

State of California
AIR RESOURCES BOARD

Resolution 08-44

December 12, 2008

Agenda Item No.: 08-11-4

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2006 (AB 32; Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the economic well-being, 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, section 38510 of the Health and Safety Code, part of AB 32, designates the Air Resources Board (the Board or ARB) as the State agency charged with monitoring and regulating sources of GHG emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38560.5, subdivisions (a), (b) and (d), of the Health and Safety Code, which is also part of AB 32, required ARB to publish and make available to the public a list of discrete early action GHG reduction measures ("Discrete Early Action Measures") on or before June 30, 2007, and requires that regulations to implement the Discrete Early Action Measures be adopted on or before January 1, 2010 to be enforceable no later than January 1, 2010;

WHEREAS, section 38560.5, subdivision (c), of the Health and Safety Code requires that regulations adopted to implement Discrete Early Action Measures must achieve the maximum technologically feasible and cost-effective reductions in GHG, and section 38560 of the Health and Safety Code also directs ARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources;

WHEREAS, the Board approved a list of early GHG actions at its June 21, 2007 hearing and approved additions to the list at its October 25, 2007 hearing, and a subset of nine of these early actions were designated as Discrete Early Action Measures;

WHEREAS, the "SmartWay Truck Efficiency" measure to reduce GHG emissions from heavy-duty trucks through improved fuel efficiency was designated as one of the Discrete Early Action Measures to be established by regulation on or before January 2, 2010;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code [also](#) authorize 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;

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WHEREAS, in section 43000 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, and sections 39002 of the Health and Safety Code charges the Board with the responsibility of air pollution control from motor vehicles, except as otherwise provided in Division 26 of the Health and Safety Code;

WHEREAS, California's transportation sector is the leading source of GHG emissions in the state, contributing almost 40 percent of the state's annual GHG emissions;

WHEREAS, heavy-duty trucks account for approximately 20 percent of the transportation sector emissions, making them the second largest contributor towards transportation emissions;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) developed in 2004 a voluntary program called the SmartWay Partnership Program, which is designed to improve the environmental performance associated with the ground freight movement system in the United States and includes the certification of fuel efficient on-road, long-haul heavy-duty tractors and box-type trailers, and the verification of fuel efficiency improving retrofit devices for these types of tractors and trailers;

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WHEREAS, despite the availability of fuel-efficient heavy-duty tractors and trailers and retrofit devices that improve fuel efficiency, most long-haul heavy-duty trucks that operate on California highways are not using these technologies;

WHEREAS, these technologies that reduce greenhouse gas emissions and the emission of other air pollutants through improved fuel efficiency also generate operating cost savings to heavy-duty tractor and trailer owners;

WHEREAS, the proposed regulation would become effective on January 1, 2010;

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WHEREAS, ARB staff conducted five series of public workshops throughout California in 2008, conducting a total of 39 workshops, and also participated in numerous other meetings with various stakeholders in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code, and Board regulations at California Code of Regulations, title 17, section 60006 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;

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WHEREAS, the Board has considered the impact of the proposed regulation 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 regulation to reduce GHG emissions from heavy-duty diesel trucks meets the statutory requirements for a Discrete Early Action Measure under section 38560.5 of the Health and Safety Code and also satisfies the requirements of section 38560 of the Health and Safety Code;

The proposed regulation was developed in an open public process, in consultation with affected parties through numerous public workshops, individual meetings, and other outreach efforts;

The proposed regulation was developed using the best available economic and scientific information and will achieve the maximum technologically feasible and cost-effective GHG emission reductions from heavy-duty trucks, and encourage early compliance with the proposed requirements;

The GHG emission reductions resulting from the implementation of the proposed regulation are expected to be real, permanent, quantifiable, verifiable, and enforceable by ARB, and the proposed regulation complements, and does not interfere with other air quality efforts;

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The proposed regulation minimizes the administrative burden of implementing and complying with this regulation;

Compliance with the proposed regulation will not disproportionately impact low-income communities since long-haul heavy-duty vehicles operate throughout California and reduced GHG emissions and oxides of nitrogen emissions are benefits from the regulation that will be shared by low-income communities;

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There exist adequate data to support the adoption of the proposed regulation and to establish that the regulation will help accomplish the objectives of AB 32;

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The existing federal SmartWay Partnership Program provides the framework for the certification of fuel-efficient, long-haul, heavy-duty tractors and trailers and the verification of fuel-efficiency improving technologies for retrofitting such vehicles;

SmartWay technologies are currently available and used on a small number of heavy-duty tractors and trailers, and have been demonstrated to reduce vehicle fuel usage, and thereby, reduce GHG emissions;

Requiring on-road heavy-duty tractors and trailers operating on California highways to be equipped with SmartWay technologies will result in substantial reductions in GHG emissions;

Implementation of the proposed regulation beginning January 1, 2010, is feasible for box-type trailers and the heavy-duty tractors that pull them. The proposed requirements will apply to the owner, driver, motor carrier, California-based broker, and California-based shipper operating non-exempt vehicles on highways in California;

The proposed regulation is economical to the consumer over the life-cycle of the vehicle; the fuel-efficiency technologies will result in operating cost savings that exceed the initial capital cost, producing a net savings to the owner over the life-cycle of the vehicle;

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A state guarantee loan program will be available to help finance compliance with these proposed requirements.

No reasonable alternative considered, or that has otherwise been identified and brought to the attention of the ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons and businesses than the proposed regulation;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that the proposed regulation will not result in any significant adverse impacts on the environment;

WHEREAS, the Board further finds that:

As new fuel-efficient heavy-duty tractors and trailers are introduced and in-use heavy-duty tractors and trailers are retrofitted with fuel-efficient technologies, the proposed regulation is estimated to result in the reduction of approximately 1 million metric tons of carbon dioxide equivalent emissions statewide and approximately 6.7 million metric tons of carbon dioxide equivalent emissions nationwide in 2020. The total cumulative GHG emission reductions from 2010 to 2020 are estimated to be approximately 7.8 million metric tons of carbon dioxide equivalent emissions in California and approximately 52.1 million metric tons of carbon dioxide equivalent emissions nationwide, as described in the Staff Report on the regulation;

The proposed regulation is estimated to result in statewide reductions of oxides of nitrogen emissions of approximately 4.3 tons per day in 2014 and 1.4 tons per day in 2020. These reductions will help with progress toward attainment of National and State Ambient Air Quality Standards for particulate matter and ozone.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts new sections 95300, 95301, 95302, 95303, 95304, 95305, 95306, 95307, 95308, 95309, 95310,

95311, and 95312 in title 17, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate into the approved regulation the modifications set forth in Attachment B, with such other conforming modifications as may be appropriate, and then to adopt the new regulation 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 modifications as may be submitted during this period, shall make further modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if the Executive Officer determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to modify the regulatory language or take other appropriate steps to ensure the requirements specified in section 95303(a)(1) for certification of tractors will take effect only if the U.S. EPA modifies the existing U.S. EPA Certified SmartWay Tractor certification requirements to establish new performance-based test requirements that will provide for comparable greenhouse gas reductions for similar certified SmartWay tractors from different manufacturers, and also directs the Executive Officer to inform the Board by the end of 2009 whether such standards were adopted by U.S. EPA and available options if such standards have not been adopted.

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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 the public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the California emission standards as adopted herein will not cause the California requirements 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.

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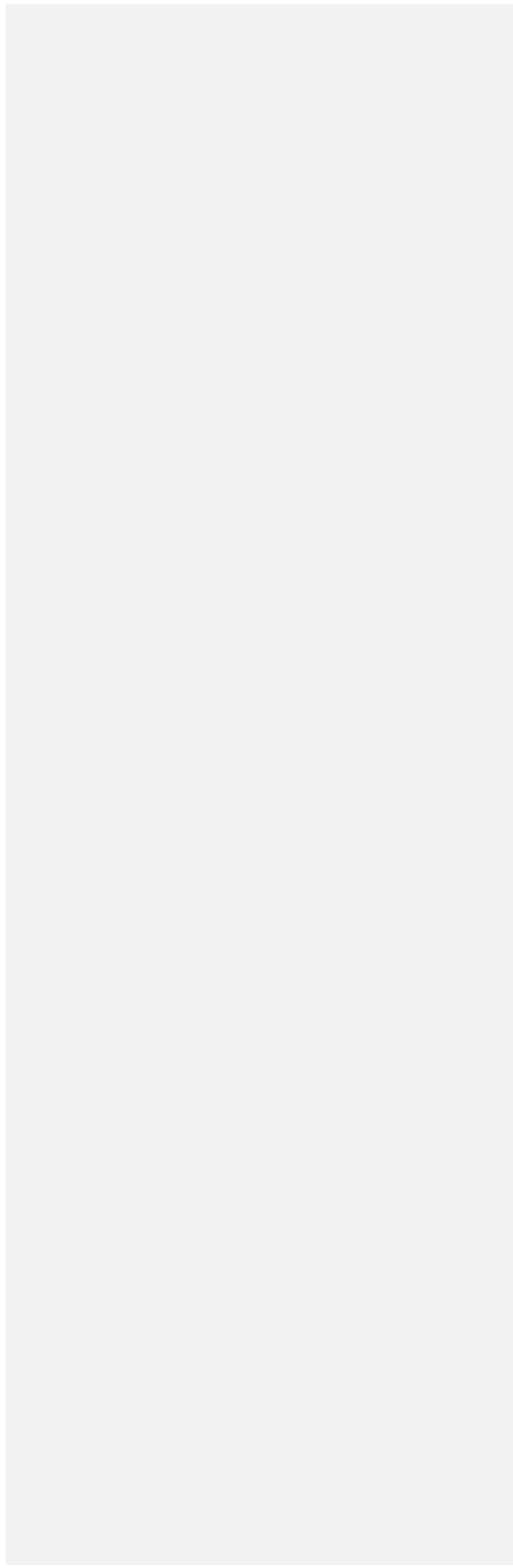
BE IT FURTHER RESOLVED that, to the extent such action is necessary, the Executive Officer shall, upon adoption, forward the regulation to the U.S. EPA with a request for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the federal Clean Air Act, as appropriate.

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I hereby certify that the above is a true and correct copy of Resolution 08-44, as adopted by the Air Resources Board.

/s/

Monica Vejar, Clerk of the Board



Resolution 08-44

December 11, 2008

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, as published and posted October 24, 2008.

Attachment B: Staff's Suggested Modifications to the Proposed Regulation Order, presented at the December 11, 2008 Board hearing.

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Monica Vejar, Clerk of the Board¶

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