

State of California
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text and
Availability of Additional Documents and Information**

PUBLIC HEARING TO CONSIDER ADOPTION OF AN AIRBORNE TOXIC CONTROL MEASURE FOR IN-USE DIESEL-FUELED TRANSPORT REFRIGERATION UNITS (TRU) AND TRU GENERATOR SETS, AND FACILITIES WHERE TRUs OPERATE.

Public Hearing Dates:	December 11, 2003 February 26, 2004
First Public Availability of Modified Text Date:	April 5, 2004
Second Public Availability of Modified Text Date:	July 16, 2004
Deadline for Public Comment:	August 2, 2004

At a public hearing on February 26, 2004, the Air Resources Board (the "Board" or ARB) approved the adoption of Section 2022 of title 13, California Code of Regulations (CCR). This rulemaking was originally heard on December 11, 2003, and continued to February 26, 2004, to provide for the required review directed by Executive Order S-2-03. The approved Section 2022 is an airborne toxic control measure (ATCM) that will reduce public exposure to diesel exhaust particulate matter (diesel PM) and other toxic air contaminants (TACs) from in-use TRU and TRU generator sets that operate in California. The proposed ATCM is described in detail in the Initial Statement of Reasons released to the public on October 24, 2003.

At the hearing on February 26, 2004, the staff presented, and the Board approved, minor modifications proposed in response to comments received during the public comment period that began on October 24, 2003, and ended at the hearing on February 26, 2004. As a result, on April 5, 2004, the first Notice of Public Availability of Modified Text and Availability of Additional Documents and Information (1st 15-Day Change Notice) was issued. The public comment period for the 1st 15-Day Change Notice ended April 30, 2004.

As a result of comments received, additional minor modifications to the regulatory text are being proposed in the Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information (2nd 15-Day Change Notice). The text of the modified regulatory language is shown in Attachment 1. The deletions and additions to the proposed modifications that were made public on April 5, 2004 are respectively indicated by single ~~striketrough~~ and underline. New deletions and additions to the proposed language that are made public with this 2nd 15-Day Change Notice are shown in ~~double striketrough~~ and double underline format, respectively.

The following is a summary of these modifications and staff's rationale for making them:

- A. The definition of "Tier 4 Nonroad/Offroad Emission Standards" and footnotes 1 and 2 were amended to reflect the recent promulgated final rule by the United States Environmental Protection Agency, "Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel" (June 29, 2004).
- B. Subparagraph (e)(1)(F)(i)c. was added so that early compliance with LETRU in-use performance standards may not earn a delay in the ULETRU compliance date if public funds are used to achieve early compliance. The applicant for ULETRU delay would be required to disclose whether any public funds were used for any portion of early compliance and what program the funding came from. Staff believes that use of public funds for the early LETRU compliance incentive should not result in earning the ULETRU compliance delay because it would give an unintended double benefit to recipients.
- C. The facility reporting compliance deadline in subparagraph (f)(2)(A) was changed from January 31, 2005 to January 31, 2006. This delay was necessary due to the delay in Board adoption of the TRU ATCM from December 11, 2003 to February 26, 2004. Such a delay will provide the necessary time for facilities to set up recordkeeping systems and collect data on their TRU operations. As a result, the data collection period was also changed from "as of December 31, 2004" to "as of December 31, 2005" and changed from "2004" to "2005" in subparagraphs (e)(2)(A)(vii), (viii), (ix), (x), and (xi).
- D. Subparagraph (f)(2)(A)(vii) was modified to clarify that the total annual TRU engine operating hours required to be reported is to include both the on-road and offroad (at-facility) operations.
- E. Subparagraph (f)(2)(A)(viii) was modified to clarify that the average weekly number of inbound refrigerated loads is to be calculated by dividing the annual total inbound refrigerated loads by 52 (weeks per year).
- F. Subparagraph (f)(2)(A)(ix) was modified to clarify that the average weekly number of outbound refrigerated loads is to be calculated by dividing the annual total outbound refrigerated loads by 52 (weeks per year).
- G. Subparagraphs (f)(2)(A)(x), and (xi) were modified to allow affected facilities to use average values for TRU engine operating time, provided the results are representative of actual TRU operating times at the facility. Average values would be determined based on recordkeeping conducted in accordance with subparagraph (f)(2)(B)(ii). Staff believes this approach will reduce the recordkeeping effort and still provide useful results. A

description of the calculation of average weekly number of hours of TRU engine operation was also included to improve clarity.

- H. Subparagraph (f)(2)(B)(i) and (ii) were added. Subparagraph (f)(2)(B)(i) incorporated the language that had previously been included in subparagraph (f)(2)(B). Subparagraph (f)(2)(B)(ii) added language to allow the Executive Officer to approve alternative recordkeeping and calculation procedures, provided the Executive Officer finds that the alternative procedure meets the intent of subparagraph (f)(2). Staff believes this approach will reduce the recordkeeping effort and still provide useful results.
- I. Subparagraphs (e)(1)(E)(i)b.1., (f)(1)(A)(ii)a.1., and (f)(2)(C)(i) added a line to ARB's mailing address reading "Stationary Source Division (TRU)" to facilitate the routing of submittals to staff.
- J. Subparagraph (e)(1)(A)(iii)e. was modified to clarify that only fuel cell technologies that use a reformer using diesel fuel as a source of hydrocarbons would be required to be evaluated and verified through the *Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines*. The intent is to assure that if there are diesel-related emissions from the reformer, then these emissions would be measured and evaluated to assure potential health impacts are at or near zero.

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following additional documents and information:

1. Memorandum, dated February 23, 2004, from Diane Moritz Johnston, General Counsel, to Alan C. Lloyd, Chairman and Honorable Board Members on the Legal Authority for Air Toxics Control Measures for Diesel Particulate Matter from In-Use Diesel Engines is included as Attachment 2.
2. Letter, dated April 20, 2004, from Air Resources Board Executive Officer, Catherine Witherspoon, to Ms. Stephanie Williams, California Trucking Association is included as Attachment 3.

By this notice, the modified regulation and additional documents and information are being made available for public comment prior to the final action by the Board's Executive Officer. In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 2022, title 13, California Code of Regulations, after making the modified language available to the public for comment for a period of at least fifteen (15) days, provided the Executive Officer consider such written comments as may be submitted during this period, make such modifications as may be appropriate in light of the

comments received, and present the modified regulation to the Board for further consideration, if warranted.

The regulatory documents for this rulemaking are available online at the following ARB internet site: <http://www.arb.ca.gov/regact/trude03/trude03.htm>

Written and e-mail comments on the second 15-day modifications shown in Attachment 1 must be received no later than 5:00 p.m. on August 2, 2004, in order to be considered by the Executive Officer prior to final action. Only comments relating to the modifications described in this 2nd 15-Day Change Notice shall be considered by the Executive Officer. Written comments must be addressed to the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812. E-mailed comments must be addressed to: trude03@listserv.arb.ca.gov.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please go to <http://inside.arb.ca.gov/as/eeo/languageaccess.htm> or contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Attachments