State of California
AIR RESOURCES BOARD

Resolution 10-39

November 18, 2010

Agenda Item No.: 10-10-6

WHEREAS, on February 26, 2004 the Air Resources Board (ARB or Board) adopted the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities where TRUs Operate (TRU ATCM or TRU regulation), codified at title 13, California Code of Regulation (CCR), title 13, section 2477, pursuant to its authority and rationale set forth in Resolution 03-37, which is incorporated herein as Attachment A.

WHEREAS, ARB staff issued a Staff Report: Initial Statement of Reasons (2003 Staff Report) that identified and explained the need and appropriate degree of regulation for diesel exhaust particulate matter and other pollutants from TRUs and the cost-effectiveness and technical feasibility of achieving such emissions reductions;

WHEREAS, the TRU ATCM was approved by the Office of Administrative Law OAL on November 10, 2004, and became effective under California law on December 10, 2004, upon being certified by the California Secretary of State;

WHEREAS, ARB requested and U.S. Environmental Protection Agency (U.S. EPA) granted authorization to California to adopt and enforce the TRU ATCM pursuant to Clean Air Act (CAA) section 209(e)(2) on January 16, 2009;

WHEREAS, since the adoption and granting of authorization of the ATCM, ARB staff has been engaged in implementing the ATCM and working closely with affected stakeholders in addressing implementation issues;

WHEREAS, after significant public outreach, including three public workshops held between March 2010 and August 2010, in which proposed concepts and draft amendments were shared with interested stakeholders, ARB staff prepared and made publicly available for at least 45 days prior to public hearing, a 2010 Staff Report: Initial Statement of Reasons (2010 Staff Report) and proposed amendments to the TRU ATCM, the latter of which are set forth in Attachment B hereto;

WHEREAS, as summarized below, the 2010 Staff Report identified and explained the need to amend the regulation to provide additional compliance options for owners and operators of model year (MY) 2003 and certain MY 2004 TRUs, to clarify the compliance schedule for flexibility engines, and to require TRU equipment manufacturers to report certain information to ARB in order to implement the proposed amendments and streamline the TRU registration process:

Need for an Additional Compliance Option for MY 2003 and Certain MY 2004 TRUs

As initially adopted, the TRU ATCM provided that MY 2003 and subsequent model year engines meet the Ultra-Low Emission TRU (ULETRU) in-use standard seven years after the engine model year;

Although the availability of verified diesel emission control strategies (VDECS) for TRUs is increasing, Level 3 (85 percent PM control) VDECS for TRUs have become available at a slower pace than initially anticipated and are not available in sufficient numbers for owners to meet the ULETRU standard for TRU engines equal to or greater than 25 horsepower (hp) by the December 31, 2010 compliance date and for TRU engines less than 25 horsepower (hp) engines by the December 31, 2010 and 2011 compliance dates;

Most TRU horsepower categories would be able to meet the less stringent low emission TRU (LETRU) standard by the respective 2010 and 2011 deadlines by using Level 2 (50 percent PM control) VDECS, which are readily available and provide a lower-cost compliance option that preserves almost all of the emission reductions anticipated;

Need for A Modified Compliance Schedule for Flexibility Engines

As initially adopted, the TRU ATCM requires in-use TRUs to meet more stringent emission standards seven years after the model year of the engine until the ULETRU standards are achieved;

Based on industry-supplied data, between 2004 and 2006, over 10,000 flexibility engines were installed in TRUs that were directed to the California market and over 37,000 TRUs with flexibility engines were directed to the U.S. market;

"Flexibility engines" are engines that are manufactured to an earlier emissions standard tier that is less stringent than the off-road engine emissions standard tier in effect at the time the engine is manufactured;

The high use of flexibility engines in TRUs was not anticipated during the original TRU ATCM development, and if this continues there would be a significant loss in diesel PM and oxides of nitrogen (NOx) emissions reductions, which would adversely affect the Board's efforts to reduce public exposure to toxic air contaminants and smog-forming emissions from TRUs;

TRU owners were not aware that equipment they purchased in the past may have been equipped with flexibility engines, nor were they aware that under the current TRU ATCM, TRUs equipped with flexibility engines would need to meet more stringent in-use standards sooner than TRUs equipped with non-flexibility engines; the compliance date for flexibility engines is calculated using the

"effective model year" of the engine, which is the last year that the emissions standard tier met by the flexibility engine was in effect, not its manufacture year;

Need to Expand Reporting Requirements for TRU Manufacturers

In order to implement the above proposed changes and simplify registration for TRU owners, it is necessary that TRU manufacturers provide production reports indicating specific information regarding TRUs and TRU engines that have been and will be sold inside and outside of California;

WHEREAS, for the reasons set forth above, staff has proposed the following amendments to the TRU ATCM, title 13, California Code of Regulations, section 2477, as set forth in Attachment B, to address implementation concerns that have been identified:

Allow Level 2 (50 percent PM control) VDECS meeting the Low-Emission TRU (LETRU) in-use standard as an additional compliance option for TRUs equipped with MY 2003 engines rated at equal to or greater than 25 hp and TRUs equipped with MYs 2003 and 2004 engines rated at less than 25 hp;

Allow the compliance schedule for flexibility engines produced before the effective date of the amended regulation to be based on the year the engine was manufactured and not the "effective model year" of the engine;

Require the compliance schedule for flexibility engines produced on or after the effective date of the amended regulation to be based on the "effective model year" as defined in Attachment B; and

Add new requirements for TRU manufacturers that would require them to periodically report production data on TRUs sold and the engines they plan to use in each TRU model;

WHEREAS, pursuant to sections 39665(c) and 43013(a) and (b) of the Health and Safety Code, the Board finds that the proposed changes to the in-use emission standards approved herein are necessary, cost-effective, and technologically feasible within the time provided for compliance;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at CCR, title 17, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds based on its independent judgment and analysis of the entire record before it that;

The proposed amendments to the TRU ATCM will have no significant adverse impact on air quality and the environment;

To the extent that a fair argument could be made that the emissions resulting from the amendments to allow TRU owners to comply with the performance requirements for affected MY 2003 and 2004 TRUs by using Level 2 VDECS and the new requirements for flexibility engines could be characterized as having a significant environmental effect, overriding considerations exist that outweigh the identified environmental impacts;

The finding of overriding considerations has been made after determining that no reasonably foreseeable feasible mitigation measures or alternative amendments exist that will better ensure that that the goals of the ATCM to reduce emissions and risks from TRU diesel engines are met; the proposed amendments provide the means for TRU owners to more fully comply with the regulation's requirements, at a less burdensome cost, with fewer emissions disbenefits; and

The proposed amendments to the TRU ATCM should not adversely impact any communities in the State, including those with low-income and ethnically diverse populations;

WHEREAS, California is not preempted under section 209(e)(1) of the federal Clean Air Act (CAA) from adopting emission standards and other requirements related to the control of emissions for TRU engines; and

WHEREAS section 209(e)(2) of the CAA requires that California seek authorization from U.S. EPA prior to enforcing emission standards or other requirements relating to the control of emissions from new and in-use non-road engines (of which diesel TRU engines are a subpart) not otherwise preempted by section 209 (e)(1) and not within the scope of previously granted authorizations;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption the proposed amendments to section 2477, title 13, California Code of Regulations, as set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment B hereto. If the Executive Officer determines that additional conforming modifications are appropriate, the Executive Officer shall adopt the modified regulation after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such further modifications as may be

appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to work with TRU manufacturers in exploring and developing reporting systems and processes that are equivalent to and at least as effective as those proposed in the amendments in Attachment B, and at the same time address manufacturers' confidentiality and availability concerns.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to begin outreach efforts as soon as possible with the affected industry to ensure that TRU owners, operators, and manufacturers are aware of the requirements of this regulation and proposed amendments.

BE IT FURTHER RESOLVED that the Board directs the staff to monitor the implementation of the regulation and propose amendments for the Board's consideration when warranted to resolve any implementation issues that may arise.

BE IT FURTHER RESOLVED that the Board directs staff to return to the Board by the earliest practical date in 2011 to consider additional amendments to the TRU ATCM, including, but not limited to, consideration of whether extending the current seven-year operational life for TRUs by up to three years is appropriate and whether additional time should be provided for pre-MY 2003 TRUs to comply with the ULETRU performance standard.

BE IT FURTHER RESOLVED that the Board hereby determines that pursuant to Title II, section 209(e)(2) of the federal Clean Air Act, as amended in 1990, that the emission standards and other requirements related to the control of emissions adopted as part of the amendments to the TRU ATCM are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions, and that the adopted standards and accompanying enforcement procedures are consistent with the provisions of section 209.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the U.S. Environmental Protection Agency with a request that it confirm that the regulations are within the scope of the existing authorization of federal preemption that it has granted for TRU engines pursuant to section 209(e)(2) of the Clean Air Act, as appropriate.

FILED
FEB 4 2011
Resources Agency of California

I hereby certify that the above is a true and correct copy of Resolution 10-39, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

Resolution 10-39

November 18, 2010

Identification of Attachments to the Board Resolution

Attachment A: Resolution 03-37 (February 26, 2004)

Attachment B: Proposed Amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities where TRUs Operate, as set forth in Appendix A to the Initial Statement of Reasons, released September 2010.

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and
Response to Significant Environmental Issues

Item:	AMENDMENTS TO THE AIRBORNE TOXIC CONTROL MEASURE FOR TRANSPORT REFRIGERATION UNITS (TRU) AND TRU GENERATOR SETS, AND FACILITIES WHERE TRUs OPERATE
Approved By:	Resolution 10-39
Adopted by:	Executive Order R-11-001
Agenda Item:	10-10-6
Public Hearing Date:	November 18, 2010
Issuing Authority:	Air Resources Board
Comment:	No comments were received identifying any significant environmental issues pertaining to this item. The Staff Report identified no adverse environmental effects.
Response:	N/A
Certified:	Amy Whiting Amy Whiting, Regulations Coordinator
Date:	February 1, 2011

FILED
FEB 4 2011
Resources Agency of California