

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO SOLICIT COMMENTS ON THE REGULATION FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS

In response to a petition filed on January 11, 2010 by the Associated General Contractors of America (AGC), the Executive Officer of the California Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to take testimony and other relevant information on the need for further amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets (the regulation), title 13, California Code of Regulations (CCR), section 2449 through 2449.3. The Executive Officer will summarize the information and testimony collected at this hearing and will present a summary to the Board at its April 2010 meeting.

DATE: March 11, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This notice describes the regulation and the reason for this hearing, the format of the hearing, and the specific topics to be covered. This hearing will be conducted by the Executive Officer or an individual designated by him pursuant to the authority set forth in sections 39515 and 39516 of the Health and Safety Code.

The following information is provided in this notice:

- Background describing the regulation and how it has been amended since it was originally adopted in 2007,
- A description of the recent petition to ARB submitted by AGC and ARB staff's response to it,
- Topics on which ARB staff is soliciting input, and
- Hearing procedures, agency contact persons, and how to submit comments regarding the hearing.

BACKGROUND

Regulation Overview:

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved the regulation with the adoption of CCR, title 13, sections 2449 through 2449.3. The regulation is intended to significantly reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NOx) from the over 140,000 off-road diesel vehicles that operate

in California. The reductions are intended to meet State and federal air quality standards and support 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. To achieve emission reductions, the regulation requires fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits.

Applicability

The regulation applies to any person, business, or government agency who owns or operates within California any diesel-fueled or alternative diesel fueled off-road compression ignition vehicle engine with maximum power of 25 horsepower (hp) or greater that is used to provide motive power in a workover rig or to provide motive power in any other motor vehicle that (1) cannot be registered and driven safely on-road or was not designed to be driven on-road, and (2) is not an implement of husbandry or recreational off-highway vehicle. With the exception of two-engine cranes and water well drilling rigs, the regulation only addresses engines that propel vehicles (i.e., it does not apply to stationary equipment or portable equipment like generators).

Fleet Requirements

In general, the regulation requires owners to modernize their fleets by replacing engines with newer, cleaner ones (repowering), replacing vehicles with newer vehicles equipped with cleaner engines, retiring older vehicles, operating higher emitting vehicles less often (designating them as low-use vehicles) or by applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere. The regulation determines the date of compliance and the actions required based on the size of the fleet, splitting fleets into three categories: large fleets with over 5,000 horsepower, medium fleets with 2,501 to 5,000 horsepower, and small fleets with 2,500 horsepower or less.

Performance requirements must be met by March 1 of each year, as follows:

- Large fleets: 2010-2020
- Medium fleets: 2013-2020
- Small fleets: 2015-2025

To meet the PM and NO_x emission reduction requirements, fleets¹ have the option of meeting fleet average emissions targets, or meeting the Best Available Control Technology (BACT) requirements. The PM BACT requirements consist of installing retrofits that have been approved by ARB as verified diesel emission control strategies (VDECS) on a certain percent of their maximum horsepower in each year of compliance (the first year's requirement, to be completed by March 1, 2010, is 20 percent). To meet the NO_x BACT requirements, large and medium fleets must turn over a certain percent of their maximum horsepower in each year of compliance (8 percent by March 1, 2010).

¹ Large and medium fleets have to meet both the PM and NO_x performance requirements. Small fleets are only required to meet the diesel PM requirements.

To encourage fleets to take early actions to reduce emissions and to allow fleets to spread out the cost of compliance during the early years of implementation, the regulation, as initially adopted, provided fleets with credits for taking the following early compliance actions before March 1, 2009:

- Repowering vehicles, including replacing Tier 0 engines with Tier 1 engines;
- Retiring Tier 0 vehicles at an average rate greater than 8 percent of total fleet horsepower per year during the period from March 1, 2006 to March 1, 2009; and
- Installing VDECS that have been verified as achieving PM reductions on their vehicles.

Modifications to the Regulation

The regulation has been amended several times since its original July 2007 Board approval. These amendments were primarily intended to provide additional clarity to the regulation's requirements or provide additional relief to affected fleets.

December 2008

On December 12, 2008, the Board approved two minor amendments to the regulation as part of the rulemaking that considered adoption of the Regulation for In-Use On-Road Diesel Vehicles. The amendments to the regulation clarified the regulation's low-use provisions and, at industry's request, expanded coverage of the regulation to include both the propulsion and auxiliary engines of two-engine cranes.

January 2009

On January 22, 2009, the Board approved several additional amendments to the regulation. First, to facilitate fleet compliance in later years, it extended the deadline for fleet owners to obtain double PM credits for installing exhaust retrofits. The deadline was extended by ten months to January 1, 2010. The extension also allowed fleets to obtain double credits if they ordered retrofits by September 1, 2009, but could not install them by January 1, 2010, due to manufacturer delays. The Board also approved several other minor modifications and clarifications to the regulation.

July 2009

As part of the California budget signed in February 2009, the California Legislature in AB 8 2X, codified at Health and Safety Code section 43018.2, directed ARB to make several changes to the regulation as set forth below. The directives included:

1. Fleets that experience reduced activity of their off-road vehicles between July 1, 2007 and March 1, 2010, may take credit for this reduced fleet activity to satisfy the turnover and retrofitting requirements of the regulation in 2010 and 2011.

2. Fleets will be given credit (for both PM and NOx) for any vehicle retirements made between March 1, 2006, and March 1, 2010, provided that total fleet horsepower has decreased.
3. For the total cumulative turnover and retrofit requirements for the years 2011 through 2013, fleets may complete 20 percent of those requirements by March 1, 2011, an additional 20 percent by March 1, 2012, and the balance by March 1, 2013.

The directives of AB 8 2X did not repeal or delay general implementation of the regulation. However, the changes will allow many large fleets, and all such fleets significantly impacted by the recession, to delay compliance requirements for the first several years of the regulation.

At the July 23, 2009, hearing, to address the AB 8 2X changes and potential impacts that could result, the Board also approved several amendments to incentivize exhaust retrofits and mitigate potential emission reduction losses. These amendments, which have not yet been submitted to the Office of Administrative Law (OAL), included allowing:

- fleets to claim an exemption for up to 15 percent of their total horsepower from future turnover if they install a retrofit prior to March 1, 2011,
- fleets to claim double credit for NOx retrofits installed by March 1, 2011,
- medium and small fleets to claim double credit for PM retrofits installed by March 1, 2012, and
- fleets to accumulate NOx carryover turnover credit for early repowers installed, regardless of the total amount of fleet hp that is repowered.

January 2010

On January 28, 2010, the Board approved a minor amendment to the regulation as part of the rulemaking that considered amendments to the Statewide Portable Equipment Registration Program (PERP) Regulation and the Airborne Toxic Control Measure for Diesel-Fueled Portable Engines (Portable Engine ATCM). This amendment expanded the coverage of the regulation to include both engines of two-engine water well drilling rigs, and is similar to the amendment made in December 2008 which added two-engine cranes to the regulation. This amendment has not yet been submitted to OAL.

EXECUTIVE OFFICER RESPONSE TO AGC PETITION

Summary of January 11, 2010 Petition

On January 11, 2010, AGC filed a petition that requested ARB to adopt an emergency amendment to delay the fleet average target dates for two years. The petition also requested that ARB ask the U.S. EPA to postpone consideration of California's request for authorization that ARB submitted pursuant to section 209(e)(2) of the federal Clean Air Act (CCA) until such time that ARB has resolved the issues underlying the petition.

AGC's request that ARB delay implementation of the regulation can be summarized as follows: since the Board's approval and adoption of the regulation in 2007-2008, changed circumstances in the economy and its impact on construction activity in California have affected the financial ability of construction fleets to comply with the regulation's requirements while concurrently resulting in fewer emissions from construction vehicles. The petition argued that without immediate relief from the regulation, California construction contractors will suffer immediate and irreparable harm because the regulation will force fleets to either downsize or have to purchase and install emission control devices or repower their equipment in order to meet the 2010 and 2011 fleet average requirements. In making this claim, AGC asserted that the relief provided by AB 8 2X is insufficient.

AGC further argued that the current economic conditions in the construction industry will not improve over the next two years, and that reduced emissions resulting from the current economy give the Board flexibility to delay the regulation and thereby reduce the financial burdens that it will impose, while still meeting the Board's air quality goals and State Implementation Plan commitments.

ARB Response to AGC's Petition

ARB Executive Officer James Goldstene responded to the petition on February 11, 2010. In this response, the following relief was granted:

1. ARB will issue an advisory notifying all stakeholders subject to the regulation that ARB will take no enforcement action regarding compliance with the regulation's emission standards or other emission related requirements before ARB receives authorization from U.S. EPA; and
2. A hearing will be held in Sacramento on March 11, 2010, before the Executive Officer to take testimony and other relevant information on the need for further amendments to the regulation to address the economic recession confronting the State and the adverse impacts that the recession has caused the construction and other industries that operate off-road vehicles. As the Board has already directed staff to provide an update on the regulation at its April 2010 meeting, any information and testimony collected at this hearing will be compiled and included as part of that update.

The full response from the Executive Officer is available online at:
<http://www.arb.ca.gov/msprog/ordiesel/documents/goldstene21110.pdf>

HEARING PROCEDURES

Hearing Topics

ARB staff will receive testimony from interested parties on whether the regulation should be modified further, beyond the relief that the Board already provided in July 2009. At the hearing, ARB staff will gather factual information on the impact of the recession on affected fleets and on emissions from off-road vehicles subject to the regulation to determine if further changes to the regulation are warranted. To assist ARB staff in collecting relevant information and recognizing that ARB will not be enforcing compliance of the March 1, 2010 emission emission-related requirement until sometime after authorization is granted, staff requests that persons testifying and submitting written comments provide information along the lines suggested in the following example questions:

For large fleets subject to the regulation:

- Did your fleet meet or was it capable of meeting the March 1, 2010 compliance requirements? To do so, did you rely or would have had to rely upon the reduced activity and reduced horsepower credits provided by AB 8 2X or the other credit provisions provided by the regulation, as presently amended? If the answer to the above questions is yes, what was the cost that you incurred or would have incurred in meeting the compliance requirements?
- If your fleet did not comply or could not have complied with the March 1, 2010 compliance requirements by using the AB 8 2X credits or other credit relief provided by the regulation what additional action did your fleet need to take or would have had to take to meet the March 1, 2010, requirements? What costs did you incur or would have had to incur to meet the requirements?
- As of the date of the Executive Officer hearing, do you expect your fleet to meet the March 1, 2011 compliance requirements? To do so, will you be relying upon the reduced activity and reduced horsepower credits provided by AB 8 2X or the other credit provisions provided by the regulation, as presently amended? If the answer to the above questions is yes, what is the cost that you expect to incur in meeting the compliance requirements? If no, what additional action would your fleet have to take to meet the 2011 requirements? What is the estimated cost that the fleet will have to bear to meet the 2011 requirements? Do you foresee being able to take these actions? If not, why not?
- Overall, has AB 8 2X and other credit provisions provided sufficient relief over the next two years, 2010 – 2011? If not, please explain why the credits presently provided by the regulation, along with the reduced compliance schedule provided by AB 8 2X for the years 2011 and 2012 are not sufficient?

For all commenters:

- What further amendments to the regulation are necessary to address economy-related problems over the next two years, and why?
- What longer term (beyond 2012) relief is necessary and why?
- Was your fleet able to utilize other early credits, besides those provided in response to AB8 2X (i.e., reduced horsepower/activity credits), that ARB has incorporated into the regulation? Which credits did you find most beneficial? What additional early credits would be beneficial to enable fleets to better comply with the regulation's emission-related requirements?
- What has been the impact of the recession on emissions from vehicles in individual fleets or cumulatively? What has been the recession's statewide impact on emissions for vehicles subject to the regulation?

Hearing Procedures

ARB staff will open the hearing with a brief presentation that will include the following:

- A short overview of the regulation, including a description of the relief for fleets impacted by the current recession that has already been provided through amendments to the regulation,
- Summary of the AGC petition and ARB's response to the petition,
- Summary of the enforcement delay, and
- A list of information ARB is soliciting to better understand if further regulation modifications are needed, and - if so – what changes would be appropriate.

Following the ARB presentation, AGC representatives will be afforded an opportunity to testify before the Executive Officer. Then, members of the public will be allowed to testify before the Executive Officer. Commenters are requested to focus their testimony on the topics above.

ARB staff plans to conduct the hearing according to the following schedule:

9:00 a.m. – 9:20 a.m.	ARB staff presentation
9:20 a.m. – 10:20 am	AGC presentation
10:20 a.m. – 10:30 a.m.	Break
10:30 a.m. until conclusion	General comments

Commenters may also submit information that they wish to remain confidential (see below under Submittal of Confidential Information). For example, if a fleet owner suggests that he or she cannot afford to comply, he or she may confidentially submit financial records to support that claim.

The hearing will be recorded by a Court Reporter. A copy of the hearing transcript will be made available and posted to the ARB website after the hearing.

Following the public hearing, all information and testimony collected will be compiled and included as part of an update to the Board in April 2010.

For those unable to attend in person, a live internet broadcast (webcast) will be available and an email address will be posted on the webcast screen to allow those watching the webcast to submit questions or comments during the webcast. The webcast can be accessed on the day of the hearing at: <http://www.calepa.ca.gov/broadcast/?BDO=1>. Staff will make every effort to address comments and questions received by email, time permitting, and the comments and questions will be made part of the official hearing record.

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, Large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidad especial o necesidad de otro idioma para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Tener documentos disponibles en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de diez (10) días laborales antes del día programado para la audiencia. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

AGENCY CONTACT PERSONS

Inquiries concerning this hearing may be directed to Ms. Kim Heroy-Rogalski, Manager of the Off-road Implementation Section by email at kheroyro@arb.ca.gov or by phone at (916) 327-2200, or Ms. Elizabeth Yura, Air Resources Engineer, by email at eyura@arb.ca.gov or by phone at (916) 323-2397.

SUBMITTAL OF COMMENTS REGARDING THE REGULATION

Public Comments:

The public may present comments orally or in writing at the hearing. The public may also submit comments in writing or by email before the hearing, or after the hearing until the deadline listed below. **Comments received by ARB will be included as part of the information and testimony collected, but they are not part of any official rulemaking record.**

To be considered by the Executive Officer, written submissions not physically submitted at the hearing must be received **no later than 5:00 p.m., March 18, 2010**, and addressed to the following.

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>

Under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines. If you wish to submit confidential information, please follow the procedure outlined in the section below.

Submittal of Confidential Information:

The public may submit confidential information in writing before, during, or after the hearing, but **no later than later than 5:00 p.m., March 18, 2010**. Please send all information claimed as confidential to:

Postal mail: Off-road Diesel Vehicle Regulation Comments
CONFIDENTIAL
Floor 5, MSCD, HDDIUS Branch, ORIS
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Facsimile submittal: (916) 323-5526

ARB has adopted regulations to protect confidential information, and all information or comments claimed as confidential will be handled in accordance with these regulations (see title 17, California Code of Regulations, sections 91000 to 91022).

If you wish to claim any information as confidential, please clearly label it as CONFIDENTIAL or it will be treated as public information.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: March 1, 2010

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.