

**REQUEST FOR AN EARLY EFFECTIVE DATE
Pursuant To Government Code Section 11343.4(c)**

The Air Resources Board (ARB or Board) formally requests, under Government Code section 11343.4(c), that the Office of Administrative Law (OAL) prescribe an early effective date for the adopted amendments to the airborne toxic control measure for in-use diesel-fueled transport refrigeration units (TRU) and TRU generator sets (TRU ATCM) that were approved by the Board on November 18, 2010 and subsequently adopted. ARB believes that “good cause” exists for OAL to grant ARB’s request – i.e., that the amendments become effective with OAL’s approval and filing of the regulations with the Secretary of State.

DEMONSTRATION OF GOOD CAUSE

In this rulemaking, the Board approved and subsequently adopted amendments to the TRU ATCM. Among other things, the TRU ATCM provides TRU owners with an additional pathway for achieving in-use emission standards for certain model-year TRUs that were required to be in compliance by December 31, 2010. The Board’s action was necessitated because of the limited availability in the marketplace of more stringent emission control devices, Level 3 verified retrofits, which were anticipated to be available for achieving compliance when the Board initially adopted the TRU ATCM in 2004. The amendments would allow owners to comply by using Level 2 verified devices. However, they would not be able to comply by using the less stringent Level 2 devices until the amendments become effective.

Recognizing that owners that elect to use the new compliance pathway will need a reasonable period of time to purchase and install the newly permitted devices, ARB has notified TRU owners that it will take no enforcement action for noncompliance with the in-use emission standards for the affected TRUs that occurs prior to March 31, 2011. An early effective date will provide owners of affected TRUs the opportunity to comply with the TRU ATCM by using a more flexible compliance option while providing ARB with the tools to ensure expeditious compliance with the regulation by March 31, 2011.

Additionally, an early effective date would administratively assist ARB in expeditiously achieving the purpose and intent of other adopted amendments. The purpose of the amendments affecting flexibility engines was to discourage the use of flexibility (higher emitting) engines by TRU original equipment manufacturers (OEMs) while ensuring that owners of TRUs with flexibility engines were not unfairly penalized. The amendments become effective on the date of OAL approval, and, thus, an early effective date will ensure that the OEM disincentives for using flexibility engines will go into effect sooner, resulting in earlier and greater emission benefits. Similarly, the amendments requiring OEM reporting also become effective on the date of OAL approval. An early effective date will ensure that manufacturers provide the data necessary to implement the adopted flexibility engine amendment expeditiously and will enable ARB staff to more quickly obtain information that is necessary for it to evaluate future amendments that the Board would like to consider later this year.

For these reasons, ARB believes there is good cause exists for OAL to grant ARB's request for an early effective date that coincides with its approval of the amendments and filing of the amendments to the Secretary of State pursuant to Government Code section 11343.4(c).

Date: February 1, 2011

/s/

Michael L. Terris
Senior Staff Counsel