

Proposed Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation

Resolution 22-19

November 17, 2022

Agenda Item No.: 22-15-4

Whereas, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB 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, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

Motor Vehicle Pollution Threatens Public Health

Whereas, section 39000 of the Health and Safety Code declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California;

Whereas, section 39002 of the Health and Safety Code charges the Board with controlling air pollution from vehicular sources;

Whereas, section 39003 of the Health and Safety Code directs the Board to coordinate efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the State;

Whereas, section 41511 of the Health and Safety Code provides that, for the purpose of carrying out its duties, CARB may adopt rules and regulations to require the owner or the operator of any pollution emission source to take such action as CARB may determine to be reasonable for the determination of the amount of such emissions from such source;

Whereas, in sections 43000 and 43000.5 of the Health and Safety Code, the Legislature declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State; that the State has a responsibility to establish uniform procedures for compliance with standards to control emission of air pollutants from motor

vehicles; the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including off-road vehicles; and that dependence on petroleum-based fuels in motor vehicles not only contributes to the substantial degradation of air quality and risk to public health, but also impedes the State's progress toward the petroleum use reduction goal prescribed in section 25000.5 of the Public Resources Code;

Whereas, section 43013 of the Health and Safety Code directs the Board to adopt and implement emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution for light-, medium-, and heavy-duty motor vehicles, which the Board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law;

Whereas, section 43018 of the Health and Safety Code directs the Board to adopt standards and regulations that will result in 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, pursuant to definitions of vehicular source, motor vehicle, and vehicle set forth in sections 39060, 39040, and 39059 of the Health and Safety Code, respectively, in-use off-road diesel vehicles are vehicular sources that fall within CARB's jurisdiction;

Whereas, off-road, diesel-fueled engines emit diesel particulate matter (DPM), which is composed of carbon particles, such as black carbon (BC or "soot"), and over 40 known cancer-causing organic substances;

Whereas, DPM has been identified as a toxic air contaminant that can substantially increase the risk of developing cancer and other health problems, such as increased respiratory illnesses, risk of heart disease, and premature death;

Whereas, DPM can be inhaled into the upper airways and lungs, creating public health issues like respiratory ailments;

Whereas, oxides of nitrogen (NO_x) emissions from diesel engines in off-road vehicles can and do undergo chemical reactions in the atmosphere, leading to the formation of particulate matter 2.5 (PM_{2.5}) and ozone, which have harmful effects on the respiratory system;

Whereas, off-road vehicles that would be subject to the Proposed Amendments emitted approximately 14 percent of statewide NO_x emissions, or 106 tons of NO_x per day, in 2022;

Whereas, off-road vehicles that would be subject to the Proposed Amendments emitted approximately 7 percent of statewide PM emissions, or 6 tons of PM emissions per day, in 2022;

The National Ambient Air Quality Standards Require Action to Protect Public Health

Whereas, under the federal Clean Air Act, the United States Environmental Protection Agency (U.S. EPA) has established National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health, including fine PM_{2.5} and ozone, and states that exceed the NAAQS are required by federal law to develop State Implementation Plans (SIP) describing how they will attain the standards by certain deadlines;

Whereas, section 39602 of the Health and Safety Code provides that the SIP shall include only those provisions necessary to meet the requirements of the Clean Air Act;

Whereas, despite improvements over the last five decades, many densely populated areas in California, such as the South Coast and San Joaquin Valley air basins, are not in attainment with the federal ozone and PM2.5 standards, and more than half (21 million out of nearly 40 million) of all Californians live in urban and rural downwind areas that exceed the most stringent NAAQS for ozone of 70 parts per billion (ppb);

Whereas, nineteen areas in California are designated as being in nonattainment, and of those, ten areas are classified as Moderate and above for the 70 ppb ozone standard, and the South Coast Air Basin and San Joaquin Valley are the only two regions that are classified as Extreme in the nation;

Whereas, the Legislature, in Health and Safety Code section 39602, has designated CARB as the air pollution control agency for all purposes set forth in federal law;

Whereas, CARB is responsible for the preparation of the SIP for attaining and maintaining the NAAQS, as required by the federal Clean Air Act (42 U.S.C. § 7401 et seq.);

Whereas, in September 2022, CARB approved the 2022 State Strategy for the SIP, which included amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation (Proposed Amendments) as a proposed measure needed to help achieve attainment and maintenance of the federal 70 ppb 8-hour ozone standard set by U.S. EPA in 2015;¹

Whereas, CARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

Whereas, because NOx is a precursor to both ozone and to secondary PM2.5 formation, reductions in NOx emissions from these Proposed Amendments will, and are necessary to, help meet the federal PM2.5 national ambient air quality standards;

Whereas, federal law, set forth in section 110(l) of the federal Clean Air Act (42 U.S.C. section 7410(l)) and Title 40, Code of Federal Regulations (C.F.R.), section 51.102, requires that one or more public hearings, preceded by at least 30 days' notice and opportunity for public review, must be conducted prior to the adoption and submittal to U.S. EPA of any SIP revision;

Whereas, as required by federal law, the Board made the Proposed Amendments available for public review beginning on September 23, 2022, at least 30 days prior to the hearing date;

Need to Support the Adoption of Zero-Emission Technology in the Off-Road Sector

Whereas, recognizing California's leadership in zero-emission transportation, in 2020, Governor Gavin Newsom issued Executive Order N-79-20, which establishes the State's goal of transitioning to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible, and directs CARB to develop and propose regulations to accomplish this goal, acting consistently with technical feasibility and cost-effectiveness; advances strategies for a

¹ CARB, Proposed 2022 State Strategy for the State Implementation Plan, https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf.

just economic transition away from fossil fuels; and declares that the State must prioritize clean transportation solutions that are accessible to all Californians, particularly those who are low-income or experience a disproportionate share of pollution;

Whereas, the Legislature has enacted the California Global Warming Solutions Act of 2006 (Assembly Bill 32, codified at Health and Saf. Code, §§ 38500 et seq.) (AB 32), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California, and requires a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020, and to maintain the emission levels and continue reductions thereafter;

Whereas, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's findings that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and the Legislature's intent that CARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32, and design emissions reduction measures to meet the statewide emissions limits for GHGs in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

Whereas, as U.S. EPA has recognized, the effects of climate change and rising temperatures from GHG emissions make it more difficult to reduce ozone air pollution that threatens public health;

Whereas, zero-emission technologies, especially trucks and equipment, reduce both greenhouse gas emissions and toxic air pollutants that disproportionately burden our disadvantaged communities of color;

Whereas the Proposed Amendments provide a GHG reduction co-benefit by offering a zero-emission compliance pathway;

All Californians Deserve Equitable Access to Clean Air Statewide

Whereas, CARB and California have greatly improved air quality in the State over the past half century. Smog alerts, which peaked at one almost every other day during the 1960s, have been eliminated, while, during this time, the State has grown its economy and become a world leader in environmental policies and clean technologies;

Whereas, despite the significant public health improvements produced by CARB's air quality programs, California's disadvantaged communities, low-income communities, and communities of color continue to experience disproportionate impacts from air pollutants and GHGs, among other inequities that increase State residents' health vulnerabilities;

Whereas, section 44291.2 of the Health and Safety Code requires CARB to develop a statewide strategy to reduce emissions of criteria air pollutants in communities affected by a high cumulative exposure burden, including from mobile sources;

Whereas, CARB's statewide strategy to address these goals, known as the Community Air Protection Program Blueprint, identifies off-road diesel equipment as a source of emissions

that require additional emission reductions to reduce exposure to criteria pollution in burdened communities;

Whereas, the Legislature enacted Assembly Bill 617 (C. Garcia, Stats. 2017, Ch. 136) (AB 617), which highlights the need for further emission reductions in communities with high exposure burdens, such as those located near where off-road diesel vehicles operate;

Whereas, CARB recognizes the imperative to meaningfully integrate equity and environmental justice considerations into programs and policies in partnership with affected communities;

Whereas, CARB recognizes the importance of providing the public health benefits associated with requiring the operation of cleaner off-road diesel vehicles to all Californians, especially those working and living near where off-road diesel vehicles operate;

Other State Policies Supporting the Proposed Amendments

Whereas, the 2016 Sustainable Freight Action Plan identified state agencies' actions needed to accelerate the use of clean vehicle and equipment technologies and fuels for freight through the targeted introduction of zero- and near-zero emission technologies;

Whereas, the Low Carbon Fuel Standard (LCFS) regulation (Cal. Code Regs. tit. 17, §§ 95480 et seq.) provides an opportunity for commercial fleets to generate credits for dispensing low carbon fuels, and credit generation under the LCFS will continue to support use of fuels like renewable diesel as long as the fuel is less carbon intensive than the annual program standard.;

Whereas, Health and Safety Code section 39730 requires the Board to identify measures to reduce short-lived climate pollutants (SLCP), which are powerful climate forcers that can have an immediate and significant impact on climate change;

Whereas, Health and Safety Code section 39730.5 requires the Board to implement measures to reduce emissions of methane by 40 percent, hydrofluorocarbon gases by 40 percent, and anthropogenic black carbon by 50 percent below 2013 levels by 2030, and requires CARB to approve and implement the Short-Lived Climate Pollutant Reduction Strategy (SLCP Reduction Strategy) and the measures identified in the SLCP Strategy;

Whereas, CARB's SLCP Reduction Strategy² developed a range of options intended to accelerate the reduction of emissions of SLCPs in California, which include black carbon (soot), methane (CH₄), and fluorinated gases (F-gases, including hydrofluorocarbons, or HFCs), and specifically calls out the need for further diesel PM_{2.5} emissions reductions in order to reduce black carbon;

² Short-Lived Climate Pollutant Reduction Strategy, March 2017. (web link: https://ww2.arb.ca.gov/sites/default/files/2020-07/final_SLCP_strategy.pdf).

The In-Use Off-Road Diesel-Fueled Fleets Regulation has Effectively Reduced Air Pollution

Whereas, off-road diesel vehicles emit significant amounts of air pollutants, including DPM, PM_{2.5}, NO_x, oxides of sulfur (SO_x), and reactive organic gases (ROG);

Whereas, CARB has adopted emission standards for new off-road diesel engines, codified at California Code of Regulations, title 13, section 2423, in December 2000 (Tiers 2 and 3) and October 2005 (Tier 4), which were amended in October 2012 and September 2021, and which harmonized CARB's emission standards for new off-road diesel engine with emission standards adopted by U.S. EPA for nonroad diesel engines;

Whereas, the Board approved at its June 2007 hearing the initial In-Use Off-Road Diesel-Fueled Fleets Regulation (Off-Road Regulation) in Resolution 07-19, and the initial Off-Road Regulation became effective on June 15, 2008;

Whereas, the Board approved amendments to the Off-Road Regulation in January 2009, July 2009, and December 2010, the last of which became effective on December 14, 2011, and are hereby referred to as the "Current Regulation" (Cal. Code Regs., tit. 13, §§ 2449 et seq.);

Whereas, the Current Regulation requires that each fleet must reduce its total fleetwide emissions annually before January 1 of each year by either meeting the prescribed fleet average target rate each compliance year or demonstrating that it met the Best Available Control Technology (BACT) requirements in that compliance year;

Whereas, the Current Regulation requires that each fleet must meet a final fleet average target by January 1, 2023, for medium and large fleets, or by January 1, 2028, for small fleets, or continue to meet BACT requirements until the final target rate is achieved;

Whereas, the importance of achieving further NO_x emissions reductions from the off-road sector, which includes off-road equipment subject to the Current Regulation and the Proposed Amendments, is only getting more critical as the share of NO_x emissions from the on-road sector as a portion of total emissions continues to decline as a result of CARB's robust on road regulatory and incentive policies;

Whereas, despite substantial progress in reducing emissions from off-road diesel vehicles over the last decade, off-road diesel vehicle emissions continue to impact nearby communities, including communities located in ozone and PM_{2.5} nonattainment areas. In addition, the DPM emissions from off-road diesel vehicles impact communities located adjacent to the operation of these vehicles, the workers operating these vehicles, as well as people living and working miles away;

Whereas, the Current Regulation has achieved significant reductions in PM and NO_x; however, there is a need to achieve additional reductions from the vehicles subject to this regulation to meet State and federal air quality mandates and goals statewide;

The Proposed Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation Will Significantly Reduce Emissions and Protect Public Health

Whereas, under the Current Regulation, off-road diesel vehicles with uncontrolled Tier 0 engines and engines certified to Tier 1 and Tier 2 standards may continue to operate, as long as fleets are meeting the final fleet average target;

Whereas, Tier 4 Final standards require the use of advanced exhaust aftertreatment technologies to control both PM and NOx, and result in diesel engines that emit 80 times less NOx than Tier 0 engines (100-175 horsepower);

Whereas, the Proposed Amendments will significantly reduce emissions of NOx and PM by introducing a mandatory tier phase-out on uncontrolled Tier 0 engines and engines certified to Tier 1 and Tier 2 standards, and by prohibiting the addition of engines certified to a standard older than Tier 4 final standards;

Whereas, the Proposed Amendments will further reduce emissions of NOx and PM by requiring the use of R99 or R100 renewable diesel, leading to an estimated 10 percent reduction in NOx and a 30 percent reduction in PM emitted from engines that are Tier 4 Interim and older;³

Whereas, the Proposed Amendments will further reduce emissions of NOx and PM by introducing a mandatory tier phase-out on uncontrolled Tier 0 engines for vehicles designated as low-use vehicles starting on January 1, 2036;

Whereas, introducing compliance verification requirements to entities that hire off-road diesel fleets is necessary to reduce the monetary advantage that noncompliance could provide, which will level the playing field for compliant fleets;

Whereas, providing regulatory flexibility and an alternate regulatory pathway for compliance based on the voluntary adoption of zero-emission off-road technology is appropriate to encourage and support California's goals to transition the off-road sector to zero-emission operations;

Whereas, staff estimates that from 2024 through 2038, the Proposed Amendments would reduce cumulative statewide emissions by approximately 31,218 tons of NOx and 2,729 tons of PM beyond expected emissions reductions from the Current Regulation;

Whereas, staff estimates that the total reduction in the number of adverse health outcomes statewide (which include cardiopulmonary mortality, hospital admissions for cardiovascular and respiratory illnesses, and emergency room (ER) visits for asthma) due to the implementation of the Proposed Amendments from 2024 to 2038 would be as follows:

- 571 fewer premature deaths (446 to 699, 95 percent confidence interval),
- 82 fewer hospital admissions for cardiovascular illnesses (0 to 161, 95 percent confidence interval),
- 98 fewer hospital admissions for respiratory illnesses (23 to 173, 95 percent confidence interval), and
- 277 fewer ER visits for asthma (175 to 379, 95 percent confidence interval).

Whereas, over the course of the twelve-year implementation period, the Proposed Amendments will lead to substantial PM and NOx reductions from one of the largest sources of emissions today, and help avoid hundreds of premature deaths and pollution-related health impacts in communities across the State, with an overall health benefits valuation of over \$5 billion;

³ CalEPA, Staff Report: Multimedia Evaluation of Renewable Diesel (weblink: https://ww3.arb.ca.gov/fuels/multimedia/meetings/renewabledieselstaffreport_nov2013.pdf).

Whereas, since 2021, CARB staff has held three workshops, three workgroup meetings, and numerous individual meetings with stakeholders to provide information to the public and solicit feedback;

Whereas, staff has proposed Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation, as set forth in Appendix A to the Initial Statement of Reasons (Staff Report) released to the public on September 20, 2022;

Whereas, staff analyzed several alternatives, as set forth in the Staff Report released to the public on September 20, 2022, and no alternatives analyzed were found to be more effective at carrying out the purpose for which the amendments are proposed or as effective and less burdensome to affected entities than the Proposed Amendments;

Whereas, the Proposed Amendments were developed using generally accepted scientific bases or scientific portions and not a new methodology;

Whereas, CARB'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 the California Environmental Quality Act (CEQA; Cal. Code Regs., tit. 14, § 15251, subd. (d)), and CARB conducts its CEQA review according to this certified program (Cal. Code Regs., tit. 17, §§ 60000-60007);

Whereas, staff has determined that the Proposed Amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter IX. of the Staff Report;

Whereas, staff has determined the Proposed Amendments are also exempt from CEQA under California Code of Regulations, title 14, section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the amendments will enhance the environment by better protecting the public from health impacts associated with exposure to NOx and PM, the regulatory process involves procedures for protection of the environment, and the Proposed Amendments will not result in any significant adverse environmental impacts, as described in Chapter IX. of the Staff Report;

Whereas, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

The Findings of the California Air Resources Board

Whereas, in consideration of the Notice of Proposed Rulemaking for these amendments, the documents and evidence referenced and incorporated therein and in this resolution, and written comments and public testimony on the Proposed Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation, the Board finds that:

California continues to face unique air quality goals and challenges statewide;

The vehicles that would be subject to the Proposed Amendments are a significant source of NOx statewide that needs to be controlled and reduced to meet CARB's air quality mandates and goals;

The vehicles that would be subject to the Proposed Amendments are a significant source of PM statewide that needs to be controlled and reduced to meet CARB's air quality mandates and goals;

The Proposed Amendments will provide criteria pollutant emission reductions that are required to meet California's SIP targets statewide;

The Proposed Amendments are necessary, cost-effective, and technologically feasible, to carry out the purposes of Division 26 of the Health and Safety Code, and are not preempted by federal law;

The Proposed Amendments were developed using the best available economic and scientific information, will achieve technologically feasible and cost-effective criteria pollutant emission reductions from off-road diesel vehicles statewide that are necessary to achieve additional criteria emissions reductions in order to meet California's SIP targets and attain the NAAQS in California;

The contracting requirements applicable to prime contractors and public works awarding bodies are necessary for the health, safety, and welfare of the people of the State, and to reduce the monetary advantage that noncompliance could provide, which is necessary to maintain a level playing field for compliant fleets;

The Proposed Amendments will provide voluntary compliance flexibility options for fleets that adopt zero-emission technology;

The voluntary zero-emission flexibility options are necessary to encourage the adoption of zero-emission technology in the off-road sector, and to help support CARB's programs that target reductions in GHG emissions, which cause climate change;

The Proposed Amendments ensure effective enforcement of the In-Use Off-Road Diesel-Fueled Fleets Regulation in California, such that real emission reductions can be verified and achieved;

The economic and fiscal impacts of the Proposed Amendments have been analyzed as required by California law;

The Proposed Amendments are within the scope of CARB's authority and legislative direction to address the serious problem of air pollution in California, and, in particular, to meet CARB's statutory obligations identified in the following sections of the Health and Safety Code:

- Sections 39003, 39602.5, and 43018, because the regulations help attain federal and State ambient air quality standards, are premised on the best available research into the cause of air pollution, and attack air pollution from motor vehicles, which are a major source of air pollution in the State;
- Sections 39060, 39040, and 39059 of the Health and Safety Code, which provide definitions of vehicular source, motor vehicle, and vehicle, respectively,

showing in-use off-road diesel vehicles are vehicular sources that fall exclusively within the jurisdiction of CARB;

- Sections 43000 and 43000.5, because the regulations control and limit air pollution from motor vehicles, adopt uniform procedures for compliance with the regulations, and reduce the State's dependence on petroleum-based fuels;
- Sections 43013 and 43018, because the regulations are necessary, cost-effective, and technologically feasible, considering their impact on the economy of the State;

The Proposed Amendments were developed using generally accepted scientific bases or scientific portions and not a new methodology, and thus no peer review as set forth in Health and Safety Code section 57004 needed to be performed;

The Proposed Amendments were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the Proposed Amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected entities than the Proposed Amendments;

The Proposed Amendments are consistent with CARB's environmental justice policies, and do not disproportionately impact people of any race, culture, income, or national origin;

The Proposed Amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061, subdivision (b)(3), because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment; and

The Proposed Amendments are exempt from CEQA under California Code of Regulations, title 14, section 15308, because substantial evidence in the record shows that it will enhance the environment by better protecting the public from health impacts associated with exposure to NOx and PM, the regulatory process involves procedures for protection of the environment, and the proposal will not result in any significant adverse environmental impacts.

The Resolutions of the California Air Resources Board

Now, therefore, be it resolved that the Board hereby approves for adoption the proposed amendments to California Code of Regulations, title 13, sections 2449, 2449.1, and 2449.2, as set forth in Appendix A to the Initial Statement of Reasons, released to the public on September 20, 2022.

Be it further resolved that the environmental analysis was completed in compliance with CARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board, whose members reviewed and considered the information therein before taking action to approve the Proposed Amendments.

Be it further resolved that if there is a possibility that any modifications to the regulation made available for one or more 15-day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis, to the extent required by CARB's regulations at California Code of Regulations, title 17, section 60004.

Be it further resolved that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Appendix A of the Initial Statement of Reasons released to the public on September 20, 2022. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

Be it further resolved that the Board directs the Executive Officer to transmit the Notice of Exemption to the Secretary of the Natural Resources Agency for posting.

Be it further resolved that the Executive Officer shall, upon adoption, forward the regulations to U.S. EPA with a request for an authorization or confirmation that the regulations are within the scope of an existing authorization pursuant to section 209(e)(2)(A) of the federal Clean Air Act, as appropriate.

Be it further resolved that the Executive Officer shall, upon adoption, submit the proposed regulatory action to U.S. EPA for approval as a revision to the California SIP, as required by the federal Clean Air Act. The adopted regulatory action would be submitted as a SIP revision because it amends regulations intending to reduce emissions of air pollutants to attain and maintain the NAAQS promulgated by U.S. EPA under the Clean Air Act.

Be it further resolved that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

Be it further resolved that the Board certifies, pursuant to 40 C.F.R. section 51.102, that the proposed SIP revision was adopted after notice and public hearing, as required by 40 C.F.R. section 51.102.

Be it further resolved that the Board hereby determines that the regulations adopted herein will not cause California off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.