State of California
AIR RESOURCES BOARD

Resolution 08-43

December 12, 2008

Agenda Item No.: 08-11-3

General Findings

WHEREAS, section 39002 of the Health and Safety Code provides that the control of air pollution from vehicular sources, except as otherwise provided in Division 26 of the Health and Safety Code, shall be the responsibility of the Air Resources Board (ARB or Board);

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Board to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, section 41511 of the Health and Safety Code provides that for the purpose of carrying out its duties, ARB may adopt rules and regulations to require the owner or the operator of any pollution emission source to take such action as ARB may determine to be reasonable for the determination of the amount of emissions from such source;

WHEREAS, under section 39650 of the Health and Safety Code, the Legislature finds and declares that it is the public policy of the State that emissions of toxic air contaminants should be controlled to levels that prevent harm to the public health;

WHEREAS, pursuant to section 39662(b) of the Health and Safety Code, on August 27, 1998, the Board identified particulate matter (PM) emissions from diesel fueled engines (diesel PM) as a toxic air contaminant pursuant to article 3 (commencing with section 39650), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, pursuant to section 39669.5(a) of the Health and Safety Code, the Office of Environmental Health Hazard Assessment has listed diesel PM and other compounds

associated with diesel exhaust as possibly causing infants and children to be especially susceptible to illness;

WHEREAS, in identifying diesel PM matter as a toxic air contaminant, the Board determined, pursuant to section 39662(c) of the Health and Safety Code and Cal. Code Regs., title 17, section 93000, that there is not sufficient scientific evidence to support identification of a threshold level below which no significant adverse health effects are anticipated ;

WHEREAS, pursuant to section 39665 of the Health and Safety Code, ARB staff prepared a comprehensive risk reduction plan (Diesel Risk Reduction Plan) to significantly reduce PM emissions from diesel-fueled engines and vehicles, which the Board approved on September 28, 2000;

WHEREAS, sections 39658, 39665, 39666, and 39667 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCM) for substances identified as toxic air contaminants in accordance with specified criteria;

WHEREAS, in fulfilling the requirements of the aforementioned sections set forth in the paragraph immediately above, and specifically section 39667 of the Health and Safety Code, the Board is required to consider adoption of an ATCM revising emission standards for vehicular sources to achieve the maximum possible reduction in public exposure based on its prior determination not to specify a threshold exposure level for diesel PM under section 39662 of the Health and Safety Code;

WHEREAS, an ATCM for a vehicular source, developed pursuant to section 39667 of the Health and Safety Code, is required to be based on application or utilization of the best available control technologies (BACT) or more effective control methods, unless the Board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, sections 39674-39675, 42400-42400.2, 42400.3.5, 42402, 42402.2, 42402.4, 42410, 43016, 43017, and 43023 of the Health and Safety Code authorize the Board to request that state and local prosecutors seek criminal prosecution, civil and administrative penalties, and injunctive relief for violations of adopted ARB regulations and ATCMs;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emissions of air pollutants, including oxides of nitrogen (NOx) and PM, from motor vehicles are the primary cause of air pollution in many parts of the State; also, the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, vehicle emission standards apply to new and used motor vehicles equipped with motor vehicle pollution control devices;

WHEREAS, section 43013(a) of the Health and Safety Code authorizes the Board to adopt motor vehicle emission and in-use performance standards, which it finds to be necessary, cost-effective, and technologically feasible;

WHEREAS, section 43013(b) of the Health and Safety Code authorizes ARB, consistent with 43013(a), to adopt emission standards and regulations for light-, medium-, and heavy-duty motor vehicles;

WHEREAS, in section 43013(h) of the Health and Safety Code, the Legislature announced that it is its intent that the Board act as expeditiously as is feasible to reduce NOx emissions from diesel vehicles that significantly contribute to the State's air pollution problems.

WHEREAS, section 43018 of the Health and Safety Code further directs the Board to endeavor to achieve the maximum degree of emission reductions possible from vehicular and other mobile sources to accomplish the attainment of State ambient air quality standards by the earliest practicable date and to adopt standards and regulations that will result in the most cost-effective combination of control measures on all classes of motor vehicles;

WHEREAS, under the federal Clean Air Act (CAA), the United States Environmental Protection Agency (U.S. EPA) has established national ambient air quality standards (NAAQS) for pollutants considered harmful to public health, including fine particulate matter less than 2.5 microns in diameter (PM2.5) and ozone, and states that exceed the NAAQS are required by federal law to develop State Implementation Plans (SIP) describing how they will attain the standards by certain deadlines;

WHEREAS pursuant to the Legislature's directives under Health and Safety Code section 39606, the Board has adopted state ambient air quality standards (state ambient standards) for PM and NOx;

WHEREAS, many areas of California, including the South Coast and San Joaquin Valley air basins, are designated non-attainment for both the state ambient standards and NAAQS for ozone, for which NOx is a precursor, and both the South Coast and San Joaquin Valley Air Basins are designated non-attainment for both the state and NAAQS for PM2.5, to which NOx and diesel PM are significant contributors;

WHEREAS, the federal CAA requires the South Coast and San Joaquin Valley air basins to attain the PM2.5 NAAQS by 2015 and U.S. EPA requires that all necessary emission reductions be achieved by 2014 and the same air basins, having the most severe ozone concentrations are expected to have until 2023 to attain the federal ozone standard;

WHEREAS, on October 13, 2007, the Governor signed Senate Bill (SB) 1028 (Stats. 2007, Ch, sections 1-3) in which the Legislature found, among other things, that a number of areas within the state have not attained NAAQS for ozone and PM2.5; that

serious public health impacts, including thousands of premature deaths per year, occur in the state as a result of ozone and PM2.5 levels exceeding the NAAQS, and that in order to ensure that all areas in the state attain the NAAQS as expeditiously as practicable, it is necessary to require the Board to adopt rules and regulations that are sufficient, in conjunction with other applicable measures, to achieve and maintain the NAAQS by the applicable federal deadlines;

WHEREAS, section 2 of SB 1028, codified at Health and Safety code section 39602.5, directs the Board to adopt rules and regulations pursuant to Health and Safety Code section 43013 that, in conjunction with other measures adopted by the Board, the districts, and the U.S. EPA, will achieve NAAQS in all areas of the state by the applicable attainment date, and to maintain these standards thereafter; that, if necessary to carry out the above directives, the Board shall adopt and enforce rules and regulations that anticipate the development of new technologies or the improvement of existing technologies; and that the rules and regulations shall require standards that the Board finds and determines can likely be achieved by the compliance date set forth in the adopted rules and regulations;

WHEREAS, section 38500 et seq. of the Health and Safety Code enacted by the Global Warming Solutions Act of 2006 (Assembly Bill 32), requires the Board to adopt regulations and other requirements that would reduce by 2020 statewide greenhouse gas emissions to the equivalent of 1990 levels;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Cal. Code Regs., 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;

Findings Specific to Adoption of Proposed Regulation to Reduce Emissions from In-Use On-Road Diesel Vehicles

WHEREAS, in September 2007, the Board adopted a SIP committing the State to develop measures to achieve emission reductions from sources under State regulatory authority, with the largest share of these emission reductions expected from trucks;

WHEREAS, the Board, pursuant to authority granted under Health and Safety Code sections 43013 and 43101, and U.S. EPA, pursuant to its authority granted under section 202(a), have adopted more stringent emission standards for new diesel engines used in heavy-duty vehicles; these standards were first introduced for sale commencing with the 2007 model-year and will be phased in through the 2010 model-year;

WHEREAS, the Board has established a program to verify diesel emission control strategies (DECS) in Cal. Code Regs., title 13, section 2700 through 2710, and has to date verified strategies that will achieve diesel PM emission reductions of at least 85 percent;

WHEREAS, in-use on-road heavy-duty diesel vehicles operating in the state are among the largest contributors to PM2.5 and ozone forming emissions;

WHEREAS, ARB staff has determined that, under normal replacement cycles, current U.S. EPA and ARB new engine emission standards do not sufficiently reduce emissions of diesel PM and other criteria pollutants and precursors from heavy-duty diesel vehicle engines certified to pre-2007 California and federal emission standards in the time frame required for compliance with NAAQS for ozone and PM2.5;

WHEREAS, Health and Safety Code sections 43600 and 43701(b), when read together with full legislative scheme of Division 26 of the Health and Safety Code, directs ARB to adopt emission standards requiring the use of emission control devices on in-use heavy-duty diesel vehicles;

WHEREAS, ARB staff met and worked with affected private industry, federal agencies, school transportation providers including representatives of school districts, and the public in developing the proposed regulation, held numerous meetings with individual affected stakeholders and industry stakeholder groups, 54 public workshops in 12 different cities across the state, and sent out nearly 300,000 mailings directly to owners of California-registered diesel vehicles, and sent informational flyers to most truck dealers and truck repair facilities in California and to truck stops in the Western United States;

WHEREAS, with the information and comments received from such meetings, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for In-Use On-Road Diesel Vehicles," (ISOR) and an associated technical support document, entitled "Technical Support Document – Proposed Regulation for In-Use On-Road Diesel Vehicles,(TSD)" both released October 24, 2008; these reports along with the report "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles," adopted by the Board on September 28, 2000, constitute the reports required under Health and Safety Code section 39665;

WHEREAS, the ISOR and TSD identified and explained the need and appropriate degree of regulation of diesel PM and NOx emissions from in-use on-road diesel vehicles and the feasibility of regulating emission from such vehicles;

WHEREAS, the ISOR and TSD discussed, to the extent data could reasonably be made available, the factors specified in Health and Safety Code sections 39665(b), 43013, and 43018, including, but not limited to estimates of emissions, exposure, potential cancer risk and non-cancer health effects associated with the operation of in-use on-road diesel vehicles subject to the proposed regulation, technically feasible control options, potential environmental impacts, cost of compliance for all owners and/or operators of in-use on-road diesel vehicles, and cost impacts for ARB implementation of the proposed regulation;

WHEREAS the ISOR and TSD also discussed ARB staff's evaluation of the potential risk of exposure to directly emitted diesel PM in the exhaust of heavy-duty trucks in a localized urban area using U.S.EPA-approved and ARB-recommended air dispersion models, and these evaluations indicate that the overall average potential ambient cancer risk within the localized urban area in the year 2003 is about 375 in a million;

WHEREAS, the ISOR and TSD further discussed the results of ARB staff's evaluations of the non-cancer health effects of exposure to primary and secondary PM emissions from the vehicles subject to the proposed regulation, and these evaluations indicate that in the year 2008, approximately 4,500 premature deaths were associated with the estimated baseline emissions;

WHEREAS, the ISOR and TSD present staff's proposal that the Board adopt the proposed Regulation for In-Use On-Road Diesel Vehicles, Cal. Code Regs., title 13, section 2025, as set forth in Attachment A to both the ISOR and TSD;

WHEREAS, the Legislature has provided funds to ARB and local air pollution control and air quality management districts to provide over one billion dollars in incentive grants and low-interest loans available to fleets, in particular small fleets, to assist with the impacts of the proposed regulation.

WHEREAS, Attachment A hereto contains this proposed Regulation for In-Use On-Road Diesel Vehicles, Cal. Code Regs., title 13, section 2025, and Attachment C contains staff's suggested modifications to the initially proposed regulation, based on staff's evaluations and on comments received since release of the ISOR and TSD;

WHEREAS, the significant elements of the proposed regulation are;

A requirement that owners of in-use on-road diesel vehicles over 14,000 pounds gross vehicle weight rating (GVWR) and shuttle busses of any GVWR that are not personal use motor homes, emergency vehicles, or tactical military vehicles reduce PM and NOx emissions from their fleet by upgrading the vehicles to meet BACT standards for PM and NOx in which:

The BACT standard for PM is an engine equipped with the highest level verified DECS for PM or an engine originally equipped with a diesel particulate filter by the engine manufacturer, and

The BACT standard for NOx is an on-road engine newly manufactured in 2010 or later or a 2010 emissions-equivalent engine as defined in the proposed regulation or a Tier 4 final engine;

Three options for complying with the emissions performance requirements of the proposed regulation are provided:

A prescribed BACT schedule that would determine each year the number of verified DECS that a fleet owner must install and the number of vehicles based on the vehicle's engine model-year that a fleet owner must replace;
A BACT percent limit option that would set for each year the minimum number of verified DECS that a fleet owner must install and the minimum number of engines required to meet the 2010 engine requirements that a fleet owner must replace; and

A fleet averaging option whereby a fleet would use PM and NOx emission factors established by the proposed regulation to calculate the average emissions of the fleet and demonstrate, by the applicable compliance date each year, that the fleet met the PM and NOx fleet average emission rate targets set by the proposed regulation, which would decline over time, requiring fleets to reduce their emissions further as time goes on;

The above compliance options require the fleet owner install the highest level PM verified DECS on certain engine model-years during the first two years of the proposed regulation, starting January 1, 2011; then fleet owners must reduce both PM and NOx emissions from their fleet by accelerating engine or vehicle replacement between January 1, 2013 and the end of 2022, so that by January 1, 2023, all engines would be the cleanest available – that is, having a 2010 or later model-year engine or retrofitted to achieve equivalent emission reductions;

An optional requirement for fleets with three or fewer vehicles that would exempt such fleets from all clean-up requirements through 2012, after which they must meet the following requirements:

For a one-vehicle fleet, the vehicle must be equipped by January 1, 2013 with a 2004 model-year or newer engine having the highest level verified PM DECS, and by January 1, 2018, be upgraded to meet the proposed PM and NOx performance requirements of the proposed regulation;

For a fleet consisting of two vehicles, one vehicle must meet the above requirements for a one-vehicle fleet and the second vehicle must be upgraded, starting January 1, 2014, to meet the proposed PM and NOx performance requirements of the proposed regulation;

For a fleet consisting of three vehicles, one vehicle must meet the above requirement for a one-vehicle fleet and then the fleet could elect to either upgrade its two remaining vehicles, starting January 1, 2014, to meet the proposed PM and NOx performance requirements of the proposed regulation, or have one of the remaining vehicles meet the 2010 model year engine emissions requirements by January 1, 2014, and the third vehicle meet the PM and NOx performance requirements by January 1, 2016.

Requirements for school buses include:

Replacement by January 1, 2012, of school buses manufactured before April 1, 1977;

Retrofit between January 1, 2011, and January 1, 2014, according to the schedule specified for school buses in the proposed regulation, all diesel-fueled school buses with the highest level VDECS to meet the PM BACT standard; if a school bus engine cannot be retrofitted as required, then the engine must be replaced by January 1, 2018, with an engine that can meet the retrofit requirements;

A provision that considers school buses in compliance with the proposed regulation if they were retrofitted on or before December 31, 2005, with a level 2 verified DECS, which was the highest level verified DECS available at the time of installation;

A requirement that drayage trucks be equipped with the highest level verified DECS for PM pursuant to the following schedule: vehicles with 2004 model-year engines by January 1, 2012, and vehicles with 2005-2006 model-year engines by January 1, 2013;

A requirement that all drayage truck and vehicles owned by utilities comply with the requirements of the proposed BACT schedule for the proposed regulation starting January 1, 2021;

Special provisions for agricultural vehicles that delay compliance with the PM and NOx performance requirements that include:

Specialty agricultural vehicles as defined in the proposed regulation are exempt from the performance requirements of the regulation until January 1, 2023, regardless of annual miles travelled;

Agricultural vehicles that operate less than 10,000 miles annually are exempt from the performance requirements of the regulation until January 1, 2023;

Agricultural vehicles with 1995 and older model-year engines that operate less than 15,000 miles annually, 1996 through 2005 model-year engines that operate less than 20,000 miles annually, and 2006 and newer model-year engines that operate less than 25,000 miles annually are exempt from the performance requirements of the regulation until January 1, 2017;

Agricultural fleets must establish by January 1, 2009, the number of vehicles in each low-mileage category, which cannot thereafter be increased;

A limit on the total number of specialty agricultural vehicles that may operate in the San Joaquin Valley Air Basin (1,100), and statewide (2,200);

A requirement that all heavy-duty diesel agricultural vehicles meet the 2010 model-year engine emissions requirements by 2023 regardless of annual mileage driven;

A requirement that auxiliary engines on dual engine sweepers meet the PM performance requirements of the proposed regulation on the same schedule as that of the propulsion engine of the dual-engine sweeper, and that for uncertified Tier 0 off-road auxiliary engines, the maximum allowable hours of operation cannot exceed 250 hours per year from January 1, 2010, through January 1, 2014, and 100 hours per year thereafter;

The following vehicles are exempt from the NOx performance requirements until January 1, 2021:

Vehicles that operate exclusively in counties that the proposed regulation has identified as in attainment with of the NAAQS for ozone and PM2.5 and that do not contribute to downwind exceedances of the state ozone standard;

All vehicles with a GVWR less than 33,000 pounds, other than vehicles using power take-off (PTO) to work while stationary, that are operated fewer than 5,000 miles annually; vehicles using PTO to work while stationary are required to operate fewer than 5000 miles annually and less than 175 hours per year; and

Truck tractors and vehicles with a GVWR greater than 33,000 pounds, other than vehicles using PTO to work while stationary, that are operated fewer than 7,500 miles annually; vehicles using PTO to work while stationary are required to operate fewer than 7500 miles annually and less than 250 hours per year;

Cab-over engine truck tractors that exclusively pull 57 foot trailers are exempt from the NOx performance requirements until January 1, 2018, if the engine of the vehicle is at least a 2004 model-year equivalent engine and meets the PM performance requirements;

Vehicles operated in California for fewer than 1,000 miles and less than 100 hours (low-use vehicles) during the preceding 12-month period from January 1 to the end of December are exempt from both the PM and NOx cleanup requirements;

An early action provision that would exempt any vehicle in a fleet equipped with the highest level verified PM DECS by January 1, 2010, from the NOx performance requirements until January 1, 2014;

A provision that would allow a fleet to receive a credit by double counting hybrid vehicles with a fuel economy that is at least 20 percent better than an equivalent diesel vehicle until January 1, 2018, when determining compliance with the BACT percent limits and fleet averaging options of the proposed regulation;

A credit for the use of vehicles equipped with alternative fuel or heavy-duty pilot ignition engines that would allow a fleet to use the NOx emission factor for the certified engine model and zero for the PM emission factor when determining compliance with the BACT percent limits and fleet averaging options of the proposed regulation;

Compliance extensions if the retrofits, repowers, or new engines needed for compliance with the regulation are not available because of manufacturer delays;

WHEREAS, in accordance with the authority set forth above, staff evaluated various control options that do not achieve the same level of PM or NOx reductions, or are less cost-effective than the proposed regulation, including performance requirements that would:

Require fleets to use PM verified DECS on all vehicles under a specified phase-in schedule, until all vehicles in the fleet have been retrofitted;

Require the upgrading of existing engines in two phases according to a schedule that requires the oldest engines to be upgraded first, with engines required in the first phase to meet a 2004 model-year or newer NOx emissions standard and be equipped with the highest level verified DECS by the end of 2013; in the second phase, all engines would have to meet a 2007 model-year emissions standard; in addition, under an alternative compliance option, owners of vehicles registered exclusively in California and not operating outside the state would have the option of meeting increasingly stringent NOx and PM fleet average emission targets;

Require fleet to meet more stringent performance standards by having vehicles upgrade to an engine that is equivalent to a 2007 model-year engine by the end of 2013, and to one equivalent to a 2010 model-year engine by the end of 2021; and require that all vehicles that operate in California meet the fleet averaging option;

Provide more generous mileage exemptions, more liberal early compliance incentives, a specialty vehicles provision beyond that which has been provided for agricultural vehicles, a less aggressive compliance schedule for businesses subject to two or more ARB regulations, and more flexible provisions if diesel emission control technology is not available;

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, based on information in the rulemaking record, including the ISOR and TSD, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed adoption of Cal. Code Regs., title 13, section 2025 that:

In-use on-road diesel vehicles that operate in the State – whether based in California or not – are significant contributors of diesel PM and NOx emissions, which California must reduce to attain the ozone and PM2.5 NAAQS and to reduce the health risks associated with such pollutants;

The regulation approved herein would achieve the necessary emission reductions to achieve the NAAQS for ozone and PM2.5, while providing fleet owners with reasonable compliance flexibility;

In 2014, the proposed regulation will provide emissions reductions of approximately 12.8 tons per day of PM and 124 tons per day of NOx, and by 2023, emission reductions of approximately 3.5 tons per day of PM and 98 tons per day of NOx;

The proposed regulation would meet or exceed the combined NOx and PM2.5 SIP fleet rule targets in both the South Coast and San Joaquin Valley air basins for all years; in 2014, in the South Coast Air Basin, the SIP target for PM2.5 would be met by achieving slightly more PM2.5 reductions and slightly less NOx than expected;

The proposed regulation would also help achieve the SIP reduction goals in 2020 for attainment in regions downwind of the South Coast and the San Joaquin Valley air basins;

The regulation would provide a small climate change benefit primarily due to the expected improvements in fuel economy associated with the modernization of the fleet to comply with the regulation that would offset the potential climate change impacts of the fuel economy penalty of the widespread installation of diesel particulate filters in the fleet;

In accordance with Health and Safety Code section 39667, and based upon the Board's determinations under Health and Safety Code section 39662, the regulation approved herein has been designed to achieve the maximum possible reduction in public exposure to toxic air contaminants utilizing BACT; by 2020, diesel PM emissions from existing on road diesel vehicles would be reduced by 80 percent from the 2000 baseline;

The regulation approved herein would significantly reduce diesel PM and NOx emissions and associated cancer, premature mortality, and other adverse health effects statewide;

The emission reductions from the regulation are expected to prevent approximately 9,400 premature deaths over the course of the regulation, and would result in about 150,000 fewer asthma-related cases and 950,000 fewer lost work days.

WHEREAS, the Board further finds that:

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

The economic impacts of the proposed regulation approved herein have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR and TSD and the benefits of the regulation to public health and the environment justify the costs of compliance, and enforcement;

The emission reductions from the proposed regulation would be expected to provide a benefit of $48 to $68 billion in avoided premature death and health costs between 2010 and 2025;

The overall cost effectiveness associated with compliance with the proposed regulation would be approximately $46 per pound of diesel PM reduced and $1.76 per pound of NOx reduced;

The proposed regulation would create costs for school districts, and may impose a mandate that would not be reimbursable by the state;

Although the Legislature has provided over significant funds for incentive grants and low-interest loans to be made available for fleets, in particular small fleets, to assist with the impacts of the proposed regulation, it is not sufficient to cover the full estimated costs of the proposed regulation;

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 regulation is proposed, or would be as effective and less burdensome to the affected private businesses and public agencies than the proposed regulation;

WHEREAS, pursuant to Health and Safety Code section 39667, the Board further finds that the proposed in-use emissions standards approved herein are based on utilization of BACT identified within the time scheduled for compliance;

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

With respect to the requirements of CEQA, the proposed regulation will not have a significant adverse effect on the environment, but will result in the reduction of diesel PM and NOx; and

Having determined that the proposed regulation will not adversely affect the environment, but rather provide environmental benefits that are achieved both statewide and locally, the proposed regulation should not adversely impact any community in the State, including low-income or minority communities; and

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, section 2020, "Purpose and Definitions of Diesel Particulate Matter Control Measures"

WHEREAS, the Board, pursuant to sections 39002, 39003, 39650-39675, 43000, 43013, 43018, 43101, 43102, 43104, 43105, and 43700 of the Health and Safety Code, adopted Cal. Code Regs., title 13, section 2020 on May 17, 2004, establishing definitions of terminology used in diesel particulate control measures ;

WHEREAS, the staff has proposed an amendment to the definition of "municipality" to exclude federal agencies and tribal reservations and rancherias, and consequently fleets owned by these entities;

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, based on information in the rulemaking record, including the ISOR, the Board finds regarding the proposed amendment to Cal. Code Regs., title 13, section 2020 that:

The amendment approved herein is necessary since fleets owned by federal agencies and tribal reservations and rancherias are not required to comply with the control measure for public agency or utility on-road heavy-duty diesel-fueled vehicles which applies to municipalities, but would be subject to the proposed regulation approved herein for in-use heavy-duty diesel vehicles;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, sections 2022-2022.1, "Diesel Particulate Matter Control Measure for Public or Utility On-Road Heavy-Duty Diesel-Fueled Vehicles"

WHEREAS, the Board, pursuant to sections 39002, 39003, 39600, 396001, 39655-39662, 39664, 39665, 39667, 39669, 39674, 39675, 43000, 43013, 43018, 43101, 43102, 43104, 43105, and 43700 of the Health and Safety Code adopted Cal. Code Regs., title 13, sections 2022 and 2022.1, on October 4, 2006, establishing a diesel

particulate matter control measure for public or utility on-road heavy-duty diesel-fueled vehicles (control measure for public or utility in-use vehicles);

WHEREAS, the control measure for public or utility in-use vehicles currently is applicable to on-road heavy-duty diesel-fueled vehicles with a 1960 to 2006 model-year medium heavy-duty or heavy heavy-duty engine having a manufacturer's GVWR greater than 14,000 pounds;

WHEREAS, the control measure for public or utility in-use vehicles currently includes the following elements:

A requirement that BACT be applied according to a specified implementation schedule that sets compliance deadlines and the percentage of the fleet that must be equipped with BACT by each deadline;

A provision wherein a public agency or utility can receive credit towards their BACT requirement by retiring a vehicle, and one means of retiring a vehicle is by selling it out-of-state;

WHEREAS, the staff has proposed amendments to the control measure for public or utility in-use vehicles that would:

Expand the scope and applicability of the regulation to include light heavy-duty engines and 2007 model-year and newer engines certified at PM levels greater than the 2007 model-year standard of 0.01 gram per brake horsepower hour (g/bhp-hr) for vehicles with a GVWR greater than 14,000 pounds;

Amend the BACT implementation schedule to add a compliance deadline for 2007 and newer engine model years certified above the 0.01 g/bhp-hr standard; Allow public and utility fleets to apply for a one-year extension of the intermediate 2009 compliance deadline for light heavy-duty engines;

Require that a municipality or utility submit a request for a VIN Stop - a Department of Motor Vehicles registration hold based on a vehicle identification numbers that prevents a vehicle from being re-registered in California after it is retired, and this request must be in place prior to selling the vehicle;

Add language to section 2022.1(h) that would establish contract requirements for out of state sales through a third party vehicle seller;

Modify the definition of "retirement" in section 2022(b)(8) to grant credit for the sale within California of dual-engine street sweepers with 2004 – 2006 model-year propulsion engines, provided that, in the case of private-sector buyers, such buyers comply with the regulation for in-use on-road diesel vehicles proposed in this rulemaking;

Provide an optional extension for privately-owned utilities that would provide a two-year delay of the intermediate and final BACT PM deadlines, accompanied by requirements that, by December 31, 2013, thirty percent of a utility's vehicles must meet the 2010 engine emission standards, and an additional twenty percent meet the 2007 or newer engine emission standards;

Make minor changes to the control measure for public and utility in-use vehicles that add new definitions for "lease," "operate," "sold outside the State of California," "third party," and "VIN Stop," which support the modifications being proposed, and modify the definition of "total fleet" for consistency with the revised scope of the regulation;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments to Cal. Code Regs., title 13, sections 2022 and 2022.1 that:

The expansion of the scope and applicability of the regulation is necessary to include the light heavy duty engines that were inadvertently omitted from the original scope of the regulation;

The expansion of the scope and applicability of the regulation to include 2007 model year and newer engines certified under Averaging Banking and Trading (ABT) provisions at PM levels greater than the 2007 model year standard of 0.01 g/bhp-hr is needed to be consistent with the original intent of the regulation to require upgrades of all engines that did not meet the PM BACT standard of 0.01 g/bhp-hr;

The optional extension for privately-owned utilities would harmonize the requirements for these utilities under the diesel particulate matter control measure for public or utility on-road heavy-duty diesel-fueled vehicles with the requirements that will apply to them under the regulation for in-use on-road diesel vehicles proposed herein, while providing early NOx emissions benefits and meeting the PM emissions reductions targets;
The amendment to establish a "VIN Stop" process to qualify a vehicle for retirement is necessary to ensure that a municipality or utility receives BACT credit for a vehicle sold out of state and that the emissions generated by these vehicles remain outside of California's air basins unless the retired vehicle is retrofit to meet the BACT requirements;

The contract language for out-of-state sales through third parties is needed to ensure that the seller informs buyers of the prohibitions against re-registering or operating retired vehicles in the State;

The amendment to the definition of retirement is necessary to improve the availability of used lower NOx-emitting dual engine sweepers to owners who would be subject to the regulation for heavy duty diesel vehicles proposed herein;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, section 2027, "Regulation To Control Emissions From In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at Ports and Intermodal Rail Yard Facilities"

WHEREAS, the Board, pursuant to sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, 43600 of the Health and Safety Code, adopted Cal. Code Regs., title 13, section 2027 on October 12, 2008, establishing a regulation to control emissions from in-use on-road diesel-fueled drayage trucks at ports and intermodal rail yard facilities (drayage truck regulation);

WHEREAS, staff has proposed amendments to the drayage truck regulation that would:

Amend the Phase 1 compliance requirements of section 2027(d)(1) to add the following requirements for drayage trucks with 2004 – 2006 model-year engines:

By January 1, 2012, all drayage trucks with 2004 model-year engines must be equipped with the highest level verified DECS for PM;

By January 1, 2013, all drayage trucks with 2005 - 2006 model-year engines must be equipped with the highest level verified DECS for PM.

Amend section 2027(b) to add diesel-fueled and dual-fueled trucks as being covered by the regulation;

Make minor changes to the definitions of section 2027(c), including the addition of definitions for "Alternative Diesel Fuel", "Compression Ignition Engine", and "Dual-Fueled Engine", and amend the definition of "Diesel-Fueled" to limit the definition to engines fueled by diesel fuel, CARB diesel fuel, and alternative diesel fuel;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments to Cal. Code Regs., title 13, section 2027 that:

The changes to the Phase 1 requirements would align the drayage truck regulation with the regulation for in-use heavy-duty diesel vehicles proposed herein;

This alignment with the proposed regulation for in-use heavy-duty diesel vehicles would help meet the State's PM emission reduction commitments and would ensure that uncontrolled trucks won't cycle into the drayage fleet to avoid compliance with the requirements of the proposed in-use on-road diesel vehicle regulation requirements; and

The proposed changes to the definitions and the applicability of the drayage truck regulation are necessary for clarification of the original intent of the regulation and for consistency with the regulation for in-use heavy-duty diesel vehicles proposed herein;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, sections 2449, 2449.1, 2449.2, and 2449.3, "In-Use Off-Road Diesel-Fueled Fleets"

WHEREAS, the Board, pursuant to sections 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39658, 39659, 39665, 39667, 39674, 39675, 40000,41500, 42400,42400.1, 42400.2, 42400.3.5, 42402, 42402.1, 42402.2, 42402.4, 42403, 43000, 43000.5, 43013, 43016, and 43018 of the Health Safety Code, adopted Cal. Code Regs., title 13, sections 2449, 2449.1, 2449.2, and 2449.3 on April 4, 2008, establishing requirements for in-use off-road diesel-fueled fleets (in-use off-road regulation);

WHEREAS, two-engine cranes are currently subject to multiple regulations and requirements with varying compliance dates: the secondary engine of two-engine cranes are subject to the requirements of the portable engine registration program and ATCM for portable engines, the drive engines of two-engine cranes that operate exclusively off-road are subject to the regulation for in-use off-road regulation, the drive engines of two-engine cranes that operate on-road would be potentially subject to the proposed regulation for in-use heavy-duty diesel vehicle regulation, and the drive engine on two-engine cranes that operate at ports or intermodal rail yards are subject to the requirements of the mobile cargo handling equipment at ports and intermodal rail yards regulation (mobile cargo handling regulation);

WHEREAS, the ARB staff has proposed amendments to the general requirements (Cal. Code Regs., title 13, section 2449) of the in-use off-road regulation that would:

Amend the applicability section to include both the secondary engine and the drive engine of all two-engine cranes operating in California, regardless of whether the drive engine is certified as an on-road or off-road engine;

Add new language that requires the replacement engine in a workover rig or other on-road vehicle subject to the in-use off-road diesel vehicle regulation to be an on-road certified engine of the same model year or newer as the engine being replaced if the vehicle will be registered and driven on public roadways;

Amend the special provisions for low-use vehicles to clarify that they are required to comply with the regulation's idling limits and the requirements for adding vehicles to the fleet;

Make minor modifications to the regulation, including adding a definition for "two-engine crane", clarifying the rounding provisions for two-engine cranes, and adding requirements for reporting of the vehicle identification number and, if applicable, the license plate number for workover rigs and two-engine cranes;

WHEREAS, the ARB staff has proposed an amendment to the fleet applicability requirements of the Surplus Off-Road Opt-In for NOx (SOON) Program of the in-use off-road regulation (Cal. Code Regs., title 13, section 2449.3) that would exclude the horsepower in two-engine cranes and the horsepower from single engine cranes formerly subject to the Cargo Handling Equipment Regulation when determining a fleet's maximum horsepower;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments to Cal. Code Regs., title 13, sections 2449 and 2449.3 that:

The proposed change to the applicability section of the in-use off-road regulation to include all two-engine cranes is necessary to achieve emissions reductions from both engines in a two-engine crane without creating unnecessary overlapping requirements or adding unnecessary costs for owners of such vehicles;

The clarification of the repower requirements for workover rigs and other on-road vehicles is needed to ensure that vehicles with off-road engines do not drive on public roadways, except as already allowed in the Vehicle Code;

Since it was not the intent to exempt low-use vehicles from the idling requirements, the proposed modification of the provisions for low-use vehicles is necessary to be consistent with the original intent of the provision; and

The other minor amendments to the regulation are necessary to clarify and improve enforcement of the in-use off-road regulation.

<u>Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, section 2479, "Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards"</u>

WHEREAS, the Board, pursuant to sections 39600, 39601, 39618, 39658, 39659, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, 42400.6, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 42410, 43013, and 43018 of the Health and

Safety Code, adopted Cal. Code Regs., title 13, section 2479 on October 17, 2006, establishing the mobile cargo handling regulation;

WHEREAS many owners of sweepers and mobile cranes subject to regulation for mobile cargo handling equipment only provide service to the ports on a limited basis and under the current mobile cargo handling regulation would have to segregate their vehicles into two separate groups – those required to comply with the mobile cargo handling regulation and those that would be required to comply with either the in-use off-road regulation or the in-use on-road regulation proposed herein;

WHEREAS, the ARB staff has proposed amendments to the regulation for mobile cargo handling equipment at ports and intermodal rail yards that include an exemption of sweepers and mobile cranes (both single-engine and two-engine) from the regulation, and modifications of definitions of mobile crane, cargo handling equipment, bulk cargo handling equipment, and sweepers to support these exemptions;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments to Cal. Code Regs., title 13, section 2479 that:

> The proposed amendments to mobile cargo handling regulation would provide consistency for owners and operators providing crane or sweeping service to ports and intermodal rail yards such that they would only be required to comply with one regulation, and this proposed amendment in combination with the changes proposed to the in-use off-road regulation to address cranes would also address other issues such as safety certification, and would provide more compliance flexibility;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, sections 2450-2465, "Portable Equipment Registration Program"

WHEREAS, the Board, pursuant to sections 39600, 39601, 41752, 41753, 41754, 41755, 43013(b), and 43018 of the Health and Safety Code, initially adopted Cal. Code Regs., title 13, sections 2450-2465 on July 25, 1997, establishing the portable equipment registration program;

WHEREAS, ARB staff has proposed amendments to the portable equipment registration program that would:

> Amend the engine requirements of section 2456 to establish new performance requirements for registered secondary diesel engines on two-engine cranes and

dual-engine sweepers not subject to the control measure for public or utility in-use vehicles as follows:

Exempt the registered secondary engines from all of the emission requirements of the portable equipment registration program except the limits on opacity specified in section 2456(f)(5);

Require that the registered secondary engine on a two-engine crane comply with the applicable requirements of Cal. Code Regs., title 13, section 2449, of the in-use off-road regulation;

Require that the registered secondary engine on a dual-engine street sweeper comply with the applicable requirements of Cal. Code Regs., title 13, section 2025, of the in-use on-road diesel vehicles regulation proposed herein;

Modify the recordkeeping and reporting requirements for registered secondary diesel engines on two-engine cranes and dual-engine sweepers not subject to the control measure for public or utility in-use vehicles as follows:

Exempt the registered secondary engine of a crane or street sweeper from the recordkeeping and reporting requirements of the portable equipment registration program; and

Require that the registered secondary engine of a two-engine crane or dual-engine street sweeper comply respectively, with the applicable recordkeeping, reporting and other administrative requirements of the in-use off-road regulation and the in-use on-road diesel vehicle regulation proposed herein;

Add a definition of "street sweeper" that would cross-reference the definition of "dual-engine street sweeper" that would be added to the control measure for public or utility in-use vehicles as proposed herein, and a definition of "crane" that would cross-reference the definition of "two-engine crane" that would be added to the in-use off-road regulation as proposed herein;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments to Cal. Code Regs., title 13, sections 2450-2465, that:

The proposed amendments are necessary to harmonize the requirements to reduce emissions from both engines in two-engine cranes and dual-engine sweepers that would otherwise be subject to multiple regulations with overlapping requirements;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 17, section 93116 et seq., "Airborne Toxic Control Measure for Portable Diesel-Engines Rated at 50 Horsepower and Greater"

WHEREAS, the Board, pursuant to sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 43013 and 43018 of the Health and Safety Code, adopted Cal. Code Regs., title 17, section 93116 et seq., on December23, 2004, establishing an ATCM for portable diesel-engines rated at 50 horsepower and greater (portable engine ATCM);

WHEREAS, ARB staff has proposed amendments to the ATCM for portable engines that would:

Exclude the secondary engines on two-engine cranes and on dual-engine sweepers that are not already subject to the control measure for public or utility in-use vehicles from the requirements of the portable engine ATCM;

Require that the secondary engine on a two-engine crane comply with all applicable requirements of the in-use off-road regulation;

Require that the secondary engine on a dual-engine sweeper not subject to the control measure for public or utility in-use vehicles comply with all applicable requirements of the in-use on-road diesel vehicle regulation proposed herein;

Delete the diesel PM standards and fleet requirements for lattice boom cranes, so that these cranes, which fall within the definition of "two-engine cranes, would be subject to the in-use off-road regulation;

Add a definition for "street sweeper" that would cross-reference the definition of "dual-engine street sweeper" that would be added to the control measure for public or utility in-use vehicles as proposed herein, and a definition of "crane" that would cross-reference the definition of "two-engine crane" that would be added to the in-use off-road regulation as proposed herein;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments of Cal. Code Regs., title 17, section 93116 that::

The proposed amendments are necessary to harmonize the requirements to reduce emissions from both engines in two-engine cranes and dual-engine sweepers that would otherwise be subject to multiple regulations with overlapping requirements;

Findings Specific to Proposed Amendments to Cal. Code Regs., title 13, section 2485, "Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling"

WHEREAS, the Board, pursuant to sections 39600, 39601, 39614(b)(6)(A), 39658, 39667, 43000.5(d), 43013(b), 43013(h), 43018(c), Health and Safety Code; and *Western Oil & Gas Assn. v. Orange County air Pollution Control Dist.* (1975) 14 Cal.3d.411, adopted Cal. Code Regs., title 13, section 2485, establishing an ATCM to limit diesel-fueled commercial motor vehicle idling;

WHEREAS ARB staff has proposed amendments to the ATCM for commercial motor vehicle idling that would:

Exempt armored cars from the idling limits while providing services for which the vehicles were designed;

Exempt workover rigs from the idling limits while performing the work for which the vehicles were designed;

Add a definition for "armored car" by reference to the Vehicle Code, and a definition for "workover rig" by reference to the in-use off-road diesel vehicle regulation;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments of Cal. Code Regs., title 13, section that:

The proposed amendment for armored cars would allow idling of the engine for climate control and is essential to the health and safety of the guard onboard in an enclosed armored car;

The proposed amendment for workover rigs is necessary to allow a workover rig to carry out its specialized work while stationary;

Findings Specific to Proposed Amendments to Cal. Code Regs. title 13, section 1956.8, "Exhaust Emissions Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Engines and Vehicles"

WHEREAS, the Board, pursuant to sections 39500, 39600, 39601, 43013, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43107, and 43806, Health and Safety Code; and section 28114, Vehicle Code, adopted amendments to Cal. Code Regs.,

title 13, section 1956.8 on September 1, 2006 that added engine idling requirements to the exhaust emissions standards and test procedures for 1985 and subsequent model heavy-duty engines and vehicles (heavy-duty engine emission standards regulation);

WHEREAS ARB staff has proposed amendments to the heavy-duty engine emissions standards regulation that would add armored cars and workover rigs to the list of vehicles exempt from the engine idling requirements of the regulation;

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, based on information in the rulemaking record, including the ISOR, written comments, and testimony provided at the public hearing, the Board finds regarding the proposed amendments of Cal. Code Regs., title 13, section 1956.8 that:

> The proposed amendment of the exhaust standards is necessary for consistency with the amendment proposed to the Commercial Vehicle idling limit;

General Findings for Amendments to Above-Referenced Regulations

WHEREAS, the Board finds that the proposed amendments to Cal. Code Regs., title 13, sections 2020, 2022, 2022.1, 2027, 2449, 2449.3, 2451, 2452, 2453, 2455, 2456, 2458, 2461, 2479, 2485, and 1956.8 and Cal. Code Regs., title 17, sections 93116.1, 93116.2, 93116.3, and 93116.5 (proposed amendments) are necessary, cost-effective, and technologically feasible within the time provided for compliance;

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

> With respect to the requirements of CEQA, the proposed amendments will not have a significant adverse effect on the environment;
>
> Having determined that the proposed amendments will not adversely affect the environment, they should not adversely impact any community in the State, including low-income or minority communities;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of Cal. Code Regs., title 13, article 4, chapter 1, division 3, section 2025, as set forth in Attachment A hereto, with the modifications described in Attachment C hereto and the following: provisions for a courtesy inspection program, backdating the start date for the accrual of retirement vehicle credits as provided in section 2025(l)(3) to July 1, 2008, and delaying the compliance dates for the first vehicle of a small fleet by one year.

BE IT FURTHER RESOLVED that the Board hereby approves the adoption of the amendments to Cal. Code Regs., title 13, sections 2020, 2022, 2022.1, 2027, 2449,

2449.3, 2451, 2452, 2453, 2455, 2456, 2458, 2461, 2479, 2485, and 1956.8 and title 17, sections 93116.1, 93116.2, 93116.3, and 93116.5, as set forth in Attachment B hereto, with the modifications in Attachment D hereto and the following: conform the performance requirements for drayage trucks as set forth in sections 2027(d) and 2025(k) so that the two sections are consistent;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate into the approved regulations the modifications set forth in Attachments C and D hereto, and such other conforming modifications as may be appropriate, and to make the modified regulatory language, with the modifications clearly indicated, available for public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if the Executive Officer determines that this is warranted;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop user-friendly guidelines for implementation of and compliance with Cal. Code Regs. Section 2025 within six months of adoption of the regulation, to conduct outreach and education activities with municipalities and owners of public agency-operated and utility-operated heavy-duty diesel-fueled vehicles, and to make information available, on the Internet and through other forms of distribution, to affected fleets regarding the appropriateness of verified retrofit devices, including information on how often a verified device must undergo regeneration and the potential cost and operational benefits of electing to upgrade a vehicle to a newer model year engine or vehicle in lieu of retrofitting an older vehicle engine;

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to conduct workshops and report back to the Board by the end of 2009 on the status of implementation and to specifically monitor, evaluate and, where appropriate to make recommendations on how to address any adverse impacts regarding the following: the state of the economy and its impact on affected vehicle emissions, the availability of funding for affected vehicles and schoolbuses, the impact of the proposed regulation on the decisions of school districts to reduce or eliminate school transportation services as a result of the proposed regulation, and the localized impacts from the proposed agricultural vehicle provisions;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to report back in January 2009 and provide an update on the impacts of the PM performance standards for vehicles driven exclusively within the designated NOx attainment areas identified in the approved Truck and Bus Regulation;

BE IT FURTHER RESOLVED that the Board finds that because section 209(a) of the federal CAA does not preempt California from adopting emission standards for non-new on-road motor vehicles and that California is not required to request a waiver from the U.S. EPA pursuant to CAA section 209(b).

BE IT FURTHER RESOLVED that the Board finds that the amendments approved herein that affect in-use off-road engines are not preempted under section 209(e)(1) in that they do not apply to new off-road engines under 175 hp used in farm and construction vehicles or to new locomotives and locomotive engines.

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments approved herein to regulations that apply to in-use off-road engines will not cause California's off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards, do not undermine any previous protectiveness finding made by the Board, and are not inconsistent with CAA section 209; accordingly, the Board directs the Executive Officer to request that U.S. EPA confirm that the approved amendments fall within the scope of authorization requests presently pending before that agency.

I hereby certify that the above is a true and correct copy of Resolution 08-43, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

Resolution 08-43

ATTACHMENTS

December 11, 2008

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, and Greenhouse Gases from In-Use Heavy-Duty Diesel-Fueled Vehicles. (Cal. Code Regs., article 4, chapter 3, division 3, title 13, section 2025) as set forth in Appendix A to the Initial Statement of Reasons, released October 21, 2005.

Attachment B Proposed amendments to Cal. Code Regs., title 13, section 2020, "Purpose and Definitions of Diesel Particulate Matter Control Measures;" Proposed amendments to Cal. Code Regs., title 13, sections 2022 and 2022.1, "Diesel Particulate Control Measure for Municipality or Utility On-Road Heavy-Duty Diesel-Fueled Vehicles;" Proposed amendments to Cal. Code Regs., title 13, section 2027, "Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks;" Proposed amendments to Cal. Code Regs., title 13, sections 2449 and 2449.3, "Regulation for In-Use Off-Road Diesel-Fueled Fleets;" Proposed amendments to Cal. Code Regs., title 13, sections 2451, 2452, 2453, 2455, 2456, 2458, 2461, and 2462 of the "Statewide Portable Equipment Registration Program;" Proposed amendments to Cal. Code Regs., title 13, section 2479, "Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Railyards;" Proposed amendments to Cal. Code Regs., title 13, section 2485, "Airborne Toxic Control Measure to Limit Diesel Fueled Commercial Motor Vehicle Idling;" Proposed amendments to Cal. Code Regs., title 13, section 1956.8, "Exhaust Emissions Standards and Test Procedures – 1985 and Subsequent Model Heavy-Duty Engines and Vehicles;" and Proposed amendment to Cal. Code Regs., title 17, sections 93116.1, 93116.2 and 93116.3 of the "Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater."

Attachment C: Modifications to the Proposed Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, and Greenhouse Gases from In-Use Heavy-Duty Diesel-Fueled Vehicles, as Approved by the Board at the December 11, 2008 Hearing.

Attachment D: Modifications to the Proposed Amendments Set Forth in Attachment B, as Approved by the Board at the December 11, 2008 Hearing.