

STATE OF CALIFORNIA AIR RESOURCES BOARD

Proposed Mobile Source Certification)
and Compliance Fees)

Agenda Item: 21-3-2
Board Hearing: April 22, 2021

**COMMENTS OF THE
TRUCK AND ENGINE MANUFACTURERS ASSOCIATION**

April 22, 2021

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Introduction

The California Air Resources Board (“CARB”) has proposed to adopt “Proposed Mobile Source Certification and Compliance Fees” [CCR, Title 13, Division 3, Chapter 16, Articles 1 through 7, Sections 2900 through 2914] (“the Proposal”) at a Board hearing scheduled for April 22, 2021.

The Truck and Engine Manufacturers Association (“EMA”) represents worldwide manufacturers of internal combustion engines and on-highway medium- and heavy-duty trucks, vehicles and engines that will be directly affected by the Proposal.

I. Background

EMA and its members have a long history of working constructively with CARB on the development and implementation of its regulations, and we are committed to continuing such work with CARB on the subject rulemaking. The regulatory programs upon which certification and compliance fees are based are changing significantly over the next decade and it is imperative that any fees program be designed both to accommodate future regulatory changes, and to harmonize with existing fees programs.

As we have noted in previous comment letters, discussions, and workshops, EMA and its members have concerns with the adoption of a separate certification fee program. Most notably, we have concerns regarding: i) harmonization with the U.S. Environmental Protection Agency’s fees program; ii) significant increases in certification fees; iii) regulatory provisions regarding refunds and credits; iv) low-volume manufacturer provisions; and v) provisions for the small offroad engine category. Those items are discussed in more detail below.

II. Specific Comments on the Proposal

Harmonization with Federal Motor Vehicle and Engine Compliance Program.

EMA does not support the adoption of a separate certification fee program, especially one that is not fully harmonized with the U.S. Environmental Protection Agency’s (EPA) Motor Vehicle and Engine Compliance Program (MVECP). Separate, and fundamentally different, programs will increase the burden on regulated entities that are subject to the certification fees. EMA strongly recommends that CARB harmonize its proposed fees program with that of the

MVECP in as much as possible prior to issuing a Final Regulation Order, to decrease burden and provide greater regulatory clarity -- specifically, for those provisions concerning the calculation of fees, reduced fees for low volume manufacturers, and fee refunds/credits.

Determination of Fees and Fee Schedule.

We appreciate the adjustment of fees for certain categories, and the incorporation of a phase-in and reduced fee opportunities; yet the costs are still prohibitively high for some categories in relation to the MVECP fee schedule, and will result in a considerable additional burden on regulated entities. A stated goal of the program is to set a compliance and certification fee schedule to cover the “reasonable costs” of certification and certification-related activities. However, the Proposal does not provide adequate detail to allow stakeholders to fully assess those costs. The Proposal notes a “significant difference in workload effort and costs between CARB’s and U.S. EPA’s programs” as justification for the significant increase in fees with CARB’s proposed program. However, the calculation methodology does not provide enough detail to fully assess those differences. For example, the number of additional hours performed by CARB Staff on its additional workload beyond that of EPA is not denoted in the 2018 “person year” (PY) activity level estimates. Similarly, the exact breakdown of staff time (direct) versus other administrative (indirect) costs does not provide complete information for assessing the difference in fees (e.g., Table Appn. A-6 On-Road Heavy-Duty Engines and Vehicles simply provides that in 2018, the number of PYs was 25.1, with overall labor costs of \$5,614,683).

Additionally, with regard to the EPA MVECP calculation methodology, we also note that under EPA’s fees program, fees can increase, decrease, or remain unchanged (*see 40 CFR 1027.105(c)(2)*), whereas CARB’s proposed program does not appear to provide any opportunity for decreased fees for a given category in a future year.

Fee Refunds and Credits.

EMA requests that CARB harmonize with the EPA MVECP refund policies for all of the following instances: manufacturer overpayment, no certificate issued, or where a manufacturer would have qualified for a reduced fee. Specifically, EPA’s regulations at 40 CFR 1027.125 allow for partial refunds to be issued if a manufacturer’s initial payment exceeds the final fee for the engines, vehicles, or equipment covered by the certificate application; or, for manufacturers qualifying for a reduced fee, if the actual sales or the actual annual retail prices are less than projected. In the case of zero sales, this would result in a full refund. MVECP also allows for full refunds if a certificate is not issued for any reason. In any case where a manufacturer qualifies for a refund, 40 CFR 1027.125 provides that manufacturers may request to have their refund amounts applied as a credit towards another certification application. We appreciate CARB’s proposed incorporation of a provision to allow for credit towards a future application; however, provisions for application fee refunds should also be included.

With regard to the proposed credit provisions, clarity is needed regarding the length of time that credits may be used. EMA requests that regulated entities be permitted to use future application credits at any time with no expiry date. Additionally, the “Criteria for Fee Credit” table at §2902(c) provides for a 100% fee credit if an application is withdrawn within 15 days of

the receipt of payment, or 50% credit if withdrawn between 16 and 45 days from receipt. This criteria is based on the assumption that beyond 15 days, an expenditure of work will have occurred on the subject application. However, if an application is withdrawn after 15 days, but no work has been performed, regulated entities should be permitted to request a 100% fee credit (or refund).

“Low California Production Manufacturer” Provisions.

The Proposal provides reduced fee provisions for “low California Production Manufacturers,” however, these provisions are only provided for certain categories -- those categories for which a “business need” was identified prior to the publication of the Proposal. This presupposes that all companies currently in the market are the only companies that should be permitted to utilize such flexibilities. New businesses entering the market in the future in any of the omitted categories, or existing businesses that have a change in their California production, will be unnecessarily penalized if the low production provisions remain as written. EMA strongly recommends that CARB provide low production manufacturer reduced fee provisions in all sectors – whether a “business need” is known at this time or not.

Small Spark Ignition/Small Off-Road Engine (SSI/SORE) Fees.

EMA believes the inclusion of small spark ignition/small off-road engine (SSI/SORE) product in this regulation is premature given the proposed SSI/SORE rulemaking anticipated in Fall 2021 and the substantial impact on the product category with the transition to zero emission equipment. Many of the assumptions utilized for calculation of the proposed SSI/SORE certification fees are based on current and projected sales of product which would not exist in the proposed program design presented by CARB Staff at the March 24th, 2021 SORE Workshop. Under that proposed design, all SSI/SORE products except portable generators would transition to zero emissions as of model year (MY) 2024. Portable generators would transition to zero emissions as of MY2028.

There is a very short time lead time for the majority of SSI/SORE products to transition to zero emissions (MY2024) which will result in few new certification applications, likely limited to portable generators as the use of credits will be restricted with expiration dates and the ability to earn new credits is limited.

The swift transition to zero emission SSI/SORE products proposed by CARB Staff for MY2024 will significantly impact the manufacturers of SSI/SORE products and reduce the number of manufacturers certifying products in California. The number of certification applications and number of CARB Staff evaluations will substantially decline between MY2020 and MY2024, and not exist as of MY2028. The complexity of the category will be significantly less as the transition to zero emission products takes place (only one type of product after MY2024) and evaluations will be less complex as the transition takes place.

In addition, the proposed fee is a large percentage of the cost of SSI/SORE product, especially compared to other product categories and, as previously noted, the Proposal does not include small volume reduced fee provisions for SSI/SORE, unlike large spark ignition engines and recreational off-road vehicles, similar categories.

We also believe that a number of the factors used to derive the costs of certification require the disclosure of additional detail to reflect the actual costs of operating the program, especially with regards to staff labor, and how the testing equipment is accounted for in ARB's financial accounting system.

EMA agrees with the comments submitted by the Outdoor Power Equipment Institute (OPEI) on the proposed Certification Fee Regulation as it applies to SORE products.

Other Provisions.

As noted in previous workshops and comments, the current application and interpretation of the terms "partial carryover" and "carryover" is quite subjective, as it is left to the interpretation of an individual certification reviewer. EMA supports the inclusion of these terms in the regulations.

III. Conclusions

EMA recommends that CARB fully consider and explore all comments and concerns raised, and further harmonize with the U.S. EPA Motor Vehicle and Engine Compliance Program as noted above, prior to adoption of a Final Regulation Order for the Mobile Source Certification and Compliance Fees Program.

Thank you for the opportunity to provide our comments. If you have any questions, or would like to discuss this matter further, please do not hesitate to contact us.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION