

Appendix 1

State of California AIR RESOURCES BOARD

Executive Order R-12-002

Relating to the Emergency Regulatory Amendments to the Tractor-Trailer Greenhouse Gas Regulation

WHEREAS, the Air Resources Board adopted the Heavy-Duty Vehicle Greenhouse Gas (GHG) Emission Reduction regulation (Tractor-Trailer GHG regulation) on October 23, 2009 to reduce GHG emissions from 53-foot or longer box-type trailers and the tractors that haul such trailers on California highways;

WHEREAS, the Tractor-Trailer GHG regulation is set forth in sections 95300 to 95312 of title 17, California Code of Regulations;

WHEREAS, the Tractor-Trailer GHG regulation required 2010 and earlier model year 53-foot or longer box-type trailers pulled by a tractor on a California highway to either be a SmartWay certified trailer or retrofitted with SmartWay approved technologies by January 1, 2013, or alternatively, a trailer owner could elect to comply with an optional trailer fleet compliance schedule;

WHEREAS, the Tractor-Trailer GHG regulation contained an optional trailer fleet compliance schedule (Option 1 of the Large Fleet Compliance Plan, "Option 1") that allowed owners of trailer fleets comprised of 21 or more 2010 or older model-year trailers to retrofit those trailers over several years (from January 1, 2011 through January 1, 2016) in lieu of fully complying with the trailer requirements by January 1, 2013, if they supplied specified information supporting their request by July 1, 2010;

WHEREAS, the compliance costs associated with the trailer requirements are estimated to range from approximately \$1900 to \$4200 per trailer;

WHEREAS, the Option 1 compliance schedule provides trailer fleet owners flexibility to better manage their capital expenditures needed to comply with the regulation, in comparison to the general requirement requiring all trailers to be compliant by January 1, 2013;

WHEREAS, the Tractor-Trailer GHG regulation was approved by the Office of Administrative Law (OAL) on December 9, 2009, and became effective on January 1, 2010;

WHEREAS, as ARB staff began implementing the Tractor-Trailer GHG regulation, it received substantially fewer requests from trailer fleet owners to participate in the optional compliance schedules than anticipated, which led staff to believe that many trailer fleet owners were simply unaware of the regulation, and may have therefore missed the opportunity to participate in the compliance phase-in option;

WHEREAS, in December 2010, the Board found that the economic environment in California and in the nation had not substantially improved since the Board approved the Tractor-Trailer GHG regulation in December 2008, and that the current recession had significantly impacted overall trucking activities, and specifically those companies that operate on-road heavy-duty vehicles in the normal course of business;

WHEREAS, on October 26, 2011, the Board, in consideration of the above mentioned findings, adopted amendments to the Tractor-Trailer GHG regulation that it found would provide affected fleets with additional flexibility to comply with the regulation's requirements without significantly affecting the GHG benefits of the existing regulation;

WHEREAS, one of the primary amendments adopted by the Board on October 26, 2011 established another compliance schedule for large trailer fleets (Option 2 of the Large Fleet Compliance Plan, "Option 2") that would allow large trailer fleet owners to phase in compliance from January 1, 2012 through January 1, 2016, provided the owners provide specified information supporting their request by July 1, 2011;

WHEREAS, another amendment adopted by the Board on October 26, 2011 provided flexibility for owners of fleets participating in both Option 1 and Option 2 to report conformance on an annual basis, rather than submitting a one-time plan that covers the entire phase-in submitted by the registration deadline of July 1, 2010;

WHEREAS, both Option 1 and Option 2 specify compliance schedules and reporting requirements that participating large trailer fleet owners must meet;

WHEREAS, OAL approved the 2011 amendments on December 12, 2011, and the amendments became effective on January 11, 2012;

WHEREAS, subsequent to OAL's approval of the 2011 amendments, ARB staff discovered that due to an oversight, the 2011 amendments specified a registration deadline for Option 2 (July 1, 2011) that preceded the effective date of the amendments (January 11, 2012);

WHEREAS, this oversight creates an emergency situation that requires immediate action because it immediately and adversely affects trailer fleet owners who waited for OAL's approval of the 2011 amendments before submitting their registration requests, as well as fleet owners that had not timely submitted registration requests, by requiring them to retrofit their entire trailer fleets by January 1, 2013;

WHEREAS, ARB did not become aware of this oversight in sufficient time to address the oversight through nonemergency regulations adopted in accordance with the provisions of Article 5, Chapter 3.5, Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, a number of large trailer fleet owners have stated their desire to utilize Option 2, but were nonetheless unwilling to register their trailer fleet until the amendments were formally approved by OAL;

WHEREAS, large trailer fleet owners have also stated that the logistics associated with retrofitting thousands of trailers by January 1, 2013 poses a difficult problem and would significantly reduce the number of available trailers to service the needs of California;

WHEREAS, the July 1, 2011 registration deadline for Option 2 effectively vitiates the Board's intent in adopting Option 2, which was to provide economic relief to an industry that is experiencing the adverse effects of the prolonged economic recession by allowing large trailer fleets to spread their compliance costs across 5 years, rather than requiring full compliance by January 1, 2013;

WHEREAS, ARB has received requests from eight large trailer fleet owners seeking to participate in the Option 2 compliance plan, but that had not submitted registration requests by the July 1, 2011 deadline;

WHEREAS, as of January 11, 2012, these eight large trailer fleet owners collectively operated over 73,000 trailers, which represent approximately 182% of the number of trailers registered in Option 2, and 11% of the total number of trailers projected to be impacted by the regulation in calendar year 2010;

WHEREAS, several large trailer fleet owners have stated that their preclusion from Option 2 would impose severe problems arising from the reduced number of available trailers to service the needs of California;

WHEREAS, such a situation will likely result in financial hardship for those fleets, as well as California businesses and members of the public that rely on those trailer fleets to bring goods into the state;

WHEREAS, based on the aforementioned facts, I find that an emergency situation exists;

WHEREAS, I have further determined that the adoption of emergency amendments to title 17, California Code of Regulations sections 95307(b), (f), and (g) is necessary to address that emergency;

WHEREAS, the emergency amendments allow owners of large trailer fleets to submit their Option 2 Large Fleet Compliance Plan until June 1, 2012;

WHEREAS, the emergency amendments require owners of large trailer fleets participating in Option 2 to ensure that the percentage of compliant trailers in their compliance plan base is at least 20 percent by June 1, 2012;

WHEREAS, the emergency amendments require owners of large trailer fleets participating in Option 2 to report to the Executive Officer the applicable compliance method for each trailer brought into compliance in order to meet the minimum fleet conformance threshold for compliance year 2011 by June 1, 2012;

WHEREAS, the emergency amendments require owners of large trailer fleets to provide the Executive Officer by June 1, 2012, the trailer identification number or vehicle identification number of each trailer in the compliance plan base that is redesignated into local-haul or storage trailer service in a specific compliance year;

WHEREAS, the emergency amendments would allow owners of trailer fleets that have elected to participate in Option 1, to withdraw their participation from Option 1 and to instead participate in Option 2, provided the Executive Officer receives the notices to withdraw by May 1, 2012 and the owners submit their requests to participate in Option 2 by June 1, 2012;

WHEREAS, the emergency amendments require owners of trailer fleets participating in Option 2 that have identified exempt storage trailers or exempt local-haul trailers in their trailer fleet lists, in accordance with section 95307(d)(2)(N), to register those exempt trailers in accordance with section 95306, Short-Haul Tractor, Local-Haul Tractor, Local-Haul Trailer, and Storage Trailer Registration Requirements, by June 1, 2012;

WHEREAS, none of the emergency amendments constitute emission standards or test procedures for new or used motor vehicles;

WHEREAS, on February 22, 2012, the Board, in accordance with Government Code section 11346.1(a)(2), sent a notice of the proposed emergency action to every person who had filed a request for notice of regulatory action with the Board;

WHEREAS, I find that this emergency regulatory action is necessary to preserve the public peace, health and safety, and general welfare of the people of California;

WHEREAS, the emergency amendments to title 17, California Code of Regulations sections 95307(b), (f), and (g), as set forth in Attachment A hereto, effectuate my direction and intent; and

WHEREAS, the Statement of Emergency as set forth in Attachment B hereto.

NOW THEREFORE, IT IS ORDERED that emergency amendments to title 17, California Code of Regulations sections 95307(b), (f), and (g) are adopted as set forth in Attachment A.

IT IS FURTHER ORDERED, that the emergency amendments be submitted to the Office of Administrative Law as expeditiously as possible.

Executed this _____ day of February 2012, at Sacramento, California.

James N. Goldstene
Executive Officer

Attachments

- Attachment A: Emergency Regulatory Amendments to the Tractor-Trailer Greenhouse Gas Regulation
- Attachment B: Statement of Emergency