## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

## NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED CALIFORNIA EVALUATION PROCEDURE FOR NEW AFTERMARKET DIESEL PARTICULATE FILTERS INTENDED AS MODIFIED PARTS FOR 2007 THROUGH 2009 MODEL YEAR ON-ROAD HEAVY-DUTY DIESEL ENGINES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendment to California's regulation regarding aftermarket parts (California Code of Regulations, title 13, section 2222), and the proposed incorporated document "California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 Through 2009 Model Year On-Road Heavy-Duty Diesel Engines."

DATE: April 22, 2016

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a one-day meeting of the Board, which will commence at 9:00 a.m., April 22, 2016. Please consult the agenda for the hearing, which will be available at least 10 days before April 22, 2016, to determine the order on which this item will be considered.

### WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on March 4, 2016. To be considered by the Board, written comments not physically submitted at the hearing, must be submitted on or after March 4, 2016 and received **no later than 5:00 pm on April 18, 2016**, and must be addressed to:

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

Under the California Public Records Act (Gov. Code, § 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.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff before the hearing any suggestions for modification of the proposed regulatory action.

The Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

## AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code sections 39600, 39601, 43000, 43000.5, 43011 and 43107, and Vehicle Code sections 27156, 38391, and 38395. This action is proposed to implement, interpret, and make specific California Health and Safety Code sections 39002, 39003, 39500, 43000, 43000.5, 43009.5, 43011, 43107, 43204, 43205, 43205.5 and 43644, and Vehicle Code sections 27156, 38391, and 38395.

## INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

**Sections Affected**: Proposed amendment to California Code of Regulations, title 13, section 2222 and proposed document incorporated by reference: California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 Through 2009 Model Year On-Road Heavy-Duty Diesel Engines.

**Documents Incorporated by Reference:**

These documents, test methods, and standard operating protocols are incorporated by reference in the proposed procedure, *California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 through 2009 Model Year On-Road Heavy-Duty Diesel Engines* date to be determined upon Executive Officer approval for adoption.

1. ARB SOP No. MLD 102/103, *Procedure for the Determination of C2 to C12 Hydrocarbons in Automotive Exhaust Samples by Gas Chromatography*, (March 15, 2007)

2. ARB SOP No. MLD 104, *Standard Operating Procedure for the Determination of Aldehyde and Ketone Compounds in Automotive Source Samples by High Performance Liquid Chromatography*, (April 1, 2006)

3. ARB SOP No. MLD 148, *Procedure for the Analysis of C3 to C12 Hydrocarbons in Automotive Exhaust by Gas Chromatography/Mass Spectrometry with Pre-Concentration System*, (March 2009)

4. American Society for Testing and Materials (ASTM) International, *Standard Specification for Diesel Fuel Oils* (1982), ASTM D975-81, West Conshohocken, PA; (May 1982)

5. ASTM, *Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)*, ASTM D287-82, West Conshohocken, PA; (August 27,1982)

6. ASTM, *Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter*, ASTM D4052-96, West Conshohocken, PA; (May 2002)

7. ASTM, *Standard Test Method for Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography*, ASTM D5186-03, West Conshohocken, PA; (April 15, 2009)

8. ASTM, D5453-93, *Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,* ASTM D5453-93, Philadelphia, PA, (September 15, 1993)

9. ASTM, *Standard Test Method for Distillation of Petroleum Products* , ASTM D86-96, West Conshohocken, PA; (April 10, 1996)

10. ASTM, *Standard Test Method for Evaluation of Diesel Engine Oils in the T-11 Exhaust Gas Recirculation Diesel Engine*. ASTM D7156-13, West Conshohocken, PA; (May 1, 2013)

11. *ASTM, Standard Test Methods for Flash Point by Pensky-Martens Closed Tester*, ASTM D93-80, Philadelphia, PA; (August 29, 1980)

12. ASTM, *Standard Test Method for Ignition Quality of Diesel Fuels by the Cetane Method*, ASTM D613-84, West Conshohocken, PA; (January 3, 1984)

13. ASTM, *Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)*, ASTM D445-83, Philadelphia, PA; (October 28, 1983)

14. ASTM, *Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection*, ASTM D4629-96, West Conshohocken, PA; (April 10, 1996)

15. United States Environmental Protection Agency (U.S. EPA, 2006b. *Alternative Heavy-Duty Highway Guidance for Infrequent Regeneration of Diesel Particulate Filters*, CISD-06-22, (November 6, 2006)

16. U.S. EPA, *Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines; Gaseous and Particulate Exhaust Test Procedures,* CFR, Title 40, Part 86, Subpart N, §86.1327-90, (September 5, 1997)

17. U.S. EPA, *Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines; Gaseous and Particulate Exhaust Test Procedures*, CFR, Title 40, Part 86, Subpart N, §86.1334-84, (January 18, 2001)

18. U.S. EPA, *Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines; Gaseous and Particulate Exhaust Test Procedures,* CFR, Title 40, Part 86, Subpart N, §86.1335-90, (September 5, 1997)

19. U.S. EPA, Code of Federal Regulations (CFR), (2014). *Equipment Specifications.* CFR, Title 40, Part 1065 Subpart B, (As it existed on February 12, 2016)

20. U.S. EPA, 2014c. *Exhaust Test Procedures for Heavy-duty Engines*, CFR, Title 40, part 86, Subpart N, (As it existed on February 12, 2016)

21. U.S. EPA, 2014, *Compliance with Emission Standards,* CFR, Title 40, Part 86, Subpart A, §86.004-28(i), as it existed on February 13, 2016

22. U.S. EPA, 2006a. *Heavy-Duty Highway Guidance for Infrequent Regeneration of Diesel Particulate Filters*, Compliance and Innovative Strategies Division (CISD)-06-17, (August 7, 2006)

23. U.S. EPA, *Maintenance,* CFR, Title 40, Part 86, Subpart A, §86.004-25, (as it existed on February 13, 2016)

24. U.S. EPA, 2014b. *Methods for Unregulated and Special Pollutants,* CFR, Title 40, part 1065, Subpart L, (As it existed on February 12, 2016)

25. U.S. EPA. *Motor Vehicle Diesel Fuel, Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel,* CFR, Title 40, Part 80, Subpart I, (As it existed on February 12, 2016).

**Background and Effect of the Proposed Rulemaking**:
California Vehicle Code section 27156 generally prohibits the sale, offer for sale, advertisement, or installation of any devices that alter the design or performance of any required motor vehicle pollution control device or system. ARB has the statutory authority to exempt non-original equipment components from this prohibition if it determines that such components will not reduce the effectiveness of any required pollution control device or would not cause vehicle emissions to exceed applicable standards. Under this authority, ARB has adopted regulations applicable to aftermarket parts and has adopted provisions specifically applicable to aftermarket catalytic converters for passenger cars and light-and medium-duty vehicles, and to aftermarket critical emission control parts for on-highway motorcycles. Emission control devices (e.g., diesel particulate filters (DPF)) to control emissions from on-road heavy-duty diesel engines and vehicles have not been previously addressed. Consequently, ARB's existing aftermarket parts provisions are not directly applicable to non-original equipment manufacturer (OEM) aftermarket emission control devices for on-road heavy-duty diesel engines, like diesel oxidation catalysts (DOC), DPFs, and selective catalytic reduction (SCR).

In this rulemaking action, ARB staff proposes the Board approve for adoption an evaluation procedure that establishes the criteria for assessing whether aftermarket DPFs for 2007 through 2009 model year on-road heavy-duty diesel engines meet the criteria to be exempted from the anti-tampering prohibitions of Vehicle Code section

27156. The proposed procedure will provide manufacturers that elect to manufacture aftermarket DPFs a legal pathway to market and sell such devices and will provide consumers a lower cost option than purchasing new OEM DPFs. Although participation in this program would be voluntary, in that no manufacturers would have to manufacture aftermarket DPFs, several companies have already expressed interest in the proposal.

The proposed evaluation procedure is solely applicable to aftermarket DPFs, and is not designed to address the unique considerations applicable to other emission controls used on heavy-duty diesel engines, such as diesel oxidation catalysts or selective catalytic reduction systems.

**Objectives and Benefits of the Proposed Regulatory Action:**
The primary purpose of this proposed regulatory action is to establish a procedure that will allow ARB to evaluate whether aftermarket DPFs for 2007 through 2009 model year on-road heavy-duty diesel engines meet the criteria to be exempted from the anti-tampering prohibitions of Vehicle Code section 27156. Because of the unique characteristics of DPFs, the proposed procedure not only considers the basic concepts of modified parts (i.e., no reduction to engine/vehicle effectiveness and does not cause emissions to exceed applicable standards), but also includes: provisions to ensure aftermarket DPFs are effective emission control devices, including but not limited to, safety considerations; a detailed submission, review, and approval process; and protections for the end user, which include warranty, audit, and recall with required recordkeeping.

The proposed regulatory amendment requires that the product be warranted to be free from defects for 2 years from the date of installation. Additionally, installers would be required to provide an installation warranty for 2 years from the date of installation.

The most significant benefit to this procedure is to the end users, which include those regulated by ARB fleet rules. The proposed regulatory amendment would introduce flexibility to the marketplace, allowing end users more choice in obtaining a replacement for their OEM DPF. Due to marketplace competition, aftermarket DPFs are expected to sell for a lower price than OEM DPFs, thus providing a cost savings to the end user. The availability of a lower cost DPFs may cause more timely replacement of failed DPFs, ensuring continued emission benefits.

**Comparable Federal Regulations:**
The United States Environmental Protection Agency (U.S. EPA) has adopted regulations applicable to aftermarket parts in the Code of Federal Regulations, title 40, part 85. However, these regulations establish only a voluntary self-certification program. In contrast, ARB's aftermarket parts regulations require aftermarket part manufacturers to receive and obtain an exemption before they can sell parts in California.

Any aftermarket emission control device is covered under U.S. EPA's 1974 "Interim Tampering Enforcement Policy" (Memo 1A). Aftermarket catalytic converters are legal for sale federally under an enforcement policy established by U.S. EPA in 1986, but the policy does not constitute a regulation. This policy addressed issues regarding

aftermarket converters for light-duty vehicles and light-duty trucks, but not aftermarket emission control devices for diesel engines such as diesel particulate filters.

**An Evaluation of Inconsistency and Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D):**
During the process of developing the proposed regulatory action, ARB searched any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

## DISCLOSURE REGARDING THE PROPOSED REGULATION

**Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):**
The determinations of the Board's Executive officer concerning the costs or saving incurred by public agencies and private persons and business in reasonable compliance with the proposed regulatory action are presented below.

**Local Mandate (Gov. Code, § 11346.5, subd. (a)(5)):**
The Executive Officer has determined that the proposed regulatory action would not create costs or savings to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

**Cost to any Local Agency or School District Requiring Reimbursement (Gov. Code, § 17500 et seq.):**
The Executive has determined there are no reimbursable costs to any local agency or school district because of this proposal.

**Cost or savings for State Agencies:**
ARB's estimated administrative costs will be $580,000 for the next 2 years, as specified in the Economic and Fiscal Impacts Statement (Form 399) prepared for this proposed regulatory action. The only savings that might result would be if an agency purchased aftermarket DPFs for any state-owned vehicles.

**Other Non-Discretionary Costs or Savings on Local Agencies:**
The Executive Officer has determined there are no non-discretionary costs or savings to local agencies.

**Costs or Savings in Federal Funding to the State:**
Under Government Code sections 11346.5, subdivision (a) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings in federal funding to the State.

**Housing Costs:**
The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete:**
The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

**Results of the Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subdivision (a)(10)):**

**NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):**

*Effect on Jobs/Businesses:*

The Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California. Some aftermarket DPF manufacturers and installers may expand and create jobs because of the introduction of aftermarket DPFs into the marketplace. On balance, the proposal is expected to result in a small net gain in jobs.

The Executive Officer has determined that the proposed regulatory action would not affect the creation of new businesses or the elimination of existing businesses within the State of California.

Existing Businesses currently doing business within the State of California that manufacture, sell, or install verified devices (retrofit DPFs) for older engines may expand their businesses to accommodate aftermarket DPFs. In addition, OEM installers that do not have exclusive agreements with OEMs may expand to accommodate aftermarket DPFs.

A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Initial Statement of Reasons (ISOR).

*Benefits of the Proposed Regulation:*
The objective of the proposed regulatory action is to provide a clear path for device manufacturers interested in selling aftermarket DPFs intended as modified parts in California and to provide end users another option in the marketplace to replace failed DPFs on 2007-2009 on-road heavy-duty diesel engines originally equipped with a DPF after expiration of the warranty period, while still maintaining end user protections in the form of recordkeeping, warranty, recall, and audit requirements. Having alternative sources of DPFs intended as substitutes for OEM parts is expected to result in a more competitive market place and reduce the costs of DPFs to the end user. A summary of these benefits is provided, please refer to "Objectives and Benefits," under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5, subdivision (a)(3) discussion on page five.

**Business Report (Gov. Code, § 11346.5, subd. (a)(11); 11346.3, subd. (d)):**
Under Government Code sections 11346.3, subdivision (c) and 11346.5, subdivision (a)(11), the Executive Officer finds the reporting requirements in the regulatory proposal, which would apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California. The proposed reporting requirements are necessary to ensure manufacturer compliance with the proposed procedure, particularly warranty obligations, and to protect end users in case of a recall.

**Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):**
In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person would incur because of the proposed action. Regarding businesses, participation is voluntary and contingent on the fact the company wishes to sell in California. No manufacturer is required to participate. If no companies participate, there is no cost to the regulation. Businesses who participate would incur costs, as detailed in the ISOR. Manufacturers and installers would not participate unless they expect to realize a major economic benefit based on the sale and service of the products.

**Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):**
The Executive Officer has also determined, under California Code of Regulations, title 1, section 4, that the proposed regulatory action might affect small businesses, including DPF manufacturers, authorized installers, and end users of these modified parts. Only manufacturers and installers who produce, install, and service these devices would incur costs, and they would not participate if they did not expect to realize an economic benefit. The end user has no imposed costs and may benefit from the option to purchase a lower cost DPF.

**Alternatives Statement (Gov. Code, § 11346.5, subd. (a)(13)):**
Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**EVIRONMENTAL ANALYSIS**
ARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory action and concluded that it is exempt under CEQA Guidelines section 15061, subdivision (b)(3) because it can be seen with certainty there is no possibility that the proposed action may cause significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Section V of the ISOR.

## SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno u otro idioma
- Una acomodación razonable relacionados con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envié un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California

## AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons, Shawn Daley, Manager, Retrofit Assessment Section, (626) 575-6972, or Yong Yu, Air Resources Engineer, (626) 450-6109.

## AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSON

ARB staff prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental assessment of the proposal. The report is entitled: *Proposed Adoption of California Evaluation Procedure for New Aftermarket Diesel Particulate Filters Intended as Modified Parts for 2007 through 2009 Model Year On-Road Heavy-Duty Diesel Engines.*

Copies of the ISOR, and the full text of the proposed regulatory language, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on March 1, 2016.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff compiled a record for this rulemaking

action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

**HEARING PROCEDURES**

The public hearing will be conducted under the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If that occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final action.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

**FINAL STATEMENT OF REASONS AVAILABILITY**

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

**INTERNET ACCESS**

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at http://www.arb.ca.gov/regact/2016/aftermarket2016/aftermarket2016.htm

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: February 16, 2016