

State of California
AIR RESOURCES BOARD

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

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED
REGULATION FOR IN-USE OFF-ROAD DIESEL VEHICLES**

Public Hearing Date: July 26, 2007
Public Availability Date: March 5, 2008
Deadline for Public Comment: March 20, 2008

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved a regulation for In-Use Off-Road Diesel Vehicles with the adoption of section 2449, title 13, California Code of Regulations (CCR), as modified. The regulation for In-use Off-road Diesel Vehicles is designed to reduce emissions of diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from in-use off-road diesel vehicles that operate in California. The regulation will significantly reduce diesel PM and NOx emissions from the nearly 180,000 off-road diesel vehicles that operate in California, which is necessary to meet state and federal air quality standards, by requiring fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits. The regulation also supports the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, which was adopted by the Board on September 30, 2000.

The Board's Action

At the July 26, 2007, hearing, the Board adopted Resolution 07-19, approving the adoption of the regulation with modifications. Staff released a First Notice of Public Availability of Modified Text and Availability of Additional Documents (First Notice), which on December 11, 2007. A Second Notice of Public Availability of Modified Text and Availability of Additional Documents was subsequently released on February 5, 2008. The comment period for the First Notice closed on January 8, 2008, and the comment period for the Second Notice will close on March 6, 2008.

Additional Modified Text Being Made Available

Based on comments received in response to the First Notice, staff is proposing additional substantive, clarifying, and technical modifications to the regulatory text that are needed to better reflect the underlying intent of the regulation.

A more complete discussion of these proposed modifications is provided below. The proposed regulatory text, including staff's modifications, is appended to this notice as Attachment 1. The proposed modifications that were made available in

the First Notice are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The proposed modifications that were made available in the Second Notice are shown in double underline to indicate additions and double ~~strikeout~~ to indicate deletions. The proposed modifications being made available in this Third Notice are shown in shaded underline to indicate additions and shaded ~~strikeout~~ to indicate deletions.

Summary of Proposed Modifications

The following is a summary of the modifications and staff's rationale for making them:

Modifications to title 13, CCR, section 2449

Section 2449(c) Definitions

Staff updated the definition of captive attainment area fleet to allow an identified subpart of a fleet (fleet portion) to be considered a captive attainment area fleet even if other vehicles in the fleet as a whole operate outside of the counties listed in section 2449(c)(6). Consistent with section 2449(d) for a fleet portion to be considered a captive attainment area fleet, the fleet portion must be operated as a bona fide sub part of the fleet as a whole (e.g., a subsidiary, division, etc. of the company or government entity) and under the control of a different responsible official. This means that if a fleet has a fleet portion that operates exclusively in those counties listed in section 2449(c)(6), the fleet operator may report those vehicles in the fleet portion as if they were an independent fleet and avoid complying with the NOx performance requirements of the regulation for those vehicles. For example, if a company operates a landfill in Alpine County but also operates vehicles in Sacramento County, assuming that the landfill vehicles are under the control of different responsible officials, the company could choose to report the landfill vehicles that are captive to Alpine County as a fleet portion, and those vehicles would not be subject to the NOx performance requirements of the regulation. As described below, once a fleet defines some of its vehicles as a fleet portion, the fleet portion must continue to comply and report separately, and the fleet portions must meet the adding vehicle requirements in section 2449(d)(7) just as if they were separate fleets.

Section 2449(d) Performance Requirements

Staff has clarified that, for alternative fuel vehicles purchased prior to January 1, 2007, just as for those purchased on or after January 1, 2007, fleets should use an Emission Factor equal to the emission standard to which the engine is certified in grams per brake horsepower-hour (g/bhp-hr). If the alternative fuel vehicle is not certified to a NOx or diesel PM emission standard, the owner may apply to the Executive Officer to use an appropriate alternative emission factor. In the application, the owner must demonstrate that the chosen emission factor is

appropriate and that the actual emissions of the alternative fuel vehicle do not exceed the chosen emission factor.

Section 2449(e) Special Provisions/Compliance Extensions

Staff has added a provision in section 2449(e)(9) allowing the Executive Officer to grant an extension to a fleet if vehicles meeting the Tier 3 emission standards are not available to meet the fleet needs. The regulation already provided for delays in availability of vehicles meeting the Tier 4 emission standards, and staff felt it appropriate to provide for a similar extension to address unavailability of vehicles with Tier 3 engines.

Section 2449(g) Reporting

Staff has added the Equipment Identification number (EIN) to the list of information that must be reported for each vehicle as part of the annual reporting requirements in section 2449(g)(1)(B)16. The reporting process will work as follows: fleets will submit the initial reporting of their vehicles to ARB, then ARB will assign a unique EIN to each vehicle, fleets are then required to label each of their vehicles with the assigned EIN, and report the EIN along with the other required vehicle and engine data in subsequent annual reports.

Modifications to title 13, CCR, section 2449.1

Section 2449.1(a) NOx Performance Requirements

Staff has clarified in section 2449.1(a) that small fleets and captive attainment area fleets are not subject to the NOx performance requirements.

Staff modified the language in section 2449.1(a) to clarify that a fleet may have a portion of its fleet that meets the definition of captive attainment area fleet and another portion that does not. For purposes of this section, the fleet owner may elect to treat the portion of the fleet that meets the captive attainment area fleet definition and the portion that does not as two separate fleets, except that the size classification of both portions of the fleet will be based upon the total horsepower of the fleet as a whole. If the fleet owner elects to identify and report a fleet portion separately, the fleet owner must continue to treat and report the fleet portion separately. When adding vehicles to the fleet portion, the fleet owner must meet the adding vehicle requirements as required under section 2449(d)(7). This means that fleets may not be able to freely swap vehicles back and forth between the fleet as a whole and the identified fleet portion.

Staff has clarified in section 2449.1(a)(2)(A) that rebuilding an engine to a more stringent emissions configuration is one way a fleet may meet the turnover requirements. (Fleets may also retire vehicles, designate vehicles as low-use vehicles, repower vehicles, or apply a verified diesel emission control strategy

verified to achieve NOx reductions.) Just as for repowering, the engine rebuilt to a more stringent emissions configuration must be Tier 2 or higher.

Staff has clarified the wording in section 2449.1(a)(2)(A)4. to make it clear that a fleet cannot count exempted vehicles as part of its turnover requirements. Before a vehicle can be exempted, the fleet must turnover all of its vehicles that would not qualify for an exemption under the criteria set forth in 2449.1(a)(2)(A)4a. through d. In other words, a fleet cannot count exempted vehicles in meeting its annual turnover requirement. For example, a fleet required to turnover 8 percent of its horsepower in a given year cannot avoid performing its turnover obligation in a year by showing that 8 percent of its horsepower is exempt under section 2449.1(a)(2)(A)4.

Modifications to title 13, CCR, section 2449.2

Section 2449.2(a) PM Performance Requirements

Staff has added a missing closed parentheses in section 2449.2(a)(2)(A)1.

Staff has clarified the wording in section 2449.2(a)(2)(A)3 to make it clear that a Level 2 verified diesel emission control strategy (VDECS) for specialty vehicles may be counted toward the retrofit requirement in section 2449.2(a)(2)(A), even if some other engines in vehicles older than 5 years for which the highest level VDECS available is a Level 3 VDECS have not been retrofitted.

Staff has also clarified the wording in section 2449.2(a)(2)(A)4. to make it clear that all of a fleet's vehicles that cannot meet the conditions set forth in 2449.2(a)(2)(A)4.a through d. must be retrofitted before an exemption can be claimed. In other words, a fleet cannot count exempted vehicles in meeting its annual retrofit requirement. For example, a fleet required to install retrofits on 20 percent of its horsepower cannot avoid having to install any retrofits in a year by showing that 20 percent of its horsepower is exempt under section 2449.2(a)(2)(A)4.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added to the rulemaking record the following documents:

- **Errata to the Technical Support Document:** Corrected versions of page 190 and Appendix I to the Technical Support Document (ARB, April 2007) are appended to this notice as Attachment 2. The percent of the total horsepower (hp) from fleets with less than or equal to 1,500 hp and the percent of fleets with over 5,000 hp on page 190 were incorrect and have been corrected. There was a typographical error in Appendix I: Climate Change Impacts to the Technical Support Document (TSD). The units of

CO₂ emissions in Tables 1, 2, and 3 of Appendix I have been corrected to metric tons (MT), not megametric tons (MMT).

- **Revised Used Vehicle Analysis:** In the original analysis in the TSD estimating the total number of used vehicles available and the number of those vehicles likely to be Tier 2 or higher, staff inadvertently double counted some vehicles, counted some vehicles that would not be subject to the in-use off-road diesel vehicle regulation, and did not retain screen shots of the auction data collected. Staff has redone the analysis, and the revised results, including screen shots of all auction data utilized, are appended to this notice as Attachment 3. The TSD stated that there were 80,000 vehicles available and 30,000 of them were likely Tier 2 or higher. The new analysis shows that over 72,000 vehicles were available and that over 33,000 vehicles were likely equipped with Tier 2 or higher engines. Because the new analysis shows nearly the same total number of used vehicles and an even higher proportion of Tier 2 or higher vehicles, the original conclusions regarding adequate availability of used vehicles in the TSD and Staff Report remain valid.

By this notice, the modified regulation and additional documents and information are being made available for public comment prior to the final action by the Board's Executive Officer (EO). All of the documents referenced above are available for public inspection at ARB's Internet website at the following address: <http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>, or by contacting Amy Whiting, Regulations Coordinator at (916) 322-6533, 1001 "I" Street, 23rd floor, Sacramento, California 95814.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the additional modifications are being made available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the EO shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board must 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>

Facsimile submittal: (916) 322-3928

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 EO, comments must be directed to the ARB in one of the three forms described above and received by 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 regulation and other information made available by the notice shall be considered by the EO.

Attachments (3)