State of California
AIR RESOURCES BOARD

MINOR MODIFICATIONS TO THE ZERO EMISSION VEHICLE REGULATION

Resolution 13-41

October 24, 2013

Agenda Item No.: 13-9-4

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 sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility of air pollution control from motor vehicles;

WHEREAS, sections 43013, 43101, and 43104 of the Health and Safety Code authorize the Board to adopt emission standards and test procedures to control air pollution caused by motor vehicles;

WHEREAS, section 43018(a) of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of State ambient air quality standards at the earliest practicable date;

WHEREAS, section 43018(c) of the Health and Safety Code provides that in carrying out section 43018, the Board shall adopt standards and regulations that will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including but not limited to, reductions in motor vehicle exhaust and evaporative emissions, and reductions in in-use vehicular emissions through durability and performance improvements;

WHEREAS, section 39667 of the Health and Safety Code directs the Board to consider revisions to ARB's emissions standards for vehicular sources to achieve the maximum possible reduction in public exposure to substances that the Board has identified as toxic air contaminants pursuant to section 39662 of the Health and Safety Code; such regulations affecting new motor vehicles are to be based on the most advanced technology feasible for the model-year and may include, but are not limited to, the required installation of vehicular control measures on new motor vehicles;

WHEREAS, the Board's California State Implementation Plan (SIP) for ozone establishes the State strategy for attaining the ambient air quality standard for ozone in all areas of the state as required by federal law; as part of the mobile source element developed by ARB,

the SIP relies on the California Low-Emission Vehicle program to provide significant reductions of ozone precursor pollutant emissions from passenger cars and light-duty trucks; and to reach the 1997 ozone standard by the attainment date in 2023, oxides of nitrogen emissions in the greater Los Angeles region must be reduced by two-thirds—even after implementing all of the regulations in place today— with the most significant share of needed emission reductions to come from long-term advanced clean air technologies;

WHEREAS, California's passenger cars and light-duty trucks are the single largest contributor of greenhouse gas emissions in the State, producing approximately 30 percent of all such emissions;

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2009 (AB 32; Health and Safety Code § 38500 et seq.) which declares that global warming poses a serious threat to the economic wellbeing, 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, in recognition of the devastating impacts of climate change emissions on California, Governor Arnold Schwarzenegger, in June 2005, enacted Executive Order S-3-05 which established the following greenhouse gas emission targets:

- By 2010, reduce GHG emissions to 2000 levels;
- By 2020, reduce GHG emissions to 1990 levels; and
- By 2050, reduce GHG emission 80 percent below 1990 levels;

WHEREAS, in May 2012, Governor Edmond G. Brown, Jr. enacted Executive Order B-16-2012, calling for the support and facilitation of rapid commercialization of zero emission vehicles (ZEV) in California, and established benchmarks for efforts supporting the commercialization of ZEVs for 2015, 2020, and 2025;

WHEREAS, since its 1990 adoption, the ZEV regulation has been modified seven times to better align the regulatory timeline and requirements with the status of ZEV technology and ZEV commercialization feasibility;

WHEREAS, at the December 2009 Board meeting, staff presented findings of an assessment of the current state of ZEV technology, including an analysis of pathways to meet California's long term 2050 GHG reduction goals in the light-duty vehicle (LDV) subsector, and a review of current and possible future complimentary policies for ZEVs;

WHEREAS, staff's 2009 assessment found that ZEVs are essential to meeting California's long term GHG emission reduction goals and ZEVs will need to be 100 percent of new vehicle sales no later than model year 2050, and that any future modifications to the ZEV regulation should help keep the LDV subsector on track to reach an 80 percent reduction in GHG emissions by 2050;

WHEREAS, at the December 2009 Board meeting, the Board reaffirmed its commitment to meeting California's long term air quality and climate change reduction goals through commercialization of ZEV technologies;

WHEREAS, in a January 2012 rulemaking, the Board approved amendments to the ZEV regulation part of the Advanced Clean Cars program, requiring 14 percent of new vehicle sales to be transitional zero emission vehicles and ZEVs by 2025 model year;

WHEREAS, staff conducted one public workshop in May 2013, released concepts for public review, and held several focused stakeholder meetings throughout the rulemaking process, in order to involve the public and affected stakeholders in this regulatory development process;

WHEREAS, Section 177 states and automobile manufacturers have worked together to propose changes to improve the functionality of the Section 177 state optional compliance path that was incorporated into the ZEV regulation in 2012;

WHEREAS, the existing ZEV regulation does not specify how the caps on manufacturers' use of non-pure ZEV credits could be used in combination to meet a manufacturer's ZEV requirement thus potentially allowing a manufacturer to avoid producing pure ZEVs;

WHEREAS, the existing ZEV regulation provides for additional credits for vehicles that meet fast refueling requirements and some manufacturers have been citing a vehicle's ability to have its battery changed out as qualifying for these additional credits without a demonstration that the battery exchanges have occurred on the vehicles earning credits;

WHEREAS, the California Environmental Quality Act (CEQA) requires that a public agency not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental impacts of such a project; in the event that specific economic, social, or other conditions make infeasible the alternatives or mitigation measures, the project may be approved if it is determined that any remaining unavoidable significant impacts are acceptable due to overriding considerations;

WHEREAS, Public Resources Code section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the Resources Agency has certified the regulatory program;

WHEREAS, that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary of Resources Agency (CEQA Guidelines, section 15251(d));

WHEREAS, in accordance with ARB's certified regulatory program at title 17, California Code of Regulations (CCR), section 60005 (b), and the policy and substantive requirements of CEQA, as part of the Initial Statement of Reasons (ISOR), ARB staff prepared an assessment of the potential for significant adverse and beneficial environmental impacts associated with the proposed Minor Modifications to the Zero Emission Vehicle Regulation;

WHEREAS, the environmental analysis, circulated with the ISOR for 45 days, concluded the proposed amendments would result in no adverse impacts to the environment;

WHEREAS, no comments were received during the 45-day comment period that raise significant environmental issues, therefore, no approval of written responses to such comments is required per title 17, California Code of Regulations, section 60007;

WHEREAS, the Board has considered the impact of the proposed regulatory action 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, the Board finds that:

The proposed Minor Modifications to the Zero Emission Vehicle Regulation are necessary and appropriate to assure that California continues to receive the cleanest vehicles available;

The proposed Minor Modifications to the Zero Emission Vehicle Regulation have the effect of: adjusting the optional Section 177 state compliance path as committed to by the Section 177 states and the manufacturers; maintaining a minimum ZEV credit requirement, regardless of model year and use of non-ZEV credits earned in the regulation; and correcting grammatical and California Code of Regulation (CCR) reference errors;

On the basis of the whole record, including the environmental analysis included in the ISOR, there is no substantial evidence that the proposed Minor Modifications to The Zero Emission Vehicle Regulation will result in any significant adverse impacts on the environment; and

The proposed regulation is consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income;

WHEREAS, during consideration of public testimony at the Board Hearing held on October 24, 2013, the Board directed the Executive Officer to continue to allow battery exchange to qualify under the fast refueling definition only when actual use of battery exchange capability for fast refueling is substantiated.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption amendments to CCR, title 13, section 1962.1 and the incorporated "California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero Emission Vehicles;" and amendments to CCR, title 13, section 1962.2 and the incorporated "California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero Emission Vehicles" as set forth in Attachments A, B, and C, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and any additional supporting documents and information 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 regulations and incorporated test procedures to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to review how the regulation affects intermediate volume manufacturers transitioning into large volume manufacturer requirements in 2018 model year and to return to the Board by December 31, 2014, with a recommendation regarding more fair treatment of these manufacturers, ensuring all manufacturers are successful in commercializing ZEV technologies.

BE IT FURTHER RESOLVED if the Executive Officer receives comments raising significant environmental issues, or if it is determined that any 15-day modifications to the regulation affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by ARB's regulations at title 17, California Code of Regulations, sections 60001-60007, and/or prepare written responses to any comments received raising significant environmental issues to present to the Board for its consideration for approval along with the proposed Final Regulation Order.

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 public health and welfare than applicable federal standards, are needed to meet compelling and extraordinary conditions, will not cause the California emission standards and test procedures for new motor vehicles and engines 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 United States Environmental Protection Agency pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to the U.S. Environmental Protection Agency with a request either for a waiver of federal preemption pursuant to section 209(b) of the Clean Air Act, or a confirmation that the amendments are within the scope of previous waivers.

I hereby certify that the above is a true and correct copy of Resolution 13-41, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

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October 24, 2013

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation order, Sections 1962.1 and 1962.2, Title 13, CCR, as set forth in Appendix A of the Initial Statement of Reasons, released September 4, 2013.

Attachment B: Proposed Amendments To 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 set forth in Appendix B of the Initial Statement of Reasons, released September 4, 2013.

Attachment C: Proposed Amendments to 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 set forth in Appendix C of the Initial Statement of Reasons, released September 4, 2013.