

State of California
AIR RESOURCES BOARD

Executive Order R-10-017

Relating to the Adoption of AB 118 Enhanced Fleet Modernization Program Regulation

WHEREAS, on June 26, 2009, the Air Resources Board (ARB or Board) conducted a public hearing to consider the adoption of AB 118 Enhanced Fleet Modernization Program Regulation, as set forth in the Initial Statement of Reasons released to the public on May 8, 2009;

WHEREAS, following the public hearing, the Board adopted Resolution 09-44, in which the Board approved new sections 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, and 2630, title 13, California Code of Regulations, as set forth in Attachment A thereto;

WHEREAS, Resolution 09-44 directed the Executive Officer to take final action to adopt the regulatory amendments set forth in Attachment A to the Resolution 09-44, with such other conforming modifications as may be appropriate, 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 as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the regulatory amendments to the Board for further consideration if he determines that this is warranted;

WHEREAS, on December 9, 2009, the modified regulations, reflecting the amendments approved by the Board and other changes made to reflect the intent of the Board at the hearing, were made available for public comment for a period of 15 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44;

WHEREAS, ten written comment letters were received during the supplemental 15-day comment period and the comments contained therein, as well as the comments received during the initial 45-day comment period, have been considered by the Executive Officer;

WHEREAS, on March 18, 2010, additional modifications were prepared in response to the comments received during the first 15-day comment period, with the changes to the previously proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44;

WHEREAS, one written comment letter was received during the supplemental

second 15-day comment period and the comment contained therein, as well as the comments received during the initial 45-day comment period, have been considered by the Executive Officer;

WHEREAS, on May 4, 2010, the California Air Resources Board submitted the Final Statement of Reasons and a Final Regulation Order containing proposed new regulations (title 13 Cal. Code Regs. sec. 2620 and following) establishing the Enhanced Fleet Modernization Program to the Office of Administrative Law (OAL) for review and approval:

WHEREAS, on June 16, 2010, OAL disapproved the proposed regulations, stating that they did not comply with the Government Code section 11349.1, subdivision (a), of the California Administrative Procedure Act (APA) for consistency with the authorizing statute. OAL found that in two instances, the proposed rulemaking did not support the interpretation of the Legislature's mandate that the Board adopt guidelines for a program allowing for the voluntary retirement of high polluting vehicles. Consequently, OAL disapproved the adoption of the regulatory proposal.

WHEREAS, on July 12, 2010, additional modifications were prepared in response to the comments made by the Office of Administrative Law, and with the changes to the previously proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44; and

WHEREAS, two written comment letters were received during the supplemental third 15-day comment period and the comments contained therein, as well as the comments received during the initial 45-day comment period, have been considered by the Executive Officer;

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 09-44 are incorporated herein.

IT IS FURTHER ORDERED, in accordance with Resolution 09-44, that sections 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, and 2630, title 13, California Code of Regulations, are adopted as set forth in Attachment I hereto.

Executed this 30th day of July, 2010, at Sacramento, California.

/s/

James N. Goldstene
Executive Officer

Attachment