State of California
AIR RESOURCES BOARD

Resolution 09-3

January 22, 2009

Agenda Item No.: 09-1-4

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, title 13, section 2449, 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. 669, §§ 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 (PM) 2.5 microns or less (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, upon approving the regulation, the Board directed staff in Resolution 07-19 to provide the Board, by January 2009, with a technology update on the status of diesel emission control strategies that have been verified by ARB and are available for installation to comply with the March 1, 2010, compliance date of the regulation;

WHEREAS, the Board directed that the update include information on the number of devices that have been verified, the cost of those devices, and the status of the ARB/South Coast Air Quality Management District/Mobile Source Air Pollution Reduction Review Committee Off-Road Diesel Retrofit Showcase (Showcase);

WHEREAS since 2007, ARB staff in conjunction with the South Coast Air Quality Management District (SCAQMD) and the Mobile Source Air Pollution Reduction Review Committee (MSRC) has been developing the Showcase program. This program is providing valuable experience to staff, fleets, and retrofit manufacturers on the challenges of retrofitting off-road vehicles, and is facilitating an increase in the number of available verified diesel emission control systems (VDECS). To date, the Showcase has been funded at $4.9 million. Eighteen fleets with over 200 vehicles and 14 emission control manufacturers with 26 systems have applied and been accepted to participate in the Showcase. To date, over 60 vehicles have been datalogged, and nine vehicles have been retrofit, which is slower than originally anticipated. However, staff estimates that all the vehicles participating in the Showcase will be retrofit by mid-2009.

WHEREAS, since adoption of the regulation, ARB staff has been engaged in preparing to implement the regulation and, to that end, has been working closely with affected stakeholders in addressing implementation concerns;

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 December 4, 2008 (ISOR);

WHEREAS, the ISOR identified and explained the need to amend the regulation for the following reasons:

> Although the availability of off-road verified diesel emission control strategies (VDECS) is increasing, VDECS have become available at a slower pace than initially anticipated and have not allowed fleets to take full advantage of the early credit provisions of the regulation and since the early credit provisions for both PM and NOx were adopted to make the regulation affordable for some fleets, it is necessary to extend the deadline for obtaining double credits for early compliance with the PM VDECS requirements;
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> As initially adopted the regulation contains requirements that prevent fleets from gaining a compliance advantage by changing size from a small fleet, to a larger fleet, and then back to a small fleet; staff has subsequently determined that, in practice, the requirements would be too complex, especially in those situations where a fleet's size could change frequently over time, and that the possible complexities would outweigh the potential for fleets to abuse the changing fleet size provisions;
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> As initially adopted, the regulation only imposed a record keeping requirement on dealers that sold off-road vehicles who were required under the regulation to disclose that the vehicle sold may be subject to the regulation; it was the intent of

the regulation that such a record keeping requirement be imposed on all persons who were under the duty to disclose upon selling an off-road vehicle, and the omission to do so was inadvertent;

The adopted regulation did not make clear whether the exemption of Tier 1 vehicles from turnover extended until March 1, 2012, or March 1, 2013.

The adopted regulation requires that fleet owners only report the VDECS model name, which ARB staff has determined does not provide specific enough information to confirm if the device was verified for a particular engine at the time of installation, which does not sufficiently ensure proper compliance and enforcement of the regulation;

WHEREAS, for the reasons set forth above, staff has proposed the following amendments to the regulation sections 2449 through 2449.3, as set forth in Attachment B, to address implementation concerns that have been identified:

Extend the double credit for early PM retrofits deadline by ten months from March 1, 2009 to January 1, 2010;

Modify the changing fleet size requirements to not penalize fleets that change from small fleets to larger fleets, and then subsequently become a small fleet again;

Clarify that all sellers, and not just dealers, of off-road vehicles must maintain records of the disclosure of regulation applicability;

Clarify that the provision for delay of Tier 1 turnover exempts Tier 1 vehicles from turnover only until the March 1, 2012, compliance deadline;

Modify the reporting requirements to delete the requirement that fleet owners report a VDECS model year and replace it with a requirement that they provide the VDECS family name and serial number;

WHEREAS, ARB staff held a workshop on December 19, 2008, in Sacramento to discuss 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 California Code of Regulations, title 17, 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:

With respect to the requirements of CEQA, the proposed amendments to the regulation will have little to no overall adverse impact on air quality and no other significant adverse effects on the environment and that to the extent that the proposed change could cause some increase in emissions, overriding considerations exist for ARB to adopt the proposed changes;

The proposed amendments to the regulation should 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(a) or (e)(1); and

WHEREAS, on August 12, 2008, the 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 adopts the proposed modifications to California Code of Regulations, title 13, sections 2449 through 2449.3, as set forth in Attachment B;

BE IT FURTHER RESOLVED that the Board directs staff to return to the Board in the fall of 2009 with a report regarding the state's in-use off-road diesel-fueled vehicle inventory as reported by vehicle fleets in 2009, with an analysis of (1) how the present economic downturn has affected the number and type of vehicles that operate in the state and the emissions from such vehicles and (2) whether the regulation, as amended, provides sufficient relief to affected stakeholders during this period of economic decline or are other provisions necessary;

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 consistent with CAA section 209.

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 09-3, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

Resolution 09-3

January 22, 2009

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 California Code of Regulations, title 13, sections 2449 through 2449.3 as set forth in Appendix A to the Initial Statement of Reasons, released December, 2008.