

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adopting the proposed heavy-duty diesel engine software upgrade regulation. This proposed software upgrade regulation would mandate installation of software to reduce emissions of oxides of nitrogen (NOx) from 1993-1999 model year heavy-duty vehicles. The proposed regulation would also make minor, mostly related, modifications to the Heavy-Duty Vehicle Smoke and Fleet Inspection programs.

The software upgrades, referred to as low NOx software, were developed in the 1990s as a result of negotiations between the United States Environmental Protection Agency (U.S. EPA), the ARB, and seven engine manufacturers. Owners of eligible vehicles and dealers/distributors with the capability to install the software would have responsibilities under the proposed regulation. This notice summarizes the proposed regulation requirements.

DATE: March 25, 2004

TIME: 9:00 a.m.

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

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., March 25, 2004, and may continue at 8:30 a.m., March 26, 2004. This item may not be considered until March 26, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before March 25, 2004, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or amalik@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of section 2011 in new article 3.5 within chapter 1, division 3, title 13, California Code of Regulations (CCR). Proposed amendments to sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194 of article 1, chapter 3.5, division 3, title 13, CCR.

What is ARB proposing?

The ARB staff is proposing to reduce air pollution by requiring owners and operators of trucks, school buses, and motor homes with 1993-1998 model year heavy-duty diesel engines to upgrade the software in the electronic control module (ECM) of these engines. Software upgrades were developed by the engine manufacturers and are available now for most 1993-1998 model year engines. If adopted, owners and operators of eligible vehicles that operate in California must ensure that their vehicles' engines have the appropriate low NOx software installed. Since many 1999 model year vehicles have engines produced in 1998, owners and operators of 1999 model year vehicles will need to check to determine if they are affected. Distributors and dealers must provide the appropriate low NOx software to the vehicle owner or operator upon request.

What is a heavy-duty diesel engine software upgrade?

A heavy-duty diesel software upgrade (also referred to as low NOx software upgrade or chip reflash) is simply software installed in the engine that reprograms the vehicle's computer and reduces off-cycle NOx emissions. The installation process typically takes between one-half to one hour.

The ARB staff has prepared a list that can be checked to determine if low NOx software is available for the engine. This list is available from our web site at:

<http://www.arb.ca.gov/msprog/hdsoftware/hdsoftware.htm>

Would out-of-state vehicles be subject to the proposed requirements?

Yes. If adopted, owners and operators of 1993-1999 model year heavy-duty diesel vehicles (trucks, school buses, and motor homes) registered out-of-state, but that travel within California, would also be required to ensure that the engines in their vehicles have the appropriate low NOx software installed.

How much would the low NOx software installation cost?

The ARB staff believes the applicable Consent Decrees and Settlement Agreements require manufacturers to supply the Low NOx software at no cost whenever it is requested. Out-of-service costs to the vehicle owner can be reduced or eliminated if the low NOx software is installed at the same time as another service or repair.

When would low NOx software have to be installed?

If adopted by the Board, this regulation would require the low NOx software upgrade to be installed on a schedule that depends on the model year of the engine in the affected vehicle. Our proposal is as follows:

1993-1994 model years	By April 30, 2005
1995-1996 model years	By August 31, 2005
1997-1998 model years	By December 31, 2005 (except for medium heavy-duty diesel engines (MHDDDEs))
1997-1998 model year MHDDDEs	By December 31, 2006

How would the low NOx software installations be enforced?

The ARB enforcement staff would verify the installations of the low NOx software through a modified Heavy-Duty Vehicle Inspection Program and modified Heavy-Duty Vehicle Fleet Inspection Program.

How will I know if the regulation is adopted, and it is time to have the software installed?

If the Board adopts this proposed regulation and it becomes effective, the ARB staff will attempt to reach you by mail with an alert stating that the regulation is effective and including the dates that low NOx software is required to be installed in your engine. An informational notice would also be posted on the ARB website.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a staff report: Initial Statement of Reasons (ISOR) for the Proposed Regulation, which includes a summary of the environmental and economic impacts of the proposal and supporting documentation. The staff report is entitled: "Initial Statement of Reasons, Public Hearing to Consider Adoption of The Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash)" and includes a supplement which updates the proposed compliance dates.

Copies of the staff report and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing March 25, 2003.

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 the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Lisa Jennings, Air Pollution Specialist, at (916) 322-6913, or Earl Landberg, Air Pollution Specialist, at (916) 323-1384.

Procedural inquiries for the proposed administrative action may be directed to Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. 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.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the ARB's Clerk of the Board at (916) 322-5594 or amalik@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/chip04/chip04.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 that the proposed regulatory action will 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 Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. There may be as many as 40,000 businesses, up to 3,000 school districts, and over 5,000 individuals who own motor homes with 1993-1999 model year heavy-duty diesel vehicles affected by this proposal. Also affected are approximately 100 dealers/distributors for Caterpillar, Cummins, Detroit Diesel, Mack/Renault, International (Navistar), or Volvo that have the capability to install low NOx software into an eligible engine's ECM. Finally, this proposal will also affect the seven engine manufacturers mentioned already – each of which is located outside of California. The total statewide costs that businesses and individuals may incur to comply with this regulation over its lifetime are up to eight million dollars.

The ARB staff believes that the low NOx software should be provided and installed free of charge to vehicle owners and operators. If engine manufacturers reimburse the dealers and distributors for labor charges, the only cost to the vehicle owner would be the time that the vehicle is out-of-service. This includes time: 1) to drive the vehicle to the dealer or distributor facility; 2) to install the low NOx software; and 3) to return the vehicle back to service. Waiting time would be minimized if vehicle owners and operators make an appointment with the dealer or distributor. This "time cost" can be reduced to next to nothing if the low NOx software is installed at the same time that another service or repair is performed on the vehicle.

The Executive Officer has made an initial determination that the proposed regulatory action will 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.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not 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 detailed assessment of the economic impacts of the proposed regulatory action can be found in the staff report (ISOR).

The Executive Officer has also determined, pursuant to Title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. Staff was unable to determine the number or percentage of total businesses impacted that are small businesses. Staff believes that some of the approximately 40,000 companies (based on our mail-out) that own 1993-1999 model year heavy-duty diesel vehicles affected by this proposal are small businesses based on income, profit, number of employees, or number of vehicles owned. Some of the

dealers/distributors affected may also be small businesses. Staff has estimated the initial cost for a small business at 0-200 dollars (for time out-of-service) with the typical business spending 0-1500 dollars to comply with this regulatory proposal.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency 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.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, March 24, 2004**, and addressed to the following:

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 and received at the ARB **no later than 12:00 noon, March 24, 2004**. Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon March 24, 2004**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB 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.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43701, and 44011.6.

This action is proposed to implement, interpret and make specific sections 39001, 39002, 39003, 39010, 39033, 43000, 43013, 43018, 43701, and 44011.6 Health and Safety Code, and sections 305, 505, 545, and 2813 Vehicle Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

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 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 the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: January 27, 2004

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.