined in section 2449.2(c)(2), but that is planning to move vehicles out of the air district such that the vehicles will not operate enough

hours in the air district to qualify for SOON funding may leave such vehicles out of the fleet average index calculation in section 2449.2(d)(1)(B), the SOON fleet average target rate calculation in section 2449.2(d)(1)(C), and the application for funding in section 2449.2(d)(1)(D). The fleet must submit a statement under penalty of perjury to the district for each such vehicle stating its intent to move each such vehicle out of the district.

**(9) Voluntary or Mandatory Nature of SOON** – An air district, having held a public hearing and opted into this regulation, may issue a solicitation for applications for funding under the SOON program.

(A) For fleets in the South Coast Air Quality Management District and San Joaquin Valley Air Pollution Control District, solicitations with a deadline before April 2, 2009, shall be voluntary. For solicitations with a deadline on or after April 2, 2009, the South Coast Air Quality Management District and San Joaquin Valley Air Pollution Control District may elect to make participation by fleets voluntary or mandatory.

(B) In any district other than the South Coast Air Quality Management District or San Joaquin Valley Air Pollution Control District, for solicitations with a deadline before April 2, 2010, participation by fleets is voluntary. For solicitations with a deadline on or after April 2, 2010, the district may choose to make participation by fleets voluntary or mandatory.

(C) The solicitation shall announce the air district's decision regarding voluntary or mandatory participation.

**(f) Local Air District Opt-In**

**(1)** To participate in the SOON program, an air district's governing board must hold a formally noticed public hearing, where public comment is taken, and, by majority vote, elect to opt into the program. As part of this hearing, for years when section 2449.2(e)(9) gives the district a choice between a voluntary and mandatory SOON program, the air district's governing board must decide whether participation by fleets is voluntary or mandatory.

**(2) District Guidelines** – An air district opting into section 2449.2 must develop, through a public process including a duly noticed public workshop and formally noticed public hearing, additional administrative provisions necessary to implement this section, including, but not limited to, funding guidelines (as required under section 2449.2(e)(7)), compliance planning requirements, and reporting and monitoring requirements. Funding guidelines may include limitations on the cost-effectiveness of projects that may be funded and must include the method used for prioritizing projects based on cost-effectiveness and whether applying fleets requested high priority for SOON program

funding, and a description of any requirements on fleets that receive SOON funding to pay part of the SOON project cost. Compliance planning guidelines must indicate the format and length of compliance plans. Air district guidelines may include a pre-application process that collects vehicle data (model year, hp, hours of use) and then requires full SOON project applications only for vehicles likely to receive funding.

**(3) ARB Approval of District Guidelines** – Before any guidelines, including administrative or funding guidelines, approved by an air district take effect, they must be approved by the Executive Officer. Air district staff shall submit proposed guidelines to the Executive Officer before they are acted on by the district’s governing board. The Executive Officer will respond within 30 days with a description of any required changes to the proposed guidelines necessary for Executive Officer approval. In evaluating proposed air district guidelines, the Executive Officer shall consider, among other factors, the adequacy of cost-effectiveness criteria, whether fleet requests for high priority for SOON funding are given preference, and uniformity of district guidelines between air districts. After guidelines are adopted by a district’s governing board, air district staff shall submit the adopted guidelines to the Executive Officer. The Executive Officer will respond within 30 days with approval or a description of any required changes to the guidelines.

**(4) ARB Authority** – ARB has sole authority to enforce the requirements of section 2449.2. The Executive Officer retains the authority to review any district’s administration of section 2449.2 and to address any unforeseen circumstances or events.

**NOTE:** Authority cited: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 43000, 43000.5, 43013, 43016, and 43018, Health and Safety Code. Reference: section(s) 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39657, 39658, 39659, 39665, 39667, 43000, 43000.5, 43013, 43016, and 43018, Health and Safety Code.

## Appendix A –

Use the values in this table unless the engine is an engine certified to on-road standards.

Engines certified to on-road standards shall use the standard to which the engine is certified. Engines certified to FEL and flexibility engines shall still use the emission factors in the table below.

Replacement engines produced per title 13, CCR, section 2423(j) shall use the engine model year of the engine replaced. For an engine certified to an emission standard lower than that shown in these tables for its model year, the emission standard to which the engine is certified may be used, provided that the certification Executive Order or certificate number is provided along with the initial and annual reporting required by section 2449(g)(1) and 2449(g)(2).

If the model year of an engine is unknown because it is missing a serial number, manufacturer's build code, and/or an engine family number, and the engine manufacturer or authorized representative is unable to determine the model year of the engine by examining the engine's build and components, such an engine shall be treated as a 1969 model year engine. If a manufacturer can bracket the model year of an engine (for example that an engine was built between 1987 and 1994) by examining the engine's build and components, the earliest date the engine could have been manufactured shall be used as the model year of that engine (in the example, 1987).

Emission Factors by Horsepower and Year (g/bhp-hr)								
Engine Model Year	Horsepower Group							
	25-49	50-74	75-99	100-174	175-299	300-599	600-750	Over 750
1900 – 1969	7.2	14.8	14.8	15.9	15.9	15.2	15.2	15.2
1970 – 1971	7.2	14.8	14.8	14.8	14.8	14.1	14.1	14.1
1972 – 1979	7.2	14.8	14.8	13.6	13.6	13.0	13.0	13.0
1980 – 1987	7.2	14.8	14.8	12.5	12.5	11.9	11.9	11.9
1988	7.1	9.9	9.9	9.3	9.3	8.9	8.9	8.9
1989 – 1995	7.1	9.9	9.9	9.3	9.3	8.9	8.9	8.9
1996	7.1	9.9	9.9	9.3	6.9	6.9	6.9	8.9
1997	7.1	9.9	9.9	6.9	6.9	6.9	6.9	8.9
1998	7.1	6.9	6.9	6.9	6.9	6.9	6.9	8.9
1999	6.2	6.9	6.9	6.9	6.9	6.9	6.9	8.9
2000	6.2	6.9	6.9	6.9	6.9	6.9	6.9	6.9
2001	6.2	6.9	6.9	6.9	6.9	4.2	6.9	6.9
2002	6.2	6.9	6.9	6.9	6.9	4.2	4.2	6.9
2003	6.2	6.9	6.9	4.3	4.3	4.2	4.2	6.9
2004	4.9	4.9	4.9	4.3	4.3	4.2	4.2	6.9
2005	4.9	4.9	4.9	4.3	4.3	4.2	4.2	6.9
2006	4.9	4.9	4.9	4.3	2.6	2.6	2.6	4.2
2007	4.9	4.9	4.9	2.6	2.6	2.6	2.6	4.2
2008	4.9	3.0	3.0	2.6	2.6	2.6	2.6	4.2
2009	4.9	3.0	3.0	2.6	2.6	2.6	2.6	4.2
2010	4.9	3.0	3.0	2.6	2.6	2.6	2.6	4.2
2011	4.9	3.0	3.0	2.6	1.5	1.5	1.5	2.6
2012	4.9	3.0	2.5	2.5	1.5	1.5	1.5	2.6
2013	3.0	3.0	2.5	2.5	1.5	1.5	1.5	2.6
2014	3.0	3.0	2.5	2.5	0.3	0.3	0.3	2.6
2015 and later	3.0	3.0	0.3	0.3	0.3	0.3	0.3	2.6