

# FINAL REGULATION ORDER

*Adopt new section 2428, in new article 4.1, Chapter 9, Division 3, title 13, California Code of Regulations to read as follows:*

NOTE: The following text is all new language to be added to the California Code of Regulations.

## **Article 4.1. State Implementation Plan Credit from Mobile Agricultural Equipment**

### **§ 2428. Procedure for State Implementation Plan Credit from Mobile Agricultural Equipment.**

#### **(a) Purpose.**

The purpose of this regulation is to provide an administrative mechanism for the State of California to receive credit towards the State Implementation Plan (SIP) requirements for emission reductions achieved in the San Joaquin Valley Air Pollution Control District from incentive-funded mobile agricultural equipment projects that are implemented using the Carl Moyer Program guidelines. This regulation will complement San Joaquin Valley Air Pollution Control District's Rule 9610, adopted by their governing board on June 20, 2013, which provides an administrative mechanism for the San Joaquin Valley Air Pollution Control District to receive credit toward SIP requirements for emissions reductions achieved in the San Joaquin Valley through incentive programs administered by the district, the U.S. Department of Agriculture Natural Resources Conservation Service, or the Air Resources Board (ARB). The two rules together ensure that emission reductions achieved through incentive programs in the San Joaquin Valley are eligible to become credited to SIP when quantified and included in a SIP amendment adopted by ARB and approved by United States Environmental Protection Agency (U.S. EPA) in accordance with the requirements of the federal Clean Air Act (CAA).

Other California Air Pollution Control Districts or Air Quality Management Districts (District) may opt-in if the District governing board notifies the Executive Officer of the intent to participate, adopts a local rule that complies with the requirements of this regulation, and submits the local rule to ARB for approval. Upon approval, ARB will submit the local rule to U.S. EPA. Upon approval of the local rule by ARB and U.S. EPA, emission reductions that are determined to be eligible for SIP credit under this proposed regulation become credited to the SIP when quantified and included in a SIP amendment adopted by ARB and approved by U.S. EPA in accordance with the requirements of the CAA.

**(b) Applicability.**

This proposed regulation applies to emission reductions achieved from voluntary incentive-funded mobile agricultural equipment projects implemented using incentive program guidelines and administered or implemented by ARB or the District.

**(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.

**(2) “Air Pollution Control Officer (APCO)”** means the District Air Pollution Control Officer, Executive Director, Executive Officer or designee.

**(3) “Air Resources Board (ARB or CARB)”** means the California State Air Resources Board as established by Health and Safety Code section 39510.

**(4) “Carl Moyer Program”** means the Carl Moyer Memorial Air Quality Standards Attainment Program, as defined by California Health and Safety Code Sections 44275– 44299.2.

**(5) “Clean Air Act (CAA)”** means the Clean Air Act, United States Code, Title 42, Chapter 85.

**(6) “Contract”** means a legally binding document including, but not limited to, contracts, grants, vouchers, rebates, loans, and loan guarantees signed by ARB or a District and the funding recipient to fund an incentive program project for the purpose of reducing emissions. Contracts include provisions for ensuring that the emission reductions occur, including, but not limited to, actions that the funding recipient must take to achieve the emission reductions for the project, deadlines, inspection and monitoring requirements, non-performance penalties, and contract term.

**(7) “District”** means a local air pollution control district or air quality management district.

**(8) “Enforceable”** means emission reductions are enforceable if the incentive program guidelines include provisions for ensuring the following:

- (A) The emission reductions are independently and practicably verifiable through reporting, inspections, monitoring, or other mechanisms;
- (B) Incentive program violations are defined through legally binding contracts, including identifying the party or parties responsible for ensuring that emission reductions are achieved;

- (C) Funding recipients are obligated to provide all records needed to demonstrate that emission reductions are achieved; and
- (D) The District provides public access to all emissions-related information for reductions claimed.

(9) **“Executive Officer”** means ARB Executive Officer.

(10) **“Funding recipient”** means a person, business, association, public agency, or other entity that enters into a contract with ARB or a District to reduce emissions under an incentive program.

(11) **“Incentive program”** means a program that reduces emissions by promoting the adoption of lower emitting mobile agricultural equipment through the distribution of funds to a funding recipient who chooses to voluntarily participate in the program.

(12) **“Incentive program guidelines”** means administrative procedures, emission reductions quantification methodologies, eligibility criteria, cost-effectiveness criteria, reporting practices, and other procedures and methodologies used to implement incentive programs, as described in Section (e).

(13) **“Inspection”** means a physical examination by an APCO of mobile agricultural equipment under contract as part of an incentive program.

(14) **“Mobile agricultural equipment”** means diesel-fueled, self-propelled, off-road equipment or vehicles with greater than 25 horsepower that are used in agricultural operations. For the purposes of this regulation, an equipment or vehicle that is used by its owner for both agricultural and nonagricultural operations is considered to be an equipment or vehicle engaged in agricultural operations only if over half of its annual operating hours are for agricultural operations.

(15) **“Operating hours”** means hours of mobile agricultural equipment use.

(16) **“Permanent”** means actions are taken to physically destroy or disable forever the older, dirtier mobile agricultural equipment to ensure the reduction of emissions for the duration of the project life.

(17) **“Project”** means actions taken to reduce emissions through incentive programs, as contracted between the funding recipient and ARB or a District. Such actions include, but are not limited to, replacements, retrofits, or repowers for one or more pieces of mobile agricultural equipment.

(18) **“Project life”** means the period of time over which an incentive program project achieves emission reductions that are surplus, quantifiable, enforceable, and permanent. Project life must not exceed the useful life of mobile agricultural equipment funded through incentive programs and may vary across incentive programs and project types.

(19) **“Project type”** means the type of mobile agricultural equipment funded through incentive programs.

(20) **“Quantifiable”** means emission reductions can be reliably determined through the use of well-established, publicly available emission factors and calculation methodologies, as outlined in applicable incentive program guidelines.

(21) **“San Joaquin Valley Air Pollution Control District”** means the regional governing authority that has primary responsibility for air quality management in eight counties including the entire counties of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and the western portion of Kern County.

(22) **“SIP attainment demonstration”** means the technical control measures, analyses, and emission reduction commitments that show how a nonattainment area will meet a National Ambient Air Quality Standard by the applicable deadline.

(23) **“State Implementation Plan (SIP)”** means a plan which provides for implementation, maintenance, and enforcement of National Ambient Air Quality Standards promulgated by U.S. EPA.

(24) **“Surplus”** means emission reductions that are not otherwise required by any federal, state, or local regulation, or other legal mandate, and are in excess of the baseline emission inventory, attainment year, and progress milestone year forecasts that include adopted regulations.

(25) **“U.S. EPA”** means United States Environmental Protection Agency.

(26) **“Western Portion of Kern County”** means that portion of Kern County which lies west and north of a line described as follows: beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.

**(d) District Requirements.**

The District must fulfill the requirements of Sections (e) through (g) for emission reductions achieved from incentive-funded mobile agricultural equipment projects implemented using incentive program guidelines to be considered for SIP credit.

**(e) Incentive Program Guidelines.**

The District must use Carl Moyer Program Guidelines to fund mobile agricultural equipment projects that result in emission reductions that are surplus, quantifiable, enforceable, and permanent as defined in this regulation. (2011 Carl Moyer Program Guidelines, approved April 28, 2011, Chapters 1, 2, 3, 7, 9, Appendices A, B, C, D, E, F, G, and Off-Road Voucher Incentive Program; 2008 Carl Moyer Program Guidelines, approved March 27, 2008, Part I, Chapters 1, 2, 5, 7, Part III; Part IV Appendices A, B, C, D, E, F, G, H; and 2005 Carl Moyer Program Guidelines, approved November 17, 2005, Part I; Part II, Chapter 5: Part IV Appendices A, B, C, D, E, F, G; all as incorporated by reference herein.)

**(f) Recordkeeping Requirements.**

All documents created and used for incentive-funded mobile agricultural equipment projects must be kept by an air district and maintained as required by the incentive program guidelines. Consistent with the California Public Records Act, such records shall be made available for public review.

**(g) Project Monitoring Provisions.**

(1) Each calendar year, a District must monitor incentive-funded mobile agricultural equipment projects implemented using incentive program guidelines to ensure projects are surplus, quantifiable, enforceable, and permanent throughout the life of the contract.

(2) The District must allow ARB to conduct program reviews of incentive-funded mobile agricultural equipment projects that are implemented and used for SIP credit. ARB will conduct these reviews as specified in the 2011 Carl Moyer Program Guidelines, Chapter 3, Section V., approved April 28, 2011; 2008 Carl Moyer Program Guidelines, Part III of IV, Part F, approved March 27, 2008; and 2005 Carl Moyer Program Guidelines, Part I of IV, Chapter 2, approved November 17, 2005, which are hereby incorporated by reference.

**(h) Opt-in Provisions.**

Emission reductions achieved from incentive-funded mobile agricultural equipment projects in Districts other than the San Joaquin Valley Air Pollution Control District that are implemented using incentive program guidelines are eligible to be considered to receive credit toward SIP requirements.

(1) Districts must notify the Executive Officer in writing of their intention to comply with the requirements of this proposed regulation, and

(2) Districts must adopt a local rule that complies with all requirements of this regulation, and

**(3)** Districts must submit their local rule to ARB and U.S. EPA for approval to ensure compliance with this regulation.

**(i) ARB Requirements.**

ARB must annually report to U.S. EPA by November 30 the participating Districts, programs, projects, and project data reported to ARB per Carl Moyer Program Guidelines.

Note: Authority cited: Sections 39001, 39003, 39500, 39515, 39516, 39600, 39601, 39602, 39602.5, 39659, 43000, 43000.5 and 44291, Health and Safety Code. Reference: Sections 39002, 39515, 39516, 39600, 39601, 39602, 39602.5, 39650, 39656, 39657, 39658, 39659, 43000, 43000.5, 43018, 44280, 44281, 44282, 44282.5, 44283, 44287 and 44288 Health and Safety Code.