

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
Reg. 43 Heavy Duty Diesel Engine Standards
Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)

FINAL

Secretary's Order No. 2004-A-62

Based on the Hearing Officer's Report, dated December 21, 2004 and attached hereto and incorporated herein, I find and conclude that approval of the proposed regulation in the above-referenced proceeding as a final regulation is appropriate and necessary to protect the public and the environment.

In sum, I find and conclude that:

1. The Department provided adequate public notice of the hearing in a manner required by the law and regulations;

2. The Department's issuance of the proposed regulation is under its authority under 7 Del.C. Section 6010, and its authority to administer the Clean Air Act and regulations promulgated thereunder. This action is supported by the need to take state action to protect the air quality from the potentially harmful air emissions from heavy diesel trucks built in the vehicle model year 2007 and thereafter;

3. The Department's issuance of the proposed regulation as a final regulation is appropriate under the law and applicable regulations because the regulation will protect the environment and reduce harmful air pollution emissions consistent with the standard recognized appropriate by the Environmental Protection Agency and thirteen states, including Delaware;

4. The comments in opposition to the proposed regulation do not state any substantive opposition to the proposed regulation. Instead, they raised procedural challenges, which should not prevent this state action insofar as the final regulation is issued under state law and is necessary to protect the state's interests from any adverse changes in the applicable federal law and/or regulations. This action is taken to maintain air quality based on existing federal standards, and is to prevent any lowering of the air quality standards if the federal laws or regulations are changed. The intent of this action is to ensure that the environmental protection now afforded Delaware citizens under the current federal regulatory protection is maintained. Thus, this final regulation will protect Delaware citizens and its visitors through an independent state regulation to protect the environment from the potentially harmful air emissions from heavy diesel truck emissions that do not meet the standard set forth in this final regulation;

5. The Department has an adequate record for its decision and no further public hearing or comments are appropriate because it would delay the implementation of the final regulation in time for the 2007 model year, which EPA indicates that states should implement three years in advance;

6. The Department considered all timely public comments and questions on the proposed regulation, as presented to the Department in the public hearing record, and its Staff's expert technical advice and investigation of the proposed regulation in issuing this final regulation, and;

7. The Department shall have published in the next available issue of the *Delaware Register of Regulations* as a final regulation, the proposed regulation as included in the hearing record, and the final regulation as published will become effective according to the law.

John A. Hughes, Secretary

Proposed Amendments to Regulation No. 43

Regulation Number 43 is hereby re-named from "Not To Exceed California Heavy Duty Diesel Engine Standards" to "Heavy Duty Diesel Engine Standards". This was necessitated due to the addition of later model years than those subject to the existing regulation.

Section 1.0 of this proposal contains the entirety of existing Regulation Number 43, and only reformatted to current *Delaware Register of Regulations* standards, which also required providing a name for the section. No wording changes were made that would affect the regulatory authority of the existing regulation. A title for the section was added to reflect the applicable model years within the overall scope of Heavy Duty Diesel Standards, and the addition of the words "section" and "sub-section", consistent with the aforementioned formatting standards, were also made to make the section read properly. The new parent Department of the Division of Motor Vehicles was also corrected from Public Safety to Transportation, which was effective in July, 2003.

Section 2.0 of this proposal contains totally new wording, and is both the reason and the substance of the regulation amendment.

The entire revised and supplemented Regulation Number 43 follows:

Regulation No. 43

~~Not To Exceed California Heavy Duty Diesel Engine Standards~~ Heavy Duty Diesel Engine Standards

1.0 On Road Heavy Duty Diesel Requirements for Model Years 2005 and 2006

1.1 Applicability

These rules apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware.

1.2 Definitions

The following definitions are applicable to this section:

“Department” means The Delaware Department of Natural Resources and Environmental Control.

“Division” means The Delaware Division of Motor Vehicles of the Delaware Department of ~~Public Safety~~ Transportation.

“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

“Executive Order” means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

“Heavy-duty diesel engine” means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Heavy-duty motor vehicle” means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Model year” means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

“New motor vehicle” means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser

“New motor vehicle engine” means a new engine in a motor vehicle.

“Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

“Ultra-small volume manufacturer” means any manufacturer with Delaware sales less than or equal to 300 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

“Urban bus” means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of

quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

1.3 Severability

Each sub-section of this section shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

1.4 Reporting Requirements

All manufacturers of 2005 and 2006 model year heavy-duty diesel vehicles with a MGVWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer's vehicle comply with the applicable exhaust emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department thirty (30) days prior to the date of the first vehicle being potentially available for sale.

1.5 Dealer Compliance

No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended on July 25, 2001 or complies with other documentation approved and provided by the Department:

1.5.1 A 2005 or 2006 model year heavy-duty diesel engine;

1.5.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.5.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.6 Exemptions and Technology Review

Notwithstanding sub-section 1.4, the requirements of this section shall not apply to:

1.6.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.6.2 An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.6.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.6.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.6.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.6.6 An emergency vehicle;

1.6.7 A military tactical vehicle or equipment; or

1.6.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.7 Manufacturer Compliance with California Orders and Voluntary Recalls

1.7.1 Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.7.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in

Delaware.

1.8 Adoption and Incorporation by Reference of California Rules

The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.

1.9 Requirements for Vehicle Registration and Transactions

1.9.1 No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with sub-section 1.5 of this regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with sub-section 1.5 of this regulation or other documentation approved by the Department.

1.9.2 No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin which complies with the standards adopted in sub-section 1.4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:

1.9.2.1 A 2005 or 2006;

1.9.2.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.9.2.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.10 Exemptions and Technology Review

Notwithstanding sub-section 1.8, the requirements of this section shall not apply to:

1.10.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.10.2 An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.10.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.10.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.10.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.10.6 An emergency vehicle;

1.10.7 A military tactical vehicle or equipment; or

1.10.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.11 Manufacturer Compliance with California Orders and Voluntary Recalls

1.11.1 Any order or enforcement action taken by the CARB to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.11.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation:

1.11.2.1 Sold, leased, or rented,

1.11.2.2 Offered for sale, lease, or rental, or

1.11.2.3 Registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

2.0 On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later

2.1 Applicability

Except as specifically provided in sub-section 2.2, this section applies to all heavy-duty diesel vehicles sold, leased or registered for use in Delaware where:

2.1.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.1.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section.

2.2 Exemptions

Notwithstanding sub-section 2.1, the requirements set forth in this section do not apply to:

2.2.1 A heavy-duty diesel engine intended for use in an urban bus;

2.2.2 A heavy-duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy-duty diesel engine standards is not required;

2.2.3 A vehicle acquired outside of Delaware by a resident of Delaware for the purpose of replacing a vehicle registered to the resident which, while out of Delaware, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;

2.2.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

2.2.5 An emergency vehicle; or

2.2.6 A military tactical vehicle or equipment.

2.3 Definitions

For the purpose of this section, the following definitions apply:

"CARB" means the California Air Resources Board, as set out in section 39003, California Health and Safety Code. (1999)

"The terms certification; diesel-cycle; emergency vehicle; engine family; heavy-duty vehicle; heavy-duty diesel engine; medium duty vehicle; military tactical vehicles and equipment; model year; urban bus; and ultimate purchaser" each shall have the meaning set out in Title 13, California Code of Regulations ("CCR") and section 165 of the California Vehicle Code.

"Division" means The Delaware Division of Motor Vehicles of the Delaware Department of Transportation.

"Emergency vehicle" means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

"Heavy-duty diesel engine" means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

"Heavy-duty motor vehicle" means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater

"Lease" means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.

"Model year" means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Sell" means any commercial transaction recognized under the laws of this State as a means of transferring

ownership of a good and includes barter. It also includes offering for sale.

“Urban bus” means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

2.4 Prohibition Against Sale or Registration of Noncomplying Vehicles

No person shall sell, lease or register a heavy-duty vehicle for use in Delaware if:

2.4.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.4.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section, unless the heavy-duty engine installed in such vehicle has been certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8, and the test procedures incorporated by reference therein that apply to Model Year 2007 and subsequent engines.

2.5 Recall of Vehicles

If, for any reason, the manufacturer of any vehicle or engine subject to this Section conducts a recall, whether required or voluntary, or a service campaign in any other state that involves any emissions-related component or element of design that is incorporated in vehicles sold, leased or registered in Delaware, such manufacturer shall notify the Division no later than five days after initiating such recall or service campaign and, unless the Division determines that the recall or service campaign is unwarranted given the facts of the matter, shall conduct such recall or service campaign on vehicles registered in Delaware in accordance with a schedule determined by the Division.

2.6 Prohibition Against Sale or Registration of Recalled Vehicles

~~2.7~~ No person shall sell, lease or register a heavy-duty vehicle subject to the requirements of this section if such vehicle has been the subject of an emissions-related recall, unless the vehicle has been corrected in accordance with a recall plan pursuant to this section.

2.7 Prohibition Against Stockpiling

The purchase of engines or vehicles in excess of normal business needs for the purpose of evading the requirements of this section shall be unlawful. No heavy-duty vehicle that is manufactured after January 1, 2007, may be sold, leased or registered in Delaware unless it contains an engine certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8 that apply to Model Year 2007 and subsequent engines.

8 DE Reg 1162 (2/1/05)