

State of California  
AIR RESOURCES BOARD

Resolution 03-38

February 26, 2004

Agenda Item No.: 03-10-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) 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, California identified diesel particulate matter as a toxic air contaminant by regulation (title 17, California Code of Regulations, section 93000) in August 1998;

WHEREAS, the ARB adopted the Diesel Risk Reduction Plan in 2000 which established the goal of reducing emissions from virtually all in-use diesel engines within the State of California by 2010;

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

WHEREAS, the ARB adopted 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);

WHEREAS, the staff has proposed the adoption of amendments to the verification procedure;

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 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 that 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 regulations approved herein 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:

1. In California diesel particulate matter (PM) accounted for approximately 70 percent of all air toxics in 2000 and the average potential cancer risk associated with diesel PM is over 500 excess cases per million people;
2. Diesel emission control systems have been proven successful in a variety of applications and field demonstration programs;
3. California is the only State that has authority to establish and amend a diesel emission control strategy verification procedure that differs from federal standards and procedures;
4. The economic and fiscal impacts of the proposed amendments to the verification procedure have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

WHEREAS, the Board further finds that:

1. The proposed amendments to the verification procedure approved herein will not have any significant adverse impact on the environment;
2. The function of the proposed amendments is to improve the ability of the verification procedure to support the Diesel Risk Reduction Plan and related programs such as the Public Transit Bus Fleet Rule, the Solid Waste Collection Vehicle Rule, the Carl

Moyer Memorial Air Quality Standards Attainment Program, and the Lower-Emissions School Bus Program;

3. Because no direct emissions benefits are associated with the staff's proposal, no traditional cost effectiveness can be calculated;
4. The proposed amendments to the verification procedure would encourage manufacturers to offer diesel emission control systems for sale in California;
5. The proposed amendments to the verification procedure would delay the effective date of the limit on nitrogen dioxide (NO<sub>2</sub>) emissions, thereby providing an opportunity for staff and stakeholders to identify an appropriate method for controlling NO<sub>2</sub> emissions without unduly restricting the use of today's effective PM control systems;
6. The proposed amendments to the verification procedure would provide a process for handling products that do not appear to rely on principles that are generally understood or accepted by the scientific community;
7. The proposed amendments would further harmonize the verification procedure with the United States Environmental Protection Agency's (U.S. EPA) "General Verification Protocol for Diesel Exhaust Catalysts, Particulate Filters, and Engine Modification Control Technologies for Highway and Nonroad Use Diesel Engines," as well as with ARB's proposed airborne toxic control measure (ATCM) for stationary compression-ignition engines; and
8. There is no alternative considered by the Board that would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 2701, 2702, 2703, 2704, 2705, 2706, 2707 and 2709, title 13, California Code of Regulations, as set forth in Attachment A hereto, with the modifications described in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate the modifications approved herein into the approved new regulations, with such other conforming modifications as may be appropriate, and then to adopt the modified 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 modified text 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 she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations 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 regulations 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 the 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 the U.S. EPA 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, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 03-38, as adopted by the Air Resources Board.

\_\_\_\_\_/s/\_\_\_\_\_  
Lori Andreoni, Clerk of the Board

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February 26, 2004

Identification of Attachments to the Resolution

**Attachment A:** Proposed Regulation Order, as set forth in Appendix A of the Staff Report: Initial Statement of Reasons

**Attachment B:** Staff's Proposed Modifications to the Verification Procedure Amendments as distributed at the February 26, 2004 hearing