

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and
Availability of Additional Documents**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED
REGULATION FOR IN-USE OFF-ROAD DIESEL VEHICLES

Public Hearing Date: July 26, 2007

Public Availability Date: December 10, 2007

Deadline for Public Comment: December 28, 2007

Deadline for Public Comment Period has been extended to January 4, 2008

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved the adoption of section 2449, title 13, California Code of Regulations (CCR), as modified. The regulation for In-use Off-road Diesel Vehicles is designed to reduce emissions of diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from in-use off-road diesel vehicles that operate in California. The regulation will significantly reduce PM and NOx emissions from the nearly 180,000 off-road diesel vehicles that operate in California by requiring fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits. The regulation supports the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, which was adopted by the Board on September 30, 2000.

The Board's Action

At the July 26, 2007, hearing, the Board adopted Resolution 07-19 (appended to this notice as Attachment 1), approving the adoption of the regulation with modifications. At the Board hearing, staff proposed suggested modifications in response to comments received since the Initial Statement of Reasons (Staff Report) was initially published on April 5, 2007. The suggested modifications presented by staff and approved by the Board include:

1. Clarifying that the regulation applies to alternative diesel fueled off-road compression ignition vehicle engines as well as those that are diesel-fueled (section 2449(b)).
2. Clarifying that the regulation exempts equipment or vehicles used exclusively in agricultural operations, but not necessarily those used only part-time for agricultural operations (section 2449(b)).
3. Clarifying that agricultural operations includes growing or harvesting of crops from soil and raising of plants at wholesale nurseries, but not retail nurseries (section 2449(c)(1)).
4. Adding a definition for alternative diesel fuel (section 2449(c)(3)).
5. Adding a definition for compression ignition engine (section 2449(c)(11)).

6. Adding a definition for diesel fuel (section 2449(c)(13)).
7. Adding a definition for diesel particulate filter (section 2449(c)(14)).
8. Modifying the definition of small fleet to include fleets with total maximum power of less than or equal to 2,500 horsepower (hp), rather than 1,500 hp, and to include all non-profit training centers (section 2449(c)(24)(C)).
9. Adding a definition for non-profit training center (section 2449(c)(36)).
10. Clarifying, consistent with the modified definition of small fleets that low-population county municipalities are subject to the small fleet requirements, even if their total maximum power exceeds 2,500, rather than 1,500 hp (section 2449(d)).
11. Allowing a fleet owner that has added an electric vehicle to its fleet to apply to the Executive Officer (EO) to use the maximum power of a diesel vehicle that serves the same function and performs equivalent work to the electric vehicle as the maximum hp of the electric vehicle in its fleet average calculations (section 2449(d)(1)(A)2.a.).
12. Allowing gasoline-powered vehicles used to replace diesel vehicles to be counted in the fleet average calculations if certain conditions are met (section 2449(d)(1)(D)).
13. Modifying the hours in fleet average option to include a factor of 1.18 in calculating the NO_x and Diesel PM indexes to account for the fact that, in general, newer, cleaner vehicles operate more than older, dirtier ones ((section 2449(d)(2)).
14. Requiring non-resettable hour meters on each vehicle in any fleet that utilizes the hours in fleet average option ((section 2449(d)(2)).
15. Requiring new fleets to meet the regulation's fleet average requirements immediately upon purchasing vehicles subject to the regulation or bringing such vehicles into the State of California, rather than within three months (section 2449(d)(5)).
16. Modifying the adding vehicles requirement to allow large and medium fleets that meet the BACT requirements to add a vehicle if it has a Tier 2 or higher engine and has a NO_x Emission Factor less than or equal to the NO_x Target for the most recent compliance date. The PM Emission Factor of the added vehicle does not have to be less than or equal to the PM Target for the most recent compliance date (section 2449(d)(7)(B)).
17. Requiring the vehicle owner to ensure that a verified diesel emission control strategy (VDECS) label is affixed to the vehicle and visible after a VDECS is installed (section 2449(d)(8)).
18. Modifying the requirements for compliance after the final target date so that fleets are not required to retrofit more than 20 percent of the total horsepower of the fleet per year, and clarifying that any previously accrued carryover PM retrofit credit may not be used to delay retrofitting remaining vehicles after the final target date (section 2449(d)(10)(B)).
19. Modifying the special provisions for use of experimental diesel emission control strategies so that fleets who participate in an experimental diesel emission control program approved by the EO may retain carryover credit accumulated during the experiment, regardless of whether the experiment

- is successful or the strategy being tested is eventually verified by ARB (section 2449(e)(5)).
20. Modifying the provisions for VDECS that impair the safe operation of a vehicle so that (1) the EO may find that a VDECS that would make compliance with occupational safety and health requirements or local air district permit conditions impossible is not considered highest level VDECS, and (2) if a VDECS manufacturer states that there is no safe or appropriate method of mounting its VDECS on a vehicle, then the VDECS will not be considered verified for that vehicle (section 2449(e)(8)).
 21. Adding an appeals procedures that provides a fleet owner the opportunity to challenge an EO's determination that a VDECS does not impair the safe operation of a vehicle (section 2449(e)(8)(A) and (B)).
 22. Exempting vehicles from the regulation's requirements that are used solely on San Nicolas or San Clemente Islands (section 2449(e)(12)).
 23. Exempting Job Corps vehicles from the regulation's requirements (section 2449(e)(13)).
 24. Requiring that electric and alternative fuel vehicles, stationary or portable systems, and gasoline-powered vehicles used to replace diesel vehicles, be labeled with an Equipment Identification Number (section 2449(f)).
 25. Changing the initial annual reporting year for medium fleets to 2012 instead of 2013 and for small fleets to 2014 instead of 2015 (section 2449(g)(2)).
 26. Changing the final annual reporting year for large and medium fleets to 2021 instead of 2020 and for small fleets to 2026 instead of 2025 (section 2449(g)(2)).
 27. Requiring that any fleet that owns or operates low-use vehicles file annual reports for each low-use vehicle (section 2449(g)(2)).
 28. Requiring fleets that choose the hours in fleet average option to report two engine hour meter readings for each engine annually (section 2449(g)(2)(C)1.).
 29. Requiring medium and small fleets to report fleet changes between 2010 and the first annual reporting date (section 2449(g)(4)).
 30. Requiring ARB to issue a Certificate of Reported Compliance if a fleet's annual reporting indicates that the fleet is in compliance with the regulation (section 2449(l)).
 31. Requiring that tracking of carryover retrofit and turnover credit be in hp instead of percent (section 2449.1(a)(2) and 2449.2(a)(2)).
 32. Modifying the requirements for early retirement credit to provide that a fleet will receive credit for early retirement it turns over Tier 0 vehicles at a rate greater than 8 percent of the fleet's total maximum power per year on average between March 1, 2006, and March 1, 2009 (section 2449.1(a)(2)(A)2.a.ii.).
 33. Requiring that if a VDECS is not new (i.e., being reused), it must have been taken from a vehicle that is no longer operating in California (section 2449.2(a)(2)(A)1.).

34. Modifying the regulation to grant credit for replacement of lower tier vehicles with Tier 4 vehicles in lieu of retrofitting (section 2449.2(a)(2)(A)1.a.).
35. Modifying the regulation to allow fleets to receive a single carryover PM retrofit credit for PM retrofits installed between March 1, 2009 and the initial fleet average compliance date (section 2449.2(a)(2)(A)2.a.ii.).

In Resolution 07-19, the Board directed the EO to incorporate the approved modifications set forth above into the proposed regulatory text, along with other modifications as may be appropriate, and to make such modifications available for a supplemental comment period of at least 15 days.

In addition to staff's suggested changes, the Board directed staff to make the following additional modifications:

Divide the regulation presently set forth in section 2449, title 13, CCR into two separate sections: one covering the requirements for compliance with diesel PM limits and one for compliance with NOx limits;

Modify the definition of Non-Profit Training Center at section 2449(d) to refer to 26 United States Code subsections 501(a) and (c)(3), (5) and (6); and

Modify the regulations to provide that, on or after March 1, 2009, a fleet that permanently retires a Tier 0 vehicle from service within California may count that vehicle in meeting both the diesel PM BACT requirements and the NOx BACT requirements to achieve equivalent emission reductions relative to the retrofit requirements.

Staff has modified the approved regulation to address each of these concerns. Pursuant to the Board's request that the NOx and PM performance standards be set forth in separate sections, the staff has divided the regulation into three parts: section 2449, General Requirements; section 2449.1, NOx Performance Requirements; and section 2449.2, PM Performance Requirements.

In addition to the Board directed modifications listed above, staff was also asked to make the following modification:

Add a new section using incentive-based funding that would allow any air quality management district and air pollution control district to achieve additional NOx reductions from in-use off-road heavy-duty diesel vehicles operating within its air basin by opting to follow the requirements of the section and providing incentive funding to fleets that would be required to apply for funds and, if received, use the funds to achieve real, calculable, and enforceable surplus NOx emission reductions.

To implement this direction, staff is currently developing a fourth part to the regulation: section 2449.3 Requirement for Largest Fleets to Achieve Additional Reductions of Oxides of Nitrogen, otherwise known as the Surplus for Off-Road Opt-In Program (SOON). This section will address the Board's directive that an element of the regulation allow local air quality management districts and local air pollution control districts to opt into a program that would allow them to achieve additional NOx reduction from in-use off-road diesel vehicles that operate in their districts by providing incentive funding to affected fleets. Staff needs additional time to work with local air districts and affected stakeholders on the detailed requirements of this component of the regulation. This section is thus not being released at this time but will be made available for public comment at a later date. This is necessary because staff believes that the other significant changes to section 2449 et seq. should not be delayed. Staff is committed to submitting all four sections of the regulation (sections 2449 through 2449.3) together as one rulemaking package to the Office of Administrative Law before the expiration of the one-year notice period set forth in Government Code section 11346.4(b).

Modified Text Being Made Available

At the Board's direction, staff worked with members of the affected industries and associations to develop the required modifications. A more complete discussion of these proposed modifications is provided below. The proposed regulatory text, including staff's modifications, is appended to this notice as Attachment 2. Additions to the initially noticed regulatory text are denoted by underline and deletions by ~~strikeout~~.

Board Resolution 07-19 and the revised regulatory text, as provided in Attachment 2, may be downloaded from ARB's Internet website at the following address: <http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>. If you would like a hardcopy of Attachment 2 sent to you through postal mail, please call Ms. Kim Heroy-Rogalski at (916) 327-2200 and give your name, company name, if any, and mailing address.

Summary of Proposed Modifications

In addition to making the changes requested by the Board, staff has modified the regulation to clarify specific provisions and correct clerical errors. The following is a summary of the substantive modifications and staff's rationale for making them:

Modifications to Title 13, CCR, section 2449

Section 2449(b) Applicability

Staff has modified this section to make it clear that equipment already subject to the Regulation for Mobile Cargo Handling equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, section 2479) is not subject to the regulation. The CHE Regulation applies to off-road, mobile equipment operated

at a port or intermodal rail yard to transport cargo or used to perform maintenance and repair activities that are routinely scheduled or that are due to predictable process upsets. Off-road equipment brought into a port or intermodal rail yard terminal for construction projects or unexpected repairs is not subject to compliance with the CHE Regulation, and therefore, would be required to meet all requirements of the regulation. Additionally, off-road equipment used at a port or intermodal rail yard solely to transport personnel or deliver fuel are not required to meet the performance standards of the CHE Regulation, and therefore, would be required to meet all requirements of the regulation.

Section 2449(c) Definitions

Agricultural Operations: The definitions for “Part time agricultural use” and “Part-time agricultural use of rental vehicles” were deleted under Agricultural Operations. These terms were not located in the regulation, and are therefore not necessary to define.

Captive Attainment Area Fleet: Staff added Santa Barbara as a captive attainment area county. This is because Santa Barbara attains all federal ambient air quality standards and because, although Santa Barbara was identified in the early 1990s as an upwind member of a transport couple with the South Coast District, in 2004, ARB has informed Santa Barbara that its contribution to the South Coast was inconsequential.

Maximum power (Max Hp): The definition of maximum horsepower was broadened to address the concern that locating an engine’s net horsepower or net flywheel power certified to Society of Automotive Engineers (SAE) Method J1349 or International Organization for Standardization (ISO) Method 9249 is not always readily available.

Model year: Staff added a definition for model year to clarify that model year has the same definition as used in certification of new engines and specified in Title 13, CCR, section 2421(a).

Non-Profit Training Center: At the Board’s direction, staff added citations to several additional sections of the Internal Revenue Code to broaden the definition of a non-profit training center.

Section 2449(d) Performance Requirements

At the request of the Board, the performance requirements for PM and NOx of section 2449 have been bifurcated into two separate sections: section 2449.1 for the NOx performance requirements, and section 2449.2 for the PM performance requirements. Many of the performance requirements in section 2449 that are applicable to the fleet in general (and not specifically NOx or PM) are still located in section 2449(d), such as the idling restrictions, reporting, and labeling

requirements. Many of the exemptions, etc., located in 2449 apply to both sections 2449.1 and 2449.2 and are therefore still located in 2449.

Electric and Alternative Fuel Vehicles Purchased on or after January 1, 2007: Staff has added a new section to allow fleets that convert diesel vehicles to alternative fuel to count such vehicles in their fleet average (section 2449(d)(1)(A)2). Staff added this section to allow fleets to consider conversion to alternative fuel systems as a method of compliance. In order to do any such conversion, a fleet would first need to obtain an aftermarket parts exemption from ARB.

In addition, when using an alternative fuel vehicle (as a replacement vehicle) in the NOx fleet average, the fleet owner will now be required to apply to the EO and demonstrate that it will be using an appropriate emission factor in calculating its fleet average. This will ensure that a fleet owner will take the necessary steps to ensure that it will be using the appropriate emission factors.

Electric and Alternative Fuel Vehicle Purchased Prior to January 1, 2007: The regulation has been clarified to show on how affected fleet owners should include a GSE electric or alternative fuel vehicle into their fleet average calculations.

Electric Stationary or Electric Portable System Used to Replace Mobile Diesel Vehicle: Fleet owners that wish to replace a mobile diesel vehicle with an electric portable or stationary systems must now apply to the EO before including those vehicles in their fleet average calculations. This addition has been made to ensure that the electric systems purchased will be used as direct replacements for mobile diesel vehicles and achieve real emission reductions.

Changing Fleet Size: The requirements for fleets changing in size from small to large, large to small, and medium to large have been clarified.

Adding Vehicles: A new exception for vehicles that are returning to a lessor's fleet has been added; those vehicles do not have to meet the adding vehicle requirements. This language was added to ensure that it would be possible for lessor fleets to comply with the regulation. Under the originally proposed language, a lessor may not have been able to accept certain vehicles back from a lessee after the end of a leasing contract; now all vehicles can return to a lessor's fleet without causing the lessor to be out of compliance with the regulation.

VDECS Maintenance: This section was clarified to state that once a VDECS has been installed on a vehicle (as part of compliance with the regulation), that VDECS must remain on the vehicle until the VDECS is either damaged or fails. This language was added to prevent a fleet from removing a

retrofit from one vehicle after it has been counted towards the requirements of the regulation and having it installed on another to be counted as retrofitted in a later year.

Section 2449(e) Special Provisions/Compliance Extensions

Compliance Extension for Equipment Manufacturer Delays: Staff has added additional detail to this extension provision to clarify that if a VDECS is purchased to replace a failed VDECS, the fleet owner must enter into purchase agreement for a replacement VDECS within 60 days of the VDECS failure. The previous language stated that replacing a failed VDECS was required within 90 days of VDECS failure, but that to get a compliance extension, the VDECS had to be purchased six months prior to the required compliance date. Thus, under the originally proposed language, it theoretically would have been impossible for a fleet to obtain a replacement VDECS in the time required and receive a compliance extension.

Section 2449(f) Labeling

Staff has modified this section to make it clear that vehicles with two engines that provide motive power will receive two separate equipment identification numbers (EINs). Staff made this modification so that it will be easier for fleets composed of vehicles such as dual engine scrapers to report and track engine data and those instances where the two engines may be separated.

Section 2449(g) Reporting

Staff has added the following additional reporting requirements:

- Systems (such as conveyor belt systems) or non-diesel fueled vehicles used in place of a diesel vehicle. It is necessary to report these vehicles if they are claimed in the fleet average calculations.

Initial Reporting: Staff reorganized the initial reporting section into the following subsections to make the requirements clearer to reporting fleets: (A) Owner Information, (B) Vehicle List, (C) Engines, (D) Verified Diesel Emission Control Systems, (E) Non-Diesel Vehicle Used in Place of a Diesel Vehicle, (F) Stationary or Portable Systems Used in Place of a Diesel Vehicle, and (G) Credit for Early Actions. For clarity, staff has also numbered the items of information to be reported.

Owner Information: Staff has added requirements to report the following owner information:

- Corporate parent taxpayer identification number (if applicable). Staff has added this requirement to help accurately identify fleets that report separately but that are under common ownership.

- Responsible person title. Staff has added this requirement to enable ARB to ascertain if the party meets the definition of responsible person.
- Contact name. Staff has added this requirement recognizing that the contact person may be different from the responsible person.
- Staff has added the following items to be reported so that it will be able to determine compliance with the regulation:
 - Whether the fleet owner is a low population county local municipality fleet;
 - Whether the fleet owner has an approval from the Executive Officer to be treated as if in a low-population county;
 - Whether the fleet owner is a non-profit training center;
 - Whether the fleet has an idling policy documented and available to employees; and
 - Whether the fleet will use a fuel-based strategy as an emissions control strategy.

Vehicle List: Staff has added requirements that fleet owners report the following information:

- Vehicle serial number. Staff has added this requirement so that it can be used as a unique identifier of the vehicle.
- Staff has added the following reporting requirements so that staff will be better able to determine compliance with the regulation:
 - If the vehicle is identified as low-use, was it operated outside of California during the previous year;
 - Whether the vehicle has been retrofitted, repowered, or replaced with Carl Moyer program funding; and
 - Whether the vehicle has been retrofitted through a demonstration program, and - if so - which program.

Staff has deleted the requirement that a fleet owner must report whether it intended to retire a vehicle within one year, having determined that the information is not relevant to the regulation's requirements.

Engines: Staff has added requirements that fleet owners report the following information:

- Engine Model and Engine Displacement. Staff has modified the section to require fleet owners to report engine model and displacement information to better ascertain retrofit device compatibility when engine family information is not available.
- Staff has added the following reporting requirements to better enable it to determine compliance with the regulation:
 - Whether the engine is a repower; and
 - If the engine is a Post-2007 flexibility engine, an engine certified to on-road standards, or an engine certified by ARB or U.S. Environmental Protection Agency to a lower emission standard than shown in Appendix A, the emission standard to which the

engine is certified and the certification Executive Order or certificate number.

Verified Diesel Emission Control System: To provide additional clarity, staff has modified the section to require that VDECS information be reported in a different section from the vehicle information, and added the following reporting requirements:

- VDECS Manufacturer and VDECS Model. Staff deleted the requirement that “type of retrofit emission control equipment installed” be reported and replaced it with the requirement that VDECS Manufacturer and VDECS Model be reported; and
- Verified percent NOx reduction (if any). Staff added Verified percent NOx reduction (if any) to be reported.

Non-Diesel Vehicle Used in Place of a Diesel Vehicle: Staff is has deleted the section “Electric Vehicles Replacing a Diesel Vehicle” and replaced it with a more inclusive section, “Non-Diesel Vehicles Used in Place of a Diesel Vehicle,” which includes the following additional reporting requirements:

- Date purchased;
- If the vehicle replaced a diesel vehicle in the fleet, provide the horsepower of the diesel vehicle replaced and the date replaced; and
- If not electric, report NOx and PM emission factor.

With the additional information, staff will be better able to determine compliance with the regulation for the use of electric, alternative fueled, or gasoline fueled vehicles replacing diesel vehicles.

Stationary or Portable Systems Used in Place of a Diesel Vehicle: Staff has added a new reporting section, “Stationary or Portable Systems Used in Place of a Diesel Vehicle,” which includes the following items of information that fleet owners must report to enable staff to better determine compliance:

- Description of the system;
- Type and number of vehicles that would otherwise be used; and
- Horsepower of the vehicle(s) that would otherwise be used.

Credit for Early Actions: Staff has added the section, “Credit for Early Actions,” which includes the following reporting requirements to enable staff to determine compliance with the regulation:

- Fleet owners claiming credit for early action must report information for each vehicle for which credit is claimed;
- For each vehicle within the fleet that was repowered with a Tier 1 or newer engine prior to March 1, 2009, the date of repower must be reported;
- For each vehicle within the fleet that was retrofit with the highest level VDECS available at the time of retrofit prior to March 1, 2009, the date of retrofit must be reported; and

- Fleet owners claiming credit for retirement of Tier 0 vehicles must report information for each and every vehicle within the fleet (not just those vehicles that were retired) between March 1, 2006 and March 1, 2009.

Engine Hour Meter Readings: Staff has added a new reporting section, “Engine Hour Meter Readings” that would require fleet owners to group all relevant information required to be reported relating to hour meter readings. Staff has also added the following information to be reported to enable staff to determine compliance with the regulation:

- Low-use vehicles used in emergency operations. For vehicles used in emergency operations, fleet owners must report the total hours used in emergency operations; and
- Vehicles used part-time in agricultural operations. For vehicles that are used part-time in agricultural operations, fleet owners would be required to report two engine hour meter readings, one from on or before March 1 of the prior year and one from on or after March 1 of the current year, and the dates of reading. Additionally, affected fleet owners would be required to report the total number of hours used for non-agricultural use.

Section 2449(h) Record keeping

Engines Rebuilt to a More Stringent Emissions Configuration:

Staff has added this section as a record keeping requirement, which would require fleet owners when an engine has been upgraded or rebuilt to a higher tier level than originally certified. This was needed to provide ARB enforcement with information to allow it to determine if the engine rebuild has not been performed successfully or fails to achieve the expected emission reductions.

Records Pertaining to Executive Officer Approval: In a number of places, the regulation allows fleets to apply to the EO for approval for various reasons. To ensure that fleet owners and ARB enforcement staff have correct information on the status of EO approvals, staff has modified the section add an additional recordkeeping requirement that such information be maintained. Fleets will need to keep records of any such approvals received, including the following (section 2449(h)(7)):

- A waiver to allow additional idling in excess of five consecutive minutes;
- Upon discontinuation of a fuel verified as a DECS, approval providing the fleet with up to two years to achieve compliance with the applicable fleet average requirement;
- A finding that a VDECS should not be considered the highest level VDECS available due to safety concerns;
- Approval to use the maximum power of a diesel vehicle that serves the same function as an electric vehicle;
- Approval of an alternative fuel vehicle NOx emission standard;
- Approval of a vehicle being designated as a specialty vehicle;

- Approval granting a fleet a compliance extension because of the unavailability of Tier 4 engines or vehicles; and
- Approval to use a fuel strategy as an emissions control strategy.

Record Retention: For clarity, staff has added greater detail to the requirements on what records need to be conveyed from the seller to buyer when a vehicle or entire fleet changes ownership (section 2449(h)(8)).

Section 2449 (I) ARB Certificate of Reported Compliance

Staff has added a requirement that ARB provide a fleet owner with a Certificate of Reported Compliance after it files and initial report required by section 2449(g)(1) and the filing has been deemed complete. This modification will allow fleets to demonstrate to agencies and companies that want to hire them that they have completed the initial reporting and are on track to comply with the off-road regulation.

Section 2449 Appendix A

Staff has clarified that replacement engines produced per title 13, CCR, section 2423(j) should use the engine model year of the engine replaced when determining the emission factor. This is appropriate because a replacement engine has the same emissions characteristics as the engine replaced.

Staff has also clarified that an engine certified to an emission standard lower than that shown in the tables in Appendix A (for example, an engine built to a higher tier standard early to meet Consent Decree requirements) may use the emission standard to which the engine is certified as the emission factor. To do so, the fleet owner must provide ARB the certification Executive Order number or certificate number when reporting the engine to ARB.

Title 13, CCR, Section 2449.1 NOx Performance Requirements

As stated, this section is comprised of all the NOx performance requirements formerly in section 2449(d). This was done at the Board's request to bifurcate the regulation.

Section 2449.1(a) Performance Requirements

Credit for Early NOx Retrofits: Staff has modified the regulation to clarify that fleets will be able to receive credit for NOx retrofits conducted before March 1, 2009.

Order of Turnover: Staff has further clarified the regulation to provide that if BACT turnover is required after all the Tier 0s and Tier 1s (with no PM standard) in the fleet have been retrofitted Tier 2s and higher can be turned

over and count towards the BACT requirements.

Exemptions: Staff has further clarified the regulation to indicate that the exemption for vehicles less than 10 years old from turnover requirements is based on date of manufacture, not date of first sale.

Title 13, CCR, Section 2449.2 PM Performance Requirements

As stated, this section incorporates the PM performance requirements formerly in section 2449(d). As with the NOx performance standards set forth in section 2449.2, this change was done pursuant to the Board's direction.

Section 2449.2(a) Performance Requirements

Retirement of Tier 0 Vehicles in Lieu of Retrofitting for Fleets with Reduced Horsepower: As explained above, at the July hearing, the Board directed staff to provide PM retrofit credits – to the extent that it can be done without a significant loss of emissions benefits – to fleets that retire Tier 0 vehicles as part of a fleet reducing its total horsepower. This new section is located under the performance requirements for 2449.2(a).

Conversion of Diesel Vehicles to Alternative Fuel: Staff has added a new section that allows fleets that convert diesel vehicles to alternative fueled vehicles to count such conversions toward their retrofit requirements (section 2449.2(a)(2)(A)1.c.). Staff added the credit because such conversions help drive diesel PM emissions to zero.

Exemptions: Staff has further clarified the regulation to indicate that the exemption for vehicles less than 5 years old from retrofit requirements is based on date of manufacture, not date of first sale.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added to the rulemaking record the following documents which are technical evaluations of the proposed modifications (Attachments 3 and 4):

- Attachment 3: Explanation of 3-yr targets loss of health benefits slide from July 26 hearing (Analysis of Alternatives discussion paper)
- Attachment 4: Tier 0 Retirement Credit Write-up

By this notice, the modified regulation and additional documents and information are being made available for public comment prior to the final action by the Board's EO. All of the documents referenced above are available for public

inspection at ARB's Internet website at the following address:
<http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>, or by contacting Amy Whiting, Regulations Coordinator at (916) 322-6533, 1001 "I" Street, 23rd floor, Sacramento, California 95814.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the EO to adopt section 2449 title 13, CCR, as modified, after making the modified regulatory language available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the EO shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

Written comments on the modifications approved by the Board must be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

In order to be considered by the EO, comments must be directed to the ARB in one of the three forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulation and other information made available by the notice shall be considered by the EO.

Attachments (4)