TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATION FOR MOBILE CARGO HANDLING EQUIPMENT AT PORTS AND INTERMODAL RAIL YARDS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards (section 2479, title 13, California Code of Regulations (CCR)).

DATE: September 22, 2011

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 22, 2011, and may continue at 8:30 a.m., September 23, 2011. This item may not be considered until September 23, 2011. Please consult the agenda for the hearing, which will be available at least 10 days before September 22, 2011, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendment of section 2479, title 13, California Code of Regulations, the Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards (CHE Regulation or regulation). The following documents would be incorporated in the regulation by reference: *(1) Society of Automotive Engineers (SAE) Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles as set forth in SAEJ1667 issued February 1996; (2) International Standard ISO 8178-4(E):1996, "Reciprocating Internal Combustion Engines – Exhaust Emission Measurement – Part 4: Test Cycles for Different Engine Applications"; (3) International Standard ISO 8178-2(E):1996, "Reciprocating Internal Combustion Engines – Exhaust Emission Measurement – Part 2: Measurement of Gaseous and Particulate Exhaust Emissions at Site, and (4) International Standard ISO 8178-1(E):1996, "Reciprocating Internal Combustion Engines – Exhaust Emission Measurement – Part 1: Test Bed Measurement of Gaseous and Particulate Exhaust Emission.*

Background:

In December 2005, the ARB approved for adoption the CHE Regulation as one of many steps to reduce emission from goods movement activities.[1] The regulation reduces emissions of diesel particulate matter (PM) and oxides of nitrogen (NO_x). The regulation also fulfills an element of the Diesel Risk Reduction Plan, adopted by the Board in 2000, that identified available strategies for reducing diesel PM. Diesel PM emission reductions are needed to reduce the potential cancer risk and other adverse impacts from exposure to this toxic air contaminant (TAC) for the people who live in the vicinity of California's major ports and intermodal rail yards. The regulation reduces diesel PM and NO_x that contribute to regional PM and assist California in its goal of achieving state and federal air quality standards. Reductions in NO_x, a precursor in the formation of ozone, also helps reduce regional ozone levels.

The regulation, effective December 6, 2006, establishes best available control technology (BACT) for new and in-use mobile cargo handling equipment (CHE) that operate at California's ports and intermodal rail yards. The regulation requires yard trucks that operate at a port or intermodal rail yard in California to meet in-use performance standards through accelerated turnover of older yard trucks to ones equipped with cleaner, on-road engines. Non-yard truck equipment is also required to meet BACT. This equipment includes retrofits and/or replacement to cleaner on-road or off-road engines. Owners or operators are required to maintain records of their equipment, compliance method, and compliance dates, as well as periodically report to ARB their compliance plans and demonstrations of compliance.

The proposed amendments would provide owners/operators with additional flexibility for the purpose of reducing compliance costs, maintain the emissions reduction benefits of the regulation, initiate an opacity based monitoring program, and clarify several of the regulation's provisions. The proposed amendments would continue to protect the public's health while providing cargo handling equipment (CHE) owners/operators with additional flexibility to comply with the regulation in the most cost-effective manner. The proposed amendments are summarized below.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The proposed amendments were designed to provide additional compliance flexibility, maintain the anticipated emission reductions, and clarify several provisions in the regulation. The proposed amendments address several areas including: retrofit requirements, operational requirements, emission standards, compliance provisions, definitions, and other clarifying language.

[1] The regulation was formally adopted October 17, 2006 and became effective on December 31, 2006.

Retrofit Requirements

Additional time for equipment with no VDECS available: Staff is proposing to add two years to the current two years maximum annual compliance extensions for in-use non-yard truck equipment for which there are no VDECS available to provide owner/operators the flexibility to use the least costly compliance option.

Add a safety provision for VDECS: Staff is proposing to add VDECS safety as a reason for determining that there is "No VDECS Available" and granting an annual extension. Under the amendment, the owner/operator would have to demonstrate that there is no VDECS that can be safely and feasibly used for a particular type of equipment. The extension would be reviewed annually and additional extensions would be contingent upon a re-evaluation of whether or not there continues to be no VDECS available for reasons of safety or feasibility.

Allow more time for extension application: The time frame to apply for the "No VDECS Available" extension would be changed from 6 months to 60 days prior to the compliance deadline in order to give operators more time to determine if a compliance extension is needed.

Require equipment with a "No VDECS Available" extension to be brought into compliance within 6 months after a VDECS does become available: Staff is proposing that the "No VDECS Available" extension be amended to require the installation of VDECS, or another compliance option, within six months of notification that a VDECS has become available for the equipment. This is consistent with the current requirements for new equipment that must be retrofitted.

Allow extensions for experimental diesel PM emissions control strategies for gathering verification data: Staff is proposing to expand the "No VDECS Available" extension for an experimental diesel emission control strategy to allow CHE owners/operators to gather information needed for verification.

Operational Practices

Low-use compliance extension: Staff is proposing two one-year annual compliance extensions for equipment that operates 200 hours per year or less. The amendment would allow ARB to limit the number of extensions per fleet to two pieces of equipment or two percent of the fleet equipment.

Non-yard truck equipment transfers: Staff is proposing to allow non-yard truck equipment owned or leased by one party to be transferred to another location within California that is owned or leased by the same party. Transfers could not be used to comply, or delay compliance, with the regulation. The equipment would be required to apply BACT prior to being used in the new location. ARB would approve transfer requests, on a case-by-case basis, for non-yard truck equipment only.

Warranty engine replacement: Staff is proposing an amendment to allow, in cases of premature engine failure, owners/operators to replace an engine under the original equipment manufacturers warranty with a like-engine even when newer engine standards are in place.

Allow rental of non–compliant equipment for manufacturer delivery delays: Staff is proposing, in cases where new compliant equipment has been purchased but there is a delay in delivery, to allow owners/operators, for period of up to six months or until new equipment can be delivered, to rent or lease equipment that does not meet current emission standards, if rental equipment meeting current standards are not available and the owner/operator can demonstrate the need to use such equipment. The rental or leased equipment that could be used under the amendment can only be one Tier lower than required engine standards (i.e., if Tier 4 engine standards are in place, only Tier 3 engines could be rented).

Initiate CHE opacity based monitoring program: Staff is proposing that an opacity-based monitoring program be incorporated into the CHE Regulation. This program would establish work practice requirements for annual opacity monitoring of all CHE to ensure proper operation and maintenance such that engines continue to perform as designed or certified. Retrofitted engines would be monitored annually to ensure that the engine continues to be incompliance with the VDECS executive order.

Emission Standards

Treat Tier 4 Engines Certified to Alternate PM Emissions Standards as Tier 3 Engines: Staff is proposing to require that any engine certified to Tier 4 Family Emission Limit (FEL) Alternate PM standards (Alt PM standards) be retrofitted with highest level VDECS within one year of acquisition. The U.S. EPA allows engine manufacturers to produce a specified percentage of Tier 4 engines built to alternative, less stringent, PM and NO_x emissions limits. These engines are referred to as FEL or Averaging, Banking, and Trading (AB&T) engines. The Tier 4 Alt PM standards are essentially Tier 3 standards. Their use would effectively undermine the emission reductions that were anticipated to be achieved by the CHE Regulation with the introduction of Tier 4 engines.

Allow demonstration of emissions equivalency for alternative technology: Staff is proposing an amendment to allow owners/operators to use power systems that they can demonstrate compliance with the applicable new or in-use emissions limits. Hybrid power systems are an example of a type of systems that could benefit from this amendment.

Compliance Requirements

Allow compliance schedule modification to bring older engines into compliance first: Staff is proposing to allow CHE owners/operators to modify their non-yard truck compliance schedules to permit them to bring older model-year engines into compliance

prior to newer model-year engines that are otherwise required to come into compliance before the older model-year engines. The number of engines required to comply each year would remain the same.

Exempt equipment at rural low-throughput ports: Staff is proposing that any port that has an average annual throughput of less than one million tons and is located more than 75 miles from an urban area would be exempt from the requirements of the CHE Regulation. The Port of Humboldt Bay is the only port that currently meets this set of criteria. If adopted, CHE with off-road engines at an exempted port would be subject to ARB's off-road in-use equipment regulation. CHE with on-road engines would be subject to the on-road truck and bus regulation. The Port of Humboldt Bay is in an ozone attainment area and does not contribute to any downwind violations.

Amendments to Clarify Language and Intent

Definitions: Staff is proposing to clarify the intent of the CHE Regulation by modifying several existing definitions including: port; owner or operator; intermodal rail yard; newly, purchased, leased or rented cargo handling equipment; rubber-tired gantry crane; retirement or retire; and compression ignition engines.

In addition, staff is proposing to add definitions for the following terms to support both modified definitions and other amendments: alternate PM standard; two-year average annual cargo throughput; water-borne commerce; construction activities; cargo; Class I Railroad; low-throughput port; opacity; otto cycle engine; safe; urban area; warranty period; and Family Emissions Limit.

*Clarifying Language: S*taff is also proposing to clarify that equipment brought onto a port or intermodal rail yard solely for construction or unexpected repairs are exempt from the regulation and other clarifying changes.

COMPARABLE FEDERAL REGULATIONS

Presently, no federal law has been promulgated addressing emission reductions from in-use CHE engines. Unless specifically preempted under Section 209(e)(1), California is the only state allowed to adopt emission requirements for off-road engines that are different from those of the federal government. Section 209(e)(2)(A) of the federal Clean Air Act (CAA) authorizes California to adopt and enforce emission standards and other requirements for off-road engines and equipment not subject to federal preemption, so long as the California standards "will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards." However, California must apply for, and receive authorization from, the administrator of the United States Environmental Protection Agency (U.S. EPA) before ARB may enforce its regulations.

In January 2007, the ARB submitted a waiver and authorization request to the U.S. EPA, pursuant to section 209(e)(2) of the federal Clean Air Act. On January 25, 2011,

the U.S. EPA initiated a public comment period on ARB's authorization request. This comment period ended March 17, 2011. As of this publication, the U.S. EPA has not yet made a decision on the request.

The proposed amendments to the regulation continue to rely on the implementation of U.S. EPA's Tier 4 nonroad emission standards for new diesel engines, with which the ARB has harmonized, since engine replacement continues to be one of many compliance pathways. While under CAA Section 213, U.S. EPA may only adopt new emission standards for nonroad engines; California is the only government agency in the nation that may adopt in-use emission standards for non-road engines.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed amendments to the regulation, which includes a summary of the potential environmental and economic impacts, if any, of the proposed amendments. The ISOR is entitled, *"Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards."*

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow comparison with existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, on August 3, 2011.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Cherie Rainforth, Manager of the Control Strategies Section, at (916) 327-7213 or Kirk Rosenkranz, Air Pollution Specialist, at (916) 327-7843.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at http://www.arb.ca.gov/regact/2011/cargo11/cargo11.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined, with the exception noted below, that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies. The proposed amendments would impose a mandate on some local agencies established for the oversight of ports that also own CHE, but any costs incurred are not reimbursable under Government Code section 17500 et seq.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB staff estimated that while the amendments would result in both costs and savings to businesses, the overall total statewide impact on businesses would be a net savings of $1 to $2 million in 2011 dollars over the time period of 2011 to 2020. The annual net savings range from $100,000 to $200,000 statewide.

For those businesses that operate at ports or intermodal rail yards, and have diesel powered cargo handling equipment, the costs due to the amendments will vary depending on the age, number and type of equipment operated. While the costs due to the amendments implementing an opacity based monitoring program are fairly predictable for a typical business, the various savings provided by the amendments, such as those due to the additional two years of extensions for equipment with "No VDECS Available", or due to the flexibility to move equipment when business needs arise, are less predictable. Additionally, the only other cost due to the amendments, the cost to retrofit Tier 4 engines certified to the FEL Alt PM standards, may be an avoidable cost as owners/operators may have the choice to purchase Tier 4 engines meeting the non-FEL standards.

It would be expected that the costs and savings associated with the different amendments would impact the different sectors of the industry in a relatively uniform manner. The one exception to this would be the amendment to exempt small rural ports. The approximately $1 million savings associated with this amendment would impact only those businesses operating at the Port of Humboldt Bay.

The Executive Officer has determined that, because there are net savings from the proposed regulatory actions, no significant impact on mobile cargo handling equipment owner/operators, businesses that import or export goods, California port competitiveness, or on individuals purchasing such goods is expected, even if all these costs were passed on to the consumer.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. A number of businesses are integrally linked to the goods that travel through California ports and intermodal rail yards. However, we do not believe that the added costs of some of the proposed regulatory actions would result in vessel operators or shippers choosing alternative ports and intermodal rail yards outside California.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not significantly affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A short delay in capital investment could be expected due to the amendments that provide for a two year delay in compliance for equipment with no VDECS available and low-use equipment. This delay is expected to benefit equipment owners/operators and has no adverse impact on VDECS manufactures because these manufacturers are unable to supply a marketable VDECS at this time. No other impacts on business would be expected.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would affect, but not adversely impact, small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a) (11), the Executive Officer has found that the proposed regulatory action will have no significant impact with regard to reporting requirements since only minor changes are proposed to these provisions of the regulations.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The comment period for this regulatory action will begin on August 8, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after August 8, 2011 and received no later than 12:00 noon on September 21, 2011, and must be addressed to the following:

Postal mail:

Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

New Feature

You can now sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: http://www.arb.ca.gov/board/online-signup.htm.

Please note that under the California Public Records Act (Gov. Code, section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39002, 39600, 39515, 39516, 39600, 39601, 39602, 39650, 39655, 39656, 39658, 39659, 39665, 39666, 39667, 39674, 39675, 40000, 41511, 43000.5, 43013, and 43018. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39655, 39656, 39657, 39658, 39659, 39665, 39666, 39667, 39674, 39675, 40000, 41511, 43000.5, 43013, and 43018.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such an event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990. The document will also be posted on ARB's website listed above.

SPECIAL ACCOMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternative format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveido para alguna de las siguientes:

- Un interprete que este disponible en la audiencia.
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresion grande) u otro idioma.
- Una acomodacion razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envie un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del dia programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 7-1-1 para el Servicio de Retransmision de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene
Executive Officer

Date: July 26, 2011

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.arb.ca.gov."