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## MEMORANDUM

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To: ESJPA Board of Directors  
From: Mary Pitto, Program Manager

Date: March 15, 2010

RE: ARB Diesel Retrofit Update

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### On-Road Heavy-Duty Diesel-Fueled Public and Utility Fleets

There has been no new recent information on the On-Road Heavy-Duty Diesel-Fueled Public and Utility Fleets Regulation (Public Fleet Rule).

As a reminder, El Dorado County is on the regular schedule for all public agencies and public utilities. The retrofit compliance dates began December 31, 2007, with 20% of the Group 1 (1960-1987) engines and 20% of the Group 2 (1988-2002) engines required to be retrofit with BACT. December 31, 2009 the percentage increases to 60% of the vehicles for both Groups and adds 50% of the Group 3 (2003-2006) engines. For the December 31, 2010 compliance deadline, the remaining 50% of Group 3 engines are required to be retrofit.

All other RCRC counties qualify as low-population counties and the compliance dates are extended. For those counties selecting the implementation schedule option, 20% of Group 2 vehicles were required to be retrofit by December 31, 2008 and 20% of Group 1 vehicles were required to be retrofit by December 31, 2009. For the December 31, 2010 compliance deadline, another 20% of the Group 2 vehicles are required to be retrofit. For those counties that chose the Accelerated Turnover Option, all 1960 - 1993 engines need to be replaced with a 1994 or newer engine by 2020, and then all 1994 - 2006 engines are required to be retrofitted by 2025.

Information on the Public Fleet Rule is available on the ARB website, located at: <http://www.arb.ca.gov/msprog/publicfleets/publicfleets.htm>

### In-Use Off-Road Diesel-Fueled Fleet Regulation

On January 11, 2010 the Associated General Contractors (AGC) of America filed a petition requesting ARB delay the fleet average target dates for the In-Use Off-Road Diesel-Fueled Fleet Regulation (Off-Road Rule) for two years. The ARB Executive Officer responded on February 11<sup>th</sup> by announcing that ARB will take no enforcement action on compliance with the regulation's emission standards before ARB receives authorization from US EPA and scheduling a public hearing on March 11, 2010.

Subsequently, ARB issued a Regulatory Advisory (attached) clarifying the delay in the enforcement policy. Since ARB currently lacks authorization from the US EPA to enforce the requirements of the fleet average target dates and because of the current economical conditions, ARB will not take enforcement action for noncompliance with the fleet average target dates. The delay will remain in effect until US EPA grants California authorization to enforce the regulation. At that time, ARB will provide an additional 6 months to comply with all requirements and fleets will not be retroactively cited for non-compliance.

What does this mean to RCRC *public fleets*? Fleets are required to meet the target fleet average emission goals or turnover 8/10% of the horsepower (hp) per year for nitrogen of oxides (NOx) and retrofit 20% of the hp per year for particulate matter (PM), by March 1 beginning in 2010 for large fleets, 2013 for medium fleets, and 2015 for small fleets and ending in 2020 for large and medium fleets and 2025 for small fleets. Except for El Dorado County, all of RCRC member counties are considered low-population counties. All local agency fleets (public, not private) of low population counties are considered small fleets, irrespective of total horsepower. Small fleets (those with a total horsepower of up to 2,500 and including municipalities in low population counties) are exempt from the NOx provision. So, except for El Dorado County, RCRC *public fleets* have no compliance requirement until 2015, and this action currently has no impact. It also has no effect on the medium and small private fleets.

The purpose of the March 11<sup>th</sup> Executive Officer hearing is to take testimony and consider if the off-road regulations should be further modified to account for the current economic condition and subsequent emissions reductions. In addition, written comments will be accepted until March 18<sup>th</sup>. The information collected will then be summarized and presented to the Board at the full ARB meeting in April, along with an updated inventory and 2014 State Implementation Plan (SIP) status, and possible revisions to the Off-Road Rule.

ARB anticipates workshops being held in May and June on possible amendments to the Off-Road Rule, as well as the In-Use Truck and Bus Regulation and the Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulation (Truck and Bus Rule). Any revisions to these rules would then be considered at the August/September Board hearing.

Additional information on the Off Road Rule is available on the ARB website, located at:  
<http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>

### Attachments

- ARB Regulatory Advisory on the Enforcement of the Off Road Rule
- ARB Frequently Asked Questions for In-Use Off-Road Diesel Vehicle Regulation



# Regulatory Advisory

February 2010



Advisory: 10-414

## ENFORCEMENT OF THE IN-USE OFF-ROAD DIESEL VEHICLE REGULATION

The purpose of this advisory is to clarify regarding Air Resources Board policy on enforcement of the In-Use Off-Road Diesel Vehicle Regulation, and is being issued in coordination with ARB staff's continuing evaluation of the emission impact of current economic conditions. As part of that effort, in late summer 2010, the Board will consider additional amendments to both this regulation and the Truck and Bus Regulation that would be designed to provide additional regulatory relief to affected fleets while still achieving California's clean air commitments.

### **Enforcement Status**

Because of the continuing effects of the economy on industries that use off-road diesel vehicles, in particular the construction industry, and because ARB currently lacks authorization from the United States Environmental Protection Agency to enforce certain aspects of the regulation, effective immediately, no enforcement action will be taken for noncompliance with the specific provisions of the regulation described in Item I below. In addition, during this enforcement delay, fleets will not be retroactively cited for non-compliance with these provisions. This enforcement delay will remain in place until U.S. EPA grants authorization to California to enforce all provisions of the regulation. At that time, ARB will provide fleets with up to an additional 6 months to comply with all requirements, as we've done previously with other regulations.

Please be advised that the provisions in Item II below remain in effect and are not subject to this enforcement delay. A more detailed description of the overall requirements of the regulation is provided later in this advisory.

### I. Provisions Currently Not Enforceable

While authorization from U.S. EPA is pending, ARB will not be enforcing:

- Fleet average or Best Available Control Technology requirements (vehicle retrofit and replacement)
- Limitations on adding higher emitting Tier 0 and Tier 1 vehicles, and
- Requirements for new fleets to meet fleet average targets in order to enter California.

While no enforcement action on these provisions will be taken during this interim period, enforcement delay does not change the existing provisions of the regulation, nor does it change the current eligibility requirements of any available financial incentive programs. Fleets that accrue any compliance credits during this time will be permitted to retain those credits towards compliance with the regulation.

### II. Provisions Currently Enforceable

While U.S. EPA authorization for certain elements is pending, enforcement of the following provisions will continue:

- Idling limits
- Reporting
- Labeling, and
- Sales disclosure requirement

These provisions remain in effect and are fully enforceable. This means that all fleets that have failed to submit an initial report to ARB are in violation of the regulation. Also, large fleets must still comply with the April 1, 2010, reporting deadline (i.e., still must report their fleet status, including any reduced activity and/or

reduced horsepower credits to ARB). This includes fleets that do not meet the regulation's emission performance standards.

### Request for Enforcement Authorization

Under state and federal law, ARB currently has the authority to implement and enforce the idling, reporting, labeling and disclosure requirements of the regulation. However, under federal law, an authorization from U.S. EPA is required in order for ARB to enforce the emission requirements of the regulation, which include the March 1, 2010 large fleet requirements for retrofitting and replacing existing vehicles, as well as restrictions on fleets to add vehicles that do not meet certain emission standards. In August 2008, ARB submitted an authorization request to U.S. EPA, but as of this publication that request is still pending.

### **Regulation Background**

The regulation was approved by ARB at a hearing on July 26, 2007, and is intended to significantly reduce emissions from off-road diesel vehicles that operate in California and have engines greater than 25 horsepower (hp) that are used to propel a vehicle and that are not used in agriculture. In general, the regulation requires vehicle 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. These requirements can be met either by annually meeting increasingly stringent fleet average targets, or by applying Best Available Control Technology (BACT) to their vehicles. The regulation determines the date of compliance and the actions required based on the size of the fleet, splitting fleets into three categories: large, medium and small. The first compliance date for large fleets (those with over 5,000 hp) is March 1, 2010. The first compliance dates for medium and small fleets are 2013 and 2015, respectively.

The regulation also has limits on vehicle idling, disclosure requirements regarding the sale of off-road diesel vehicles subject to the regulation, and requirements for the reporting and labeling of affected vehicles. These requirements apply to all fleets, regardless of size, and are currently in effect.

The regulation has been amended several times to provide additional relief and credits to fleets by extending deadlines for fleet owners to obtain additional compliance credits for the early installation of exhaust retrofits, as well as the addition of new credits to provide relief to large fleets that have been adversely impacted by the current recession (either through the reduction in overall fleet hp or through a reduction in vehicle activity).

### **Non-Compliance**

Fleets that have not yet reported or do not meet the labeling, disclosure or idling requirements of the regulation may be subject to enforcement action, including fines. Health and Safety Code, Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars or ten thousand dollars respectively for each day in which the violation occurs, which can be applied to each vehicle that is not reported.

### **For more information**

To obtain a copy of the regulation or other related compliance assistance documents, visit the off-road knowledge center webpage <http://www.arb.ca.gov/msprog/ordiesel/knowcenter.htm> or contact the DOORS Hotline at 1-877.59DOORS or via e-mail at [doors@arb.ca.gov](mailto:doors@arb.ca.gov). If you would like additional information regarding the enforcement of the off-road diesel regulation, please contact Mr. Eric Brown at 916-323-0166 or via e-mail at [ebrown@arb.ca.gov](mailto:ebrown@arb.ca.gov).

## Frequently Asked Questions In-Use Off-Road Diesel Vehicle Regulation

### Restrictions On Adding Used Vehicles To A Fleet

#### Tier 0 Vehicles

**Q - Am I allowed to buy an older, used, Tier 0 vehicle? In other words, is it legal to add a Tier 0 vehicle to my fleet?**

A - No, except in very limited cases (described below), as of March 1, 2009, fleets cannot add vehicles with Tier 0 engines. Tier 0 engines are uncertified engines; those built before emissions standards were in effect, and include the following:

- Model year (MY) 1998 and earlier engines: 25-49 horsepower (hp),
- MY 1997 and earlier engines: 50-99 hp,
- MY 1996 and earlier engines: 100-174 hp,
- MY 1995 and earlier engines: 175-750 hp, and
- MY 1999 and earlier engines: > 750 hp.

For more information about Tier 0 engines, see <http://www.arb.ca.gov/enf/advs/advs390.pdf>. At the end of this document there is a link to a table which lists Tiers by engine model year and horsepower.

A vehicle with a Tier 0 engine may be purchased for parts only, or if the vehicle will be immediately repowered with a cleaner engine. For more information, see <http://www.arb.ca.gov/msprog/ordiesel/documents/partsvehicles.pdf>.

**Q - What if I want to sell a vehicle with a Tier 0 engine? Who can legally buy a vehicle with a Tier 0 engine in California?**

A - If a fleet wants to sell a vehicle with Tier 0 engine, it can only legally be purchased by certain parties, such as out-of-state fleets, fleets involved in agricultural operations, a person that intends to use the vehicle for personal, noncommercial use, or by a dealership who intends to resell it. Sellers must provide the required disclosure when selling any vehicle subject to the off-road diesel vehicle regulation (see <http://www.arb.ca.gov/enf/advs/advs378.pdf>).

#### Higher Tier Vehicles

**Q - What about other, newer used vehicles? Is it legal to add used Tier 1, 2, or 3 vehicles to my fleet (i.e., to buy other used vehicles)?**

A - Beginning March 1, 2010 for large fleets, March 1, 2013, for medium fleets, and March 1, 2015, for small fleets, there are certain restrictions that apply to adding

used vehicles with engines newer than Tier 0 (i.e., Tier 1 through 3 vehicles). The exact restrictions for adding vehicles to a fleet depend upon a fleet’s compliance path – that is, whether the fleet met the fleet averages or showed compliance through Best Available Control Technology (BACT) requirements, on the previous March 1. Fleets complying with the fleet average requirements have more flexibility in adding used vehicles than do fleets complying via BACT, as summarized below:

**If fleet met the fleet averages** - If a fleet met the fleet average targets of the previous March 1, they can add Tier 1 and newer vehicles on any date. However, if the purchase of a vehicle causes the fleets to exceed those targets, then the fleet has 3 months to bring the fleet back into compliance and meet those targets.

**If the fleet met the BACT requirements** - If a large or medium fleet met BACT requirements (and did not meet the fleet average targets) on the previous March 1, then any vehicle the fleet wants to add to their fleet must be Tier 2 or higher and have a NOx emission factor less than or equal to the most recent NOx fleet average target.

The chart below shows which tier vehicles are acceptable to add to large and medium fleets. For example, for a vehicle with a 75-99 hp engine, from March 1, 2015, to February 29, 2016, a large or medium fleet that met the BACT requirements on the previous March 1 could only add a vehicle with a Tier 3 or higher engine.

Horsepower Group	March 1, 2010 - Feb 28, 2011	March 1, 2011 - Feb 29, 2012	March 1, 2012 - Feb 28, 2013	March 1, 2013 - Feb 28, 2014	March 1, 2014 - Feb 28, 2015	March 1, 2015 - Feb 29, 2016	March 1, 2016 - Feb 28, 2017	March 1, 2017 - Feb 28, 2018	March 1, 2018 - Feb 28, 2019	March 1, 2019 - Feb 29, 2020			
25-49 hp	T2					T4							
50-74 hp						T3				T4I		T4I	
75-99 hp										T3		T4I	
100-174 hp						T3		T4I		T4I		T4I	
175-299 hp						T3		T4I		T4I		T4I	
300-599 hp						T3		T4I		T4I		T4I	
600-750 hp						T3		T4I		T4I		T4I	
Greater than 750 hp						T3		T4I		T4I		T4I	

If a small fleet met BACT requirements on March 1 of the previous year, any vehicles that fleet wants to add must be Tier 2 or higher, beginning

March 1, 2015. Small fleets are always allowed to add Tier 2 or higher vehicles (i.e., at no point are they limited to Tier 3 or higher, etc.).

For further explanation of fleet averages and BACT, see the Large, Medium, or Small Fleet Requirements documents on the knowledge center web page at <http://www.arb.ca.gov/msprog/ordiesel/knowcenter.htm>.

### Reporting Adding Vehicles

**Q - Do I have to report vehicles I have added to my fleet to ARB?**

A - Yes, when a fleet acquires an off-road vehicle, the fleet must report the addition within 30 days from the date the fleet receives the vehicle, unless the fleet is utilizing the manufacturer delay provisions (see below). See <http://www.arb.ca.gov/msprog/ordiesel/documents/continuedreporting.pdf> for more information. After a vehicle is added to a fleet, that vehicle must be labeled within 30 days of reporting. See <http://www.arb.ca.gov/msprog/ordiesel/faq/faq-labeling.pdf>. In summary: 30 days to report, then another 30 days to apply the EIN.

For more information on how to report vehicles purchased or sold, please see our DOORS User Guides at [https://secure.arb.ca.gov/ssldoors/doors\\_reporting/reporting.php](https://secure.arb.ca.gov/ssldoors/doors_reporting/reporting.php). Note that for vehicles in DOORS, after the seller marks it sold (from their DOORS fleet), then the buyer simply enters the EIN and the vehicle and engine information is automatically inserted in the buyer's fleet.

### Other Factors When Adding Vehicles

**Q - What if there are delays in receiving a vehicle after it is purchased?**

A - If a new vehicle is needed for a fleet's compliance demonstration, the manufacturer delay provisions of the regulation specify that a fleet is considered in compliance (i.e., may count the purchased vehicle in their fleet averages and for BACT purposes) if there was a contractual agreement for the purchase of a vehicle at least four months prior to the required compliance date, even if that vehicle does not arrive until after the compliance date. The fleet should report the vehicle purchase date in DOORS as the date of the signed contract or signed purchase order. For more information, see <http://www.arb.ca.gov/msprog/ordiesel/faq/faqmanufacturerdelay.pdf>.

**Q - How can I find the tier and model year of an off-road engine in a vehicle I am considering buying?**

- A - For reference, this table [http://www.arb.ca.gov/msprog/ordiesel/documents/PM\\_NOx\\_Emis\\_Factors.pdf](http://www.arb.ca.gov/msprog/ordiesel/documents/PM_NOx_Emis_Factors.pdf) shows engine Tier (and emission factor) by engine model year<sup>1</sup> and horsepower. Also, this document explains how to determine the model year of an engine <http://www.arb.ca.gov/msprog/ordiesel/faq/faq-model-year.pdf>.
- Q - Do the same adding vehicle restrictions that apply to buying vehicles apply to renting or leasing vehicles? For example, am I prevented from renting a Tier 0 vehicle or renting a Tier 1-3 vehicle after a certain date?**
- A - No, unless the lease is for a year or longer and it is written into the lease agreement that compliance is the responsibility of the lessee, you are permitted to rent or lease any tier vehicle. If the lease is for a year or longer and the lease agreement indicates compliance is the responsibility of the lessee, then the lessee must follow the adding vehicle restrictions described above (i.e., cannot lease a Tier 0 vehicle, or lease a higher tier vehicle that violates the adding vehicle restrictions above). For further information on how the regulation applies to rental and leased vehicles, please see <http://www.arb.ca.gov/msprog/ordiesel/documents/rentalfaq.pdf>.

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<sup>1</sup> There can be a difference between vehicle model year and engine model year. A difference of a year or two is not unusual. See the document referenced in this section for more information.