

State of California
AIR RESOURCES BOARD

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE
CALIFORNIA AIR RESOURCES BOARD'S CERTIFIED REGULATORY
PROGRAM IN THE CALIFORNIA CODE OF REGULATIONS, TITLE 17,
SECTIONS 60000-60007**

STAFF REPORT: INITIAL STATEMENT OF REASONS

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I. INTRODUCTION AND BACKGROUND

The California Air Resources Board (CARB) is proposing certain regulatory amendments to the provisions set forth in California Code of Regulations, title 17, sections 60000 through 60007 (“proposed amendments” or “proposed regulation”). These provisions are part of CARB’s “certified regulatory program” under Public Resources Code section 21080.5 (hereafter section 21080.5). CARB’s certified regulatory program is considered the functional equivalent of the California Environmental Quality Act (CEQA). It will be updated through this proposal to improve clarity regarding CARB procedures for the preparation and adoption of environmental analyses regarding projects that may significantly affect the environment.

CEQA requires public agencies to analyze and disclose the potentially significant environmental impacts that may result from their discretionary approval decisions. CEQA also requires such agencies to avoid or mitigate those impacts, if feasible. (Pub. Resources Code § 21100.) State agencies may develop their own CEQA-equivalent regulatory programs, and may seek certification of those programs by the Natural Resources Agency. (Pub. Resources Code § 21080.5.) This certification exempts agencies from Chapters 3 and 4 of CEQA (Division 13 of the Public Resources Code), because the environmental analysis involved in the regulatory program is deemed to be the functional equivalent of traditional CEQA documentation. (Pub. Resources Code § 21080.5(c); 14 California Code of Regulations (CCR) §§ 15250-53.)

In 1978, CARB received certification of its regulatory program by the Secretary of Natural Resources. The certification documents from the Secretary of Resources issued in August 1978 certified the portion of CARB’s regulatory program involving the adoption or approval of standards, rules, regulations or plans to be used in the regulatory program for the protection and enhancement of the ambient air quality of California as meeting the requirements for certification under Public Resources Code section 21080.5.

After receiving its certification, CARB amended its CEQA regulations twice. The first amendments, in 1980, were in response to legislative changes to the Administrative Procedure Act that imposed some requirements that needed to be incorporated into the regulations. The next amendments were approved in September 1981 in response to Assembly Bill 1111¹, which required all agencies to review all regulations on the basis of five statutory criteria (necessity, clarity, consistency, authority, and reference). In response, CARB shortened the then-existing regulations to “eliminate unnecessary repetition of statutory provisions and other excess verbiage, add references to appropriate statutes, and simplify or clarify language in those regulations proposed for retention.”

¹ 1981 rulemaking record for Board Resolution No. 81-61.

II. THE PROBLEM THAT THE PROPOSAL IS INTENDED TO ADDRESS

The 1981 amendments significantly shortened the provisions in section 60000-60008, particularly those portions related to environmental analysis requirements. Since 1981, CARB has not amended the procedures for its certified regulatory program; however, the CEQA statute and guidelines have been amended numerous times, and CEQA case law has evolved considerably. The proposed regulatory amendments are intended to address these developments.

CARB's existing certified regulatory program lacks detail and occupies only a single page of regulatory text. In the years since 1981, CEQA has become increasingly complex. CARB's existing program specifies very few requirements, and does not adequately inform the public about CARB's CEQA practices and procedures.

CARB is proposing to update its certified regulatory program to more fully set forth its CEQA review procedures. Proposed changes include further specifying notice and comment requirements, exemptions, definitions, and the different procedures that will apply to different types of CARB environmental review. Such changes will bring greater efficiency, transparency, and certainty to CARB's planning and rulemaking processes by creating a more uniform and clear environmental review process.

Certified regulatory programs were created to exempt state agencies from certain aspects of CEQA, avoiding duplication where those agencies already conduct their duties with environmental safeguards in place. (See Public Resources Code § 21080.5.) The statute governing certified regulatory programs allows such agencies a wide amount of discretion in creating their own CEQA-equivalent review processes and requirements, within certain constraints. (See *Id.*) However, CARB's primary goals in proposing these amendments are to (1) align CARB's certified regulatory program with established CEQA principles, and (2) increase public transparency by more fully setting forth the requirements applicable to CARB environmental analyses.

III. THE SPECIFIC PURPOSE AND RATIONALE OF EACH ADOPTION, AMENDMENT, OR REPEAL

Section 60000. Purpose.

Summary of section 60000

Section 60000 is amended to replace the word “supplement” with “implement” to more accurately describe the purpose of the procedures described in sections 60000-60007.

Rationale for section 60000

This minor revision is necessary to more accurately describe the purpose of the subchapter. The subchapter describes the procedures CARB staff will follow with regard to meetings and hearings of the state board and the executive officer to implement requirements of the Mulford-Carrell Air Resources Act (Division 26 of the Health and Safety Code), the Administrative Procedure Act (APA), and CEQA.

Section 60002. Notice.

Summary of section 60002

Section 60002 has been amended to specify that CARB provides notice as required by applicable law. The term “mailed” has been changed to “given”, and language has been added specifying that notice may be provided electronically in lieu of physical mail, unless otherwise prohibited.

Rationale for section 60002

This revision is necessary to specify that CARB’s noticing procedures align completely with applicable law, including CEQA and the Administrative Procedure Act. CARB’s previous notice provision did not directly address which key laws were relevant to its noticing, and it included noticing provisions that were outdated and did not clearly tie to a specific requirement or purpose (although they are largely required by those noticing laws anyway). The proposed amendments simplify the language, help avoid inconsistency with state noticing laws, and connect the noticing requirements to the key state laws that specifically address noticing. Certain language concerning noticing procedures is being modified to avoid duplication and potential confusion, as the noticing requirements depend on what type of notice is being sent, and for what purpose. To avoid this potential confusion, CARB proposes these amendments to completely align with the existing specific CEQA and APA noticing requirements applicable to each notice type. Certain notices may also now be provided by electronic mail, and therefore the changes relating to electronic notice is necessary to reflect that notice may be provided by electronic means, where allowed.

Section 60003. Staff Reports.

Summary of section 60003

CARB is proposing to renumber existing section 60005, Staff Reports, to section 60003 and make minor amendments (existing Section 60003, Quorum, is renumbered to Section 60006, see below). Section 60003 would describe the procedures CARB uses to prepare a staff report and when the staff report is published. Section 60003(a) is amended to specify when a staff report is to be prepared and published for a proposed rule, regulation, order, standard or plan. Section 60003(b) is amended to specify that staff reports will be prepared consistent with the APA's broad policies, where applicable. Existing language in 60003(a) and (b) relating to when a staff report is required, when staff reports shall be available for public review and distributed, and the contents of the staff report is deleted; the language setting forth the contents of the staff report has been moved to section 60004. Language has also been added to this subsection specifying that this Article is intended to set forth the guidelines for CARB's orderly evaluation of its proposed activities and the preparation of plans or other written documentation, in a manner consistent with the environmental purposes of CARB's regulatory program.

Rationale for section 60003

This minor clarification for when a staff report will be prepared in 60003(a), and that staff reports will be consistent with broad APA policies, is necessary to describe the procedures CARB uses to prepare a staff report, or "Initial Statement of Reasons" for rulemaking items subject to the Administrative Procedure Act. The deletions in 60003(a) and (b) are necessary to avoid duplication; new text in this section and in section 60004, as proposed, will set forth those requirements. Requiring that staff reports be published as early as reasonably practicable prior to the public hearing for non-regulatory items helps give CARB more flexibility in terms of when to publish its staff reports, and helps align its publication requirements with existing laws governing public meetings and environmental review. The proposed changes also recognize that some projects that fall under CARB's certified regulatory program are not subject to full 45-day notice and comment procedures under the APA. Also, CARB is proposing to provide notice to other agencies of proposed actions with potentially significant environmental impacts through the State Clearinghouse (see proposed section 60004.2(b)(4); see also section 60002). As such, CARB proposes to delete the duplicative language that CARB will send the notice to state and local government agencies. CARB proposes to remove the language that describes the availability and content of staff reports to avoid duplication; CARB will comply with the applicable law regarding the availability and content of staff reports. For CARB proposals that are not subject to the Administrative Procedure Act, the regulatory language would specify that staff reports are published as early as reasonably practicable before the public hearing, to reflect that certain staff reports will require more time than others to prepare.

Note that this section is not intended to fully set forth the public review and comment process for CEQA purposes; it is primarily intended to set forth the Administrative Procedure Act related requirements for staff reports. The proposed amendments do, however, specify that the broader Article in which this section is contained is intended to set forth the guidelines for CARB's orderly evaluation of its proposed activities and the preparation of plans or other written documentation, in a manner consistent with the environmental purposes of CARB's regulatory program. This provision is necessary to clarify that the provisions in this Article are intended to satisfy the requirements for a certified regulatory program.

Other sections below set forth the public review and comment process for CEQA purposes.

Section 60004. General Environmental Review Provisions.

Summary and Purpose of section 60004

CARB is proposing to renumber existing section 60004, Record of Proceedings to section 60007 and insert new language in section 60004 that describes the procedures CARB uses to determine the appropriate level of environmental review, and to prepare an environmental analysis for purposes of its certified regulatory program. This provision also sets forth some key definitions.

Rationale for section 60004

The amendments to Section 60004 are necessary to more fully describe the procedures CARB uses to prepare its environmental analysis for the purposes of analyzing the potential environmental impacts of its actions. The proposed amendments will specify that there are several different levels of environmental analysis with varying requirements that are consistent with current CEQA requirements. This provision is needed to detail how CARB determines the appropriate level of environmental review. This provision is also needed to define key terms, including what activities constitute a "project".

Summary and Purpose of subsection 60004(a)

Subsection 60004(a) identifies definitions of terms used throughout the regulatory text.

Rationale for amendments to subsection 60004(a)

Subsection 60004(a), is necessary to specify what certain terms used throughout the regulatory text mean. This is necessary to improve the regulation's transparency, comprehensibility, and consistency.

Summary and Purpose of subsection 60004(b)

Subsection 60004(b) identifies when CARB will prepare an environmental document pursuant to its certified regulatory program. Where a proposed regulation or other state action for which a staff report is prepared is considered a

project under CEQA and CARB determines that there are no applicable CEQA exemptions, the staff report will include an environmental analysis. The subsection provides that in developing the environmental analysis, CARB shall determine whether the proposed project may have a significant effect on the environment.

Subsection 60004(b)(1) identifies that if CARB determines there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect is adverse or beneficial, CARB shall do one of the following: prepare an Impact Environmental Analysis; rely on or tier from a prior environmental analysis, environmental impact report, negative declaration, or mitigated negative declaration; or prepare a supplemental environmental analysis.

Subsection 60004(b)(2) identifies that if CARB determines that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment, CARB may prepare a Environmental Analysis Finding No Impacts, a Supplemental Environmental Analysis Finding No Impacts, or it may rely on a prior Impact Environmental Analysis or Environmental Analysis Finding No Impacts.

Subsection 60004(b)(3) identifies that if CARB determines that a certified Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts requires minor changes or additions to the information contained in the previous document and the circumstances listed in CEQA Guidelines section 15162(a) are not present, CARB may prepare an addendum pursuant to 60004.4.

Rationale for amendments to subsection 60004(b)

Subsection 60004(b) is necessary to specify when CARB will prepare an environmental analysis pursuant to its certified regulatory program. It is the policy of the state board to prepare staff reports in a manner consistent with the environmental protection purposes of the state board's regulatory program, with the goals and policies of CEQA (Public Resources Code Sections 21000 et seq.), and with all other applicable laws. Consistent with CEQA, where a proposed regulation or other state action for which a staff report is prepared is considered a non-exempt project, CARB will prepare an environmental analysis.

Subsection 60004(b)(1) is necessary to specify what type of environmental document CARB will prepare when it determines that there is substantial evidence that any aspect of the project may cause a significant effect on the environment. To be consistent with CEQA, it is necessary to prepare an Impact Environmental Analysis pursuant to section 60004.2 (see below) if a new analysis of a project is required. To be consistent with CEQA, it is necessary to rely on a previously prepared environmental document (as specified) if the previous analysis remains adequate. To be consistent with CEQA, it is necessary to prepare a supplemental environmental analysis if a previous environmental

analysis remains applicable though requires supplemental information to constitute an adequate analysis. CARB's certified regulatory program is exempt from Chapters 3 and 4 of CEQA, including requirements to prepare an initial study, negative declaration, or environmental impact report. (Pub. Resources Code § 21080.5(c).) This helps align with established CEQA principles regarding when environmental analyses may be prepared, and helps inform the public regarding when CARB prepares the various types of analyses.

Subsection 60004(b)(2) is necessary to specify when CARB may prepare an Environmental Analysis Finding No Impacts, consistent with CEQA. This helps align with established CEQA principles regarding when negative declarations may be prepared, and helps inform the public regarding when CARB prepares the various types of analyses.

Subsection 60004(b)(3) is necessary to specify that CARB may prepare an addendum if it determines that a certified Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts requires minor changes or additions to the information contained in the previous document and the circumstances listed in section 15162(a) of title 14 of the California Code of Regulations do not apply. This helps align with established CEQA principles regarding when addenda may be prepared, and helps inform the public regarding when CARB prepares the various types of analyses.

Summary of subsection 60004(c)

Subsection 60004(c) defines "project" for purposes of the certified regulatory program, and sets forth a list of types of potential CARB activities that do not constitute a project subject to CEQA review under settled CEQA law. See the "Rationale" section below for a list of these categories, as well as the associated CEQA citations for each category.

Rationale for subsection 60004(c)

Subsection 60004(c) is necessary to define a "project" consistent with CEQA (e.g., Pub. Resources Code § 15378), and to set forth a non-exclusive list of what types of CARB activities do not constitute a "project" for CEQA purposes. These activities are deemed not to be a "project" because they are expressly excluded from the "project" definition in CEQA Guidelines section 15378, or they are otherwise deemed not to be "projects" subject to CEQA review, pursuant to established statutory, regulatory, or case law.

These proposed categories, and the settled CEQA law that each of them is based on, are as follows:

- Proposed Section 60004(c)(1). Proposals for new legislation: See 14 CCR § 15378(b)(1).
- Proposed Section 60004(c)(2). Continuing administrative or maintenance activities: See 14 CCR § 15378(b)(2).

- Proposed Section 60004(c)(3). The creation of government funding mechanisms: See 14 CCR § 15378(b)(4).
- Proposed Section 60004(c)(4). Organizational or administrative activities: See 14 CCR § 15378(b)(5).
- Proposed Section 60004(c)(5). Approval of planning documents where CARB does not commit itself or any other agency to a course of action: See 14 CCR § 15352(a); *Save Tara v. City of W. Hollywood* (2008) 45 Cal. 4th 116. Note that some CARB planning efforts, including the projects described in the environmental analysis prepared by CARB for the 2017 Scoping Plan² and for the 2016 State Strategy for the State Implementation Plan,³ constitute commitments to a course of action. Such planning efforts (which constitute commitments to a course of action) have been, and would continue to be, fully analyzed as appropriate under CEQA. This exemption covers only plans that do not constitute a commitment to a course of action, which is a settled CEQA principle. Like the other provisions in these proposed amendments, this provision is necessary to further specify CARB's existing CEQA practices, and to align CARB's certified regulatory program with settled CEQA law.

Furthermore, when CARB prepares environmental analyses, it analyzes all reasonably foreseeable direct and indirect environmental impacts, including future impacts resulting from actions taken by other agencies or private sector parties in response to CARB's action.

- Proposed Section 60004(c)(6). Ministerial projects: See Pub. Resources Code § 21080(b)(1).
- Proposed CARB activities that otherwise do not qualify as a "project" as defined under CEQA: This provision is a catch-all which incorporates other categories of activities listed in the CEQA Guidelines that are not a CEQA "project." This helps ensure CARB's certified regulatory program is aligned with established CEQA principles. See 14 CCR § 15378.

Note that the term "project" as defined in the proposed amendments directly refers to the definition of that term in section 15378(a) of the CEQA Guidelines. That provision, in turn, defines a "project", in part, as the whole of an action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, this definition is necessary to completely align with the established CEQA definition of "project," and with the established CEQA concept that a project includes the whole of the action.

² The environmental analysis for this plan is available at https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

³ The environmental analysis for this plan is available at https://www.arb.ca.gov/planning/sip/2016sip/rev2016statesip_CEQA.pdf.

Summary and Purpose of subsection 60004(d)

Subsection 60004(d) lists the activities that CARB has determined are exempt because they fall within the scope of exemptions set forth under CEQA. This subsection also clarifies that all of the exemptions set forth under CEQA, whether statutory or in the CEQA Guidelines, may apply to CARB activities where the activity under consideration qualifies for the exemption.

Subsection 60004(d)(1) identifies CARB activities that fall within the “Common Sense Exemption”, CCR 14, section 15061(b)(3).

Subsection 60004(d)(2) identifies CARB activities that fall within the Class 1 exemption, CCR 14, section 15301.

Subsection 60004(d)(3) identifies CARB activities that fall within the Class 6 exemption, CCR 14, section 15306; the Class 14 exemption CCR 14, section 15314; and the Class 22 exemption, CCR 14, section 15322.

Subsection 60004(d)(4) identifies CARB activities that fall within the Class 7 exemption, CCR 14, section 15307.

Subsection 60004(d)(5) identifies CARB activities that fall within the Class 8 exemptions, CCR, section 15308.

Subsection 60004(d)(6) identifies CARB activities that fall within the Class 21 exemption, CCR 14, section 15321.

Subsection 60004(d)(7) identifies CARB activities that fall within the Class 21 exemption, CCR 14, section 15262.

Rationale for subsections 60004(d), 60004(d)(1), 60004(d)(2), 60004(d)(3), 60004(d)(4), 60004(d)(5), 60004(d)(6)

Subsections 60004(d), 60004(d)(1), 60004(d)(2), 60004(d)(3), 60004(d)(4), 60004(d)(5), 60004(d)(6), and 60004(d)(7) are necessary to specify what activities CARB has determined to be exempt from CEQA in compliance with law. This section helps inform the public regarding what CARB activities may be exempt from CEQA review. California Code of Regulations, title 14, section 15300.4, requires public agencies to, in the course of establishing their own procedures, list specific activities which fall within each of the exempt classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. Under this authority, CARB has determined that certain projects and activities are exempt from CEQA because they fall within CEQA exempt classes. As such, CARB has listed those classes, in a non-exclusive list, in its amendments. (CEQA Guidelines 15300.4.) This list is consistent with both the letter and the intent expressed in the classes of exemptions to which these activities are subject.

Summary and Purpose of subsection 60004(e)

Subsection 60004(e) specifies that the state board may delegate to the Executive Officer authority to carry out any changes to proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with the other provisions in section 60004.

Rationale for subsection 60004(e)

Subsection 60004(e) is necessary to identify the procedures the state board may use to delegate authority to the Executive Officer to carry out any changes to regulatory language as appropriate under Government Code section 11346.8(c) for a rulemaking proceeding under the Administrative Procedure Act. This provision is also necessary to specify that, where the state board delegates such authority to the Executive Officer, the state board also delegates authority to conduct any additional environmental review that may be required in connection with the specific changes evaluated by the Executive Officer. This is also necessary to ensure that any delegations of authority are done in a manner consistent with the court decision in *POET, LLC. v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, at pages 99-103.

Summary and Purpose of subsection 60004(f)

Subsection 60004(e) provides that CARB may file a Notice of Exemption with the Natural Resources Agency and/or the State Clearinghouse when it approves or determines to carry out a project exempt from CEQA.

Rationale for subsection 60004(f)

Subsection 60004(e) is necessary to align CARB's practices and certified regulatory program with established CEQA principles concerning filing notices of exemption, and to inform the public regarding how CARB files such notices.

Summary and Purpose of subsection 60004(g)

Subsection 60004(g) provides that CARB may tier its environmental analyses using the principles set forth in California Code of Regulations, title 14, section 15152, which sets forth the CEQA Guidelines provisions regarding tiering in preparing environmental analyses, as well as principles set forth in other tiering-related provisions in CEQA.

Rationale for subsection 60004(g)

Subsection 60004(g) is necessary to specify that CARB may tier its environmental analyses, where appropriate and consistent with existing law. This provision is also necessary to set forth the standards under which CARB may tier its environmental analyses. This provision is necessary to help align CARB practices with established CEQA law.

Section 60004.1. Environmental Analysis Finding No Impacts.

Summary and Purpose of section 60004.1

Section 60004.1 describes the procedures CARB uses to prepare and approve an Environmental Analysis Finding No Impacts and the contents of that analysis for purposes of its certified regulatory program.

Rationale for section 60004.1

Section 60004.1, in its entirety, is necessary to more fully inform the public about the procedures CARB uses to prepare and approve an Environmental Analysis Finding No Impacts and the contents of that analysis for purposes of its certified regulatory program. This section tracks the requirements of section 15071 of the CEQA Guidelines, while adapting those requirements to CARB's purposes, as agencies are supposed to do in establishing a certified regulatory program tailored to their individual programs. For example, this section does not include the requirement to show the location of the project on a map, as the vast majority of CARB's projects are statewide, and CARB instead describes the applicability of its projects in the project description. This section also specifies that CARB must explain its findings that the project would not have any potentially significant environmental effects. This section further specifies that mitigation measures may be used to reduce impacts to below the level of significance, aligning with existing CEQA law regarding mitigated negative declarations. As with all of the proposed amendments, the intent is to align with established CEQA principles, including that an Environmental Analysis Finding No Impacts may be approved only if there is no substantial evidence that the proposed project would have a potentially significant impact on the environment. (See proposed subsection 60004.1(c).) This is necessary to ensure consistency with established CEQA principles.

Summary of subsection 60004.1(a)

Subsection 60004.1(a) identifies the contents of the Environmental Analysis Finding No Impacts. Consistent with CEQA Guidelines 15252, an Environmental Analysis Finding No Impacts must include a brief description of the proposed activity, and either an explanation demonstrating that the CARB's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment, or mitigation measures, if any, included in the project to avoid potentially significant effects that the project might have on the environment.

Rationale for subsection 60004.1(a)

Subsection 60004.1(a) is necessary to identify the contents of an Environmental Analysis Finding No Impacts prepared by CARB pursuant to its certified regulatory program and consistent with CEQA Guidelines 15252. This section helps inform the public regarding the contents of an Environmental Analysis Finding No Impacts.

Summary of subsection 60004.1(b)

Subsection 60004.1(b) identifies that CARB will provide a public review period consistent with CEQA Guidelines section 15073, and specifies that public comment on subsequent modifications to the originally proposed regulation text set forth in 11346.8(c) for the same rulemaking shall be limited to the changes proposed in those modifications.

Rationale for subsection 60004.1(b)

Subsection 60004.1(b) is necessary to inform the public regarding the procedures CARB will use to provide a public comment period for an Environmental Analysis Finding No Impacts prepared pursuant to the certified regulatory program and that those procedures will be consistent with CEQA Guidelines section 15073.

Summary of subsection 60004.1(c)

Subsection 60004.1(c) identifies the procedures the state board shall use to consider and approve the Environmental Analysis Finding No Impacts. The section describes that the state board must consider the proposed Environmental Analysis Finding No Impacts together with any timely-submitted comments specific to the environmental analysis submitted during the applicable public review period, prior to approval of the proposed project. It also describes when the board must approve the proposed Environmental Analysis Finding No Impacts and when the approval occurs. Finally, it states that the state board may, but is not required to, respond to comments on the proposed Environmental Analysis Finding No Impacts.

Rationale for subsection 60004.1(c)

Subsection 60004.1(c) is necessary to inform the public regarding the procedures the state board will use to consider and approve the Environmental Analysis Finding No Impacts prepared pursuant to its certified regulatory program. The proposed amendments are also necessary to identify the date when approval occurs as provided by CEQA Guidelines 15352(a). (See the decision in *POET, LLC. v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, at page 92.)

Summary of subsection 60004.1(d)

Subsection 60004.1(d) identifies that CARB shall file a notice of decision with the Secretary of the Natural Resources Agency after deciding to approve the project.

Rationale for subsection 60004.1(d)

Subsection section 60004.1(d) is necessary to inform the public as to how CARB files a notice of decision when relying on an Environmental Analysis Finding No Impacts, and to add specificity to CARB's regulations regarding how notices are filed.

Summary and Purpose of subsection 60004.1(e)

Subsection 60004.1(e) specifies that the state board may delegate to the Executive Officer authority to carry out any changes to proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with the other provisions in section 60004.

Rationale for subsection 60004.1(e)

Subsection 60004.1(e) is necessary to identify the procedures the state board may use to delegate authority to the Executive Officer to carry out any changes to regulatory language as appropriate under Government Code section 11346.8(c) for a rulemaking proceeding under the Administrative Procedure Act. This provision is also necessary to specify that, where the state board delegates such authority to the Executive Officer, the state board also delegates authority to conduct any additional environmental review that may be required in connection with the specific changes evaluated by the Executive Officer. This is also necessary to ensure that any delegations of authority are done in a manner consistent with the court decision in *POET, LLC. v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, at pages 99-103.

Section 60004.2 Impact Environmental Analysis.

Summary of section 60004.2

Section 60004.2, in its entirety, describes the proposed procedures CARB will use to prepare an Impact Environmental Analysis for purposes its certified regulatory program, including but not limited to the content and certification process of an Impact Environmental Analysis.

Rationale for section 60004.2

Section 60004.2, in its entirety, is necessary to more fully describe the procedures CARB will use to prepare and certify an Impact Environmental Analysis for purposes its certified regulatory program. This provision is also necessary to more fully inform the public about the procedures CARB uses to prepare and certify this type of environmental document, and about the contents of this type of document.

Summary of subsection 60004.2(a)

Subsection 60004.2(a) identifies the contents of a draft Impact Environmental analysis, which will include a description of the proposed activity and the environmental and regulatory setting for the project, and a discussion of the environmental impacts, feasible mitigation measures which could minimize significant adverse impacts identified, cumulative and growth-inducing impacts, any mandatory findings of significant in accordance with CEQA Guidelines section 15065, and a reasonable range of alternatives which could feasibly attain project objectives and avoid or lessen identified significant impacts.

Rationale for subsection 60004.2(a)

Subsection section 60004.2(a) is necessary to identify the contents of a draft Impact Environmental Analysis CARB may prepare pursuant to its certified regulatory program and consistent with CEQA Guidelines. (See CEQA Guideline sections 15126 and 15252.) CEQA Guidelines section 15252 requires the substitute environmental analysis document in a certified regulatory program describe the proposed activity and either the alternatives to the activity and mitigation measures to reduce significant or potentially significant environmental effects of the project or a statement that CARB's review showed the project would not have significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed. CEQA Guidelines section 15126 requires a consideration and discussion of the proposed project's environmental impacts, including growth-inducing impacts. CEQA Guidelines section 15130 requires a consideration and discussion of cumulative impacts. CEQA Guidelines section 15065 sets forth requirements to consider and make mandatory findings regarding the proposed project's significant effects on the environment. Specifying the proposed contents of the Impact Environmental Analysis is necessary to incorporate these various requirements into one document to best notify the public of a proposed project's significant effects and potential significant effects consistent with CEQA.

Summary of subsection 60004.2(b)

Subsection 60004.2(b) identifies the procedures CARB will use to provide public and state agency review of the Impact Environmental Analysis pursuant to its certified regulatory program. The procedures CARB will use to provide public review of the Impact Environmental Analysis include requirements related to public notice, public comment, response to public comments, preparation of a Final Impact Environmental Analysis, hearings, and certification procedures for the Final Impact Environmental Analysis.

Rationale for subsection 60004.2(b)

Subsection 60004.2(b) is necessary to identify the procedures CARB will use to provide public review for Impact Environmental Analysis prepared pursuant to its certified regulatory program consistent with CEQA statute and Guidelines. (Public Resources Code § 21091-92.) The requirements are necessary to set forth details regarding the timing and content of public notice, timing of public comment, how CARB shall evaluate and respond to public comments, distribution to state agencies, preparation of the Final Impact Environmental Analysis, hearings, and certification of the Final Impact Environmental Analysis. This provision is also necessary to inform the public about the scope of public comment for the different phases of the rulemaking process, and to inform the public that comments must focus on the specific changes being circulated for public review. See California Government Code section 11346.8(c) (regarding 15-day comment periods) and section 11346.4(a) (regarding 45-day comment periods). This provision is further needed to align with established CEQA principles governing public comments and responses thereto.

Summary of subsection 60004.2(c)

Subsection 60004.2(c) identifies the procedures the state board will follow to consider and certify an Impact Environmental Analysis and approve the proposed project pursuant to its certified regulatory program.

Rationale for subsection 60004.2(c)

Subsection 60004.2 (c) is necessary to identify the procedures the state board will follow to consider and certify an Impact Environmental Analysis and approve the proposed project pursuant to its certified regulatory program. These provisions add certainty and transparency to CARB's process. They also help align with existing CEQA provisions, including sections 15094(b) and 15352(a) of Title 14 of the California Code of Regulations, as well as section 21080.5(d)(2)(A) of the Public Resources Code.

Summary of subsection 60004.2(d)

Subsection 60004.2(d) identifies when CARB will prepare a Notice of Decision for a Final Impact Environmental Analysis pursuant to its certified regulatory program.

Rationale for subsection 60004.2(d)

Subsection 60004.2(d) is necessary to inform the public of the procedures the state board will follow to prepare a Notice of Decision for a Final Impact Environmental Analysis consistent with CEQA statute and Guidelines, which require it be filed within five working days of the decision to approve the project; and specifies the contents. (Public Resources Code § 21083 and 21153; CEQA Guidelines 15094(b). This section also helps align with established CEQA practice.

Summary and Purpose of subsection 60004.2(e)

Subsection 60004.2(e) specifies that the state board may delegate to the Executive Officer authority to carry out any changes to proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with the other provisions in section 60004.

Rationale for subsection 60004.2(e)

Subsection 60004.2(e) is necessary to identify the procedures the state board may use to delegate authority to the Executive Officer to carry out any changes to regulatory language as appropriate under Government Code section 11346.8(c) for a rulemaking proceeding under the Administrative Procedure Act. This provision is also necessary to specify that, where the state board delegates such authority to the Executive Officer, the state board also delegates authority to conduct any additional environmental review that may be required in connection with the specific changes evaluated by the Executive Officer. This is also necessary to ensure that any delegations of authority are done in a manner

consistent with the court decision in *POET, LLC. v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, at pages 99-103.

Section 60004.3 Supplemental Environmental Analysis and Supplemental Environmental Analysis Finding No Impacts.

Summary of section 60004.3

Section 60004.3, in its entirety, describes the procedures CARB will use to prepare a Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts for purposes of its certified regulatory program when a previous environmental analysis must be updated to become adequate for a revised project.

Rationale for section 60004.3

Section 60004.3 is necessary to more fully describe the procedures CARB will use to prepare a Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts for purposes of its certified regulatory program.

Summary of subsection 60004.3(a)

Subsection 60004.3(a) identifies when a Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts may be prepared.

Rationale for subsection 60004.3(a)

Subsection 60004.3(a) is necessary to specify that a Supplemental Environmental Analysis may be prepared where any circumstances set forth in section 15162(a) of title 14 of the California Code of Regulations exist. This subsection is also necessary to specify that a Supplemental Environmental Analysis Finding No Impacts may be prepared where provided by section 15162(b) of title 14 of the California Code of Regulations. These provisions are necessary to align with established CEQA principles regarding preparation of supplemental environmental analyses.

Summary of subsection 60004.3(b)

Subsection 60004.3(b) identifies the contents of the Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts for purposes of CARB's certified regulatory program.

Rationale for subsection 60004.3(b)

Subsection 60004.3(b) is necessary to specify that the contents of the Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts for purposes of CARB's certified regulatory program need only include the information necessary to make the previous environmental analysis adequate for the project as revised. This helps align with the CEQA statute and Guidelines, which provide that a supplement to an Environmental Impact Report or Negative Declaration need contain only the information

necessary to make the previous document adequate for the project as revised. (Public Resources Code § 21083; CEQA Guidelines § 15163(b).)

Summary of subsection 60004.3(c)

Subsection 60004.3 (c) identifies the public review process CARB will use for its Supplemental Environmental Analysis for purposes of its certified regulatory program.

Rationale for subsection 60004.3(c)

Subsection 60004.3 (c) is necessary to more fully describe the public review process CARB will use for its Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts, which will be to receive the same notice and public review as the draft environmental document in section 60004.2(b) or 60004.1(b), respectively. The process described helps align with CEQA statute and Guidelines, which provide that a supplemental environmental analysis must be given the same kind of notice and public review as given to a draft environmental analysis. (Public Resources Code § 21083; CEQA Guidelines 15163(c).)

Summary of subsection 60004.3(d)

Subsection 60004.3(d) identifies the process the state board will use to consider and approve a Supplemental Environmental Analysis or Supplemental Environmental Analysis Finding No Impacts for purposes of its certified regulatory program.

Rationale for subsection 60004.3(d)

Subsection 60004.3(d) is necessary to identify the process the state board will use to consider and approve a Supplemental Environmental Analysis in a manner that is consistent with CEQA statute and Guidelines, which provides that CARB must consider the previous environmental analysis as revised by the supplemental environmental analysis. (Public Resources Code § 21083; CEQA Guidelines 15163(e).) This subsection is also necessary to specify that this subsection does not apply in situations where the supplemental environmental document is to be considered by the Executive Officer under delegation from the state board to carry out changes in regulatory language pursuant to Government Code section 11346.8(c). In that particular case, the requirements for considering a supplemental environmental document are set forth in sections 60004(e), 60004.1(e), 60004.2(e), 60004.3(f), and 60004.4(e), as applicable.

Summary of subsection 60004.3(e)

Subsection 60004.3(e) identifies when the state board will prepare a Notice of Decision for Supplemental Environmental Analysis for purposes of its certified regulatory program.

Rationale for subsection 60004.3(e)

Subsection 60004.3(e) is necessary to identify the procedures the state board will follow to prepare a notice of decision for Supplemental Environmental Analysis for purposes of its certified regulatory program in a manner consistent with CEQA, which requires it be filed within five working days of the decision to approve the project and specifies the contents. (Public Resources Code § 21083 and 21153; CEQA Guidelines 15094(b).

Summary and Purpose of subsection 60004.3(f)

Subsection 60004.3(f) specifies that the state board may delegate to the Executive Officer authority to carry out any changes to proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with the other provisions in section 60004.

Rationale for subsection 60004.3(f)

Subsection 60004.3(f) is necessary to identify the procedures the state board may use to delegate authority to the Executive Officer to carry out any changes to regulatory language as appropriate under Government Code section 11346.8(c) for a rulemaking proceeding under the Administrative Procedure Act. This provision is also necessary to specify that, where the state board delegates such authority to the Executive Officer, the state board also delegates authority to conduct any additional environmental review that may be required in connection with the specific changes evaluated by the Executive Officer. This is also necessary to ensure that any delegations of authority are done in a manner consistent with the court decision in *POET, LLC. v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, at pages 99-103.

Section 60004.4. Addendum to an Impact or Environmental Analysis Finding No Impacts.

Summary of section 60004.4

Section 60004.4, in its entirety, describes the procedures CARB will use to prepare an addendum to a prior environmental analysis for purposes of its certified regulatory program.

Rationale for section 60004.4

Section 60004.4, in its entirety, is provided to more fully describe the procedures CARB will use to prepare an addendum to a prior environmental analysis for purposes of its certified regulatory program. This is necessary to better inform the public of the applicable requirements, and adds specificity to CARB's regulation to increase its transparency.

Summary of subsection 60004.4(a)

Subsection 60004.4(a) identifies when an Addendum may be prepared.

Rationale for subsection 60004.4(a)

Subsection 60004.4(a) is necessary to specify that an Addendum may be prepared where the circumstances set forth in section 15164 of title 14 of the California Code of Regulations exist. This is necessary to better inform the public of the applicable requirements, and adds specificity to CARB's regulation to increase its transparency.

Summary of subsection 60004.4(b)

Subsection 60004.4(b) identifies the contents of an Addendum to a prior environmental analysis for purposes of its certified regulatory program, which is only the information necessary to update the previous document.

Rationale for subsection 60004.4(b)

Subsection 60004.4(b) is necessary to more fully describe the contents of an Addendum to a prior environmental analysis in a manner consistent with CEQA statute and Guidelines, which provide that an Addendum for minor technical changes or additions is permissible to update a previous environmental analysis. (Public Resources Code § 21083; CEQA Guidelines § 15164(b).) This is necessary to better inform the public of the applicable requirements, and adds specificity to CARB's regulation to increase its transparency.

Summary of subsection 60004.4(c)

Subsection 60004.4(c) identifies the public review process CARB will use for an Addendum to a prior environmental analysis for purposes of its certified regulatory program, which may but is not required to be circulated for public review and that it can be included or attached to the certified Final Impact Environmental Analysis or adopted Environmental Analysis Finding No Impacts it is associated with.

Rationale for subsection 60004.4(c)

Subsection 60004.4(c) is necessary to more fully describe the public review process CARB will use for an Addendum to a prior environmental analysis for purposes of its certified regulatory program in a manner consistent with CEQA statute and Guidelines, which provide that an addendum need not be circulated for public review but can be included in or attached to the final environmental analysis. (Public Resources Code § 21083; CEQA Guidelines § 15164(c).)

Summary of subsection 60004.4(d)

Subsection 60004.4(d) identifies the process the state board will use to consider and approve an Addendum to a prior environmental analysis for purposes of its certified regulatory program.

Rationale for subsection 60004.4(d)

Subsection 60004.3(d) is necessary to identify the process the state board will use to consider and approve an Addendum to a prior environmental analysis for purposes of its certified regulatory program, which will be to consider the

Addendum together with the prior environmental analysis consistent with CEQA statute and Guidelines. (Public Resources Code § 21083; CEQA Guidelines § 15164(d).) This subsection is also necessary to specify that this subsection does not apply in situations where the addendum is to be considered by the Executive Officer under delegation from the state board to carry out changes in regulatory language pursuant to Government Code section 11346.8(c). In that particular case, the requirements for considering the addendum are set forth in sections 60004(e), 60004.1(e), 60004.2(e), 60004.3(f), and 60004.4(e), as applicable.

Summary and Purpose of subsection 60004.4(e)

Subsection 60004.4(e) specifies that the state board may delegate to the Executive Officer authority to carry out any changes to proposed regulatory language under Government Code section 11346.8(c), as well as any appropriate further environmental review associated with such changes, consistent with the other provisions in section 60004.

Rationale for subsection 60004.4(e)

Subsection 60004.4(e) is necessary to identify the procedures the state board may use to delegate authority to the Executive Officer to carry out any changes to regulatory language as appropriate under Government Code section 11346.8(c) for a rulemaking proceeding under the Administrative Procedure Act. This provision is also necessary to specify that, where the state board delegates such authority to the Executive Officer, the state board also delegates authority to conduct any additional environmental review that may be required in connection with the specific changes evaluated by the Executive Officer.

Section 60005. Administrative Record.

Summary of section 60005

CARB is proposing to repeal existing section 60005 Staff Reports and move it to section 60003 (see section 60003 above for summary and rationale). CARB is proposing to include new text in section 60005 Administrative Record to describe the procedures CARB uses to keep and maintain an administrative record for purposes of its certified regulatory program.

Rationale for section 60005

Section 60005 is necessary to more fully describe the procedures CARB uses to gather and maintain its administrative record for purposes of its certified regulatory program, which shall be consistent with CEQA. This is necessary to better inform the public of the applicable requirements pertaining to the administrative record, and adds specificity to CARB's regulation to increase its transparency.

Summary of section 60005(a)

Section 60005(a), describes the requirements for CARB to prepare, maintain, and post on its website a record of the proceeding during which an environmental analysis is prepared for purposes of its certified regulatory program.

Rationale for section 60005(a)

Section 60005(a) is necessary to more fully describe the procedures CARB uses to prepare, maintain, and make publicly available its administrative record for purposes of its certified regulatory program. This is necessary to better inform the public of the applicable requirements pertaining to the administrative record, and adds specificity to CARB's regulation to increase its transparency.

Summary of subsection 60005(b)

Subsection 60005(b) identifies the contents of CARB's administrative record for purposes of its certified regulatory program, including specific examples of what is not part of the record (including privileged materials and those not relied upon by the state board in making its decision on the project).

Rationale for new section 60005(b)

Section 60005(b) is necessary to more fully describe the contents of CARB's administrative record for purposes of its certified regulatory program. It is necessary to specify that certain documents will not be in the record, such as privileged materials and those not relied upon by the state board in making its decision on the project, to accurately describe the contents of the record. This is necessary to better inform the public of the applicable requirements pertaining to the administrative record, and adds specificity to CARB's regulation to increase its transparency.

Section 60006. Quorum.

Summary of section 60006

CARB is proposing to repeal existing section 60006 Environmental Alternatives and move the substance of the section into sections 60004.1 and 60004.2 (see sections 60004.1 and 60004.2 above for summary and rationale). CARB is proposing to renumber existing section 60003 Quorum to section 60006. CARB is not proposing any additional changes to the regulation text in the new section 60006 Quorum.

Rationale for section 60006

It is necessary to repeal existing section 60006 Environmental Alternatives and move the substance of its requirements to sections 60004.1 and 60004.2 to allow for sections on environmental analysis to be set forth consecutively. The proposed amendments will incorporate all requirements for each level of environmental analysis in consecutive section (sections 60004-60004.4) to facilitate comprehension and understanding of all requirements for environmental

analyses. CARB does not propose to make any modifications to the remaining regulation text in the section 60006 Quorum.

Section 60007. Record of Proceedings

Summary of section 60007

CARB is proposing to repeal existing section 60007 Response to Environmental Assessment and move the substance of the section into section 60004 (see section 60004 above for summary and rationale). CARB is proposing to renumber existing section 60004 Record of Proceedings to section 60007. CARB is not proposing any additional changes to regulation text in the new section 60007 Record of Proceedings.

Rationale for section 60007

It is necessary to repeal existing section 60007 Response to Environmental Assessment and move the substance of its requirements to section 60004 to allow for sections on environmental analysis to be set forth consecutively. The proposed amendments will incorporate all requirements for each level of environmental analysis in consecutive sections (sections 60004-60004.4) to facilitate comprehension and understanding of all requirements for environmental analyses. CARB does not propose to make any modifications to the remaining requirements in the section 60007 Record of Proceedings.

IV. BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

CARB is proposing to update its certified regulatory program regulations to specify in greater detail the existing procedures CARB uses to analyze projects consistent with CEQA requirements, and to add greater specificity to CARB's environmental review process. Such changes will bring greater efficiency and transparency to rulemakings by creating a more consistent, uniform, and clear environmental review process.

For these reasons, the proposed amendments are needed to further specify procedural and substantive requirements of CARB's certified regulatory program associated with the different levels of environmental analysis carried out by CARB. There are no expected benefits to worker safety, and public health and safety as a result of this rulemaking.

V. ENVIRONMENTAL ANALYSIS

This section provides the basis for CARB's determination that the proposed amendments are exempt from the requirements of the California Environmental Quality Act (CEQA). A brief explanation of this determination is provided below. CARB's regulatory program, which involves the adoption, approval,

amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of the State's ambient air quality, has been certified by the California Secretary for Natural Resources under Public Resources Code section 21080.5 of CEQA (Cal. Code Reg., tit. 14, § 15251, subd. (d)). Public agencies with certified regulatory programs are exempt from certain CEQA requirements, including but not limited to, preparing environmental impact reports, negative declarations, and initial studies. CARB, as a lead agency, prepares a substitute environmental document (referred to as an "Environmental Analysis" or "EA") as part of the Staff Report prepared for a proposed action to comply with CEQA (Cal. Code Regs., §§ 60000-60008).

CARB has determined that the proposed amendments are exempt from CEQA under the "general rule" or "common sense" exemption, California Code of Regulations, title 14, section 15061(b)(3). The common sense exemption states a project is exempt from CEQA if "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

The proposed amendments are an administrative update to CARB's certified regulatory program in order to further specify CARB's environmental review practices. The regulation concerns only the Board's internal procedure and would not change any entity's physical compliance responses. The proposed amendments have no potential for material impact on any regulated entity or the environment.

Based on CARB's review it can be seen with certainty that there is no possibility that the proposed amendment may result in a significant adverse impact on the environment; therefore, this activity is exempt from CEQA. If the amendments are finalized, a Notice of Exemption will be filed with the Office of the Secretary for the Natural Resources Agency and the State Clearinghouse for public inspection.

VI. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (Government Code, section 65040.12, subdivision (c)). CARB is committed to making environmental justice an integral part of its activities. The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into CARB's programs consistent with the directives of State law (CARB 2001). These policies apply to all communities in California, but recognize that

environmental justice issues have been raised more in the context of low-income and minority communities.

The proposed amendments are an administrative update to the regulatory program in order to specify certain aspects of CARB's administrative procedures. The proposed regulation concerns only the Board's internal procedure for its certified regulatory program, and it has no potential to impact disadvantaged communities, or environmental justice policies and topics. The proposed regulation will increase efficiency and transparency regarding CARB's procedures for developing environmental analyses, and to the extent that this increases awareness to the public, it will also increase awareness for disadvantaged communities participating in CARB proceedings.

VII. ECONOMIC IMPACT ASSESSMENT

The proposed amendments specify and update CARB's administrative procedures and relevant references, and place no new requirements on businesses, individuals, or government agencies within California.

The regulation is not expected to create or eliminate any jobs within the state. The regulation is not expected to impact the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. Therefore, the proposed amendments have no potential for economic or fiscal impact. Furthermore, there is no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons

The benefits of this regulation, as discussed in Section II above, would be to more fully describe CARB's procedures, thereby improving the Board's regulatory process and CARB's overall administrative efficiency. Therefore, the regulation is not expected to impact the health and welfare of California residents, worker safety, and the state's environment.

VIII. EVALUATION OF REGULATORY ALTERNATIVES

Reasonable Alternatives

Government Code section 11346.2(b)(4) requires CARB to consider and evaluate reasonable alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses, and provide reasons for rejecting those alternatives. While the proposed amendments would not have the potential to adversely impact small businesses, CARB provides the following analysis for informational purposes.

No Action

Under the No Action Alternative, the proposed amendments would not be approved. CARB's certified regulatory program would continue in its existing form without improving the clarity of procedures proposed in this proposal.

The existing certified regulatory program has not been amended since 1981. In the intervening decades, there have been changes to CEQA and the CEQA Guidelines, as well as case law developments interpreting and clarifying many aspects of CEQA compliance. The differences between the regulatory program's requirements and the requirements and practices resulting from these other authorities justify amending the current regulatory program. For example, the current regulatory program does not set forth the varying levels of environmental analysis.

To not more fully specify CARB's procedures would be to leave in place less-detailed, sometimes outdated references, which is not a less burdensome and equally effective alternative that would achieve the purpose of the regulation in a manner that ensures full compliance with the law. For these reasons, staff rejects the No Action Alternative.

Eliminate Certified Regulatory Program

Under this alternative, the proposed amendments would be modified to instead eliminate the existing administrative procedures contained in the California Code of Regulations, title 17, sections 60000 – 60008 and not provide a replacement program. CARB would no longer have and implement a certified regulatory program and would no longer be exempt from Chapter 3 and Chapter 4 of Division 13 of the Public Resources Code. (See section 21080.5.) This alternative could increase staff's workload in developing environmental analyses pursuant to traditional CEQA requirements, without any related environmental or regulatory benefits because the existing and proposed updates to the certified regulatory program provide the functional equivalent to CEQA documentation. This alternative would fail to achieve the goals of the proposed regulatory action. For these reasons, staff rejects the alternative of eliminated the existing certified regulatory program in its entirety.

Small Business Alternative

Government Code section 11346.2(b)(4)(B) requires a description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives. CARB has not identified any reasonable alternatives that would

lessen any adverse impact on small business because the proposed changes are clarifications and updates that impact CARB's administrative procedures that have no potential for economic impact on small businesses.

Performance Standards in Place of Prescriptive Standards

Government Code section 11346.2(b)(4)(A) requires that when CARB proposes a regulation that would mandate the use of specific technologies or equipment, or prescribe specific actions or procedures, it must consider performance standards as an alternative. In addition, Government Code section 11346.2(b)(1) requires that when a proposed regulation would mandate the use of specified technologies or equipment, CARB include in the ISOR a statement of reasons why the agency believes these mandates or prescriptive standards are required.

Because the proposed amendments further specify and update CARB's administrative procedures only, they are not mandating a performance or prescriptive standard and do not impact the public at large.

Major Regulation Alternatives

Health and Safety Code section 57005 requires that when CARB proposes a major regulation (one that will have an economic impact on the State's businesses in an amount exceeding ten million dollars (\$10 million)) it must evaluate alternatives that are less costly or a combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

The proposed regulation is not a major regulation as defined by Health and Safety Code section 57005 as it will not result in a total economic impact on state businesses of more than \$10 million in one or more years of implementation.

IX. JUSTIFICATION FOR ADOPTION OF REGULATIONS DIFFERENT FROM FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS

There are no federal regulations that are directly comparable to CEQA and CARB's certified regulatory program.

X. PUBLIC PROCESS FOR DEVELOPMENT OF THE PROPOSED ACTION (PRE-REGULATORY INFORMATION)

Consistent with Government Code sections 11346, subdivision (b), and 11346.45, subdivision (a), and with the Board's long-standing practice, CARB staff held two public workshops with interested persons during the development of the proposed regulation. These informal pre-rulemaking discussions provided staff with useful information that was considered during development of the regulation that is now being proposed for formal public comment.

CARB held two in-person public workshop in Sacramento, California that were also webcast electronically to solicit input on the proposal. The first workshop was held on December 7, 2018, and was publically noticed on November 21, 2018. The second workshop was held on January 16, 2019, and was publically noticed on January 4, 2019.

XI. REFERENCES

No references were relied upon in developing the proposed regulation, other than the statutory and case law references described in the proposed regulation order.

XII. APPENDICES

Appendix A: Proposed Regulation Order