

State of California  
AIR RESOURCES BOARD

**EXECUTIVE ORDER G-05-007**

Relating to the Heavy-Duty Diesel Engine Software Upgrade (Chip Reflash)

WHEREAS, on March 25, 2004, the Air Resources Board (the Board or ARB) conducted a public hearing to consider amendments to the Heavy-Duty Diesel Engine Software Upgrade (Chip Reflash), as set forth in the Initial Statement of Reasons released to the public on February 6, 2004;

WHEREAS, following the public hearing on March 25, 2004, the Board adopted Resolution 04-14, in which the Board approved adoption of section 2011 and amendments to sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194, title 13, California Code of Regulations (CCR), as set forth in Attachment A thereto;

WHEREAS, the Board directed the Executive Officer to return to the Board in December 2004 with an evaluation of the results of the voluntary program described in Attachment B of Resolution 04-14 for Board review, and further directed the Executive Officer to withhold filing of the adopted regulatory sections with the Office of Administrative Law until after the Board has reviewed the evaluation of the voluntary program;

WHEREAS, on October 28, 2004, the Air Resources Board conducted a public meeting for an interim update to the Heavy-Duty Diesel Engine Voluntary Software Upgrade Program;

WHEREAS, on December 9, 2004, the Air Resources Board conducted a public meeting to evaluate the Heavy-Duty Diesel Engine Voluntary Software Upgrade Program;

WHEREAS, following the public hearing on December 9, 2004, the Board adopted Resolution 04-46, in which the Board directed the Executive Officer to file with the Office of Administrative Law 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, as required by Government Code section 11346.8, provided that the Executive Officer shall consider such written comments as may be submitted during this period, and shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted after review of the comments;

WHEREAS, on December 23, 2004, the modified regulations, reflecting the amendments approved by the Board and other changes made to best reflect the intent

of the Board at the hearing, were made available for public comment for a period of at least 15 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44;

WHEREAS, written comments were received during the first 15-day comment period and those comments have been considered by the Executive Officer.

WHEREAS, on January 13, 2005, additional modifications were prepared in response to the comments received during the first 15-day comment period, and were made available for public comment for a period of at least 15 days, with the changes to the previously proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44;

WHEREAS, written comments were received during the second 15-day comment period and those comments have been considered by the Executive Officer;

WHEREAS, after the second 15-day comment period ended the record was reopened to make several nonsubstantial changes to the regulatory text in response to concerns raised by California's Office of Administrative Law, after which the record was again closed;

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolutions 04-14 and 04-46 are incorporated by reference herein.

IT IS FURTHER ORDERED adoption of section 2011 and amendments to sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194, title 13, California Code of Regulations (CCR), are adopted, as set forth in Attachment 1 hereto.

Executed this 21st day of March, 2005, at Sacramento, California.

/s/  
Catherine Witherspoon  
Executive Officer

Attachment