

Air Transport Association

March 18, 2010

BY ELECTRONIC SUBMISSION

James N. Goldstene, Executive Officer
California Air Resources Board
c/o Clerk of the 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 Mr. Goldstene:

I write on behalf of the Air Transport Association of America, Inc. (ATA) to provide comments in response to the “Notice Of Public Hearing To Solicit Comments On The Regulation For In-Use Off-Road Diesel-Fueled Fleets,” issued by the California Air Resources Board (ARB) on March 1, 2010.¹ 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 and its amendments, and comments to EPA concerning whether the ORD Rule should be authorized under the federal Clean Air Act, 42 U.S.C. § 7543(e). We appreciate the opportunity to provide input regarding whether the ORD Rule should be modified in light of the economic downturn and other changed circumstances since it was originally adopted by ARB in July 2007.

However, ATA wants to highlight another matter related to the ORD Rule that *requires immediate attention*. Specifically, the DOORS (Diesel In-Use On-Line Reporting System) and offroad compliance fleet calculator contain a number of errors affecting Airport Ground Support Equipment (GSE). As ARB staff have acknowledged, these errors include:

¹ Posted at <http://www.arb.ca.gov/regact/nonreg/inuse2010.pdf>.

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, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; associate members are: Air Canada, Air Jamaica, and Mexicana.

- Failure to properly calculate the BACT targets for NO_x and PM for those fleets that contain electric-powered offroad vehicles. The BACT target calculation should include only diesel-powered equipment, but the DOORS/fleet average calculator includes both electric- and diesel-powered ORD in the calculation of these BACT targets. Until this error is corrected, the ARB compliance calculator and reporting system in effect penalize operators for conversion to electric-powered equipment.
- Failure to properly calculate fleet average targets and fleet average indices for fleets that include electric GSE purchased prior to January 2007. The DOORS/fleet average calculator improperly calculates the electric GSE component of these targets and indices. Again, these errors effectively penalize operators for early conversion to electric-powered equipment. Further, operators have no way to properly determine their ORD compliance status until these errors are corrected.

Stated simply, it does not make sense to require reporting using a system that does not convey accurate fleet information or allow the operator to determine compliance status. ATA is committed to continuing to work with ARB staff to promptly correct the flaws in the DOORS system and ARB fleet calculator applicable to GSE. In the meantime, however, CARB should defer the deadlines for submission of initial and annual fleet reporting under Section 2449(g) until the ARB-approved DOORS system is corrected and can provide accurate fleet reporting information. ATA respectfully requests CARB to issue an enforcement advisory making clear that fleet reporting deadlines applicable to GSE are deferred until the DOORS system and compliance calculator are corrected.

COMMENTS ON POTENTIAL FURTHER MODIFICATIONS TO ORD RULE

ATA has consistently supported the emission reductions ARB seeks to achieve from off-road diesel vehicles, including GSE. We have worked to provide constructive input and to cooperate with ARB staff in the hopes of improving the regulation, and we look forward to continuing to do so.

As an initial matter, it is important to state clearly that our member airlines have worked very hard toward achieving compliance with the ORD Rule, including the original March 1, 2010, compliance deadlines for large fleets. By necessity, our member airlines already have invested heavily both in terms of employee time and equipment expenditures to reduce emissions and meet ORD Rule requirements. We expect that any further modifications to the ORD Rule will provide appropriate recognition of the airlines' good faith efforts to comply with the original compliance deadlines and the resulting emission reductions they have already achieved through these efforts.

For a number of reasons, we agree that further modifications to the ORD Rule are warranted. The ORD Rule remains unnecessarily complicated and burdensome, and the same emission reductions could be achieved through a more efficient approach with far less impact on

employment and economic activity in California. ATA plans to provide further detail in connection with the upcoming Board hearings and workshops scheduled through August/September of this year, but we highlight a few initial points below.

A. Changed Circumstances Warrant Further Modification of the ORD Rule

1. Impacts of the Economic Downturn

The airlines have invested significant money and effort to be in a position to comply with the ORD Rule's requirements applicable to GSE. However, as ARB and the construction industry have noted, the economic downturn has significantly reduced equipment activity levels across all of the industries regulated by the ORD Rule, with associated reductions in emissions from regulated equipment. Consistent with the experience of the construction industry, due to the economic downturn GSE activity and associated emissions have declined significantly below the levels anticipated when ARB adopted the ORD Rule. At the same time, the reduction in economic activity has obviously reduced the resources available to invest in new equipment and other compliance measures under the ORD Rule. The airline industry in particular was under serious economic pressure prior to the economic downturn due to dramatic increases in fuel costs, and now faces decreased passenger and cargo demand. These difficult economic conditions are expected to persist for the foreseeable future.

These reductions in emissions from reduced economic activity were only partially taken into account in the amendments to the ORD Rule adopted by ARB in July 2009 in response to AB 8 2X.³ Among other things, those amendments limit the credit available for reductions in fleet size and activity levels. Particularly in light of the current stresses on businesses and employment throughout the California economy, the reduction in activity levels and emissions warrant further revisions to the compliance schedule of the ORD Rule.

When it was adopted, the ORD Rule's stringent requirements were intended to impose the "economic limit of what industry could bear."⁴ While ARB has not yet estimated the job losses and economic impact of the ORD Rule in today's economy, it is clear that the burdens of the Rule now extend beyond that limit. Fortunately, the reduction in emissions associated with the reduction in economic activity provides an opportunity to achieve the needed emission reductions more efficiently, and with less burden on employment and economic activity in California.

³ California Assembly Bill No. 8, Chapter 6 (codified at Cal. Health & Safety Code § 43018.2).

⁴ ARB Staff Report: Initial Statement of Reasons For ORD Rule (April 2007)(ISOR) at 3.

2. VDECS Have Not Proved Technically Feasible or Cost-Effective

A key pillar underlying ARB's adoption of the ORD Rule was the assumption that retrofits of existing vehicles with Verified Diesel Emission Control Systems (VDECS) would be available, technically feasible, and cost effective. ARB believed that most or all fleets would find it necessary to install VDECS to comply,⁵ and that retrofit would provide the only viable compliance option for many fleets in the early years of the regulation.⁶ In response to concerns over whether sufficient verified retrofit options would be available and feasible for installation under real-world operating conditions, the Board directed the Executive Officer to provide periodic updates to the Board concerning the practical availability and cost of installing VDECS retrofits. *See* ARB Resolution 07-19 at pages 9-10.

As with ARB's assumption of increasing levels of economic activity through 2020, this core premise for the Rule has not borne out. The cost-effective, safe, and technically feasible retrofit devices necessary to comply with the ORD Rule have simply not been made available to operators as ARB had anticipated. Based on data shared during the Offroad Implementation Advisory Group (ORIAG) meetings, we understand that of the approximately 180,000 off-road diesel vehicles subject to the ORD Rule, less than 1,000 have been successfully retrofit with VDECS. By contrast, in adopting the regulation ARB had assumed that over 35,000 vehicles would have been retrofit by 2010. TSD at J-9.

Numerous safety and technical issues and delays have been encountered with VDECS, including adverse visibility and fire risk issues. In particular, we understand that VDECS retrofits installed on offroad vehicles have already caused fires and total equipment loss in two instances. In addition, there are reports that diesel particulate filter retrofits (the same technology used in VDECS) installed at a stationary diesel power plant resulted in a fire and total loss of that facility. No comprehensive or definitive information on these apparent incidents has been made available. However, these early reports are very troubling, particularly in light of the relatively low number of VDECS that have been installed to date. Simply stated, the safety issues associated with diesel retrofit technology have not been properly addressed, and therefore GSE fleet operators and others cannot rely on VDECS to comply with ORD rule requirements as anticipated by ARB.

⁵ Out of approximately 180,000 regulated vehicles, "[t]he regulation is expected to require installation of over 100,000 VDECS." Final Statement of Reasons for ORD Rule (April 2008) at 221; ISOR Technical Support Document (TSD) at J-9; ISOR at 39 (the majority of the compliance costs of the ORD Rule were expected to be spent on VDECS retrofits).

⁶ *See* TSD at 167 (for most older fleets "the NO_x and PM requirements will most likely only be fulfilled by complying with the BACT requirements for a number of years").

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As discussed above, ARB should re-evaluate alternative approaches, which in light of current reductions in activity may very well achieve the same or better air quality improvements, with a fraction of the economic burden to California residents. ATA looks forward to continuing to work with ARB staff to achieve this common goal in a sensible way.

B. ARB Should Clarify the Six Month Post-Authorization Enforcement “Grace Period”

As ARB has recognized, unless and until EPA grants authorization under Section 209 of the Clean Air Act, the emission requirements of the ORD Rule are preempted by federal law and are unenforceable. ARB’s request for authorization is currently pending before EPA, and a public hearing has been scheduled for April 2010, with written comments due in May. ARB recently issued Enforcement Advisory 10-414, which confirms that no enforcement action will be taken for any noncompliance with the emission standards imposed by the ORD Rule. The Advisory states that during this “enforcement delay,” which will remain in place until EPA grants authorization, fleets will not be “retroactively cited” for noncompliance during that period. It also states that fleets will be provided with “up to” an additional 6 months to comply, as ARB has provided previously for other regulations.

We appreciate the clarity that ARB has sought to provide in issuing the Advisory. However, ARB should make more explicit that a 6 month post-authorization grace period “will” apply to all fleets, and that fleets will not be cited for any noncompliance during that 6-month period. A fixed compliance deadline is needed to provide at least a minimal level of certainty for compliance planning purposes, particularly given the many other uncertainties facing CARB and the regulated community regarding the ORD Rule.

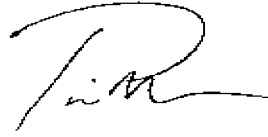
In this regard, we remain concerned about the “SOON” program. As set forth in prior comments, the SOON program is substantively and legally flawed.⁷ At a minimum, ARB must explicitly clarify that the SOON program, just like the other emission standards set forth in the ORD Rule, is unenforceable and cannot be legally implemented unless and until EPA grants authorization. We look forward to providing more specific comments and recommendations concerning the SOON program as ARB proceeds with its process for considering amendments to the ORD Rule as a whole.

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.

⁷ See Letter from T. Pohle to ARB, dated March 6, 2008, at pages 4-9. Available at: http://www.arb.ca.gov/lists/ordiesl07/1244-2008-03-06_ata_second_15-day_comments_re_ord_rule.pdf.

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Sincerely,

A handwritten signature in black ink, appearing to read "Tim", with a large, stylized initial "P" or "R" above it.

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