

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-11-009

Adoption of Amendments to the Regulation to Reduce Emissions
of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria
Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles

WHEREAS, on December 17, 2010, the Air Resources Board (the Board or ARB) conducted public hearing after issuance of a Notice of Public Hearing (45-Day Notice) to consider the adoption of amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus regulation), title 13, California Code of Regulations (Cal. Code Regs.), section 2025; the Heavy-Duty Vehicle Greenhouse Gas (GHG) Emission Reduction Measure (Tractor-Trailer GHG regulation), title 17, Cal. Code Regs., sections 95301 to 95307, 95309, and 95311; and the regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities (Drayage Truck regulation), title 13, Cal. Code Regs., section 2027;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified which outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report or negative declaration (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's regulatory program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, ARB's certified regulatory program provides that when an action contemplated by the Board may have a significant effect on the environment, ARB staff shall prepare a staff report that shall contain a description of the proposed action, an assessment of anticipated significant long or short-term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts, which shall include a discussion of feasible mitigation measures and alternatives to the proposed action;

WHEREAS, concurrent with publication of the 45-Day Notice, ARB issued an Initial Statement of Reasons (Staff Report) that included an environmental analysis that addressed potential long and short-term environmental impacts related to the proposed amendments given California's severe recession and its impact on operation of heavy-duty vehicle emission sources;

WHEREAS, at the December 17, 2010 public hearing, the Board adopted Resolution 10-44 (copy of which is attached hereto as Attachment 1), which directed the staff to modify the initially proposed amendments that were part of the 45-Day Notice, consistent with the resolution and the suggested modifications presented by staff in Attachment B to the resolution;

WHEREAS, Resolution 10-44 further directed the Executive Officer to make the modifications to the initially proposed amendments to the regulation available for public comment for a period of 15 days, that he consider written comments submitted during the 15-day comment period, make such further modifications as may be appropriate in light of the comments received, and that he should return to the Board for further consideration if he determines that this is warranted;

WHEREAS, Resolution 10-44 also directed the Executive Officer to prepare and approve written responses to comments received, including comments raising significant environmental issues, as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and Cal. Code Regs., title 17, section 60007, determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time addressing the serious economic recession and its impact on industry and residents of the State, make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental effects, and take final action to adopt the proposed amendments to the Truck and Bus regulation, as modified in the publicly noticed 15-day changes;

WHEREAS, on May 19, 2011, ARB issued the modified regulation, reflecting the amendments considered by the Board and other conforming modifications, which were made available for public comment for a period of 15-days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 (15-Day Notice);

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of 15-day comment period and oral comments were received as part of the testimony taken at the December 17, 2010 Board hearing, and among the comments received were comments that raised potentially significant environmental issues;

WHEREAS, pursuant to the Board's direction in Resolution 10-44, ARB staff has summarized and prepared written responses to comments raising significant environmental issues, (a copy of which is attached hereto as Attachment 2); and

WHEREAS, the Executive Officer has deemed it is necessary to bifurcate the amendments to sections 2025, title 13, Cal. Code Regs., and 95301 to 95307, 95309, and 95311, title 17, Cal. Code Regs. from the proposed amendments to sections 2027, title 13, Cal. Code Regs. to ensure that the amendments to the three regulations covered by the 45-Day Notice are handled expeditiously and become operative as soon as possible.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 10-44 are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared for the amendments to the Truck and Bus regulation was prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising significant environmental issues as set forth in Attachment 2.

IT IS FURTHER ORDERED that after fully considering the amendments as modified by the 15-Day Notice, the environmental analysis, and the full record before me, I find:

The amendments to the Truck and Bus regulation will not result in any adverse impacts to the environment, and therefore, no mitigation measures, findings or statement of overriding considerations are required;

ARB adopted the Truck and Bus regulation in 2008/2009 to, among other things, reduce the public's health risk exposure to diesel particulate matter (PM), an identified toxic air contaminant, and meet the national ambient air quality standards (NAAQS) established by U.S. EPA for PM 2.5 and ozone by 2014 and 2023 respectively;

The severe, long-lasting recession experienced in the United States and California, specifically, has impacted the number of on-road heavy-duty vehicles operating and total vehicle miles travelled by these vehicles in California, and the consequent emissions from these vehicles is less than ARB forecasted when the Truck and Bus regulation was first considered for adoption in 2008;

The revised inventories for on-road heavy-duty vehicles, combined with the effects of the recession and the emission reductions forecasted to be achieved from the Truck and Bus regulation, as initially adopted in 2008/2009, achieve emission reductions greater than the emission

reductions that California needs to meet its NAAQS emission reduction obligations under the State Implementation Plan (SIP);

Although in the short term, the amendments will result in some foregone emission reduction benefits that would have been achieved absent the amendments to the regulation, the effects of the recession and amendments long-term will result in environmental benefits at least equal to the initially adopted regulation;

Given the revised inventory and the lower emissions caused by the recession, the amendments to the Truck and Bus regulation will not cause emissions to exceed the emission reduction targets of the SIP or the forecasted emission levels that were anticipated by the regulation as initially adopted in 2008/2009, therefore, the amendments will not have a significant adverse environmental effect on air quality.

IT IS FURTHER ORDERED, the amendments to Cal. Code Regs., title 13, section 2025, as set forth in the Final Regulation Order, which is attached hereto as Attachment 3, are adopted.

Executed this 19th day of September 2011, at Sacramento, California.


James N. Goldstene
Executive Officer

Attachments