

## UPDATED INFORMATIVE DIGEST

### MODIFICATIONS TO THE REGULATION FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS

#### Sections Affected

Proposed modifications to title 13, CCR, section 2449(d)(4)(A), 2449(g)(1)(D), 2449(h)(8), 2449.1(a)(2)(A)5., and 2449.2(a)(2)(A)2.a.i., the regulation for In-Use Off-Road Diesel Vehicles.

#### Background

At its July 26, 2007, public hearing, the Air Resources Board (Board or ARB) approved the regulation for In-Use Off-Road Diesel-Fueled Fleets (the in-use off-road regulation or the regulation) with the adoption of sections 2449 through 2449.3, title 13, California Code of Regulations (Cal. Code Regs.). The regulation is intended to reduce emissions of diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from in-use off-road diesel vehicles that operate in California. The regulation will significantly reduce diesel PM and NOx emissions from the nearly 180,000 off-road diesel vehicles that operate in California, which is necessary to meet state and federal air quality standards. The regulation requires fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits. The regulation also supports 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.

The regulation was formally adopted by ARB on April 4, 2008 and approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on May 16, 2008. It became effective on June 15, 2008. Additional amendments to the regulation were approved by the Board on December 11, 2008 and formally adopted by the Board and submitted to OAL for approval on October 19, 2009. OAL approval of the December 11 amendments are presently pending. The amendments described in this informative digest were approved by the Board on January 22, 2009. (Further amendments to the regulation were approved by the Board on July 23, 2009, but these are not discussed in this digest.)

#### *Applicability*

The fleet requirements of the regulation apply 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. The regulation adopted, as formally adopted on April 4, 2008, only addressed engines that drive self-propelled vehicles (i.e., it did not apply to stationary equipment or portable equipment like generators). The amendments adopted on December 19, 2009, but not as yet approved by OAL expanded the regulation's scope to include some auxiliary portable engines that are used on specialized vehicles like off-road sweepers and two-engine cranes.

### *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.

### *Retrofits*

To meet the diesel PM emission reduction requirements of the in-use off-road regulation, fleets have the option of meeting fleet average emissions targets, or installing the highest level verified diesel emission control strategy (VDECS or retrofit) on 20 percent of their maximum horsepower in each year of compliance. To assist fleets spread out the cost of compliance during the early years of the regulation and to encourage retrofits prior to implementation of the regulation, fleets were granted double credit for all retrofits installed by March 1, 2009.

## **Description of the Regulatory Action**

### *Early Double Credit for Retrofits*

Staff modified section 2449.2(a)(2)(A)2.a.i. to extend the deadline for double retrofit credit for fleets that have installed the highest level VDECS by 10 months, from March 1, 2009 to January 1, 2010. The change provides double credits for VDECS ordered by September 1, 2009, even if manufacturer or installer delays cause their installation to be delayed beyond January 1, 2010. Staff recommended this extension because exhaust retrofits have become verified slower than anticipated since the July 2007 Board Hearing, leaving many fleets unable to take full advantage of the early credit provisions. The ability of fleets to take advantage of the double retrofit credit provision was important during the Board's consideration and approval of the regulation, as it provides an important mechanism for fleets to use to reduce their costs during the initial years of the regulation. The change provides additional time for manufacturers of

diesel emission control strategies to submit and verify new off-road retrofit applications, as well as additional fleets to purchase and install VDECS that have been recently verified.

### *Fleet Size Changes*

Staff modified section 2449(d)(4)(A). That section required a small fleet that grew in size to become a medium or large fleet, but then subsequently downsized to become a small fleet again, to continue meeting the medium or large fleet requirements for the next two reporting years after returning to small fleet status. This provision was initially developed to prevent fleets from potentially circumventing the regulation by growing and shrinking their fleet and remaining subject to only the small fleet requirements. However, staff has determined that, in practice, application of the provision is too complex and potentially confusing for affected fleets, especially in those situations where a fleet's size may change frequently over time. Staff believes that such complexity and potential confusion far outweighs the potential for fleets to abuse the changing fleet size provisions. Accordingly, the provision was deleted.

### *Recordkeeping Requirements for Disclosure of Applicability*

Staff also modified section 2449(h)(8) to clarify that the section applies to both sellers and dealers of off-road vehicles, and that both sellers and dealers must maintain records of the disclosure of regulation applicability. The record retention requirements currently require that only dealers must maintain records of the disclosure of the regulation applicability. However, since section 2449(j) applies to any person in California selling a vehicle with an engine subject to the regulation and that the seller is required to include a disclosure of applicability, staff believed it was necessary to clarify that the record retention requirements of disclosure apply to any person that sells a vehicle, and not just to dealers.

### *Turnover Delay for Tier 1*

Staff modified section 2449.1(a)(2)(A)5. to clarify the turnover exemption for Tier 1 or higher engines, consistent with the original intent of the regulation. The original intent of this provision was to exempt Tier 1 vehicles from the turnover requirements only through March 1, 2012, and that these vehicles would have to meet the March 1, 2013, compliance deadline -- that is a fleet may have to turn over their Tier 1 vehicles between March 2, 2012, and March 1, 2013, provided that all non-exempt Tier 0 vehicles in the fleet owner's fleet have already been turned over.

### *VDECS Reporting*

Staff modified section 2449(g)(1)(D) to require reporting of the VDECS family name and serial number, rather than the VDECS model. During development of the reporting system for the regulation, staff determined that just the VDECS model does not provide specific enough information to determine if a device was verified for a particular engine

at the time of installation. Instead, the VDECS family name is necessary for this purpose. The VDECS serial number is also important to enable ARB enforcement to track a particular device should there be some question regarding the proper functioning of that device. Including VDECS serial number data in DOORS will also facilitate transfer of that information to the buyer should a vehicle with a VDECS be sold.

### **Comparable Federal Regulations**

The U.S. Environmental Protection Agency (U.S. EPA) has promulgated federal emission standards for new non-road engines. However, no federal standards have been promulgated addressing emission reductions from in-use off-road diesel vehicle engines.

Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off-road engines and equipment not expressly subject to federal preemption, so long as California applies for and receives authorization from the Administrator of U.S. EPA. California requested authorization for the regulation initially adopted on April 4, 2008 on August 12, 2008. On October 27, 2008, the U.S. EPA conducted a hearing regarding California's request, which is presently pending.