

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE NATIONAL SECURITY EXEMPTION
FOR MILITARY TACTICAL VEHICLES AND EQUIPMENT

Public Hearing Date: December 14, 1995
Agenda Item No.: 95-13-3

I. GENERAL

A Staff Report which constitutes the Initial Statement of Reasons for the proposed rulemaking to adopt the national security exemption for military tactical vehicles and equipment, released October 27, 1995, is incorporated by reference herein.

At the public hearing on December 14, 1995, the Air Resources Board (ARB or Board), by resolution 95-13, adopted a national security exemption for military tactical vehicles and equipment. Resolution 95-13 is attached hereto and incorporated by reference herein. The Board approved the regulatory language as proposed, with no substantive modifications. It provides for the exclusion and exemption of military tactical vehicles and equipment from exhaust emission standards for new on-road motor vehicles (Title 13, Chapter 1, section 1950 et seq.), and engines used in off-road vehicles and equipment (Title 13, Chapter 9, sections 2400 et seq.). It defines military tactical vehicles as an "on-road motor vehicle or off-road vehicle or equipment owned by the U.S. Department of Defense and/or the U.S. military services and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations."

The adopted regulations align with the regulations and policies of the United States Environmental Protection Agency (U.S. EPA) that exclude and exempt military tactical vehicles and equipment. On-road engines and vehicles that fall under the adopted definition of a military tactical vehicle would be excluded or exempted in accordance with 40 CFR, Subpart R, Sections 85.1702(a)(2), 85.1703, 85.1704(b), 85.1708, and 85.1710. Off-road engines and equipment defined as military tactical equipment, would be exempted in accordance with 40 CFR, Subpart J, Sections 89.908 and 90.908. Under the adopted regulations, the ARB will, in general, defer to the decisions of the U.S. EPA that exclude or exempt military tactical vehicles and equipment from federal standards and regulations. Under the adopted regulations, the ARB will similarly exclude and exempt such vehicles and equipment from the California standards and regulations. In addition to vehicles and equipment covered by federal exclusions and exemptions, the adopted regulations provide for a further exemption from the California standards and regulations for military tactical vehicles and equipment that meet the federal standards and have received federal certificates of conformity. Although these vehicles and equipment do not need to be exempted from the federal regulations, the need for a uniform, deployable national fleet dictates that these vehicles and equipment also be exempt from the California regulations. The adopted regulations require the U.S. Department of Defense to submit to the ARB a list of all vehicles and

equipment types that are excluded and/or exempted under the above provisions and which are located in California.

The referred documents have been available from the ARB upon request pursuant to Title 13, CCR, Section 1902 and were available in the context of the subject rulemaking in the manner required by Government Code Section 11346.7(a).

Pursuant to Government Code section 11346.9(a)(2), the Board has determined that this regulatory action will not result in a mandate to any local agency or school district.

Pursuant to Government Code section 11346.9(a)(4), the Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons, than the action taken by the Board.

The Final Regulatory Order contains several nonsubstantive changes. Inadvertently, the ARB mistyped the first sentence of sections 1905(c), 2400(c)(3), and 2420(d)(3). The first sentence of section 1905(c) should have read "vehicle types" instead of "vehicles", and the first sentences of sections 2400(c)(3) and 2420(d)(3) should have read "vehicle and equipment types" instead of "vehicles and equipment". These changes clarify the reporting requirements and make them consistent with the requirements set forth in the remainder of the above sections, that is, to keep the ARB informed of the types of vehicles that are being excluded and exempted from the regulations.

The Final Regulatory Order has also been nonsubstantively modified to not incorporate by reference the federal regulations cited in sections 1905(b), 2400(c)(2), and 2420(d)(2). The ARB has determined that it is not necessary for it to incorporate by reference the cited federal regulations in order for it to administer the national security exclusion and exemption provisions. It is unnecessary because the ARB will not be making independent judgments on the types of equipment that will be excluded and exempted, and thus do not need to apply the specific provisions of those sections. Rather, the regulations provide that the ARB will defer to the decisions of the U.S. EPA in granting the exclusions and exemptions for the covered tactical military vehicles and equipment, and will accept federal certification for those vehicles and equipment that do not require a federal exemption because they have obtained a federal certificate of conformity.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

Prior to the public hearing on December 14, 1995, the ARB received a written comment from the U.S. Department of Defense (DoD). At the public hearing, oral testimony was presented by Captain Kathy Dodge of DoD. Both the written submittal and the oral testimony expressed DoD's strong support for the staff's proposal.

1. Comment: The proposed annual reporting requirements should more accurately reflect the ARB's intent that DoD furnish a list of the types of tactical vehicles and equipment subject to the exemption and not an individual listing of all exempted tactical vehicles and equipment in California. (DoD)

Agency Response: As stated above, the ARB inadvertently omitted the word "types" from the first sentence of sections 1905(b), 2400(c)(3), and 2420(d)(3). The Final Regulatory Order corrects this error, making the reporting requirements consistent with those sections as a whole.

2. Comment: The military's portable tactical equipment is subject to regulation in California by each air district as stationary sources. This patchwork of regulations causes significant problems for the military. AB 531 provides a sensible framework for solving these problems through a statewide registration program. The military would like to work with ARB to complete these regulations as soon as possible. In the interim, the military requests temporary relief from the ARB, possibly by reclassifying this equipment as mobile sources instead of the current stationary classification. (DoD)

Agency Response: Under AB 531, the ARB has been directed to create a voluntary statewide registration program for portable equipment by January 1, 1996. That legislation also exempts military tactical support equipment from state and district emission controls and limits. To assist in the development of the AB 531 regulations, the ARB has created a work group to address the directives of the legislation. Recognizing the military exemption in AB 531, the ARB has requested that the districts not enforce their stationary source rules that establish emission controls or limits for off-road equipment located on military bases.