

# **Delegation of Authority to the Executive Officer to Consider Proposed Amendments to Mobile Source Regulations**

**Resolution 23-15**

**March 23, 2023**

Agenda Item No.: 23-3-3

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, section 39515, subdivision (a) of the Health and Safety Code provides, in pertinent part, that the Board shall appoint an executive officer and may delegate to the executive officer, with limited exceptions, any duty that it deems appropriate;

Whereas, section 39516 of the Health and Safety Code provides that any power, duty, purpose, function, or jurisdiction that the Board may lawfully delegate is conclusively presumed to be delegated to the executive officer, unless the Board affirmatively votes to reserve any such power duty, purpose, function, or jurisdiction for its own action;

Whereas, on February 23, 1978, the Board affirmatively voted in Resolution 78-10 to retain to itself the power to "adopt, amend, and revoke emission standards and test procedures, assembly-line test procedures, and compliance test procedures for new motor vehicles;"

Whereas, the Board additionally affirmatively voted in Resolution 78-10 to clarify that "nothing herein shall prevent the Board, at a public meeting, from expressly delegating to the Executive Officer any powers, etc., otherwise reserved hereby to the Board, or from reserving to itself any additional powers, etc.;"

Whereas, on August 27, 2020, the Board approved for adoption the Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (hereinafter Omnibus regulation), which primarily establishes exhaust emission standards for oxides of nitrogen (NOx) for 2024 and subsequent model heavy-duty trucks that are significantly more stringent than currently applicable California and federal exhaust emission standards for heavy-duty trucks;

Whereas, the Omnibus regulation also significantly strengthens other elements of California's certification and testing programs to ensure heavy-duty trucks comply with the more stringent standards throughout their useful lives;

Whereas, the Omnibus regulation currently provides manufacturers the flexibility to produce and certify limited quantities of 2024 and 2025 model year heavy-duty trucks and engines in California that do not meet Omnibus requirements, provided those manufacturers offset any

resulting emissions increases with credits obtained by certifying zero-emission powertrain families used to power class 4 through 8 vehicles;

Whereas, the Board has also recently approved for adoption regulations that establish more stringent emission standards for heavy-duty and light-duty motor vehicles and engines;

Whereas, on June 27, 2019, the Board approved for adoption Alternative Certification Requirements and Test Procedures for Heavy-Duty Electric and Fuel-Cell Vehicles and Standards and Test Procedures for Zero-Emission Powertrains (ZEP Powertrain Procedures), which establish emission standards and certification requirements for 2021 and subsequent model year medium- and heavy-duty zero emission vehicles (ZEVs), including heavy-duty battery electric and heavy-duty fuel cell vehicles, and the zero-electric powertrains installed such vehicles;

Whereas, on June 25, 2020, the Board approved for adoption the Advanced Clean Trucks Regulation, which requires truck manufacturers to produce increasing numbers of ZEV medium- and heavy-duty trucks in California starting with the 2024 model year;

Whereas, on August 25, 2022, the Board adopted the Advanced Clean Cars II regulation, which establishes more stringent emissions standards for 2026 and later model year passenger cars, light-duty trucks, and medium-duty motor vehicles;

Whereas, on October 27, 2022, staff presented to the Board the proposed Advanced Clean Fleets regulation, which would require specified vehicle fleets to acquire increasing numbers of ZEV medium- and heavy-duty trucks starting with the 2024 model year; the Board is scheduled to consider approving for adoption the Advanced Clean Fleets regulation on April 27 and 28, 2022;

Whereas, in early February of 2023, some heavy-duty engine manufacturers informed CARB staff that they would not be marketing certain engines in California in the 2024 through the 2026 model years;

Whereas, those manufacturers have requested that staff propose amendments to the existing compliance flexibility provisions of the Omnibus regulation, so that manufacturers will be afforded additional flexibility to produce and certify greater numbers of existing engines in the 2024 through the 2026 model years, in order to better address their customer demands for new engines throughout the 2024 through 2026 model years;

Whereas, staff is developing narrowly-tailored amendments that will provide the industry the compliance flexibility it needs to successfully transition to the more stringent requirements of the Omnibus regulation in a manner that does not undermine the emissions benefits of the Omnibus regulation, the ZEP Powertrain Procedures, the Advanced Clean Trucks regulation, or the proposed Advanced Clean Fleets regulation;

Whereas, this may not be the only instance in which CARB may wish to consider providing additional compliance flexibility as manufacturers successfully transition to more stringent emission standards, where such flexibility can be provided in emissions-neutral manner;

Whereas, the Board's schedule to consider proposed rulemaking actions in 2023 has been established, and the Board is scheduled to hear such rulemaking actions only on two specified dates each calendar month in 2023;

Whereas, staff believes it could more expeditiously present any proposed amendments to mobile source regulations to the Executive Officer for consideration, since the Executive Officer would, pending the Board's approval, be authorized to schedule the consideration of the proposed amendments on any date or dates that he determines is more suitable for considering such amendments;

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; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

Whereas, staff has determined that the proposed delegation is not a "project," as defined under CEQA (California Code of Regulations, title 14, section 15378), because record evidence shows that there is no potential that the act of delegating authority to the Executive Officer, as described herein, will result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment since it neither compels the Executive Officer to act in any particular manner nor does it propose a particular action that would cause a physical change in the environment;

Whereas, the Board finds that:

Some heavy-duty engine manufacturers may not be marketing certain engines in California in the 2024 through the 2026 model years, as a result of business decisions;

Those manufacturers have requested that CARB propose amendments to the existing compliance flexibility provisions of the Omnibus regulation, to provide them additional flexibility to produce and certify existing engines in the 2024 through the 2026 model years;

It is appropriate to delegate, as prescribed herein, to the Executive Officer the authority to adopt, amend, and revoke emission standards, test procedures, compliance test procedures, and compliance flexibilities for new on-road motor vehicles that the Board previously reserved to itself in Board Resolution 78-10 during a limited time period;

The Executive Officer shall use his discretion to exercise that delegated authority to consider approving for adoption or denying any CARB staff-proposed new, amended or revoked emissions standards, test procedures, compliance test procedures, and compliance flexibilities for new on-road motor vehicles, including 2024 through 2026 model year medium-duty and heavy-duty engines and vehicles, in order to provide engine and vehicle manufacturers additional compliance flexibilities so that such manufacturers can more easily transition to the more stringent requirements of applicable mobile source regulations, while also ensuring those flexibilities will not reduce the emissions benefits of CARB's mobile source regulations, including, but not limited to, the Omnibus regulation, the ZEP Powertrain Procedures, the Advanced Clean Trucks regulation, the Advanced Clean Cars II regulation, or the proposed Advanced Clean Fleets regulation.

The proposed delegation meets the statutory requirements identified in Health and Safety Code sections 39600, 39601, 39515, 39516, and Board Resolution 78-10 because the delegation would allow the Board to more expeditiously consider and resolve potential situations arising from manufacturers' requests for compliance flexibility as they transition to more stringent emission standards, such as the requests by certain manufacturers that CARB provide them additional flexibility to produce existing heavy-duty engines in the 2024 through the 2026 model years.

The proposed delegation to the Executive Officer in the manner described herein is not a project as defined under CEQA (California Code of Regulations, title 14, section 15378) because record evidence shows that there is no potential that the act of delegating authority to the Executive Officer, as described herein, will result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment since it neither compels the Executive Officer to act in any particular manner nor does it propose a particular action that would cause a physical change in the environment.

Now, therefore, be it resolved that the Board hereby delegates to the Executive Officer the power to adopt, amend, and revoke emission standards and test procedures, compliance test procedures, and compliance flexibilities for new on-road motor vehicles that the Board previously reserved to itself in Board Resolution 78-10;

Be it further resolved that the Executive Officer shall use his discretion to exercise that delegated authority to consider approving for adoption or denying any CARB staff-proposed new, amended or revoked emissions standards, test procedures, compliance test procedures, or compliance flexibilities for new on-road motor vehicles, including 2024 through 2026 model year medium-duty and heavy-duty engines and vehicles, in order to provide engine and vehicle manufacturers additional compliance flexibility so that such manufacturers can more easily transition to the more stringent requirements of applicable mobile source regulations, while also ensuring those flexibilities will not reduce the emissions benefits of CARB's mobile source regulations, including, but not limited to, the Omnibus regulation, the ZEP Powertrain Procedures, the Advanced Clean Trucks regulation, the Advanced Clean Cars II regulation, or the proposed Advanced Clean Fleets regulation.

Be it further resolved that the aforementioned delegation of power terminates on December 31, 2023.

I hereby certify that the above is a true and correct copy of Resolution 23-15 as adopted by the California Air Resources Board.

*Krista Harrington*

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Board Clerk