State of California
AIR RESOURCES BOARD

Resolution 10-3

January 28, 2010

Agenda Item No.: 10-1-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB 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, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state and, in sections 39002 and 39003 of the Health and Safety Code, has charged the Board with the responsibility of systematically addressing the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 43013, 43018, 43101, and 43104 of the Health and Safety Code authorize the Board to adopt motor vehicle emission standards, in-use performance standards, and test procedures, which it finds to be necessary, cost-effective, and technologically feasible;

WHEREAS, in 1998, California identified diesel particulate matter as a toxic air contaminant by regulation (title 17, California Code of Regulations, section 93000);

WHEREAS, the Board adopted the Diesel Risk Reduction Plan in 2000 which established discrete goals for reducing emissions from virtually all in-use diesel engines within the State of California by 2010 and 2020;

WHEREAS, diesel emission control systems have been developed that may be applied to in-use diesel-fueled vehicles and equipment;

WHEREAS, the Board has adopted a number of regulations to reduce emissions from in-use diesel vehicles and equipment, including heavy-duty on-road vehicles, off-road vehicles, transport refrigeration units and drayage trucks;

WHEREAS, in May 2002, the Board approved regulations establishing a diesel emission control strategy verification procedure and warranty and in-use compliance requirements for on-road, off-road, and stationary diesel-fueled vehicles and equipment (sections 2700-2710, title 13, California Code of Regulations), and has subsequently amended these regulations several times;

WHEREAS, the verification procedure is intended to support the various regulations approved by the Board to reduce emissions from in-use diesel vehicles and equipment

by evaluating the emission reduction claims and durability of the diesel emission control strategies and providing a manufacturer warranty for these systems;

WHEREAS, the verification procedure is a voluntary program whereby manufacturers of diesel emission control strategies may apply for the verification of a candidate device for sale in California;

WHEREAS, the federal Clean Air Act grants the State of California the authority to adopt standards for the control of emissions from new motor vehicles and engines if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as the applicable federal standards;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has published a draft document, "General Verification Protocol for Diesel Exhaust Catalysts, Particulate Filters, and Engine Modification Control Technologies for Highway and Nonroad Use Diesel Engines," but has not promulgated formal regulations for this verification protocol;

WHEREAS, the U.S. EPA verification protocol is designed to support the voluntary retrofit programs initiated by U.S. EPA, while staff's proposal is designed to support ARB's Diesel Risk Reduction Plan and all the associated in-use fleet regulations;

WHEREAS, there are significant differences between the California verification program and the voluntary U.S. EPA verification protocol, most notably that the U.S. EPA program does not have warranty provisions;

WHEREAS, to improve the effectiveness of the California verification program, ARB staff has proposed the adoption of amendments to the verification procedure;

WHEREAS, ARB staff met and worked with affected stakeholders in developing the proposed amendments, including meetings with affected stakeholders and a public workshop;

WHEREAS, after considering the information and comments received from such meetings, ARB staff prepared a report entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Amendments to the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines (ISOR)," released December 10, 2009;

WHEREAS, the Board has considered the effects of the proposed amendments on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which 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, 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, the Executive Officer has determined that the proposed amendments will not have a significant, if any, impact on the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California;

WHEREAS, the Board finds that:

Diesel emission control strategies have been proven successful in a variety of applications and field demonstration programs;

It is appropriate for California to establish and maintain its own diesel emission control strategy verification program;

The proposed amendments are authorized by California law, and the cost of the regulations is justified by the benefit to human health, public safety, or the environment;

The economic and fiscal impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

The proposed amendments will improve the ability of the verification procedure to support the Diesel Risk Reduction Plan and related programs such as the Statewide Truck and Bus Fleet Rule, In-use Off Road Rule, the Carl Moyer Memorial Air Quality Standards Attainment Program, and the Lower-Emissions School Bus Program; and

The proposed amendments will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 2701, 2702, 2703, 2704, 2705, 2706, and 2707, and approves the adoption of the new section 2711, title 13, California Code of Regulations, as set forth in Attachment A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments to sections 2701, 2702, 2703, 2704, 2705, 2706, 2707 and the proposed new section 2711, California Code of Regulations, after making the modified regulatory language available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in

light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

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

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

BE IT FURTHER RESOLVED that the Board finds that the amendments approved herein will not cause the California emission standards and test procedures for new motor vehicles 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 the Executive Officer shall, upon adoption, forward the amended regulations to U.S. EPA with a request for a waiver of federal preemption pursuant to section 209(b) of the Clean Air Act, or confirmation that the amendments are within the scope of previous waivers, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 10-3, as adopted by the Air Resources Board.

Sandra Bannerman, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Proposed Amendment for the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines, as set forth in Appendix A of the Staff Report: Initial Statement of Reasons, released December 10, 2009

Attachment B: Staff's Suggested Modifications to the Original Proposal (Distributed at the January 28, 2010 Board hearing)