

PROPOSED

State of California
AIR RESOURCES BOARD

**PUBLIC HEARING TO CONSIDER THE PROPOSED
ADVANCED CLEAN TRUCKS REGULATION**

Resolution 20-19

June 25, 2020

Agenda Item No.: 20-6-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 39000 of the Health and Safety Code declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California;

WHEREAS, section 39003 of the Health and Safety Code charges the Board with the responsibility for systematically attacking the serious air pollution problem caused by motor vehicles;

WHEREAS, section 39500 of the Health and Safety Code designates CARB as the agency responsible for control of emissions from motor vehicles;

WHEREAS, in section 39650 of the Health and Safety Code, the Legislature declares that it is the public policy of the state that emissions of toxic air contaminants should be controlled to levels which prevent harm to the public health;

WHEREAS, sections 39655, 39658 and 39659 of the Health and Safety Code authorizes the Board to establish airborne toxic control measures for toxic air contaminants;

WHEREAS, section 39667 of the Health and Safety Code authorizes the Board to regulate emissions of toxic air contaminants from vehicular sources;

WHEREAS, section 43000 of the Health and Safety Code declares that dependence on petroleum based fuels in motor vehicles not only contributes to substantial

degradation of air quality and risk to public health, but also impedes the state's progress toward petroleum use reduction, and that the State has a responsibility to establish uniform procedures applicable to all motor vehicles for compliance with vehicle emissions standards which control and eliminate emissions of air pollutants from motor vehicles, which is the primary cause of air pollution in many parts of the state;

WHEREAS, in section 43000.5 of the Health and Safety Code, the Legislature declares that the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, and the Board should take immediate action to implement both short- and long-range programs of across-the-board reductions in vehicle emissions and smoke;

WHEREAS, sections 43013, 43100, 43101, 43102, and 43104 of the Health and Safety Code authorize the Board to adopt emission standards, in-use performance standards, and test procedures to control air pollution caused by motor vehicles;

WHEREAS, section 43018 of the Health and Safety Code authorizes the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards for ambient air quality at the earliest practicable date;

WHEREAS, section 43105 of the Health and Safety Code provides that no new motor vehicle or engine required under Part 5 of Division 26 of the Health and Safety Code to meet emission standards shall be sold to the ultimate purchaser, ordered or delivered for sale to the ultimate purchaser, or registered in this state, if the manufacturer has violated emission standards or test procedures and has failed to take corrective action, which may include recall of vehicles or engines, specified by the Board in accordance with its regulations; and provides that the Board shall establish procedures for determining, and the facts constituting, compliance or failure of compliance pursuant to section 43105;

WHEREAS, section 43106 of the Health and Safety Code provides that each new motor vehicle or engine required under Part 5 of Division 26 of the Health and Safety Code to meet the emission standards established pursuant to section 43101 shall be, in all material respects, substantially the same in construction as the test motor vehicle or engine that has been certified by the Board in accordance with Article 1, Chapter 2, Part 5, Division 26 of the Health and Safety Code;

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2006 (Assembly Bill 32 (AB 32); Stats 2006, chapter 488, Health and Safety Code section 38500 *et seq.*), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and requires a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020, and to maintain the emission levels and continue reductions thereafter;

WHEREAS, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's findings that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and the Legislature's intent that CARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32, and design emissions reduction measures to meet the statewide emissions limits for GHGs in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38510 of the Health and Safety Code designates CARB as the State agency charged with monitoring and regulating sources of GHG emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38505 of the Health and Safety Code defines "greenhouse gas" (GHG) or "greenhouse gases" for purposes of Division 25.5 of the Health and Safety Code as including all of the following gases: carbon dioxide (CO₂), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or categories of sources;

WHEREAS, Senate Bill 32, statutes of 2016, chapter 249 (SB 32), was signed into law to expand upon the California Global Warming Solutions Act of 2006 to reduce GHG emissions to 40 percent below the 1990 level by 2030;

WHEREAS, section 38566 of the Health and Safety Code directs the Board to adopt rules and regulations to achieve the maximum technologically feasible and cost effective GHG emissions reductions authorized by this division, the state Board shall ensure that statewide greenhouse gas emissions are reduced to at least 40 percent below the statewide GHG emissions limit no later than December 31, 2030;

WHEREAS, in recognition of the devastating impacts of climate change emissions on California, Executive Order S-3-05 established the following GHG emission targets:

- By 2010, reduce GHG emissions to 2000 levels;
- By 2020, reduce GHG emissions to 1990 levels; and
- By 2050, reduce GHG emission 80 percent below 1990 levels;

WHEREAS, Executive Order B-16-12 reaffirmed a 2050 GHG emission reduction target for the transportation sector of 80 percent below 1990 levels;

WHEREAS, Executive Order B-30-15 established a 2030 GHG emission reduction target of 40 percent below 1990 levels, in order to ensure California meets its target of reducing GHG emissions to 80 percent below 1990 levels by 2050;

WHEREAS, Executive Order B-48-18, established a goal of at least 5 million zero-emission vehicles on California roads by 2030;

WHEREAS, Executive Order B-55-15 established a new statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045, and maintain net negative emissions thereafter;

WHEREAS, Governor Gavin Newsom in Executive Order N-19-19 directed CARB to consider strengthening existing or adopting new regulations to achieve the necessary greenhouse gas reductions from within the transportation sector;

WHEREAS, CARB's 2016 Mobile Source Strategy identifies several potential technology advancing measures needed to achieve California's air quality and climate goals, including measures to accelerate the deployment of zero-emission vehicles in last-mile delivery applications;

WHEREAS, the 2016 Sustainable Freight Action Plan directed state agencies' actions to accelerate use of clean vehicle and equipment technologies and fuels for freight through targeted introduction of zero and near-zero emission technologies;

WHEREAS, in March 2017, the Board adopted the State Strategy for the State Implementation Plan, which identifies the deployment of zero-emission transportation as a necessary component for California to achieve established near and long-term air quality and climate mitigation targets;

WHEREAS, in December 2017, the Board adopted California's 2017 Climate Change Scoping Plan, which recommends transition to zero-emission vehicles in the transportation sector as a measure to meet the State's GHG emissions and air quality goals and enable long-term de-carbonization of the transportation sector;

WHEREAS, Senate Bill 350, statutes of 2015, chapter 547 directed the California Public Utility Commission to take actions to support widespread transportation electrification;

WHEREAS, the California Public Utility Commission unanimously approved three large-scale medium- and heavy-duty transportation electrification programs to install infrastructure needed to support medium and heavy-duty electric vehicles operated by fleets. Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric have been authorized to spend \$236 million, \$343 million, and \$107 million, respectively over a five year period;

WHEREAS, the Low Carbon Fuel Standard (LCFS) regulation provides an opportunity for commercial fleets to generate credits for dispensing electricity or hydrogen, with a low-carbon intensity, into zero-emission vehicles. The credit value can offset some or all of the fuel cost and improves the total cost of ownership for zero-emission vehicles while stimulating the low carbon fuel market;

WHEREAS, dozens of truck and bus manufacturers exclusively sell zero-emission trucks and buses, and nearly all of the established medium- and heavy-duty vehicle manufacturers have announced plans to sell a wide range of zero-emission vans, trucks and buses in the United States;

WHEREAS, information collected from large entities and fleets is necessary to identify appropriate flexibilities and ensure a level playing field in developing fleet requirements and to accelerate the market with future zero-emission truck fleet rules;

WHEREAS, since 2016, CARB staff has held eight workshops, five workgroup meetings, and numerous individual meetings with stakeholders to provide information to the public and solicit feedback;

WHEREAS, on March 23, 2017, CARB adopted the Revised Proposed 2016 State Strategy for the State Implementation Plan (State SIP Strategy) and transmitted it to U.S. EPA for inclusion in the California SIP;

WHEREAS, the State SIP Strategy was developed to provide the emission reductions necessary to meet the national air quality standards throughout the State;

WHEREAS, the State SIP Strategy includes a commitment to develop and bring to the Board for consideration a measure entitled, "Last Mile Delivery" (now known as Advanced Clean Trucks) to achieve oxides of nitrogen (NOx) emission reductions throughout the State;

WHEREAS, the Advanced Clean Trucks regulation fulfills the State commitment to propose the measure for Board consideration and provides emission reductions toward the State's aggregate emission reduction commitment;

WHEREAS, the Initial Statement of Reasons (ISOR) presents, among other things, the rationale and basis for the Proposed Advanced Clean Trucks Regulation, as set forth in Appendix A to the ISOR released to the public on October 22, 2019, that identifies the data, reports, and information relied upon for these proposed regulations;

WHEREAS, the ISOR and proposed regulatory language and other required documents were made available to the public for comment for at least 45 days prior to the public hearing to consider the proposed regulatory action;

WHEREAS, the notice released to the public on October 22, 2019, stated that, if adopted by CARB, CARB plans to submit the proposed regulatory action to the U.S. EPA for approval as a revision to the SIP required by the federal Clean Air Act (CAA);

WHEREAS, CARB's regulatory program for considering the environmental impacts of the proposed adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60008);

WHEREAS, CARB prepared a draft environmental analysis under its certified regulatory program for the proposed regulation entitled *Draft Environmental Analysis Prepared for the Proposed Advanced Clean Trucks Regulation* (Draft EA), and circulated it as Appendix D to the Staff Report for 45 days from October 22, 2019, through December 9, 2019;

WHEREAS, the environmental analysis concluded that:

- Implementation of the proposed regulation has the potential to result in beneficial impacts to long-term energy demand, long-term air quality emissions, and long-term GHG emissions;
- Implementation of the proposed regulation has the potential to result in less than significant impacts to: odor impacts, short-term energy demand, short-term GHG emissions, short-term impact on mineral resources, population, employment, housing, public services, and recreation; and
- Implementation of the proposed regulation has the potential to result in potentially significant and unavoidable adverse impacts to: aesthetics, conversion of agricultural and forest resources, short-term air quality, biological resources, cultural resources, geology and soil, hazardous materials and impacts, hydrology and water quality, long-term mineral resources, noise, traffic and transportation, and demand for utility services.

WHEREAS, on December 12, 2019, the Board conducted a public hearing on the proposed Advanced Clean Trucks regulation and the Draft EA;

WHEREAS, following the public hearing staff considered written comments submitted during the public review period and whether to make any additional appropriate conforming modifications available for public comment for at least 15 days, pursuant to Government Code section 11346.8;

WHEREAS, following the public hearing, modified regulatory language and supporting documentation were circulated for a 30-day public comment period, with the changes

to the originally proposed text clearly indicated, according to the provisions of Government Code, section 11340.85, and California Code of Regulations, title 1, section 44, from April 28, 2020, through May 28, 2020;

WHEREAS, staff evaluated all comments received during the public comment periods, including comments on the Draft EA, in order to prepare written responses to EA comments as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60008 and Government Code section 11346.9(a);

WHEREAS, staff prepared written responses to comments on the EA in a document entitled *Response to Comments on the Environmental Analysis Prepared for the Advanced Clean Trucks Regulation* (Response to EA Comments);

WHEREAS, pursuant to CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60008 and Government Code section 11346.9(a), the Executive Officer presents to the Board the Final EA, along with the Response to EA Comments, for consideration for approval, and the finalized regulation for consideration for adoption;

WHEREAS, staff posted on the rulemaking page the Final EA, which includes minor revisions, and the Response to EA comments, on June 23, 2020;

WHEREAS, prior to the duly noticed public hearing held on June 25, 2020, staff presented the Final EA and the Response to EA Comments to the Board for consideration;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, in consideration of the ISOR, written comments, and public testimony, the Board finds that:

A new approach for requiring major truck manufacturers to sell zero-emission trucks in California and for large entities to report facility and vehicle use information is appropriate;

The Advanced Clean Trucks regulation contains elements to ensure a successful and orderly transition to a larger zero-emission transportation sector;

The Advanced Clean Trucks regulation is necessary for meeting the State's air quality goals and requirements to reduce NOx and PM emissions from on-road heavy-duty vehicles as prescribed by the revised 2016 State Implementation Plan.

The Advanced Clean Trucks regulation is necessary for meeting the State's climate goals by reducing GHG emissions as prescribed by several California Climate Executive Orders.

The Advanced Clean Trucks regulation will not have a significant statewide adverse economic impact that would directly affect businesses, including the ability of California businesses to compete with businesses in other states, or on represented private persons;

No alternative considered to date, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than proposed regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law of the proposed amendments, upon considering, among other things, the standardized regulatory impact analysis of the proposed amendments and the specific benefits of the proposed amendments that were identified in the Notice of this action; and

The proposed regulation and the amendments are consistent with the Board's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the Final EA was completed in compliance with CARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed and considered the information therein before taking action to approve the regulations and the amendments.

BE IT FURTHER RESOLVED that the Board approves the Response to EA Comments.

BE IT FURTHER RESOLVED that in consideration of the Final EA, the Response to EA Comments, and the entirety of the record, the Board adopts the Findings and Statement of Overriding Considerations, set forth in Attachment A to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts sections 1963, 1963.1, 1963.2, 1963.3, 1963.4, 1963.5, 2012, 2012.1, and 2012.2, title 13, California Code of Regulations.

BE IT FURTHER RESOLVED that the adopted regulatory text may be further revised with grammatical or other non-substantial changes, which will be added to the rulemaking record and indicated as such.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional sufficiently related modifications to the regulation are appropriate, and that if no additional modifications are appropriate, the Executive Officer shall take CARB's final step for final approval of the Board-approved regulations, as set forth in Appendix A, through submittal of the Board-approved rulemaking package to the Office of Administrative Law. If the Executive Officer determines that additional sufficiently related substantial modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information, for at least 15 days. The Board delegates to the Executive Officer the authority to both (1) either approve or disapprove proposed changes in regulatory language under Government Code section 11346.8(c), and (2) conduct any appropriate further environmental review associated with such changes, consistent with the Board's Certified Regulatory Program regulations, at California Code of Regulations, title 17, sections 60000-60008, for those sufficiently related substantial modifications. Alternatively, rather than taking action on the proposed modifications, the Executive Officer may instead present the modifications, and any appropriate further environmental review associated with the modifications, to the Board for further consideration, if the Executive Officer determines further Board consideration is warranted.

BE IT FURTHER RESOLVED that if there is a possibility that any further modifications to the regulation may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by the Board's regulations at California Code of Regulations, title 17, sections 60000-60008, and prepare written responses to any comments received raising significant environmental issues if required by the level of additional environmental analysis, to present to the Board for approval along with the final regulation, if the Executive Officer decides Board action is warranted to approve the modifications.

BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209 of the Federal Clean Air Act, that the requirements related to the control of emissions adopted as part of the amendments to the regulations adopted herein are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions of high concentrations of people and motor vehicles, vulnerability to climate change, and the geographic and climate conditions of the state, and that the adopted requirements are consistent with the provisions of sections 202(a) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the Environmental Protection Agency with a request for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the Clean Air Act, as appropriate.

BE IT FURTHER RESOLVED that CARB staff ensure that the Advanced Clean Trucks regulation, the proposed Low-NOx Omnibus rulemaking, and the proposed Zero-Emission Fleet Rules complement each other to ensure maximum emission reductions

from the medium- and heavy-duty sector. The goal of these regulations in combination is to transition California's medium-and heavy-duty fleet to zero-emission everywhere feasible and the cleanest possible combustion everywhere else.

BE IT FURTHER RESOLVED that CARB staff continue to take steps to determine how to best achieve a zero-emission California fleet of medium- and heavy-duty vehicles by 2045 everywhere feasible with an earlier transition for certain market segments, including a goal of:

- Drayage trucks: 100 percent zero-emission vehicle fleets by 2035
- First and last mile delivery, refuse trucks, and local buses transition to 100 percent zero-emission vehicle fleets by 2040
- Utility and government fleets: transition to all zero-emission capable vehicles by 2040

BE IT FURTHER RESOLVED that CARB develop supporting regulations to ensure that fleets, businesses, and public entities that own or direct the operation of medium- and heavy-duty vehicles in California will purchase and operate zero-emission vehicles on a schedule that is consistent with this manufacturer rule and achieves a smooth transition to a zero-emission vehicle fleet by 2045 everywhere feasible. CARB shall ensure these upcoming regulations shall emphasize emissions reductions within disadvantaged communities to the maximum extent feasible.

BE IT FURTHER RESOLVED that CARB recognizes the importance of identifying and committing additional resources to addressing the need for infrastructure and supporting actions to make a full transition to a zero-emission transportation system. For that reason, CARB is committed to working with our sister state agencies, including the California Energy Commission, the California Public Utilities Commission, and the Governor's Office of Business Development as well as utilities, local permitting agencies, and fleets to expand infrastructure for the transition to zero-emission medium- and heavy-duty technologies.

BE IT FURTHER RESOLVED that CARB recognizes the importance of identifying and committing additional resources to addressing the need for workforce development and training associated with a transition to a zero-emission fleet. CARB recognizes that state investments that support California workers can expand the benefits of the regulation, and deliver much-needed jobs training and employment opportunities to communities across the state. For that reason, CARB is committed to working with our sister state agencies, such as the California Workforce Development Board and Employment Development Department, to invest in workforce development and training in the operation and maintenance of zero-emission medium- and heavy-duty vehicle technologies. CARB staff's efforts in this area will seek to leverage, to the maximum extent possible, existing and scalable curriculums already utilized by early adopters of zero-emission vehicles.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the Advanced Clean Trucks regulation and other appropriate supporting documentation to U.S. EPA for inclusion in the SIP.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR, section, 51.102, that the Advanced Clean Trucks regulation was adopted after notice and public hearing as required by 40 CFR, section 51.10.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons, submit the completed rulemaking package to the Office of Administrative Law, and transmit the Notice of Decision with the Response to EA Comments to the Secretary of the Natural Resources Agency for posting.

Resolution 20-19

June 25, 2020

Identification of Attachments to the Board Resolution

Attachment A: Findings and Statement of Overriding Considerations, released to the public at the June 25, 2020, CARB hearing