

PART B
Regulations Adopted, Amended or Repealed
Since January 6, 1999

Background and EO S-2-03 Review Process

The Air Resources Board (ARB) has conducted a review of adopted regulations pursuant to provision 1(e) of Executive Order S-2-03 signed by Governor Schwarzenegger on November 17, 2003. This provision of EO S-2-03 requires all state agencies to prepare a report on "all regulations adopted, amended or repealed ... since January 6, 1999" and, in that report, to determine whether:

1. the economic impact of these regulations was addressed, as required by California Government Code section 11346.3;
2. adequate authority for the regulations exists pursuant to California Government Code section 11342.1 and 11342.2; and
3. the regulations conform with the criteria set forth in California Government Code section 11349.1 related to necessity, authority, clarity, consistency, reference and non-duplication.

Since January 6, 1999, the ARB has completed 74 rulemakings that adopted, amended or repealed various sections of Title 13 or Title 17 of the California Code of Regulations. Pursuant to EO S-2-03, ARB has reviewed each of these rulemakings. This review confirmed that, prior to adoption by ARB, the economic impact and legal authority assessments required by Government Code sections 11342.1, 11342.2, 11346.3 and 11349.1 were prepared. In addition, the adequacy of these assessments and the ARB's response to comments pertaining to each of these rulemakings, was reviewed by the Office of Administrative Law (OAL) at the time that the rulemakings were submitted to OAL and found to comply with the Government Code. This review meets the requirements of EO S-2-03, and confirms that all of the fiscal impacts of all of rulemakings completed by the ARB over the last five years were fully evaluated. The review also confirmed that each of the rulemakings were legally justified and necessary.

Additional Review

In addition to the explicit provisions of EO S-2-03, the ARB staff also evaluated a several additional factors relevant to the ongoing need for, and economic impacts of, each regulation. Specifically, each rulemaking was subjected to a more comprehensive review (called the "First Level Review") to determine its:

1. Overall cost
2. Ongoing costs
3. Implementation status, and
4. Actual versus anticipated costs and impacts.

The responsible staff for each rulemaking conducted a review to determine the magnitude of the rules' overall costs, the ongoing annual costs, and each rule's implementation status. Summaries of each rulemaking action were collected and reviewed, as were the fiscal impact statements prepared during the rulemaking process. Staff determined if the actual costs and benefits were consistent with the anticipated cost and benefits upon which rule adoptions were predicated. Attachment 1 provides additional detail on the factors assessed when these evaluations were performed. The results of this effort were then reviewed by both the management of the lead division for each rulemaking, and by the ARB Executive Office.

Review Results

The ARB's internal review concluded that 65 of the 74 rulemakings resulted in negligible or minor ongoing costs and achieved benefits that were equal or greater than those anticipated, at net costs that were equal to or less than anticipated. For these 65 rulemakings, the ARB Executive Office determined that there was sufficient information to determine that retention of the current rule was appropriate. Accordingly, the review process for these rules was deemed complete. Nine rulemakings stood out and were deemed to merit additional consideration by the ARB Executive Office. Attachment 2 provides a listing of the 74 rules that were reviewed and a summary of the First Level Review results. The nine rules needing additional review are highlighted.

Rules were selected for additional review for one or more of the following reasons. First, they have significant ongoing costs of greater than \$10 million/year. Six rules fell in this category. Or, the costs of the rule are considerably greater than anticipated. Two rules met this criterion. Or, the anticipated benefits of the rule were not being achieved. One rule met the latter description. Each of the remaining nine rules was further analyzed to determine if the rulemaking:

1. Had actual benefits commensurate with the actual, ongoing costs.
2. Was necessary to achieve air quality goals despite its costs.
3. Is governed by established federal or state legal requirements beyond the ARB's discretion to modify.
4. Could be significantly improved to provide more cost-effective benefits or otherwise improve its performance.

As a result of this second level review it was determined four of the nine rules warranted revisions. The remaining five rules, although they have significant ongoing costs, also provide commensurate air quality benefits and were therefore determined to be appropriate and justified as currently enacted.

The four rules requiring revisions were the:

- Transit Bus Standards approved in January 2000,
- Enhanced Vapor Recovery Regulations approved in March 2000,
- ZEV (zero emission vehicles) rules approved in January 2001, and
- Diesel Retrofit Verification Procedures approved in May 2002.

Before EO S-2-03 was signed, ARB staff and affected stakeholders had identified issues with each of these rules. Accordingly, efforts to modify these rules have been underway for some time. Three of the rulemakings, Enhanced Vapor Recovery, Diesel Retrofit Verification Procedures and the ZEV rules, were in the active rule revision process in November of 2003.

Amendments to address issues affecting the Enhanced Vapor Recovery rulemaking were at the Office of Administrative Law (OAL) on November 17. Subsequently the ARB sought and obtained, on December 10, concurrence from Department of Finance (DOF) that this rulemaking could be implemented. This rule has now been approved by OAL.

Similarly, rule changes to address issues affecting the 2001 ZEV regulation were also in process on November 17, 2003. As of that date, Board hearings on the rule changes were complete, but the final revised rulemaking had not yet been submitted to OAL. Subsequently the ARB sought and obtained, on December 11, 2003, concurrence from DOF that this rulemaking could be processed. The ZEV rule changes have since been submitted to OAL, and approval is expected in the very near future.

Modifications to the Diesel Retrofit Verification Procedures rulemaking were proposed and set for hearing before November 17, 2003. Subsequently the ARB sought and obtained, on December 10, 2003, concurrence from DOF that this rulemaking could proceed. This rule was considered at the Board's December 11 hearing, and will be reconsidered at the Board's February 26, 2004 meeting, at which time adoption of the needed changes is expected.

Finally, the revisions to the existing Transit Bus Standards are under development by ARB staff. The first public workshop has been held and a Board hearing to consider modifications to this rulemaking is expected to be conducted during the summer of 2004.

Opportunity for Public Comment

In addition to conducting an internal review, ARB solicited comments from the public relative to the need to revise rules affected by EO S-2-03. On January 7, 2004 the ARB posted a notice on its Internet webpage announcing the review, and providing a list of the rulemakings subject to review (See Attachment 3). Pursuant to this solicitation the ARB has received comments from ten individual

commentors relative to this process. The comments and the ARB staff response are summarized in Attachment 4.

Conclusion

As a result of ARB's primary and secondary rule review process, it was determined that 70 of the 74 rules adopted, amended or repealed between January 6, 1999 and November 17, 2003 had been properly assessed and did not warrant additional amendments at this time. It was also determined that four rulemakings from this period needed revision. Two of these rulemakings have been completed, one is pending in February 2004, and the remaining rule is expected to be reconsidered in the summer of 2004.

This Part B report provides an assessment of ARB rules adopted, amended or repealed between January 6, 1999 and November 17, 2003. For a review of rulemakings that were in process, but not yet finalized as of November 17, 2003, please consult Part A.

**Part B -- Attachment 1
Rulemaking Evaluation Form**

Regulation Evaluated: _____

Summary Evaluation:

1. Overall Cost [Check One]
 - None or insignificant (under \$1 million)
 - Minor (\$1 to 10 million)
 - Intermediate (\$ 10 to 50 million)
 - Significant (Greater than \$50 million)

2. Ongoing Costs [Check One]
 - None or minor (under \$1 million/year)
 - Intermediate (\$ 1 to 10 million/year)
 - Significant (Greater than \$10 million/year)

3. Implementation Status [Check One]
 - Fully Implemented, no ongoing costs
 - Fully Implemented, ongoing costs
 - Partially Implemented
 - Not yet Implemented

4. Anticipated vs. Actual Costs and Benefits [Check Two]
 - Benefits as or better than expected
 - Benefits significantly less than expected
 - Costs as or less than expected
 - Costs significantly greater than expected

5. Legal Issues and Mandates [Check Those that Apply]
 - Rule required by State law
 - Rule required by federal law

Evaluated by _____ on ___/___/2004

Approved by _____ on ___/___/2004

PART B Attachment 2 -- Summary of Rule Reviews

ARB Summary of Regulation Review	Hearing	Ref.#	Results of 1st Review*					Adjust.	Second
			Total	Annual	Implt.	Actual	Actual		
Title of Regulation	Date	code	Costs	Costs	Status	Costs	Benefits	Made?	Review
Small Off-Road Engine Regulations	Mar-98	MSCD1	IS	IS	PI	AE	AE	N	No
Classifying Minor Violations	Apr-98	ED1	IS	IS	FI	AE	AE	N	No
Heavy Duty Vehicle 2004 Standards	Apr-98	MSCD2	IS	IS	PI	AE	AE	N	No
Ethylene Oxide ATCM	May-98	SSD1	IS	IS	FI	AE	AE	N	No
Vapor Recovery Test Procedures	Aug-98	MLD1	M	IS	FI	AE	AE	N	No
ID of Diesel Exhaust Toxic Air Contaminant	Aug-98	SSD2	IS	IS	FI	AE	AE	N	No
Stationary Source Test Methods	Aug-98	MLD2	IS	IS	FI	AE	AE	N	No
Administrative Hearing Procedures	Sep-98	ED2	IS	IS	FI	AE	AE	N	No
Area Designations 1998	Sep-98	PTSD1	IS	IS	FI	AE	AE	N	No
Gasoline Deposit Control Additive	Sep-98	SSD3	IS	IS	FI	AE	AE	N	No
Hot Spots Fees (FY 1998-1999)	Oct-98	PTSD2	M	IS	FI	AE	AE	Y	No
Large Off-Road Engine Regulations	Oct-98	MSCD3	IT	IS	FI	AE	AE	N	No
LEV 2 and CAP 2000	Nov-98	MSCD4	S	S	PI	AE	AE	Y	Yes
LVP-VOC Def. & Test Methods	Nov-98	MLD3	IS	IS	FI	AE	AE	N	No
Aftermarket Parts for Off-Road Engines	Nov-98	MSOD1	IS	IS	FI	AE	AE	N	No
VOC Aerosol Coating/Methly Acetate	Nov-98	SSD22	M	IS	PI	AE	AE	N	No
VOC Consumer Prod - Midterm II Limits	Nov-98	SSD23	IT	IS	PI	AE	AE	N	No
1997+ Off-Highway Rec Vehicles and Engines	Dec-98	MSCD5	IS	IS	FI	AE	AE	N	No
Standards for On-Road Motorcycles	Dec-98	MSCD6	IT	IT	PI	AE	AE	N	No
Portable Equipment Registration Program	Dec-98	SSD4	IS	IS	PI	AE	AE	N	No
Voluntary Accelerated Vehicle Retirement	Dec-98	MSCD7	IS	IS	FI	AE	LE	N	No
2000+ SI Marine (jetski/outboard)	Dec-98	MSCD22	S	S	PI	AE	AE	Y	Yes
LPG Specifications - Vehicle Fuels	Dec-98	SSD5	IS	IS	FI	AE	AE	N	No
CaRFG -Oxygen in Tahoe	Jun-99	SSD7	IS	IS	FI	AE	AE	N	No
CaRFG -MTBE Pump Labels	Jun-99	SSD6	IS	IS	FI	AE	AE	N	No
Vapor Recovery Test Procedures	Jun-99	MLD4	IS	IS	FI	AE	AE	N	No
Clean Fuel Outlets	Jul-99	SSD10	IS	IS	FI	AE	AE	N	No

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Portable Fuel Container	Sep-99	MLD5	S	S	FI	AE	AE	Y	Yes
Hot Spots Fee - FY 1999 - 2000	Oct-99	PTSD3	M	IS	FI	AE	AE	Y	No
Area Designations 1999	Nov-99	PTSD4	IS	IS	FI	AE	AE	N	No
CaRFG Phase III/MTBE Phase Out	Dec-99	SSD11	S	S	FI	AE	AE	N	Yes
Off-Road Compression Ignition Engines	Jan-00	MSCD8	IS	IS	PI	AE	AE	N	No
Transit Bus Standards	Jan-00	MSCD11	M	IT	PI	GE	AE	N	Yes
Agricultural Burning Guidelines	Mar-00	PTSD7	IT	IT	FI	AE	AE	N	No
Enhanced Vapor Recovery	Mar-00	MLD6	S	S	PI	AE	AE	Y	Yes
ATCM Chlorinated TACs - Automotive Repair	Apr-00	SSD12	M	IS	FI	AE	AE	Y	No
VOC content of Aerosol Adhesives	May-00	SSD13	IS	IS	FI	AE	AE	N	No
VOC content Aerosol Coatings and MIR Values	Jun-00	SSD14	M	IT	FI	AE	AE	N	No
ATCM for Asbestos-Containing Serpentine	Jul-00	SSD8	IS	IS	FI	AE	AE	N	No
ARB Conflict of Interest Code	Sep-00	OLA1	IS	IS	FI	AE	AE	N	No
Rice Straw Conditional Burn Permits	Sep-00	PTSD5	IS	IS	FI	AE	AE	N	No
VOCs from Antiperspirants and Deodorants	Oct-00	SSD9	IS	IS	FI	AE	LE	N	No
Hot Spots Fees (FY 2000-2001)	Oct-00	PTSD8	M	IS	FI	AE	AE	Y	No
Area Designations 2000	Nov-00	PTSD6	IS	IS	FI	AE	AE	N	No
Cleaner Burning Gasoline Test Methods	Nov-00	MLD7	M	IS	FI	AE	AE	N	No
CaRFG3 - Minor Changes	Nov-00	SSD15	IS	IS	FI	AE	AE	N	No
Federal Tier 2 Standards HD Gasoline Vehicles	Dec-00	MSCD9	IS	IS	PI	AE	AE	N	No
Not-to-Exceed (NTE) Test Procedures	Dec-00	MSCD10	M	IS	NI	AE	AE	N	No
ZEV Regulations - 2001 Update	Jan-01	MSCD12	IS	IS	PI	GE	AE	N	Yes
Transported Pollutants - Ozone	Apr-01	PTSD9	IS	IS	FI	AE	AE	N	No
ZEV Infrastructure/ EV Charging Equipment	Jun-01	MSCD14	IT	IS	NI	AE	AE	Y	No
Gas Inboard and Sterndrive Marine	Jul-01	MSCD15	IT	IT	PI	AE	AE	N	No
Asbestos ATCM for Construction/Quarrying, etc.	Jul-01	SSD16	M	IS	FI	AE	AE	N	No
HexChromium/Cadmium in Vehicle Coatings	Sep-01	SSD17	M	IS	FI	AE	AE	N	No
HDD Engine Standards for 2007 and Later	Oct-01	MSCD13	IS	IS	NI	AE	AE	N	No
Vapor Recovery Test Procedures	Oct-01	MLD8	IS	IS	FI	AE	AE	N	No
Hot Spots Fee (FY 2001-2002)	Oct-01	PTSD10	M	IS	FI	AE	AE	Y	No

Attachment 2 -- Summary of Rule Reviews

Distributed Generation Regulations	Nov-01	SSD18	IS	IS	PI	AE	AE	Y	No
Vapor Recovery Equipment Defects List	Nov-01	MLD9	IS	IS	FI	AE	AE	N	No
Low Emission Vehicle - 2001 Amendments	Nov-01	MSCD16	IS	IS	FI	AE	AE	N	No
Motor Vehicle Service Information Rule	Dec-01	MSOD2	IT	IT	FI	AE	AE	N	No
Voluntary Accelerated Vehicle Retirement	Feb-02	MSCD17	IS	IS	FI	AE	AE	Y	No
ATCM for Outdoor Residential Waste Burning	Feb-02	PTSD11	S	S	FI	AE	AE	N	Yes
On-Board Diagnostic II	Apr-02	MSCD18	M	IS	FI	AE	AE	N	No
Diesel Retrofit Verification Procedure	May-02	MSCD19	IS	IS	FI	AE	LE	N	Yes
Air Quality Standards for PM and Sulfates	Jun-02	RD1	IS	IS	FI	AE	AE	N	No
CaRFG3 Extension of MTBE Phase Out	Jul-02	SSD19	IS	IS	FI	AE	AE	N	No
Revision to Transit Bus Reg-Hybrids	Oct-02	MSCD20	IS	IS	PI	AE	AE	N	No
LEV II 2002 HD Otto Cycle Engine	Nov-02	MSCD21	IS	IS	PI	AE	AE	N	No
Administrative Civil Penalties.	Dec-02	OLA2	IS	IS	PI	AE	AE	N	No
Max. Levels of Oxygenates/MTBE in Gasoline	Dec-02	SSD20	IS	IS	PI	AE	AE	N	No
ATCM to Limit School Bus Idling	Dec-02	SSD21	IS	IS	PI	AE	AE	N	No
Enhanced Vapor Recovery - Amended Standards	Dec-02	MLD10	IS	IS	PI	AE	AE	N	No
Ozone Transport Mitigation	May-03	PTSD12	M	IS	NI	AE	AE	N	No
* - Key to review codes									
Total Costs: IS = none or insignificant			Actual vs Anticipated Costs:						
M = minor (\$1 to 10 million)			AE = as expected, or better						
IT = intermediate (\$10 to 50 million)			GE = significantly greater than expected						
S = significant (>\$ 50 million)			Actual vs Anticipated Benefits:						
Ongoing Costs: IS = none or minor (< \$1 million/yr)			AE = as expected, or better						
IT = intermediate (\$1 to 10 million/yr)			LE = significantly less than expected						
S = significant (>\$ 10 million/yr)									
Implementation Status:			Legal Mandate:						
FI = fully implemented			S = required by State law						
PI = partially implemented			F = required or aligned with federal law or regs.						
NI = not yet implemented			S/F = required by both						
			Blank = neither State or Federal law requires						

Part B -- Attachment 3
Solicitation of Public Comment

The following notice was posted on the Air Resources Board website, following issuance of Executive Order S-2-03 and receipt of further implementing instructions from the Governor's Legal Affairs Secretary and the Department of Finance.

**Opportunity for Public Comment on Retrospective Review of CARB
Administrative Regulations Per Executive Order S-2-03**

The Air Resources Board is conducting a retrospective review of all **regulations** adopted, amended or repealed by the ARB since January 6, 1999, as required by the Governor's Executive Order S-2-03. As stated in the Executive Order, this retrospective review must address:

1. The impact of each rule on California businesses;
2. The authority for the adopted, amended or repealed regulations; and
3. Conformity with statutory criteria for necessity, authority, clarity, consistency, reference and nonduplication.

Public comments on this review are welcome and should address the specific criteria described above. Please direct such comments to Ms. Diane Johnston, General Counsel, at regreview@arb.ca.gov. The deadline for public comments on the retrospective rule review is January 30, 2004.

The ARB is conducting an identical review for regulations approved by its Governing Board but not yet final. This category contains mostly rulemakings undertaken in the latter half of 2003. For some of these rules, 15-day changes are still pending and there will be a future opportunity for public comment. In those cases, we request that any comments prompted by Executive Order S-2-03 be submitted at the time that public comment is reopened. For all other pending rulemakings, please address your comments to Ms. Diane Johnston at the address above. The latter comments will not be part of the public record for individual rules, but will be used to assess whether any adjustments to the nearfinal rulemakings are warranted.

Finally, the ARB's Governing Board held public hearings and took public testimony on four new regulatory items in November and December of last year, but deferred final action pending approval to proceed by the Department of Finance. That approval was granted on December 10, 2003. Accordingly, the ARB intends to reschedule the four open rulemakings for consideration by the Board at its February 26-27, 2004, public hearing. The public comment period is still open for all four of these rulemakings and comments pertinent to Executive Order S-2-03 are welcome. The four open rulemakings are:

1. Airborne Toxic Control Measure for Stationary Diesel Engines
2. Heavy-Duty Diesel Engine Software Upgrade ("Chip Reflash")
3. Airborne Toxic Control Measure for Transportation Refrigeration Units
4. Diesel Retrofit Verification Procedures.

Public hearing notices issued for the first time after November 17, 2003, are not subject to Executive Order S-2-03. However, it is ARB's intent to comply fully with the spirit of the Executive Order when considering all future regulations. Specifically, the ARB intends to assure strict compliance with all statutory requirements applicable to state agency rulemakings, and to thoroughly examine the potential impacts of proposed rules on the California business community. The ARB will also continue to conduct its customary analyses of all air quality, public health, and economic benefits that may derive from proposed regulations.