State of California
AIR RESOURCES BOARD

Resolution 10-48

December 17, 2010

Agenda Item No.: 10-11-3

WHEREAS, the Air Resources Board adopted Off-Road Large Spark-Ignition (LSI) Engine Fleet Requirements (the LSI Regulation), California Code of Regulations (Cal. Code Regs.), title 13, sections 2775, 2775.1, and 2775.2, pursuant to its authority and rationale set forth in Resolution 06-11, which is attached as Attachment A to this resolution;

WHEREAS, California and the nation have been in an economic recession that was not anticipated when the Board adopted the LSI Regulation on May 25, 2006;
WHEREAS, the recession has led to a reduction in overall off-road vehicle and engine activity, and therefore resulting in the production of fewer emissions, in California;

WHEREAS, between September 2010 and October 2010, ARB staff met and worked with affected private industry fleets, public fleets, and the public, and held four public workshops statewide to discuss potential changes to the regulation;

WHEREAS, taking into account the information and comments received at the aforementioned meetings, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements," released October 28, 2010 (ISOR);

WHEREAS the ISOR along with the report, "Staff Report: New Emission Standards, Fleet Requirements, and Test Procedures for Forklifts and Other Industrial Equipment (Staff Report 2006), document the findings required under Health and Safety Code sections 43013 and 43018;

WHEREAS, the ISOR identifies and explains the need to amend the regulation for the following reasons:

> The global recession has caused a loss in employment and revenue in the manufacturing, wholesale, transportation and utilities sectors and other industries that are affected by the LSI Regulation; this has resulted in a reduction in business activity and has strained the financial ability of industry to comply with the LSI Regulation.
> The existing limited hours of use (LHU) provision in the LSI Regulation is scheduled to expire on January 1, 2011, and portends significant retrofit or

replacement costs for equipment that is infrequently used, resulting in emission reductions that are not cost effective;

The existing compliance extension provisions within the LSI Regulation only provide limited flexibility for responding to the current lack of available retrofit emission control systems. When the Board approved the LSI regulation in May 2006, staff believed retrofit emission control systems would be a widely available and cost effective compliance tool for nearly all fleets. But it has become clear that for some fleets and applications, the availability of retrofit systems present a significant challenge, and although retrofit emission control systems remain a viable option for many fleets, staff believes it is necessary to modify the compliance extension provisions of the LSI Regulation to provide additional compliance time for fleets that cannot use retrofits as a compliance strategy; and

Several areas of the regulation need to be modified to make the regulation clearer and easier to implement.

WHEREAS, the ISOR discussed, to the extent data could reasonably be made available, the factors specified in Health and Safety Code sections 43013 and 43018, including, but not limited to estimates of emissions associated with the operation of in-use LSI engine equipment subject to the LSI Regulation, technically feasible control options, potential environmental impacts, cost of compliance for all owners and/or operators of in-use LSI engine equipment, and cost impacts for ARB implementation of the proposed regulation;

WHEREAS, for the reasons set forth above, staff has proposed the following amendments to the regulations in sections 2775, 2775.1, and 2775.2, as set forth in Attachment B, as follows:

Modify the current limited hours of use (LHU) provisions to allow equipment operated no more than 200 hours per year subsequent to January 1, 2011, to be excluded from FAEL standard calculations. To ensure that the LHU provision is enforceable, the ARB intends to clarify that operators desiring to exclude equipment need to use non-resettable hour meters;

Modify the current extension provision language to allow a two-year compliance extension with provisions for an additional two years in the event of continued non-availability of retrofit kits. Administratively, section 2775.2(e)(1)(A) provides an incomplete reference to "subsections (a), (c), and (d)" without stating the section. Staff proposes to clarify that the subsections are part of section 2775.1; and Make other minor amendments to the regulation to clarify or streamline the regulation.

WHEREAS, Attachment B hereto contains the proposed amendments to the regulation, and Attachment C contains staff's suggested modifications to the initially proposed

amendments, based on staff's evaluations and on comments received since release of the ISOR;

WHEREAS, the Board has considered the impact of the regulation on the economy of the State, and the potential adverse economic impacts on California business enterprises and individuals;

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 California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at title 17, Cal. Code Regs., 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, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board's regulations under its certified regulatory program, the Board further finds that:

1. ARB staff has prepared an environmental analysis for the proposed amendments, which is contained in the ISOR;

2. Staff's environmental analysis determined that the proposed amendments would substantially reduce hydrocarbon and oxides of nitrogen (HC+NOx) emissions, as compared to the environmental conditions that currently exist, because some of the emission reductions expected from the current LSI regulation have not yet occurred;

3. However, staff's environmental analysis also determined that the emission benefits from the proposed amendments would, in the short term, be less than what would have occurred under the current regulation with no amendments.

4. While the proposed amendments would not result in any adverse environmental impacts compared to the environmental conditions that currently exist, the foregone emission reductions in future years could be viewed as a significant adverse environmental impact;

5. Although the proposed amendments will delay some of the emissions benefits of the current regulation, these impacts have been significantly lessened because of the recession and its impact on fleet activity, which has resulted in emissions being lower today than originally anticipated when the current regulation was adopted in 2006;

6. The ISOR describes the benefits of the proposed amendments, which are designed to address the serious economic recession and its impact on industry and residents of the State;

7. The Executive Officer is the decision maker for the purposes of title 17, California Code of Regulations, section 60007, and no final decision will be made until comments on the environmental analysis are fully considered and addressed by the decision maker.

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

1. The proposed amendments approved herein are necessary to provide economic relief to affected fleets while assuring that California continues to meet its air quality obligations and health based goals;

2. In accordance with Health and Safety Code section 43013(a) and (b), the in-use emission standards and other requirements of the proposed regulation are necessary, cost-effective, and technologically feasible for in-use off-road LSI equipment fleets within the time provided for compliance;

3. The economic impacts of the proposed regulation have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

4. The benefits of the regulation to public health and the environment justify the costs of compliance, and enforcement;

5. The proposed amended regulation would reduce costs over the life of the regulation by $8.4 to $59.5 million;

6. The reporting requirements of the amended regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State;

7. No alternatives considered or that have otherwise been identified and brought to the attention of the ARB would be more effective carrying out the purpose for which the amendments to the regulation are proposed, or would be as effective and less burdensome to the affected private businesses and public agencies than the proposed amended regulation.

WHEREAS, section 209(e)(2) of the Clean Air Act (CAA) requires that California request authorization from U.S. EPA prior to enforcing emission standards or other requirements relating to the control of emissions from new and in-use nonroad engines (of which off-road LSI engines are a subpart) not otherwise preempted by section 209(e)(1); and

WHEREAS, on December 10, 2008, ARB submitted to the U.S. EPA a request for authorization determination pursuant to CAA section 209(e) for the regulation.

NOW, THEREFORE, BE IT RESOLVED that the Board directs the Executive Officer to take the following actions:

1. Make the modified regulatory language set forth in Attachment B, with such other conforming modifications as may be appropriate, available for public comment 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 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;

2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare and approve written responses as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and title 17, Cal. Code Regs. section 60007;

3. Determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same addressing the serious economic recession and its impact on industry and residents of the State;

4. Make findings as required by Public Resources Code § 21081 if the proposed amendments would result in one or more significant adverse environmental effects; and

5. Take final action to adopt the proposed amendments set forth in Attachment B, with the modifications set forth in Attachment C, any additional conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action, or return the proposed amendments and findings to the Board for further consideration before taking final action, if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines, in accordance with CAA section 209(e)(2), that the amendments to the regulation as they affect nonroad vehicles or nonroad engines as defined in CAA section 216(10) and (11), do not undermine the Board's previous determination that the regulation's emission standards, other emission related requirements, and associated enforcement procedures are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, are necessary as part of ARB's off-road emissions program to meet

compelling and extraordinary conditions existing in the state, and are consistent with CAA section 209.

BE IT FURTHER RESOLVED that the Board, pursuant to CAA section 209(e)(2) and the determinations set forth in the preceding paragraph, directs the Executive Officer to request that U.S. EPA confirm that all parts of the amendments to the regulation fall within the scope of the authorization that U.S. EPA is currently considering for the regulation.

I hereby certify that the above is a true and correct copy of Resolution 10-48, as adopted by the Air Resources Board.

FILED
OCT 28 2011
Resources Agency of California

Mary Alice Morency, Clerk of the Board

Resolution 10-48

ATTACHMENTS

December 17, 2010

Identification of Attachments to the Board Resolution

Attachment A: State of California Air Resources Board Resolution 06-11 approved May 25, 2006.

Attachment B: Proposed Amendments to the Off-Road Large Spark-Ignition (LSI) Engine Fleet Requirements, Cal. Code Regs., title 13, sections 2775, 2775.1, and 2775.2 as set forth in Appendix B to the Initial Statement of Reasons, released October 21, 2010.

Attachment C: Staff's Suggested Modifications to the Originally Proposed Amendments to the Off-Road Large Spark-Ignition (LSI) Engine Fleet Requirements.

RESOLUTION 10-48

ATTACHMENT C

OFF-ROAD LSI FLEET REQUIREMENTS

<u>Staff's Suggested Modifications to the Original Proposal</u>

DECEMBER 17, 2010

Shown below are the staff's suggested modifications to the originally proposed regulatory text set forth in Appendix B to the Initial Statement of Reasons, released October 21, 2010. All proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

- Modify the "operator" definition to specify how the fleet average emission level standards and limited hours of use provisions apply to rental equipment as well as both dedicated service (operations) equipment and non-dedicated service equipment possessed by dealers and rental equipment operators.

- Modify the limited hours of use (LHU) exclusion to specify how LHU equipment that has been retrofitted is handled in fleet average calculations and the period of time upon which the exclusion is based.

- Modify the compliance extension provisions to address fleets that are either fully emission controlled but still above the fleet average emission level standard and fleets containing specialty equipment for which verified retrofit emission control systems are still not available after the provided extension periods.

- Modify the "agricultural crop preparation services" definition to include forestry-specific post-harvest crop activities.

State of California
Environment Protection Agency
AIR RESOURCES BOARD

Notice of Decision

Project Title:	Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and Off-Road Large Spark Ignition Engine Fleet Requirements
Project Location:	Statewide
Public Meeting Dates:	December 17, 2010; Agenda Item 10-11-3
Project Description:	The project is amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and Off-Road Large Spark Ignition Engine Fleet Requirements originally approved in December 2008. The amendments are comprised of several minor changes and clarifications, including extending the limited hours of use provisions and broadening compliance extension flexibility.
Approved By:	Air Resources Board Executive Order No. R-11-016 Dated: October 28, 2011

This notice is to advise that ARB, as the lead agency, has approved the above described project on October 28, 2011and has determined that the project will not have a significant adverse impact on the environment (see attached Executive Order No. R-11-016).

There were no comments received identifying any significant environmental issues pertaining to this item. No findings, mitigation or statement of overriding considerations were adopted.

A copy of the Staff Report: Initial Statement of Reasons and the Final Statement of Reasons are available at the ARB rulemaking webpage at:
http://www.arb.ca.gov/regact/2010/offroadlsi10/offroadlsi10.htm

These rulemaking documents may also be examined at:

California Air Resources Board
Attn: Board Administration and Regulatory Coordination Unit
1001 I Street
Sacramento, CA 95814

FILED
OCT 28 2011
Resources Agency of California

Certified: Jeannette Bickerstee

Date: 10/28/11

Attachment:

- Executive Order No. R-11-016