

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and
Availability of Additional Documents**

PUBLIC HEARING TO CONSIDER ADOPTION OF THE REGULATION TO REDUCE
GREENHOUSE GAS EMISSIONS FROM HEAVY-DUTY VEHICLES

Public Hearing Date: December 11, 2008
Public Availability Date: September 17, 2009
Deadline for Public Comment: October 2, 2009

At its December 11, 2008 public hearing, the Air Resources Board (the Board or ARB) approved the adoption of sections 95300 through 95311, title 17, California Code of Regulations (CCR), which establish requirements to reduce greenhouse gas emissions from long-haul heavy duty-vehicles (HDVs). These sections will be referred to collectively hereafter as the "regulation."

The regulation will reduce GHG emissions by improving HDV fuel efficiency. For the purposes of this regulation, a HDV consists of a heavy-duty tractor (tractor), and a trailer. The regulation will require new and existing long-haul on-road tractors pulling 53-foot or longer box-type trailers and 53-foot and longer box-type trailers pulled by tractors to be equipped with United States Environmental Protection Agency (U.S. EPA) SmartWay approved aerodynamic technologies and low-rolling resistance tires when they operate on California highways.

The Board's Action

At the hearing, the Board adopted Resolution 08-44 (Resolution) approving the adoption of the regulation originally proposed in the Staff Report released on October 24, 2008 with modifications that were proposed by staff and made available to the public at the hearing. These modifications, included as Attachment B to the Resolution, were the result of suggestions by ARB staff and by public commenters and included language: (1) clarifying that livestock trailers and refuse trailers are exempt from the requirements of the regulation; (2) redefining "owner" to facilitate the enforcement of the regulation; (3) streamlining the trailer aerodynamic equipment and low-rolling resistance tire requirements; (4) restructuring the compliance schedule requirements for 2010 or previous model year refrigerated-van trailers resulting in the elimination of some of the recordkeeping requirements for the owners of these trailers; (5) for clarity, redefining "short-haul" to mean travelling no more than 50,000 miles per year and adding the term "local-haul" to mean travelling within a 100-mile radius of the local-haul base; (6) removing the Executive Officer approval criteria from the short-haul/local-haul tractor and trailer exemption requirements; (7) restructuring the optional trailer fleet compliance

schedule requirements for clarity, and modifying the calculation methodology and general requirements.

The Board directed the Executive Officer to incorporate the approved modifications to the initially noticed text, along with such other conforming modifications as may be appropriate, and to make such modifications available for a supplemental comment period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

The Board also directed the Executive Officer to take appropriate steps to ensure that the requirement to use SmartWay certified tractors would take effect only if the U.S. EPA establishes performance-based certification requirements for U.S. EPA certified SmartWay tractors. On August 17, 2009, U.S. EPA did establish interim requirements for tractor manufacturers to add SmartWay certified tractor models to the current list of SmartWay tractors. These interim requirements establish both design and performance-based requirements by allowing new tractor models to be certified if the fuel efficiency of the new tractor model meets or exceeds the fuel efficiency of at least one current SmartWay certified tractor model from any manufacturer. Fuel efficiency is to be determined using a modified version of the *Joint TMC/SAE J1321 Fuel Consumption Test Procedure Type II RP J1321 (October, 1986)*. The interim requirements are set forth in the following two documents: Interim Requirements to Determine Eligibility of SmartWay Tractors, EPA-420-F-09-045, August 2009; and Interim Test Method for Verifying Fuel-Saving Components for SmartWay: Modifications to SAE J1321, EPA-420-F-09-046, August 2009. Because these documents introduce a performance-based standard for U.S. EPA certified SmartWay tractors, ARB has retained the tractor component in the regulation. As described elsewhere in this notice, ARB is soliciting public comment on the interim requirements and interim test method announced by U.S. EPA last month.

Summary of Proposed Modifications to the Regulation

The following is a summary of the proposed substantive modifications to the regulation and ARB's rationale for making them. All references to California Code of Regulations sections 95300 through 95312 are to new sections that are proposed to be added to subarticle 1, article 4, subchapter 10, chapter 1, division 3 of title 17. The following list does not include modifications to correct typographical or grammatical errors, a complete listing of all numbering changes, or minor revisions to improve clarity. For a complete account of all modifications in the proposed regulation since the original notice on October 24, 2008, please refer to the underline and strikeout text in Attachment 1.

Applicability (section 95301):

Language was added to clarify that the regulation applies to specified parties not only when they use certain tractors and trailers in California, but also when they cause the use of that equipment by others within the state. This modification is consistent with the substantive requirements in section 95303 and reflects the fact that some motor carriers, brokers and shippers covered by the regulation could arrange the use of this equipment in the state without using it themselves.

“Refuse trailers” and “livestock trailers” have been added to the list of vehicles for which the requirements of this subarticle do not apply. Both refuse trailers and livestock trailers have been exempted because their design and typical uses are not compatible with the requirements for aerodynamic technologies and low-rolling resistance tires.

Language has been added to clarify that short-haul and local-haul tractors, local-haul trailers, and drayage tractors are exempt from certain provisions of the regulation in accordance with section 95305.

Definitions (section 95302):

The definition of “broker” was changed to improve clarity and to make the definition consistent with other ARB regulations.

A definition for the Diesel On-road and Off-road Reporting System (DOORS) has been added because this system is referred to in section 95307, Optional Trailer Fleet Compliance Schedules.

A definition of “fleet” has been added to improve clarity.

The definition of “authorized emergency vehicle” has been changed to a definition of “emergency vehicle” to improve clarity.

The definitions of “container,” “flatbed trailer,” and “lessee” have been deleted as unnecessary. The terms “container” and “flatbed trailer” do not need to be defined because the terms are not used in the proposed regulation. “Lessee” is a common term that does not need to be separately defined for purposes of this regulation.

Definitions of “livestock trailer” and “refuse trailer” have been added because both vehicles have been added to the list of vehicles exempted from the requirements of this subarticle.

The definitions of “cab side extender,” “curtain-side trailer,” “drop-frame trailer,” “dry-van trailer,” “flow control device,” “front trailer fairing,” “refrigerated-van trailer,” “sleeper cab,” and “trailer side skirt” have been modified to improve clarity.

The definition of “motor carrier” has been modified to reference the definition of “motor carrier” in the California Vehicle Code.

The definition of “owner” has been modified and expanded to provide greater clarity and additional details about which parties are responsible for ensuring that vehicles, including leased vehicles and federal government vehicles, comply with the regulation’s requirements.

The definition of “short-haul tractor” has been modified so the term refers only to tractors that travel less than 50,000 miles per year, and new definitions were added for “local-haul tractor” and “local-haul trailer” to describe tractors and trailers that travel within a 100 mile radius of their local haul base. The definition of “short-haul trailer” was deleted because the term has been replaced by “local-haul trailer.”

A definition of “trailer” has been added to improve clarity.

The term “U.S. EPA Approved SmartWay Technology” has been changed to “U.S. EPA Verified SmartWay Technology” and the term “U.S. EPA SmartWay Partnership Program” has been changed to “U.S. EPA SmartWay Transport Partnership Program” to be consistent with the program’s current terminology. Other minor modifications were made to these definitions, including an update of the U.S. EPA contact information.

Definitions for “compliant trailer,” “compliance year,” “conformance,” “delayed compliance trailer,” and “early compliance trailer” have been added to clarify the provisions of the Optional Trailer Fleet Compliance Schedules.

Definitions for “California-based broker” and “California-based shipper” have been added to clarify the applicability of this subarticle.

The definition of “dispatch” has been modified to improve clarity.

Requirements and Compliance Deadlines (section 95303) and Refrigerated Fleet Compliance Provision (section 95308):

Subsection 95303(b), Trailer Requirements, has been restructured to specify the tire and aerodynamic technology requirements in separate subsections, and to delete an option that identified specific aerodynamic equipment that could be installed on dry-van trailers and refrigerated-van trailers for compliance. Staff deleted this language because the regulation establishes performance standards of 5% fuel savings for dry-van trailers and 4% fuel savings for refrigerated-van trailers, which makes specifying the aerodynamic equipment required to meet these standards unnecessary and potentially limiting.

In subsection 95303(b)(3), the compliance schedule requirements for a refrigerated-van trailer that is a model year 2003 through 2008 trailer equipped with a 2003 or subsequent model year transport refrigeration unit, has been added. These requirements were previously part of referenced subsection 95308. As a result of this restructuring of the regulation, subsection 95308 is no longer necessary and has been deleted. The subsequent subsections (formerly 95309 through 95312) are renumbered as 95308, 95309, 95310, and 95311, respectively.

Subsection 95303(c)(2) specifies the information a driver must provide to an authorized enforcement official. This subsection has been modified to improve clarity, and to specify that the vehicle odometer reading is only required if the vehicle is an exempt short-haul tractor.

Subsection 95303(e)(3) is no longer necessary and has been deleted. It referenced the requirements of subsection 95308 which are now contained in subsection (b).

Subsections 95303(f), Requirements for California-based Brokers, and 95303(g), Requirements for Motor Carriers, have been modified to clarify that the requirements only apply to tractors and trailers dispatched for travel on California highways.

Subsection 95303(h), Requirements for California-Based Shippers, has been modified to clarify that a California-based shipper must not ship freight from its California facility or facilities in non-compliant tractors and trailers.

Exemptions (section 95305)

Previously, the term “short-haul” was used to describe both tractors that travel less than 50,000 miles per year and those that travel within a 100 mile radius from their local haul base. It also was used to describe trailers that are restricted in travel within a 100 mile radius of their local haul base. To clarify the regulation, staff redefined “short-haul” tractor as a tractor that travels less than 50,000 miles per year, and added the terms “local-haul” tractor and “local-haul” trailer to describe those tractors and trailers that are restricted in travel within a 100 mile radius. Changes have been made throughout section 95305 and 95306 to reflect this change in nomenclature.

Subsection (a) has been modified to reference the specific subsections from which a short-haul tractor is exempt, and to delete the listing of the criteria that define a short-haul tractor since these criteria are identified in the definition of “short-haul tractor.”

A new subsection (b) has been added to identify the specific subsections from which a local-haul tractor is exempt, and those subsections with which it still must comply.

Subsection (b) has been renumbered to subsection (c) and has been modified to identify the specific subsections from which a local-haul trailer is exempt and those subsections with which it still must comply. .

Subsection (c) has been renumbered to subsection (d) and has been modified for clarity.

A new subsection (e) has been added to identify the specific subsections from which a 53-foot or longer box-type trailer is exempted from when being pulled by a local-haul tractor.

A new subsection (f) has been added to identify the specific subsections a 2011 or subsequent model year sleeper cab HD tractor is exempted from when pulling a local-haul trailer.

Short-Haul Tractor and Short-Haul Trailer Exemption Requirements (section 95306)

As discussed above, changes have been made throughout section 95306 to reflect the redefinition of “short-haul” tractors and trailers as “short-haul” tractors and “local-haul” tractors and trailers.

Subsection (a) has been modified to remove Executive Officer approval criteria from the short-haul and local-haul tractor and trailer exemption requirements. Approval is granted automatically as long as all requirements specified in section 95306 are met.

Subsections (b) through (e) have been modified to make the owner contact information required consistent with the information required in section 95307, Optional Fleet Compliance Schedules.

Subsection (f), the requirement to provide a map of the local-haul base location, originally thought to be a useful compliance tool, has been determined to be unnecessary and was deleted.

Subsection (g) has been renumbered as subsection (f) and has been modified to clearly identify the information required to be submitted to the Executive Officer. The statements required to be submitted have also been modified to reflect the removal of Executive Officer approval criteria from the exemption requirements.

New subsection (g) has been added to clarify how long the exemption will be in effect for owners of local-haul tractors or trailers; and to require owners to notify the Executive Officer of reported information changes.

Subsection (h), which defined the exemption period for all short-haul tractors and trailers as one year from the date of the approval letter, has been deleted.

New subsections (h) and (i) clarify that owners of local-haul tractors or trailers, and

owners of short-haul tractors, are required to notify the Executive Officer and update applicable tractor and trailer fleet list information when these vehicles are removed from local or short haul service. The requirements state that this notification must occur prior to the vehicle's change in ownership or prior to travelling on California highways, whichever comes first. The reason for this language is to ensure the exempt status of these vehicles is removed expeditiously. Also, in new subsection (i), a provision was added that does not allow a short-haul tractor that was dropped from an owner's short-haul fleet to be added back into the fleet sooner than 3 years from the removal date. This language was added to prevent circumvention of the rule by opting in and out of the short-haul exemption fleet.

New subsection (j) has been added to clarify the length of time an exemption is in effect for an owner of a short-haul tractor.

Subsection (i) has been renumbered as subsection (k) and has been modified to clarify that drivers must, upon demand, provide the information specified in this subsection for exempt local-haul trailers.

New subsection (l) has been added to provide enforcement personnel the authority to directly view the odometer of HD tractors when enforcing the short-haul exemption 50,000 annual miles travelled requirement.

New subsections (m) through (o) have been added to clarify that exceeding the applicable limits for short-haul tractors (50,000 miles per year) and local-haul tractors and trailers (travel within a 100 mile radius of the vehicle's local-haul base) are violations of this subarticle.

Optional Trailer Fleet Compliance Schedules (section 95307)

Section 95307 has been restructured for clarity and to allow for referencing of the requirements defined in the introductory eight paragraphs. The information contained in these paragraphs has been either deleted from this subarticle because it was redundant, transferred to new subsection (a), Trailer Fleet Compliance Schedule Applicability, transferred to section 95302, Definitions, or transferred to new subsections (f)(19) and (f)(20). To accommodate new subsection (a), subsections (a), (b), (c), (d), and (e) have been renumbered to subsections (b), (c), (d), (e), and (f), respectively.

In subsection (a), which has been renumbered as subsection (b), Large Fleet Compliance Schedule, and subsection (b), which has been renumbered as subsection (c), Small Fleet Compliance Schedule, the large and small fleet compliance threshold dates have been changed from December 31 to January 1. Also, for clarity the term "conformance" has replaced the term "compliance" where applicable. In addition, the requirement for the fleet owner to provide evidentiary documentation for early compliance trailers has been deleted, since information identifying the early compliance

trailer is required as part of the trailer fleet list. Also, the requirements defining the maximum allowable number of delayed compliance trailers has been deleted and replaced with requirements defining the maximum allowable number of early compliance trailers. This change has been made because it is simpler for the fleet owner to determine the number of early compliance trailers, than to calculate the number of delayed compliance trailers. Finally, in subsections (b)(2) and (c)(2), the requirement for the fleet owner to provide a copy of the registration for each trailer listed on the trailer fleet list has been determined to be unnecessary and deleted.

In subsection (c), which has been renumbered as subsection (d), General Compliance Plan Components, the information required to be submitted in the trailer fleet list, subsection (d)(2), has been modified as follows:

- For clarity, the address information required to be provided has been specifically listed.
- New subsection (L) has been added requiring the DOORS (Diesel Off-road On-line Reporting System) identification number of the owner's corporate parent to be submitted.
- Subsection (K) has been renumbered to subsection (M) and clarifies that owners that elect to participate in the large fleet compliance schedule are required to report all trailers that will operate in California, while owners that elect to participate in the small fleet compliance schedule are required to list all trailers that will operate both inside and outside California. Previously, small fleet owners were required only to list trailers that will operate in California. This change has been made to improve the enforceability of the small fleet compliance provisions.
- Subsection (N) identifies the information required to be submitted for each trailer participating in an optional compliance plan. Vehicle identification number, registration type, county of registration, exemption status, and California operating status were added to improve enforceability of the regulation. The information listed that is required for each refrigerated-van trailer listed in the trailer fleet list has been reduced from eight to two items: transport refrigeration unit (TRU) model year and TRU engine model year. Staff determined the six deleted information requirements were unnecessary to ensure compliance.

Subsection (c)(3), which has been renumbered as subsection (d)(3), has been modified to clarify which trailers are to be included in the compliance plan base list.

Subsection (c)(4), which has been renumbered as subsection (d)(4), has been modified to reflect terminology changes (compliance to conformance) and to clarify how the annual conformance commitment list is to be determined by the trailer owner. The requirement specifying how the trailers shall be listed has been deleted because it was determined by staff to be unnecessary and overly prescriptive.

In subsection (d), which has been renumbered as subsection (e), Calculation Methodology, the calculation methodology has been modified. Equation 2 has been modified and renumbered to equation 3, and a new equation 2 has been added. These changes were made to remove trailers that will not travel on California highways from the calculation of the small fleet compliance plan base number. Equation 3 has been modified and renumbered to equation 5. The new equation 5 is used to calculate the maximum allowable number of early compliance trailers, rather than the maximum allowable delayed compliance trailers. As mentioned earlier, this change has been made because it is simpler for the fleet owner to calculate the number of early compliance trailers, than to calculate the number of delayed compliance trailers

In subsection (e), which has been renumbered as subsection (f), General requirements for all compliance schedules, requirements have been added or modified that:

- update the information to be provided as part of the trailer fleet list for clarity and to accommodate trailers based in Mexico and Canada,
- clarify that an owner participating in the small fleet compliance schedule may only operate a trailer in California that is included in the owner's trailer fleet list, unless the trailer is acquired after the compliance plan due date and is compliant with the equipment requirements of the regulation,
- allow a trailer owner to remove a trailer identified in the compliance plan base list and re-designate it as a local-haul trailer,
- allow compliance plan revisions for owners whose companies are affected by a merger, acquisition, split or other changed circumstance affecting operations,
- do not allow compliance plan participation for owners of affected businesses (i.e. motor carriers) that form after the compliance plan submission due date,
- clarify that the Executive Officer may make public the non-confidential information submitted pursuant to the optional fleet compliance plan requirements,
- clarify that the Executive Officer may terminate a fleet's participation in a compliance schedule if the fleet is found in violation of this subarticle,
- clarify the scenarios in which an owner participating in the large fleet compliance schedule may operate a trailer subject to the requirements of this subarticle, and
- clearly state that any violation of the requirements of subsection 95307 is a violation of this subarticle.

The preceding list of modifications is intended to summarize the most significant changes to the regulation as originally proposed, but does not describe all the changes to the regulatory text. Please review the underline and strikeout language in Attachment 1 for a complete account of all changes that are being proposed in the regulation.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added to the rulemaking record and invites comments on the following documents that support the proposed action:

- Interim Requirements to Determine Eligibility of SmartWay Tractors, EPA-420-F-09-045, August 2009, which can be downloaded at <http://www.epa.gov/smartway/transport/documents/tech/interim-tractor-rqmts.pdf>
- Interim Test Method for Verifying Fuel-Saving Components for SmartWay: Modifications to SAE J1321, EPA-420-F-09-046, August 2009, which can be downloaded at <http://www.epa.gov/smartway/transport/documents/tech/interim-test-method-j1321.pdf>

Availability of the Modified Regulatory Text and Other Materials

The modified regulation is being made available for public comment prior to the final action by the Board's Executive Officer. The modified regulatory text (Attachment 1 to this Notice), as well as other regulatory documents for this rulemaking, are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2008/ghghdv08/ghghdv08.htm>

It is also available from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California, 95814. If you would like a printed copy of any attachments sent to you through postal mail, please call Daniel Hawelti at (626) 450-6149 and give your name, company name (if any), and mailing address.

As mentioned, ARB is also accepting public comments on the documents listed above that are being added to the rulemaking file. These documents are available on the U.S. EPA web pages identified above and are available for public inspection at ARB's Sacramento offices. Please contact Trini Balcazar, Regulations Coordinator, at (916) 445-9564, 1001 I Street, 23rd floor, Sacramento, California 95814 to arrange viewing of these documents.

Comments and Subsequent Action

Written comments on the modifications and other documents added to the rulemaking file may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the three forms described above and received by the ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulations or to the additional documents added to the rulemaking file shall be considered by the Executive Officer.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact the Clerk of the Board at (916) 322-5594 or by Facsimile at (916) 322-3928 as soon as possible. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Attachment