

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE DIESEL PARTICULATE CONTROL MEASURE FOR ON-ROAD HEAVY-DUTY RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION VEHICLES: FLEET RULE FOR THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the Diesel Particulate Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles regulations. The proposed amendments would require owners of solid waste collection vehicles (collection vehicles) that operate in the South Coast Air Quality Management District (SCAQMD or District) to purchase low emission technology when purchasing or leasing collection vehicles, provided that compliant technology is commercially available at the time of purchase.

DATE: September 15-16, 2005

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 E. Copley Drive
Diamond Bar, California 91765

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 15, 2005, and may continue at 8:30 a.m., September 16, 2005. This item may not be considered until September 16, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before September 15, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendment to title 13, California Code of Regulations, section 2021.2.

Background: The Air Resources Board (ARB or Board) is the state agency responsible for protecting public health and the environment from the harmful effects of air pollution. The ARB has the sole responsibility for controlling emissions from vehicular sources, except as otherwise provided by law.

The SCAQMD is the sole and exclusive local agency within the South Coast Air Basin and the desert portion of Riverside County in the Salton Sea Air Basin with responsibility for comprehensive air pollution control. The South Coast Air Basin has been designated as a serious nonattainment area for particulate matter (PM) and an extreme nonattainment area for ozone. In 1987, the Legislature enacted Health and Safety Code section 40447.5, which authorizes SCAQMD to adopt regulations that require operators of 15 or more public and commercial fleet vehicles, when adding or replacing vehicles, to purchase vehicles that are capable of operating on methanol or other equivalently clean-burning alternative fuel.

Under its Clean Fleets program, SCAQMD adopted seven fleet rules during the years 2000 and 2001. These rules were developed to gradually shift public agencies and certain private entities to lower emissions by requiring them to acquire alternative fuel vehicles whenever an operator with 15 or more vehicles purchased or leased vehicles for replacement or addition to its fleet. One of these seven rules is Rule 1193 concerning solid waste collection vehicles.

Shortly after the District adopted its fleet rules, the Engine Manufacturers (EMA) and the Western States Petroleum Association (WSPA) sued the District in federal court challenging its authority to adopt the rules. In April 2004, the United States Supreme Court ruled that it appears likely that at least certain aspects of the fleet rules were preempted by section 209(b) of the federal Clean Air Act. The Supreme Court remanded the case back to the federal District Court to determine whether some parts of the fleet rules could be characterized as state purchasing decisions and, if so, whether preemption applied. In response to this decision, SCAQMD requested that ARB submit the District's rules to the United States Environmental Protection Agency (U.S. EPA) for a waiver of preemption pursuant to section 209(b) of the Clean Air Act. The ARB requested public comment and consulted with U.S. EPA regarding the legal requirements for obtaining a waiver for a rule adopted by a local government. The ARB staff concluded that the fleet rules, as written and adopted by SCAQMD, would not receive a section 209(b) waiver because these rules have not been adopted by ARB as state regulations (applicable within the boundaries of SCAQMD).

When the State Legislature adopted Health and Safety Code section 40447.5, it intend that SCAQMD have the authority to adopt and implement clean fuel fleet rules. Accordingly, ARB staff has reviewed the information and prepared the present proposal, which through the state rulemaking process, is meant to support the intent of the State Legislature.

Meanwhile, on May 5, 2005, the federal District Court ruled that, under the "market participant" doctrine, the SCAQMD fleet rules are not preempted to the extent they

apply to purchasing decisions made by state and local governmental entities. However, the District Court has not yet addressed questions of whether the fleet rules are preempted as they apply to private entities under contract with state or local governments or to used or leased vehicles. It is also possible that EMA or WSPA could appeal the “market participant” decision.

Proposed Amendments: If adopted by the Board, the proposed amendments would require all owners of solid waste collection vehicles operating in the SCAQMD, whether owned or operated by public agencies or private companies, to purchase the lowest emitting trucks available. Staff projects that the lowest emitting trucks will operate on alternative-fuel (most likely natural gas) through the 2009 model year. For 2010 and subsequent model years, staff projects emissions from diesel and natural gas vehicles to be equivalent.

The amendments to ARB's existing solid waste collection vehicle regulations would insert specific purchasing requirements based on a performance standard of 0.20 grams per brake horsepower-hour (g/bhp-hr) for oxides of nitrogen (NO_x) and 0.01 g/bhp-hr for particulate matter (PM). The performance standard could be met by a new engine as certified or a new engine plus a verified emission control system. In developing this proposal, staff has worked to obtain current, objective information on the challenges, cost-effectiveness, and emission benefits from the various technology options.

Staff expects a small positive impact on emissions from solid waste collection vehicles as a result of this proposal. Reductions in NO_x will be about 0.3 tons per day, on average, over the 15-year life of the rule. The cumulative NO_x reduction through the year 2020 amounts to about 1,590 tons, or about four percent of the total NO_x emissions from SCAQMD collection vehicles from 2006 to 2020. Staff expects only a very small reduction in PM emissions attributable to the regulations, as PM emissions from all heavy-duty diesel and alternative-fuel engines are required to be the same from the 2007 model year onward.

COMPARABLE FEDERAL REGULATIONS

Although U.S. EPA sets emission standards for diesel and gasoline engines, U.S. EPA does not separately regulate solid waste collection vehicles or their engines. Federal emission standards for engines are codified in title 40, Code of Federal Regulations, part 86.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The staff has also prepared a technical support document (TSD) that summarizes technology available and feasible for compliance with the proposal.

Copies of the staff ISOR, TSD, and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the 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, 1st Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing September 15, 2005.

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 the ARB's website listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Mr. Richard Varenchik by email at rvarench@arb.ca.gov or by phone at (626) 575-6730, or to Ms. Annette Hebert by email at ahebert@arb.ca.gov or by phone at (626) 575-6973.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Ms. Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has 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.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/scswcv05/scswcv05.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will create costs or savings to a state agency, but not in federal funding to the state, and will create costs or a mandate to a local agency or school district which is not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary savings to state or local agencies. The proposed action may result in costs to local agencies operating collection vehicles, but those costs are expected to be recovered through appropriate fare increases.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. Staff estimates that the total additional cost owners would incur by complying with the proposal would range from \$31.6 million to \$82.7 million over 15 years (2006 through 2020). The high cost estimate assumes the purchase of alternative-fuel (liquefied natural gas) trucks, and includes differential costs for the vehicle, operations and maintenance, and new fueling stations. Of the \$82.7 million, about \$56 million (or about two thirds) comes from additional capital costs, while the remaining \$27 million comes from additional operations and maintenance costs. The ARB estimates the total cost per household, over the 2006 to 2020 timeframe, would be approximately \$15 dollars, or \$1 dollar annually.

The Executive Officer has made an initial determination that the proposed regulatory action will 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. The proposed requirements could have a positive impact on manufacturers and distributors of alternative-fuel engines, alternative-fuel vehicle components, alternative fuels and fueling stations, and diesel emission control systems. The proposed amendments apply equally to all owners of solid waste collection vehicles that operate within SCAQMD regardless of where their companies are based.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. Staff expects that the proposed regulations would result in the expanded use of alternative fuels, related technologies, and diesel emission control systems. To meet increased demand for these products, there would likely be job creation. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

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.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received

no later than 12:00 noon, September 14, 2005, and addressed to the following:

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: scswcv05@listserv.arb.ca.gov, and received at ARB **no later than 12:00 noon, September 14, 2005**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB **no later than 12:00 noon, September 14, 2005**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, and 39658, Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39650 through 39675, 43000, 43013, 43018, 43101, 43102, 43104, 43105, and 43700, Health and Safety Code.

HEARING PROCEDURES

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt 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 that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon
Executive Officer

Date: July 19, 2005

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at www.arb.ca.gov.