State of California
AIR RESOURCES BOARD

Resolution 09-50

July 23, 2009

Agenda Item No.: 09-7-7

WHEREAS, the Air Resources Board (ARB or Board) adopted the Regulation for In-Use Off-Road Diesel-Fueled Fleets (the regulation), California Code of Regulations (Cal. Code Regs.), title 13, section 2449 through 2449.3, pursuant to its authority and rationale set forth in Resolution 07-19, which is incorporated herein and attached hereto as Attachment A;

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 National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter 2.5 microns or less in size (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 United States Environmental Protection Agency (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, on February 20, 2009, the Governor signed Assembly Bill (AB) 8 2X (Chapter 6) in which the Legislature added Section 43018.2 to the Health and Safety Code, directing the State Board to amend sections 2449.1 and 2449.2 of title 13 of the Cal. Code Regs. as follows:

> Modify the regulation requirements to allow a fleet to achieve its cumulative turnover and retrofit requirements from 2011 through 2013 by completing 20 percent of its cumulative obligations in 2011, an additional 20 percent in 2012, and the remaining 60 percent in 2013; and

Modify the credit provisions for particulate matter (PM) and oxides of nitrogen (NOx) to reflect vehicle retirements that reduce total fleet horsepower (hp) between March 1, 2006, and March 1, 2010, and reduced fleet activity between July 1, 2007, and March 1, 2010.

WHEREAS, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and Implementation Update – Regulation for In-Use Off-Road Diesel Vehicles," released June 5, 2009 (ISOR) to implement the legislative directives of AB 8 2X;

WHEREAS, the ISOR identified and explained the need to amend the regulation beyond those provisions directed by the Legislature for the following reasons:

The legislatively directed amendments would provide fleets with credits beyond those provided in the existing regulation, and thereby allow fleets to perform fewer actions to reduce emissions, resulting in a potential overall increase in emissions compared to the emissions that would have otherwise occurred; in order to mitigate the loss in emission benefits due to the legislatively directed amendments, it is necessary to incentivize additional emissions reduction actions that would, among other things, encourage fleets to repower vehicles with cleaner engines and install verified diesel emission control strategies;

The regulation presently specifies that a vehicle may be exempted from the retrofit requirements of the regulation if the retrofit cannot be installed without violating the safety standards prescribed under title 8, Cal. Code Regs., by the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) and provides no further exemption for conflicts with any other federal or state safety agency safety requirements;

The regulation presently requires fleets to report purchases of affected vehicles within 30 days, but does not require fleets to report the sale of affected vehicles until the fleet's next annual report to ARB, which could create situations where the same vehicle is simultaneously listed in multiple fleets;

The provision allowing a fleet to delay compliance of a vehicle because of manufacturer production or delivery delays is unclear as to whether it also applies to installer caused delays;

The regulation currently provides that non-profit training centers that train students in the use of off-road vehicles are granted small fleet status regardless of their total horsepower; however, a similar provision does not exist for community college programs that run similar training programs; and
The regulation presently exempts private vehicles used in commercial forest operations, including but not limited to, installing fuel breaks and firebreaks, and

engaging in fire hazard abatement, but does not exempt public agency vehicles engaged in fire prevention activities.

Whereas, for the reasons set forth above, staff has proposed the following amendments to the regulation in sections 2449 through 2449.3, as set forth in Attachment B, to implement both the legislatively directed changes, and to address the issues identified above:

Modify the requirements of sections 2449.1 and 2449.2 to (1) allow fleets to comply with the regulation's retrofit and turnover schedules by completing the cumulative 2011 through 2013 requirements in accordance with the following schedule: 20 percent in 2011, 20 percent in 2012, and 60 percent in 2013; and (2) include language to prevent increasing the compliance requirements for fleets meeting the fleet average targets in 2011 or 2012;

Provide credit towards the NOx and PM Best Available Control Technology (BACT) requirements for reductions in overall fleet hp from March 1, 2006 to March 1, 2010 (i.e., retirement credit);

Provide credit towards the NOx and PM BACT requirements in 2010 and 2011 for a reduction in fleet activity from the annual period January 1, 2007 to December 31, 2007, to the annual period March 1, 2009 to February 28, 2010; fleet activity is defined as the sum of the annual hours of use for each vehicle in the fleet multiplied by the vehicle hp, not including those vehicles claimed for retirement credit; and

To incentivize emission reduction to prevent the loss of emission benefits to be achieved by the regulation:

Provide double credit towards the NOx requirements for retrofits installed prior to March 1, 2011, which reduce NOx emissions;

Extend the double credit for PM retrofits for medium and small fleets to retrofits installed prior to March 1, 2012;

Allow fleets to claim an exemption from future turnover for vehicles retrofit, up to 15 percent of the fleet's total hp, if they install a retrofit prior to March 1, 2011;

Allow fleets to receive credit for all repowers performed prior to their initial compliance date; and

Clarify that a vehicle may be exempted from having to be retrofitted if the retrofit installation would conflict with any federal or State safety agency requirements and not just Cal/OSHA requirements;

Require fleets to report to ARB the sale of all applicable vehicles within 30 days;

Clarify that the manufacturer delay provisions apply to installer delays as well;

Specify that community college programs that train students in the use of off-road diesel vehicles are included in the definition of Non-Profit Training Center; and

For purposes of consistency and to prevent discouraging public agencies from engaging in fire prevention activities, extend the exemption for vehicles engaged in forest operations, to public agencies.

WHEREAS, ARB staff held public workshops on April 7, 2009, in Sacramento and April 29, 2009, in Diamond Bar to discuss and solicit input on the proposed amendments to the regulation described above;

WHEREAS, pursuant to section 43013(a) and (b) of the Health and Safety Code, the Board further finds that the proposed changes to the in-use emission standards approved herein are necessary, cost-effective, and technologically feasible within the time provided for compliance;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at title 17, Cal. Code Regs., section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

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

The proposed amendments will likely result in significant adverse environmental impacts due to the loss of emission benefits that were scheduled to be achieved from the existing regulation, even though these impacts will likely be mitigated, at least in part, by the provisions of the proposed amendments that provide incentives for early compliance;

To the extent that significant adverse environmental impacts occur, overriding considerations exist to adopt the proposed BACT schedules and credits to fleets for retirement of vehicles and reduced fleet activity, because these amendments have been mandated by the California Legislature in AB 8 2X;

Except for provisions of the proposed amendments that provide incentives for early compliance, there are no feasible mitigation measures or alternatives that would reduce the potential adverse environmental impacts, while at the same time ensuring that the directives of the Legislature in AB 8 2X will be carried out; and

With respect to the proposed amendments to the regulation not directed by the Legislature, the amendments and clarifications will not result in significant adverse effects on the environment and will not adversely impact any community in the State, especially low-income or minority communities.

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

WHEREAS, on August 12, 2008, ARB submitted to the U.S. EPA a request for authorization determination pursuant to CAA section 209(e) for the regulation.

NOW, THEREFORE, BE IT RESOLVED that the Board after consideration of the ISOR, written comments, and public testimony it has received, hereby approves for adoption proposed modifications to California Code of Regulations, title 13, section 2449 through 2449.3, as set forth in Attachment B, with the following additional modification to section 2449(e)(8): replace the word "impossible" with the word "infeasible" in the sentence that now reads "The Executive Officer shall accept the official findings of the responsible federal or local agency that compliance with the requirements of this regulation would make compliance with the federal and state safety or health requirements impossible."

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt proposed amendments to section 2449 through 2449.2, after making the modified regulatory language and any additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, make modifications as may be appropriate in light of the comments received, and present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby directs staff to report back to the Board in December 2009 with an update analysis of available data regarding in-use off-road vehicle fleet activity in the state as of that date.

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

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

I hereby certify that the above is a true and correct copy of Resolution 09-50, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: State of California Air Resources Board Resolution 07-19 approved July 26, 2007.

Attachment B: Proposed Modifications to the Regulation for In-use Off-road Diesel-Fueled Fleets Cal. Code Regs., title 13, section 2449 through 2449.3 as set forth in Appendix A to the Initial Statement of Reasons, released June 5, 2009.