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March 6, 2008

To Whom It May Concern:

Attached are comments by the American Rental Association on the Second 15-day Notice – Proposed Regulation for the In-Use Off-Road Mobile Diesel Vehicles with proposed modified text. We appreciate the opportunity to comment on this proposal and to participate in this regulatory process. If you have any questions, please do not hesitate to contact John McClelland at john.mcclelland@ararental.org or Michael Graboski at msgraboski@speedtrail.net.

Sincerely,

A handwritten signature in black ink that reads 'John W. McClelland'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John W. McClelland, Ph.D.
Vice President, Government Affairs

JWM:mmf
Enclosure



Comments of the American Rental Association

on

Second 15-day Notice

**Proposed Regulation for In-Use Off-Road Diesel Vehicles
Approved by the Board July 2007
with Proposed Modified Text**

John W. McClelland Ph.D.

**ARA Vice President Government Affairs
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and

Michael S. Graboski Ph.D.

March 6, 2008

Section 1: ARA comments that were not addressed in the December 15-day package:

ARA made a number of comments on the 15-day package that we felt were very important but were not addressed in the second 15-day package. We would appreciate responses on the following comments that were not addressed by the Agency.

1. We commented for the December 15-day package: “2449(g) Reporting: “First, medium fleets according to the Board Resolution 07-19 must comply beginning in **2013**. Small fleets must comply beginning in **2015**. All fleets must do initial reporting in 2009. *Then, medium fleets must report in 2012, and small fleets must report in 2014 even though there are no compliance requirements in those years.*” Small and medium fleets already have to file an initial report in 2009. We don’t understand why small and medium fleets must report again prior to their first compliance date.
2. We commented for the December 15-day package: “2449.1 NO_x Performance requirements: There is still no procedure for handling numerical roundoff when deciding whether a fleet complies or not. ARA has commented repeatedly in the past regarding this issue.” A simple example is rounding a 5. The number 5 is equidistant from 0 and 10. If rounding is unbiased, when is a 5 rounded up and when is it rounded down? We believe this is still unresolved.
3. We commented for the December 15-day package: “Item 2449(d)(2) Hours in Fleet Average Option: We have not seen a quantified justification for the 1.18 factor. This approach already allows for fleets to control the use of older vehicles by limiting their use for compliance purposes. Limiting the use of older equipment could be an economically viable approach for some equipment owners. All the 1.18 factor does is reduce the viability of this approach because it effectively lowers the hours that the older equipment would be used by 20% (1/1.18).” What is the justification for this factor?
4. We commented for the December 15-day package: “In section 2449.2 under BACT Requirements: The requirement for PM BACT needs to be clarified. If a fleet fails both the NO_x and PM average and therefore turns over vehicles, does it then recompute its PM average to determine compliance with the PM part of the rule?”

Section 2: Comments on Second 15-day package

The only new issue that warrants comment is the SOON program.

Comment on SOON Program- Small Engines

The idea of the SOON program is to capture excess NO_x reductions from very large fleets (over 20,000 hp). The SOON program may **mandate** very large fleets with 40% or more Tier 0 and Tier 1 equipment to participate in any area where that AQMD has opted into the program.

ARA is strongly opposed to this program in its current format. We believe that it will put an excessive burden on our larger independent and national chain businesses while yielding no quantifiable emission benefits from the rental industry.

All of our comments would be addressed if the program were made voluntary for the fleets under all circumstances.

1. **2449.3(e)(9) Voluntary or Mandatory Nature of SOON:** The program should be completely voluntary.
2. Businesses seem to have to complete the SOON exercise to determine if they fall under the applicability requirement. What records do they need to keep and for how long must they keep such records? If a company decides in good conscience that the program doesn't apply but the district in a mandate environment has the opposite finding, how is this dispute settled?
3. **2449.3(b) Fleet Applicability:** The applicability requirements are based on Tier only. It is not indicated whether this criterion is based upon horsepower or count-weighted percentage of equipment. We believe the criterion should be based upon fleet horsepower weighting to favor fleets with larger engines.
4. SOON should apply only to fleets satisfying the rule through BACT.
5. A consequence of the SOON program is that rental companies with large fleets of small engines **might be mandated to** participate under SOON. This is an unnecessary burden imposed by the SOON program because it will never provide any NO_x benefits. The reason for this consequence is that rental fleets are generally composed of smaller horsepower engines. If it is assumed that the particular rental fleet is composed of 99 and fewer horsepower engines, the problem is immediately obvious. The introduction of Tier 2 engines under 100 horsepower did not occur until January 1, 2004. Based upon a January 1, 2008 date, the latest model engine in the fleet will probably be 2007. Thus, for a typical fleet with 5-year average age and uniform distribution of equipment model years, on January 1, 2008, 60% of the fleet is still Tier 1 and Tier 0. Yet, due to normal turnover, *this fleet will always meet the averaging requirements* when the rule comes into effect because the fleet is turning over 10% of its equipment per year. On January 1, 2014, the rental fleet with 11 model years would have no Tier 1 or Tier 0 equipment in its fleet. If there is no assurance that a particular piece of equipment will be present in the fleet in 2014 because of fleet turnover, why require the fleet to participate in the exercise.
6. Further, in the survey data we provided the Agency, we documented that the average usage of rental equipment is approximately 500 hours per year. Such small equipment cannot be repowered. The business would probably never qualify for SOON funding because of the low usage and the business's plan would be to replace equipment anyway on its normal schedule without State or District money.

7. ARA recommends that the SOON Applicability Criteria in the proposed section 2449.3(b)(2) be modified to reflect the intent to capture large Tier 0 equipment that will remain in the fleet for many years to come and where economic repowering is feasible.
8. **2449.3(d)(D) Apply for Funding:** Why must businesses be potentially forced to apply if their desire for funding is nil? For this program to succeed, businesses must want to actively participate. A business that has no interest in participating will probably go through the motions and put minimal effort into the plan.
9. **2449.3(c)(2) Operated Within District:** The SOON rule applies to very large companies, not smaller businesses. These larger company fleets may move around the state and between districts. Rental companies have no information on where particular equipment was actually operated and for how long during the preceding three years. Prior to this regulation, there is no legal requirement to track equipment activity. Under this regulation, there is no legal requirement to track and report use by AQMD. It is probably impossible for rental companies to determine if any of its equipment operated the majority of time in a certain district.
10. Participating in SOON would be inconsistent with a rental company's business model. Rental equipment can stay in a district or be moved. It is a burden on rental businesses to limit operation of any equipment falling under SOON to the affected district.
11. **Cost Effectiveness:** 2449.3(d)(3) Air Districts that opt into the SOON program: This section requires Districts to prioritize projects on "the optimum NOX cost effectiveness". What is the definition of "optimum cost effectiveness"?
12. A definition of cost effectiveness and a methodology for computing it should be included or referenced in this rule.
13. It appears under (f)(2) that projects do not need to be cost effective to be SOON-worthy. Section (f)(2) suggests that districts may establish cost effectiveness limitations. Public money should only be spent on cost effective projects. If a project is not cost effective, the district should spend its money elsewhere to buy NO_x reductions.
14. The off-road rule is based on a cost effectiveness calculation. The same cut point and methodology needs to be followed under SOON to be consistent.
15. Furthermore, ARB and the Districts should provide guidance on the types of projects that might be considered on a cost effectiveness basis and this should be built into the applicability requirements to insure that fleets that would never receive SOON money do not have to go through all of the reporting, planning and application efforts required by this complex program. What size, operating hours, duty factors, and differential costs would justify a SOON project?

16. **2449.3(e)(1) Accounting for the In-Use Off -Road Diesel Vehicle Rule:** The SOON program requires a 3-year contract where emissions benefits are guaranteed. How does this requirement fit with an equipment replacement model? Suppose SOON funding is used to accelerate fleet turnover in a rental fleet. The project is the 1-year advanced replacement of a unit. Is the life of the benefit 1 year because the unit would have been replaced anyway the next year?
17. **2449.3(e)(5) Tracking Devices:** While there is no specific section regarding enforcement of this part, we assume that there is some mechanism present in this part of the rule. Suppose that a rental company has a piece of equipment paid for with SOON funds. Further, suppose that the renter moves this unit out of the district so that the required percentage of operating hours is not met. Who is responsible?