TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER 2014 AMENDMENTS TO THE ZERO EMISSION VEHICLE REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider proposed amendments to the California Zero Emission Vehicle (ZEV) regulation.

DATE: October 23, 2014

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 E. Copley Drive
Diamond Bar, California 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 23, 2014, and may continue at 8:30 a.m., on October 24, 2014. This item may not be considered until October 24, 2014. Please consult the agenda for the hearing, which will be available at least 10 days before October 23, 2014, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)

Sections Affected: Proposed amendments to California Code of Regulations (CCR), title 13, sections 1962.1 and 1962.2; and to the following documents incorporated by reference therein: "California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes", as adopted December 17, 2008, as last amended May 30, 2014, and "California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes," as adopted March 22, 2012, as last amended May 30, 2014.

Background and Effect of the Proposed Rulemaking:

As part of the 2012 Advanced Clean Car (ACC) rulemaking, the Board approved amendments to the intermediate volume manufacturer (IVM) definition within Section 1900, title 13, California Code of Regulations (CCR). An IVM was previously defined as any manufacturer with California sales between 4,501 and 60,000 new light- and medium-duty vehicles. The 2012 amendments reduced the California sales upper bound to 20,000 vehicles per year beginning with the 2018 model year. The 2012 amendments concurrently changed the IVMs' ZEV obligations from being able to meet

the mandate with super clean conventional partial zero emission vehicles (PZEVs) to transitional ZEVs (TZEVs, generally plug-in hybrids). At the 2012 hearing, the Board directed staff to revisit the 20,000 vehicle threshold and the IVM ZEV obligation to determine if the provisions were appropriate for the IVM category of manufacturers.

At the October 2013 Board Hearing on minor modifications to the ZEV regulation, a number of IVMs[1] presented a proposal for changes to the ZEV regulation that would provide them with the regulatory relief they felt was necessary to allow them time to come into the advanced technology vehicle market. Their proposed changes included very small demonstration quantities of ZEVs through 2025, large credit multipliers for any ZEVs produced, travel and pooling of both ZEVs and TZEVs in ZEV states, extended service credits for cars offered for sale or extended leases, and three years to make up ZEV credit deficits. As a result of the presentation, the Board directed staff to work with the IVMs to understand their needs and propose amendments as appropriate.

Staff will now present proposed ZEV Regulation modifications to the Board that provide additional compliance flexibility to the IVMs. This flexibility is achieved by providing additional production lead time, a reduced compliance obligation, an opportunity to pool compliance obligations in "Section 177" states, and additional time to make up credit deficits. The staff proposal also includes minor changes to the fast refueling definition and corrects grammatical errors.

Description of the Proposed Regulatory Action, Objectives, and Benefits:

Proposed Regulatory Action:

Staff is proposing modifications to the ZEV Regulation that provide additional compliance flexibility to IVMs working to bring advanced technology vehicles to market. A detailed discussion of the proposed amendments appears in Chapter III (Summary of Proposed Action) of the Staff Report: Initial Statement of Reasons for Rulemaking for the 2014 Modifications to the Zero Emission Vehicle Regulation. The parenthetical references are to the affected sections in title 13, CCR.

1) Modify the IVM definition to add a global revenue test (1962.2(b)(7)(A)).

In January 2012, the Board approved changes to the ZEV Regulation that modified the IVM definition within Section 1900, title 13, California Code of Regulations (CCR) to specify that, beginning with the 2018 model year, an IVM was any manufacturer with California sales between 4,501 and 20,000 new light- and medium-duty vehicles based on the average number of vehicles sold for the three previous consecutive model years for which a manufacturer seeks certification. Concurrently, the Board directed staff to revisit the 20,000-vehicle threshold to determine if the threshold was appropriate for manufacturers in the IVM category.

[1] Jaguar Land Rover, Mazda, Mitsubishi, Subaru, and Volvo

Staff subsequently determined that the vehicle sales threshold, in and of itself, is not sufficiently useful in assessing a manufacturer's ability to bring advanced technology vehicles to market. In consultation with manufacturers, we determined that a better indicator of this ability is robust global revenue in conjunction with the established manufacturer sales threshold. Accordingly, staff is proposing a global revenue threshold of 40 billion dollars, based upon the average of the three consecutive fiscal years preceding the determination. The global revenue test is only available to IVMs for the 2018 and 2019 model years (i.e., the global revenue test is phased out starting with model year 2020). Beginning in the 2020 model year, a manufacturer exceeding the 20,000 vehicle threshold will need to prepare to bring ZEVs to market per the large volume manufacturer (LVM) requirements; staff expect most IVMs will make ZEVs available for sale by the 2025 model year.

2) Provide IVMs additional production lead time (1962.2(b)(7)(A)).

The ZEV Regulation currently provides lead time, prior to requiring a ZEV model for compliance, to an IVM transitioning to LVM status. The existing regulatory language (which provides for 3 consecutive three-year sales averages once the first three-year average exceeds 20,000 vehicles) could provide an IVM as few as 3 years before that IVM would be subject to the LVM requirements. This is significantly shorter than the normal product development timeline. ARB staff is proposing to extend the lead time to 5 three-year averages commencing once the first three-year average exceeds 20,000 vehicles. This provides IVMs a minimum of 5 years and a maximum of 7 years to bring a ZEV to market. This lead time is similar to the lead time provisions established for IVMs that transitioned to LVM status prior to 2018 in ZEV regulation versions prior to the 2012 amendments.

3) Decrease the percent of ZEVs that IVMs must produce (1962.2(b)(1)(A)).

The ZEV regulation allows an IVM to meet its pre-2018 model year ZEV obligation solely with partial zero emission allowance vehicles[2] (PZEV). It then requires the IVM, in 2018 and subsequent model years, to begin delivering ZEVs. However in recognition of the lower number of vehicle models offered by the typical IVM, and its lesser research and development capabilities as compared to LVMs, the ZEV Regulation allows an IVM to meet its entire ZEV obligation with TZEVs.

The pre-2018 model year PZEV provisions were intended to ease the burden on IVMs in comparison to LVMs since PZEVs are much easier to market as compared to the ZEVs required under the ZEV provisions for LVMs. Unfortunately, while the intention was to decrease the burden on IVMs, the existing regulation has the unintended practical effect of establishing two hurdles for IVMs starting in 2018. First, an LVM has had several years to develop ZEV offerings and accrue credits from the placement of those ZEVs. With the ZEV regulation only requiring IVMs to produce PZEVs and considering that IVMs' lesser revenues make it more challenging for them to develop

[2] Typically, PZEVs are conventional gasoline, diesel, or natural gas vehicles that meet the most stringent standards for smog-forming emissions. They additionally have zero evaporative emissions and extended emission control warranties.

multiple advanced technology models simultaneously, IVMs generally have not been able to bring forth ZEV offerings and accrue the higher credits that ZEVs offer. Second, without the research and development and economic means to concurrently develop both TZEVs and greater credit ZEVs, an IVM must plan to offer a significantly greater portion of its sales (potentially in excess of 40 percent by 2025[3]) as TZEVs to meet its obligation.

To address these issues, staff is proposing to adjust downward the total ZEV credit obligation for IVMs in the 2018 through 2025 model years by looking at the LVM's total percent of new car sales that are expected to be ZEVs and TZEVs. Specifically, the proposed obligation is set at a credit level equivalent to one-fifth of the LVM pure ZEV obligation plus the entire LVM optional TZEV obligation. This results in an IVM having an advanced technology vehicle sales percentage (based on a likely compliance scenario) more closely aligned to that of the LVMs. Additionally, the proposed ZEV credit percentage requirements for IVMs may be met entirely with TZEVs.

4) Provide a pathway for IVMs to pool compliance obligations in Section 177 states (1962.2(d)(5)(E)).

Section 177 of the federal Clean Air Act[4] allows other states to adopt California motor vehicle emission standards including the ZEV Regulation. Currently, nine states (hereinafter referred to as the Section 177 states) have adopted the California ZEV Regulation: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Vermont.

In 2012, the Board adopted changes to the ZEV Regulation establishing a new optional Section 177 State compliance path. The changes allow manufacturers to place extra ZEVs in the Section 177 states one and two years prior to the 2018 model year. In exchange for early placement of these extra ZEVs, manufacturers gain the ability to pool credits across state lines within and between two regional pools[5]. They also earn a reduced TZEV obligation.

Currently, only one IVM has a ZEV product or plans to bring a ZEV to market prior to the 2018 model year, so essentially only LVMs have been able to make use of these provisions. The IVMs have stated that they need this same ability to pool ZEV and TZEV credits across state lines because some of them have few dealers in some of the Section 177 States. Accordingly, staff is proposing to change the Section 177 State optional compliance path to provide additional flexibility for IVMs. Specifically, it is proposed that the IVMs may place extra ZEVs in Section 177 States in the two model years prior to the start of their LVM requirements should they transition to LVM status. However, in recognition of production timing constraints and the IVM's ability to place vehicles as a new LVM, the IVMs may take an additional two years to place these extra

[3] IVM Joint Comments Letter dated October 24, 2013 (http://www.arb.ca.gov/lists/com-attach/8-zev2013-B2FTPFwzUGIKYAhX.pdf)
[4] United States Code, title 42, section 7507
[5] Two regional pools were created for the purpose of this provision: the West Region pool and East Region Pool. States west of the Mississippi River, excluding California, make up the West Region pool, and states east of the Mississippi River make up the East Region pool.

ZEVs. The IVMs will also be allowed to pool TZEV credits to meet total annual percentage obligations in each Section 177 State. They will not be allowed a reduced TZEV obligation.

5) Allow additional time to make up ZEV credit deficits (1962.2(g)(7)(A)).

Beginning in 2018, the ZEV regulation requires automakers to make up a ZEV credit deficit by the next model year. IVMs have stated that the existing one-year period does not provide sufficient time to address a potentially underperforming advanced technology vehicle model and have asked for a three-year credit recovery period, consistent with the non-methane organic gas provisions within the LEV III component of the ACC rulemaking. Staff is proposing to extend the make-up period for IVMs to three years. In recognition of the fact that a longer deficit period may allow an automaker to accrue an even larger deficit, staff is also proposing two constraints. First, the three-year credit recovery period will only be made available to IVMs that have actually delivered a ZEV or TZEV to market. IVMs that have not marketed a ZEV or TZEV will only be provided a one-year credit recovery period. Second, automakers with a credit deficit will be required to provide ARB an action plan illustrating how the automaker will achieve compliance concurrent with their annual reporting first indicating the deficit.

Currently, a manufacturer must fulfill a ZEV credit deficit with credits earned from ZEVs. To provide additional flexibility for IVMs, staff is also proposing to allow IVMs to fulfill a ZEV credit deficit with TZEV credits. This flexibility is consistent with existing regulatory provisions as IVMs may meet their entire ZEV credit percentage requirement with credits from TZEVs.

6) Clarify the fast refueling definition (1962.1(d)(5)(B)).

Amendments adopted in 2001 provide that ZEVs with the ability to refuel to 95 percent of full capacity within 15 minutes are allowed to earn more credit under specific ZEV Type designations. Prior to the amendments that went into effect in July 2014, some BEVs had qualified under the fast refueling definition because of their potential for battery exchanges. However, it has not been shown that battery exchanges were actually occurring on the vehicles earning credits. Accordingly, ARB amended the ZEV regulation in 2014 to require: (1) actual fast refueling events (e.g., actual battery exchanges) to qualify for such credits, and (2) manufacturers seeking to earn fast refueling credits to submit the number of fast refueling events that occur over a 12-month period for all otherwise eligible vehicles in the vehicle fleet.

Comments received before and after the October 2013 Board Hearing included concerns that vehicles placed in the latter part of a model year would not be able to count fast refueling events after the calendar year had ended. Under the scenario proposed by the manufacturers, a 2015 model year BEV placed in service on October 31, 2015 would only be able to count those fast refueling events that occurred between October 31 and December 31, 2015. This was not staff's intent, and staff is proposing to clarify that fast refueling events occurring during the initial 12-month period following the vehicle's placement in California would qualify for the fast refueling credit.

This suite of modifications to the ZEV regulation provides manufacturers greater flexibility in complying with the regulations while continuing the Board's commitment to the ZEV program requirements and advanced technology vehicles. Staff is also proposing minor grammatical corrections.

Beginning in March 2014, ARB staff conducted a series of meetings, conference calls, and a public workshop on July 14, 2014, to engage stakeholders and obtain input on the proposed regulatory amendments. These stakeholders included representatives from manufacturers, Section 177 states, and environmental advocates. The workshop was held at ARB offices in Sacramento and broadcast via webcast. The announcements and materials for this workshop were posted on ARB's website and distributed through a list serve that included over 14,500 recipients. In an effort to build consensus and minimize areas of disagreement, staff worked with the Section 177 states, environmental advocates, and manufacturers on the proposed modifications presented at the workshop.

Objective:

At the January 2012 and October 2013 public hearings, the Board directed staff to revisit the need to provide additional compliance flexibility to IVMs while still maintaining the Board's commitment to a strengthened ZEV regulation. Staff's proposal provides the IVMs with the regulatory relief deemed necessary by the Board while ensuring continued progress toward the production of advanced technology vehicles.

Benefits:

The additional flexibility provided by the proposed modifications ensures that IVMs will be able to smoothly transition to LVM status thus making the commercialization of advanced technology vehicles by IVMs and the emissions benefits that accompany them more certain. Finally, the commercialization of ZEVs (zero emission vehicles) will help achieve California's goal of long-term air quality and climate change.

DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulatory action, ARB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

This regulation is not mandated by federal law or regulations.

COMPARABLE FEDERAL REGULATIONS

This regulation does not have comparable federal regulations.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal, and all information upon which the proposed regulation is based. The report is entitled: "Proposed 2014 Amendments to the Zero Emission Vehicle Regulation."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on September 2, 2014.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Agency Contact Persons

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mark Williams, Air Pollution Specialist, (916) 327-5610 and the back-up contact person Elise Keddie, ZEV Implementation Section Manager, (916) 323-8974.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at http://www.arb.ca.gov/regact/2014/zev2014/zev2014.htm

DISCLOSURES REGARDING THE PROPOSED REGULATION

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Fiscal Impact / Local Mandate

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of The Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.3(b)

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed amendments to the regulation is to provide additional compliance flexibility to the IVMs, make minor changes to the fast refueling definition, and correct grammatical errors. Continued compliance with the ZEV Regulation will create a positive impact on emission benefits, and benefits the air quality of the state's environment.

A summary of these benefits is provided, please refer to "Objectives and Benefits", under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page 2.

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because small businesses are not regulated parties under these regulations.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Business Reports

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the proposed regulatory action, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California.

Alternatives

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, 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 action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Environmental Analysis

When the ACC Program was proposed in 2012, ARB prepared an environmental analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). The EA, included in Appendix B of the ISOR entitled Appendix B: Draft Environmental Analysis for the Advanced Clean Cars Program, dated December 7, 2011, determined the ACC Program could result in adverse impacts to aesthetics, air quality, noise, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, traffic and utilities. Staff has determined that no additional environmental review is required for the current proposed amendments because there are no changes that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects in the prior 2011 EA. The basis for reaching this conclusion is provided in Chapter IV of the ISOR.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on September 5, 2014. To be considered by the Board, written comments not physically submitted at the hearing, must be submitted on or after September 5, 2014, and received **no later than 5:00 pm on October 20, 2014**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43104 and 43105. This action is proposed to implement, interpret, and make specific sections 38562, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, 43205, 43205.5 and 43206.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified

is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno u otro idioma
- Una acomodación razonable relacionados con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envié un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: August 19, 2014