

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

**PUBLIC HEARING TO CONSIDER ADOPTION OF THE HEAVY-DUTY DIESEL ENGINE
SOFTWARE UPGRADE REGULATION (CHIP REFLASH)**

Public Hearing Dates: December 11, 2003
March 25, 2004

Public Meeting Dates: October 28, 2004
December 9, 2004

Public Availability Date: December 23, 2004

Deadline for Public Comment: January 7, 2005

At a public hearing held March 25, 2004, the Air Resources Board (the Board or ARB) approved the adoption of new section 2011 in new article 3.5, within chapter 1, division 3, title 13, California Code of Regulations (CCR), and the amendment of sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194 of article 1 within chapter 3.5, division 3, title 13, CCR. The new regulation and amendments will require software upgrade on certain 1993 through 1999 model year heavy-duty diesel engines, and establish a mechanism for inspection and enforcement. This rulemaking was originally heard on December 11, 2003, and continued to March 25, 2004, to provide for the required review directed by Executive Order S-2-03.

The Board's action. At the conclusion of the hearing, the Board adopted Resolution 04-14, in which it approved the new and amended regulatory sections in the original proposal. The Board also directed the Executive Officer to return to the Board in December 2004 to report back on the results of the voluntary program, described in staff's presentation and in Attachment B of Resolution 04-14, for Board review. The Board further directed the Executive Officer to withhold filing the adopted regulatory sections with the Office of Administrative Law until the Board had reviewed and evaluated the voluntary program.

At the Public Meeting on December 9, 2004, the Board adopted Resolution 04-46, in which it concluded that overall the voluntary program did not meet the first target of a Low NOx Rebuild Software upgrade installation rate of 35 percent of the California-registered reflashable engines and at least 35 percent of the emission benefits of reflash from California-registered reflashable engines. The Board also determined that Detroit Diesel Corporation (DDC) had met the first voluntary program target from installation of Low NOx software on California-registered engines. The Board also directed the Executive Officer to incorporate the approved modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period.

The approved modifications include specifying that Low NOx Rebuild Engine manufacturers' authorized dealers, distributors, repair facilities, and rebuild facilities must provide a Low NOx Rebuild Kit at no added cost and install the kit within a reasonable amount of time; that Low NOx Rebuild Engine manufacturers must provide software free of charge to the dealers and reimburse authorized dealers, distributors, repair facilities, and rebuild facilities for costs incurred with software installation; that any authorized dealers, distributors, repair facilities, and rebuild facilities that refuse to install Low NOx rebuild kits must pay a civil penalty; and that Detroit Diesel Corporation may continue implementing the voluntary program, if the second, third, and fourth targets of Low NOx Rebuild Software installation rates are met.

Availability of modified text. Section 44(a), title 1, CCR requires the ARB to mail the modifications to the originally proposed regulatory text, except changes that are nonsubstantial, to, among others, all persons who commented on the software upgrade proposal during the public comment period. To expedite the mailout, nonessential material has been eliminated from this mailing.

Attachment 1 (Board Resolution 04-46), and Attachment 2 (text of the modified language), including Appendix A "Voluntary Program Upgrade Discussion Paper" (released March 16, 2004), are available online at the following ARB internet site:

<http://www.arb.ca.gov/regact/chip04/chip04.htm>

Attachment 2 contains the text of the regulation affected by the modifications being proposed with this notice. Additions to the originally proposed language are shown in underline, and deletions are shown in ~~strikeout~~. Appendix A is omitted from this mailing but is available at the above link.

Printed copies of the above attachments, including Appendix A, may be obtained by contacting Ms. Lisa Jennings, Air Pollution Specialist, Mobile Source Control Division, telephone (916) 322-6913, fax (916) 322-3923, or ljennings@arb.ca.gov.

Comments and subsequent action. In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt the regulatory sections set forth in Attachment A to Resolution 04-14, with the modifications directed by the Board and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: chip04@listserv.arb.ca.gov

Facsimile submissions are to be transmitted to: (916) 322-3928

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

Sincerely,

Robert H. Cross, Chief
Mobile Source Control Division

Attachments