State of California
AIR RESOURCES BOARD

Resolution 10-46

December 17, 2010

Agenda Item No.: 10-11-3

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2006 (Assembly Bill 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;

WHEREAS, section 38510 of the Health and Safety Code designates the Air Resources Board (ARB or Board) 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 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 reductions from sources or categories of sources, subject to the criteria and schedules set forth in part 4 of division 25.5 of the Health and Safety Code;

WHEREAS, subdivisions (a), (b), and, (d) of section 38560.5 of the Health and Safety Code required ARB to publish and make available to the public a list of discrete early action GHG reduction measures (Discrete Early Action Measures) on or before June 30, 2007, and requires that regulations to implement the Discrete Early Action Measures be adopted on or before January 1, 2010;

WHEREAS, the "SmartWay Truck Efficiency" measure to reduce GHG emissions from heavy-duty trucks through improved fuel efficiency (later renamed the "Heavy-Duty Vehicle GHG Emission Reduction" measure), was designated by the brand as one of the Discrete Early Action Measures to be established by regulation on or before January 1, 2010;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize ARB 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, in section 43000 of the Health and Safety Code, the Legislature declared that the emission of air pollutants from motor vehicles is the primary cause of air

pollution in many parts of the state, and sections 39002 of the Health and Safety Code charges the Board with the responsibility of controlling air pollution from motor vehicles, except as otherwise provided in division 26 of the Health and Safety Code;

WHEREAS, California's transportation sector is the leading source of GHG emissions in the state, contributing almost 40 percent of the state's annual GHG emissions;

WHEREAS, heavy-duty trucks account for approximately 20 percent of the transportation sector emissions, making them the second largest contributor towards transportation emissions;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) developed in 2004 a voluntary program called the U.S. EPA SmartWay Partnership Program (SmartWay), which is designed to improve the environmental performance associated with the ground freight movement system in the United States and includes the certification of fuel efficient on-road, long-haul heavy-duty tractors and box-type trailers, and the verification of fuel efficiency improving retrofit devices for these types of tractors and trailers;

WHEREAS, despite the availability of fuel-efficient heavy-duty tractors and trailers and retrofit devices that improve fuel efficiency, most long-haul heavy-duty trucks that operate on California highways were not using these technologies;

WHEREAS, these technologies that reduce GHG emissions and the emission of other air pollutants through improved fuel efficiency also generate operating cost savings to heavy-duty tractor and trailer owners;

WHEREAS, after a public hearing on December 11 and 12, 2008, the Board approved the adoption of the Heavy-Duty Vehicle GHG Emission Reduction regulation (hereinafter "Tractor-Trailer GHG regulation"), which become effective of January 1, 2010 and is set forth at title 17, California Code of Regulations (CCR) sections 95300 to 95311;

WHEREAS, the Tractor-Trailer GHG regulation requires that, beginning January 1, 2010, long-haul tractor-trailer combination vehicles be either SmartWay certified or be retrofitted with SmartWay verified technologies that improve fuel efficiency and reduce GHG emissions by reducing aerodynamic drag and tire rolling resistance;

WHEREAS, ARB staff has implemented a comprehensive outreach program to assist affected tractor and trailer owners and operators, including conducting training seminars and presentations throughout the nation; distributing information to associations, tractor and trailer dealers, state and local agencies, and traditional media; and establishing an internet website TruckStop (http://www.arb.ca.gov/msprog/truckstop/truckstop.htm) and a toll free phone number, 866-6DIESEL;

WHEREAS, on September 1, 2009, ARB staff formed the Truck Regulations Advisory Committee (TRAC) to facilitate communication with affected stakeholders and to obtain their feedback regarding the implementation of the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles" and the Tractor-Trailer GHG regulation; and also formed subcommittees to address specific issues arising from the implementation of the Tractor-Trailer GHG regulation;

WHEREAS, in the course of implementing the Tractor-Trailer GHG regulation, ARB staff has acquired information indicating that certain provisions of the existing regulation affect the ability of tractor owners, trailer owners, and fleets to comply with the regulation; these provisions include the incompatibility of certain trailer configurations with existing verified aerodynamic devices, the need to transport certain trailers from one location to another without requiring the trailers to comply with the aerodynamic device and/or low rolling resistance tire requirements, the unavailability of SmartWay verified retread tires, and issues related to the existing reporting requirements;

WHEREAS, California and the nation have been in an economic recession that is deeper and longer lasting than anticipated when the Board approved the Tractor-Trailer GHG regulation on December 11, 2008.

WHEREAS, the recession has had a significant impact on overall trucking activities and specifically on companies that operate on-road heavy-duty vehicles in the normal course of business, with a concomitant reduction in the GHG emissions in the State;

WHEREAS, ARB staff has undertaken a thorough review and update of its emissions inventory for heavy-duty on-road heavy-duty diesel vehicles and engines and determined that emissions from such vehicles are substantially lower than estimated in December 2008 when the Tractor-Trailer GHG regulation was initially adopted;

WHEREAS, ARB staff, in recognition of the above-mentioned issues, has proposed amendments to the existing Tractor-Trailer GHG regulation that would provide affected fleets with additional flexibility to comply with the regulation's requirements without significantly affecting the GHG benefits of the existing regulation;

WHEREAS, ARB staff conducted two series of public workshops throughout California in 2010, conducting a total of 8 workshops, and also held numerous other meetings to discuss the proposed amendments with industry representatives, including trucking businesses, tire manufacturers, aerodynamic equipment manufacturers, trailer manufacturers, and the various associations that represent these industries;

WHEREAS, the Tractor-Trailer GHG regulation currently allows owners of large trailer fleets to phase-in compliance of pre-2011 model year trailers between 2010 and 2015, provided that they register for and submit a compliance plan to ARB by July 1, 2010;

WHEREAS, the proposed amendments would establish a second large fleet compliance schedule allowing owners of pre-2011 model year trailers to phase-in compliance from 2011 through 2015 if owners submit a compliance plan by July 1, 2011;

WHEREAS, the proposed amendments provide owners of trailer fleets that are participating in an optional compliance schedule the option to report compliance on an annual basis, instead of on a one-time, up-front basis as currently required;

WHEREAS, the Tractor-Trailer GHG regulation currently requires 2010 and previous model year tractors to be retrofitted with low rolling resistance tires by January 1, 2012, and 2010 and previous model year trailers to be retrofitted with low rolling resistance tires either by January 1, 2013 or by the applicable compliance year, if participating in a compliance phase-in plan;

WHEREAS, the proposed amendments would do the following:

- Extend the compliance date for retrofitting 2010 and previous model year tractors with low rolling resistance tires until January 1, 2013, and for retrofitting 2010 and previous model year trailers with low rolling resistance tires until January 1, 2017;

- Add language allowing owners of trailers to modify SmartWay verified aerodynamic equipment from its original verified configuration, subject to Executive Officer approval

- Add an exemption from the aerodynamic and tire requirements for storage trailers;

- Add a limited term exemption from the aerodynamic technology requirements for trailers that are configured such that none of the SmartWay verified aerodynamic technologies can be effectively installed on these trailers, subject to Executive Officer approval;

- Exempt empty local-haul trailers from the aerodynamic equipment requirements, and empty storage trailers from both the aerodynamic equipment and tire requirements when they are being relocated to another local-haul base or storage location;

- Provide for temporary passes to allow local-haul and storage trailers loaded with freight to travel on California highways on a temporary basis without the required aerodynamic technologies for local haul trailers and without the required aerodynamic technologies and low rolling resistance tires for storage trailers;

- Provide for a temporary pass for tractors, and the trailers they pull, that only travel in California once a year, allowing them to travel on California highways without the required aerodynamic technologies and low rolling resistance tires for

a period of no more than three consecutive days, subject to Executive Officer approval;

- Require California-based vehicle dealers of 53-foot and longer box-type trailers and heavy-duty tractors to maintain records of the disclosure statement given to buyers regarding the Tractor-Trailer GHG regulation for a period of no less than three years;

- Allow a limited term exemption, for 2011 and subsequent model year tractors to use open shoulder drive tires (tires with outermost treads separated into blocks to provide traction when travelling on mud or snow covered highways), until January 1, 2013;

- Include provisions to improve the clarity and enforceability of the Tractor-Trailer GHG regulation;

- Provide additional flexibility to affected fleets in meeting the requirements of the regulation, improve the ability of fleets to periodically adjust their compliance plan and in some cases reduce compliance costs, while only minimally impacting the GHG benefits of the existing regulation;

WHEREAS, ARB staff prepared a staff report entitled "Initial Statement of Reasons (ISOR) for Proposed Rulemaking, Proposed Amendments to the Truck and Bus Regulation, The Drayage Truck Regulation, and the Tractor-Trailer Greenhouse Gas Regulation," which presents the rationale for the proposed amendments;

WHEREAS, the ISOR and proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed amendments to the Tractor-Trailer GHG regulation;

WHEREAS, the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code, and Board regulations at California Code of Regulations, title 17, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

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

WHEREAS, in consideration of the information in the public record, including the ISOR, written comments, and testimony provided at the hearing, the Board finds that:

The proposed amendments were developed in an open public process, in consultation with affected parties through numerous public workshops, individual meetings, and other outreach efforts;

The proposed amendments were developed using the best available economic and scientific information and will achieve the maximum technologically feasible and cost-effective GHG emission reductions from tractor-trailer combination vehicles;

The proposed amendments are necessary for the successful implementation of the requirements in the existing regulation;

The proposed amendments would provide affected fleets with additional flexibility that would reduce their burden of compliance without impacting the 2020 GHG emission benefits and only minimally impacting the 2010 to 2020 cumulative GHG emission benefits associated with the existing regulation;

The proposed amendments would minimize the administrative burden of implementing and complying with the existing regulation;

The reporting requirements of the proposed amended regulations which apply to business are necessary for the health, safety, and welfare of the people of the State;

The existing federal SmartWay Partnership Program provides the framework for the certification of fuel-efficient, long-haul, heavy-duty tractors and trailers and the verification of fuel-efficiency improving technologies for retrofitting such vehicles;

SmartWay technologies are currently available and used on a small number of heavy-duty tractors and trailers, and have been demonstrated to reduce vehicle fuel usage, and thereby, reduce GHG emissions;

Requiring on-road heavy-duty tractors and trailers operating on California highways to be equipped with SmartWay technologies will result in substantial reductions in GHG emissions;

The proposed amendments would retain the economic benefits of the existing regulation to the consumer over the life-cycle of the vehicle; the fuel-efficiency technologies will result in operating cost savings that exceed the initial capital cost, producing a net savings to the owner over the life-cycle of the vehicle;

A state guarantee loan program may be available to some fleets to help finance compliance with the proposed amendments. and

No reasonable alternative considered, or that has otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected private persons and businesses than the proposed amendments;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board's regulations under its certified regulatory program, the Board further finds that:

ARB staff has prepared an environmental analysis for the proposed amendments, which is contained in Chapter VI of the ISOR;

Staff's environmental analysis determined that the proposed amendments would not impact the 2020 GHG emission reductions resulting from the existing regulation, which is approximately 0.7 million metric tons of CO2-equivalent (MMT CO2e) in California;

Staff's environmental analysis determined that the proposed amendments would substantially reduce GHG emissions, as compared to the environmental conditions that currently exist, this is because the requirements applicable to pre-2011 model year tractors and trailers in the existing Tractor-Trailer GHG regulation have not yet become effective and have therefore not yet resulted in actual emission reductions;

However, staff's environmental analysis also determined that the 2010 to 2020 cumulative statewide GHG emission reductions from the proposed amendments would likely be less than the reductions that would have occurred under the current regulation with no amendments; and these foregone emission benefits are quantified in the ISOR;

While the proposed amendments would not result in any adverse environmental impacts compared to the environmental conditions that currently exist, the foregone 2010 to 2020 cumulative statewide GHG emission reductions could be viewed as a significant adverse environmental impact;

These potential adverse environmental impacts have been significantly lessened because of the recession and its impact on fleet activity, which has resulted in GHG emissions being lower today than originally anticipated when the existing regulation was initially adopted in 2008; GHG emissions in future years will also be lower than originally anticipated;

The ISOR describes the benefits of the proposed amendments, which are designed to provide affected fleets additional flexibilities that would reduce their burden of compliance without impacting the 2020 GHG emission benefits associated with the existing regulation;

The Executive Officer is the decision maker for the purposes of title 17, California Code of Regulations, section 60007, and no final decision will be made until comments on

the environmental analysis are fully considered and addressed by the decision maker.

NOW, THEREFORE, BE IT RESOLVED that the Board directs the Executive Officer to take the following actions:

Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare and approve written responses as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and title 17, Cal. Code Regs. section 60007;

Determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time addressing the serious economic recession and its impact on industry and residents of the State;

Make findings as required by Public Resources Code § 21081 if the proposed amendments result in one or more significant adverse environmental effects;

Determine if additional modifications to the proposed amendments set forth in Attachment A are appropriate, and take final action to adopt the proposed amendments with any additional conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action, or return the proposed amendments and findings to the Board for further consideration before taking final action, if he determines that this is warranted.

BE IT FURTHER RESOLVED that if the Executive Officer determines that additional modifications are appropriate as specified above, the Board directs the Executive Officer to make the modified regulatory language available for public comment for a period of 15 days prior to taking final action to adopt the amendments, 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 regulation to the Board for further consideration if he determines that this is warranted;

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of the public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the California emission standards as adopted herein will not cause the California requirements to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of U.S. EPA pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that, to the extent such action is necessary, the Executive Officer shall, upon adoption, forward the regulation to U.S. EPA 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 federal Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 10-46, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

Resolution 10-46

December 17, 2010

Identification of Attachments to the Resolution

Attachment A: Proposed Regulation Order, as set forth in Appendix C of the Staff Report: Initial Statement of Reasons, as published and posted October 28, 2010.