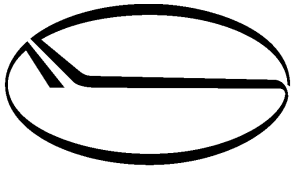

July 22, 2009

BY ELECTRONIC SUBMISSION

Clerk of the Board
California Air Resources Board
1001 I. Street
Sacramento, California 95814
http://www.arb.ca.gov/lispub/comm/bclist.php

Re: Proposed Amendments to Regulation for In-Use Off-Road Diesel-Fueled Fleets (ORD Rule)

Dear California Air Resources Board:

I write on behalf of the Air Transport Association of America, Inc. (ATA) to provide comments on the California Air Resources Board's (ARB's) "Notice of Public Hearing to Consider Proposed Amendments to the Regulation For In-Use Off-Road Diesel-Fueled Fleets" issued on June 5, 2009.[1] ATA is the principal trade and service organization of the U.S. airline industry, and ATA's airline members and their affiliates transport more than 90 percent of all U.S. airline passenger and cargo traffic.[2] ATA frequently comments on regulatory activities that affect the airline industry and the safety and efficiency of air travel in the United States. ATA has provided comments to ARB in response to prior notices concerning the ORD Rule, as well as comments to EPA concerning whether the ORD Rule should be authorized under the federal Clean Air Act, 42 U.S.C. § 7543(e).[3]

[1] Posted at www.arb.ca.gov/regact/2009/offroad09/offroad09.htm.

[2] The members of the Association are: ABX Air, AirTran Airways, Alaska Airlines, American Airlines, ASTAR Air Cargo, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, Federal Express Corporation, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; associate members are: Air Canada, Air Jamaica, and Mexicana.

[3] *See* ATA comments posted at: www.arb.ca.gov/lists/ordiesl07/868-2007-05-23_ata_initial_comments_on_proposed_ord_rule.pdf; www.arb.ca.gov/lists/ordiesl07/1097-ata_comments_re_ord_rule_with_attachments.zip; www.arb.ca.gov/lists/ordiesl07/1186-ata_15-day_comments_re_ord_rule_with_attachments.zip; www.arb.ca.gov/lists/ordiesl07/1244-2008-03-06_ata_second_15-day_comments_re_ord_rule.pdf; www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=ordiesl09&comment_num=26&virt_num=20; www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=EPA-HQ-OAR-2008-0691. Each of these written comments and all other previous ATA comments submitted to ARB concerning the ORD Rule are incorporated herein by

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Throughout ARB's development of the ORD Rule, ATA has consistently supported the achievement of the emission reductions sought for off-road diesel vehicles, including airport ground support equipment (GSE), and has endeavored to provide constructive input and to work in cooperation with ARB staff in the hopes of improving the regulation. As revised by ARB's proposed amendments, the ORD Rule remains an unnecessarily complicated and burdensome regulatory regime, and, as discussed in prior ATA comments, the same emission reductions could be obtained using alternative regulatory approaches that would be much more efficient and have less economic impact on California and its residents.

Although the proposed amendments do not resolve the fundamental defects in the ORD Rule, ATA generally supports the current proposed revisions prompted by California Assembly Bill No. 8, Chapter 6 (codified at Cal. Health & Safety Code § 43018.2) ("AB 8 X"). For the most part, the proposed changes implement the directed changes in a manner consistent with the legislation, or increase the clarity of existing language. ATA respectfully provides specific comments on some of the proposed revisions below.

I. Clarifications Concerning Installer Delays and the VDECS Safety Exemption

ATA supports the proposed revisions to Section 2449(e)(6), which clarify that a fleet owner who has purchased new equipment in order to comply with the regulation can be excused from immediate compliance if installation does not occur in time for compliance due to a delay on the part of the installer, and not only the manufacturer. *See* ISOR at 64-65. As ATA has noted in previous comments, and as ARB has observed in the rulemaking record, the determination of whether a particular VDECS is technically feasible for installation on a particular GSE vehicle, and, if so, the installation itself, involve substantial technical efforts likely to be conducted with the assistance of a VDECS installer. Many of the same companies that manufacture VDECS are also engaged with installation efforts. We agree with ARB that it makes sense to avoid any arbitrary distinctions in this regard, and to make clear that installer delays will be treated the same as manufacturer delays where a fleet has purchased the equipment required for compliance with ORD Rule and satisfies the other conditions of Section 2449(e)(6).

The proposed revisions to Section 2449(e)(8) also provide helpful clarification that ARB did not intend to mandate installation of VDECS where the responsible federal or state agency has found that such installation would run afoul of federal or state safety or health requirements. The prior language included confusing references to "mining" and "occupational" safety and health requirements, and the proposed revisions make clear that ARB does not intend to arbitrarily limit the types of safety and health requirements relevant under Section 2449(e)(8).

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reference, including all attachments. ATA and its members reserve the right to assert any of the arguments presented in these or prior comments in any appropriate forum.

This clarification is particularly appropriate in the context of airport GSE, given that the Federal Aviation Administration (FAA) has exclusive authority over safety issues in the airport environment. *See*, *e.g.*, *Montalvo v. Spirit Airlines*, 508 F.3d 464, 472 (holding that the Federal Aviation Act preempts the field of aviation safety and that Congress made the FAA the "sole arbiter of air safety"). If FAA were to find that installation of a particular category of VDECS, for example those that generate significant heat, or limit operator visibility, are not appropriate for installation on GSE for safety reasons, the proposed revisions more clearly allow for ARB to recognize and defer to any such FAA findings (as it must) and to implement them within the ORD Rule framework. It is ATA's understanding that ARB intends in any event to defer to any safety-related findings of the FAA, but the revised language proposed for Section 2449(e)(8) should help avoid ambiguity in this regard.

In addition, based on workshop presentations by ARB staff, it is ATA's understanding that ARB intends to apply the VDECS safety exemption where installation of a particular model or category of VDCES would be inconsistent with applicable engineering or safety standards for a particular vehicle or category of vehicles -- including Society of Automotive Engineers (SAE) standards applicable to GSE. We look forward to assisting ARB in implementing this aspect of the ORD Rule.

II. Changes Intended To Implement AB 8 2X

In general, ATA supports the changes proposed by ARB as necessary to implement the legislature's directives set forth in AB 8 2X. In particular, ATA supports the proposed approach of requiring fleets that wish to secure both the fleet reduction and reduced activity credits available pursuant to the legislation, to first determine the amount of the fleet reduction achieved, and subtract those reductions before determining the credit for any additional marginal reduced activity among the remaining units. This approach eliminates any concern about 'double-counting' the amount of credit available for the fleet reductions and reduced activity. As recognized by the legislature, the economic downturn substantially lowered baseline emissions associated with the regulated equipment from those assumed at the time the ORD Rule was adopted, and it makes sense to provide credit for these very real emission reductions.

ATA also supports the proposed provisions that allow the use of direct and verifiable indicators of fleet activity to measure activity reductions for fleets that do not have hour meters or log records starting in July 2007. There is a general presumption against interpreting legislation to impose retroactive obligations, and it would be inconsistent with AB 8 2X to arbitrarily limit reduced activity credits to those fleets that happen to have available hour meter or operator logs dating back to 2007.

However, with respect to proposed Section 2449.1(a)(5)(B), which would place a cap of 20% on the amount of credit available to fleets that demonstrate reduced activity based on "indirect" indicators, ATA believes that imposing such a cap is arbitrary and contrary to the law. The legislation plainly requires that the credit provisions of the ORD Rule "shall" be modified "to reflect . . . reduced activity between July 1, 2007, and March 1, 2010." Notice at 57 (quoting

AB 8 2X). Imposing a 20% credit cap where a fleet can establish such reduced activity based on reliable information, merely because that support is deemed "indirect," is entirely arbitrary and contrary to the plain language of the legislation. So long as historic fleet activity levels can be supported by reliable information, there is no reason to impose an arbitrary cap on reduced activity credits. In fact, reductions in activity levels result in more dramatic emission reductions than the turnover and retrofit requirements of the ORD Rule, given that idle equipment generates zero air emissions, and thus the credit provided under ARB's proposed modifications already under-represents the real emission reductions achieved through reduced activity. At a minimum, ARB should not impose an arbitrary cap on credit for real emission reductions that are demonstrated through reliable information.

In addition, the proposed language of Section 2449.1(a)(2)(A)(5)(B) arguably suggests that the 20% cap is to be applied to the fleet's reduced activity *before* taking account of retired vehicles. If this is not ARB's intent, the language should be clarified. If this was ARB's intent, we believe that any 20% cap should be applied *after* the fleet subtracts any credits received for early retirements, not *before*. Applying the 20% cap to reduced activity first would not make sense, given that reduced activity is already defined to subtract retired vehicles. *See* 2449.1(a)(2)(A)(2)-(3). Imposing the 20% cap first and subtracting early retirement credits second would arbitrarily preclude fleets that were reduced in size by over 20% from claiming any credit for demonstrated reductions in activity among its remaining vehicles. This result is arbitrary and contrary to the law, and would read the activity-reduction credit provision out of the legislation for such fleets. Accordingly, to the extent that ARB decides to retain the arbitrary 20% cap, at a minimum it should be made clear that the cap is to be applied *after* taking account of any vehicle retirements.

III. Conclusion

This Rule culminates a series of regulations adopted by ARB over the past several years that together impose stringent and costly emission mandates on virtually all GSE in use in California. *See* Airborne Toxic Control Measure for Portable Diesel-Fueled Engines, 17 CCR §§ 93116-93116.5; Large Spark-Ignition (LSI) Engine Fleet Requirements, 13 CCR §§ 2775-2775.2. These regulations were imposed by ARB on fleet operators in an effort to further reduce PM, NOx, and other emissions from existing equipment -- above and beyond the continuing reductions achieved through ARB's increasingly stringent emission standards imposed on new engine manufacturers. We appreciate the opportunities provided by ARB staff over the years to provide input and to work cooperatively in an effort to improve each of these regulations.

Collectively, the ORD Rule and ARB's other regulations governing conventional GSE emissions impose comprehensive mandates that will require the replacement or retrofit of virtually all GSE in California over the next decade, at a very substantial cost. These rules also introduce profound additional complexities into the already intricate GSE fleet planning and implementation activities necessary to ensure efficient air travel. In the future, if ARB considers any additional requirements for the same equipment relating to greenhouse gases or other

emissions, ARB should be mindful of the comprehensive GSE fleet changes it has now mandated. Any future obligations should not negate the dramatic compliance efforts demanded under these existing rules, and ARB should avoid any requirement that would necessitate the replacement or scrapping of the very vehicles that must be purchased or retrofit to comply with these existing rules.

Moreover, ATA supports ARB staff's plan to provide an update to the Board in October 2009 concerning how the economic recession has impacted ORD fleets, including the level of emission reductions that have occurred, and will continue to occur, due to lower than anticipated levels of equipment activity. While this effort should have been undertaken many months ago, we agree that it is critical that the Board be fully informed about the dramatic changes that have taken place since the ORD Rule was first adopted, and how those changes affect both the economic impacts and the emission-reduction goals of the regulation. At the time of its adoption, the ORD Rule was explicitly designed by ARB to impose requirements that represented the "economic limit of what industry could bear."[4] The substantial reduction in economic activity since that time continues to warrant careful scrutiny of the unforeseen emission reductions that have already been achieved due to reduced economic activity, and there may be additional opportunities for ARB to adjust the ORD Rule to reduce the job losses and other economic impacts of the regulation without compromising ARB's emission reduction goals.

Please contact me at 202-626-4216 if you have any questions or would like additional information in connection with any of the points raised in these comments.

Sincerely,

Timothy Pohle
Managing Director – U.S. Environmental Affairs
& Associate General Counsel
Air Transport Association of America, Inc.

[4] ARB Staff Report: Initial Statement Of Reasons For ORD Rule (April 2007), at 3.