State of California
AIR RESOURCES BOARD

SUBMISSION OF WAIVER AND AUTHORIZATION MEASURES INTO THE CALIFORNIA SIP

Resolution 15-40

July 23, 2015

Agenda Item No.: 15-6-4

WHEREAS, the Legislature in Health and Safety Code, section 39602, has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (NAAQS or standards) as required by the federal Clean Air Act (CAA) (42 U.S.C. section 7401 et. seq.), and to this end is directed by Health and Safety Code, section 39602, to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) necessary to comply with the CAA;

WHEREAS, ARB has primary responsibility for the control of air pollution from vehicular sources, including motor vehicle fuels, as specified in the Health and Safety Code, sections 39002, 39500, and part 5 (commencing with section 43000);

WHEREAS, the CAA, section 209, allows California to seek a waiver or authorization from federal preemption to enact emission standards and other emission-related requirements for new motor vehicles and engines or new and in-use non-road engines and vehicles;

WHEREAS, California has relied on regulations covered by United States Environmental Protection Agency (U.S. EPA) waivers or authorizations in the California SIP to meet federal ambient air quality standards;

WHEREAS, historically, U.S. EPA policy allowed California to utilize pollution reductions resulting from waiver or authorization measures in the SIP without requiring that those measures be separately submitted into the California SIP;

WHEREAS, on May 20, 2015, in *Committee For A Better Arvin, et al. v. U.S. EPA, et al.* (No. 11-73924), the Ninth Circuit U.S. Court of Appeals ruled that U.S. EPA erred in approving SIPs that relied on reductions from waiver or authorization measures without requiring those measures be included in the SIP;

WHEREAS, California must now submit for inclusion into the SIP the portions of waiver or authorization measures it relies upon for SIP reductions;

WHEREAS, ARB staff compiled a Waiver/Authorization List of all applicable approved and pending waiver and authorization measures, along with recent ARB actions that will need a waiver or authorization in the future, as Appendix A to a Staff Report released for public review on June 19, 2015;

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment or repeal of standards, rules, regulations, or plans, has been certified by the Secretary for Natural Resources under Public Resources Code, section 21080.5 of CEQA; California Code of Regulations, title 14, section 15251(d), and ARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, ARB staff determined that the submission of appropriate portions of these previously adopted ARB regulations subject to waivers or authorizations to U.S. EPA for inclusion in the SIP is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because this action is administrative in nature and there is no possibility that the submission of these previously adopted regulations into the SIP may result in any significant adverse impacts on the environment, as described in the Staff Report released on June 19, 2015;

WHEREAS, as required by federal law, ARB made the Waiver/Authorization List available for public review at least 30 days before the public hearing; and,

WHEREAS, the Board finds that:

1. The emission reductions from appropriate portions of waived and authorized measures are critical to meeting air quality standards in California and so are appropriate for inclusion in the SIP; and,

2. This action is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because it is administrative in nature and there is no possibility that the submission of portions of these previously adopted regulations into the SIP may result in a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED, the Board approves the waiver and authorization measures included in the Waiver/Authorization List, as set forth in Attachment A to this Resolution, for inclusion in the SIP, with the appropriate portions of those measures required for submission to be determined by the Executive Officer.

BE IT FURTHER RESOLVED, the Board directs the Executive Officer to submit the appropriate portions of those waived/authorized measures from the Waiver/Authorization List to U.S. EPA for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED, the Board directs the Executive Officer to submit the appropriate portions of the remaining measures from the Waiver/Authorization List, once waivers or authorizations are granted for those measures, for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED, the Board directs the Executive Officer to work with U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding these SIP submissions.

BE IT FURTHER RESOLVED, the Board authorizes the Executive Officer to include in the SIP submittals any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED, the Board hereby certifies and approved the Waiver/Authorization List after notice and public hearing as required pursuant to Code of Federal Regulations, title 40, section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 15-40 as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Waiver/Authorization List included as set forth in the Appendix A to the Staff Report, released June 19, 2015