

State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER ADOPTION OF THE HEAVY-DUTY DIESEL ENGINE
SOFTWARE UPGRADE REGULATION (CHIP REFLASH)**

Public Hearing Dates:	December 11, 2003 March 25, 2004
Public Meeting Dates:	October 28, 2004 December 9, 2004
Public Availability Date:	January 13, 2005
Deadline for Public Comment:	January 28, 2005

At a public hearing held March 25, 2004, the Air Resources Board (the Board or ARB) approved the adoption of new section 2011 in new article 3.5, within chapter 1, division 3, title 13, California Code of Regulations (CCR), and the amendment of sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194 of article 1 within chapter 3.5, division 3, title 13, CCR. The new regulation and amendments will require software upgrade on engines in certain 1993 through 1999 model year heavy-duty diesel trucks, and establish a mechanism for inspection and enforcement. This rulemaking was originally heard on December 11, 2003, and continued to March 25, 2004, to provide for the required review directed by Executive Order S-2-03.

The Board's action. At the conclusion of the hearing, the Board adopted Resolution 04-14, in which it approved the new and amended regulatory sections in the original proposal. The Board also directed the Executive Officer to return to the Board in December 2004 to report back on the results of the voluntary program, described in staff's presentation and in Attachment B of Resolution 04-14, for Board review. The Board further directed the Executive Officer to withhold filing the adopted regulatory sections with the Office of Administrative Law until the Board had reviewed and evaluated the voluntary program.

At the Public Meeting on December 9, 2004, the Board adopted Resolution 04-46, in which it concluded that overall the voluntary program did not meet the first target of a Low oxides of nitrogen (NOx) Rebuild Software upgrade installation rate of 35 percent of the California-registered reflashable engines and at least 35 percent of the emission benefits of reflash from California-registered reflashable engines. The Board also determined that Detroit Diesel Corporation (DDC) had met the first voluntary program target from installation of Low NOx software on California-registered engines. The Board directed the Executive Officer to incorporate modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period. The modified text described in this document responds to comments received during the 15-day comment period that ended

January 7, 2005. The current modifications refine the list of Low NOx Rebuild Engines to more accurately identify engines for which Low NOx Rebuild Kits are available; clarify the costs for which Low NOx Rebuild Engine Manufacturers must reimburse authorized dealers, distributors, repair facilities, and rebuild facilities for software installation; and revise the exemption provision for DDC to reflect the Board's intent to allow DDC to continue in the voluntary program.

Availability of modified text. Section 44(a), title 1, CCR requires the ARB to mail the modifications to the originally proposed regulatory text, except changes that are nonsubstantial, to, among others, all persons who commented on the software upgrade proposal during the public comment period. To expedite the mailout, nonessential material has been eliminated from this mailing.

The attachment (text of the modified language), is available online at the following ARB internet site:

<http://www.arb.ca.gov/regact/chip04/chip04.htm>

The attachment contains the text of the regulation affected by the modifications being proposed with this notice. The newly modified language is shown in double underline, and deletions are shown in ~~double-strikeout~~.

Printed copies of the attachment, may be obtained by contacting Ms. Lisa Jennings, Air Pollution Specialist, Mobile Source Control Division, at telephone (916) 322-6913, fax (916) 322-3923, or ljenning@arb.ca.gov.

Comments and subsequent action. In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt the regulatory sections set forth in Attachment A to Resolution 04-14, with the modifications directed by the Board and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 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.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: chip04@listserv.arb.ca.gov

Facsimile submissions are to be transmitted to: (916) 322-3928

In order to be considered by the Executive Officer, comments must be directed to the 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 above-described modifications to the text of the regulations shall be considered by the Executive Officer.

Sincerely,



Robert H. Cross, Chief
Mobile Source Control Division

Attachment