

Updated Informative Digest

Proposed Mobile Source Certification and Compliance Fees

Sections Affected:

Proposed repeal of California Code of Regulations, title 13, division 3, chapter 1, article 2.5, sections 1990, 1991, 1992, 1993, and 1994.

Proposed adoption of California Code of Regulations, title 13, division 3, chapter 16, articles 1 through 7, sections 2900 through 2914.

Background and Effect of the Proposed Regulatory Action

In 1966, California established the first tailpipe motor vehicle emission standards for carbon monoxide and hydrocarbons as a strategy to improve the severe air pollution plaguing our state. Today, stringent standards cover not only cars and trucks, but any vehicle or equipment with a combustion engine. State law prohibits the sale of new motor vehicles or new engines used in mobile sources within California unless they meet the currently applicable emission standards adopted by CARB. Similarly, state law generally prohibits the installation, sale, offer for sale, or advertisement of aftermarket emission-related parts without approval from CARB to prevent tampering with emission control systems. Manufacturer compliance with these requirements is demonstrated through CARB's certification and compliance programs.

When a manufacturer requests certification of a product (i.e., vehicle, engine, or add-on component), CARB may as part of its certification review, verify the information provided by the manufacturer using pre-sale audits and confirmatory emissions testing of that product prior to issuing a certification document (Executive Order [EO] or other approval document). CARB may also perform screening testing that can include standard testing in the lab, testing in the field using Portable Emission Measurement Systems (PEMS), and/or by using special operating cycles in the lab that replicate conditions encountered in normal use to identify defeat devices.

After the product is sold, continued compliance with emission standards is doublechecked through a variety of in-use programs which includes laboratory audits and on-vehicle monitoring systems. In-use emissions testing and warranty activities help confirm that vehicles and engines continue to comply with CARB requirements throughout their useful lives. Compliance issues found through these programs can result in required corrective actions, including product recall.

CARB issues EOs for all types of vehicles and engines, including automobiles and heavy-duty trucks, as well as large off-road equipment and small lawn and garden engines, evaporative systems, and aftermarket components that are used in automobiles, trucks, and off-road engines. Each product is certified by CARB according to the regulations and test procedures established based on the product's specific equipment classification or operating category.

In 1988, the legislature gave CARB authority (Health and Safety Code [HSC] section 43019) to assess a fee for motor vehicles and engines (generally, cars, trucks, and motorcycles) that was capped at \$4.5 million a year, but with annual adjustment of the cap based on the California Consumer Price Index (CPI). In 1990, CARB implemented this authority through regulation that provides a formula to assess fees on a limited class of motor vehicle and engine manufacturers. Manufacturers of vehicles and engines not subject to an emission standard at the time were not included in regulation. Since then, however, emission standards and certification requirements have expanded to include nearly all mobile sources. CARB currently issues over 3,700 EOs annually, which allow manufacturers to sell their products in California. This is close to ten times more than the 430 EOs issued by CARB when the fee was first collected in 1990. As such, only about one third of the products currently certified by CARB are assessed a certification fee. The amount collected in 2018 under these existing rules was roughly \$9.7 million, only about one quarter of the cost to implement the mobile source emissions control programs. The balance of the program costs is being paid through other revenue sources. Specifically, CARB has historically used existing funds (primarily the Air Pollution Control Fund (APCF), Motor Vehicle Account (MVA), and Vehicle Inspection and Repair Fund (VIRF)) to implement its mobile source certification and compliance programs.

On June 27, 2018, Senate Bill (SB) 854 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2018) was passed and signed into law that directs CARB to adopt a schedule of fees to cover all or part of CARB's reasonable costs associated with certification, audit, and compliance of off-road or non-vehicular engines and equipment, aftermarket parts, and emission control components sold in the State (limited to activities covered by HSC sections 38560¹, 43013 and 43018, and on-road aftermarket parts under Vehicle Code section 27156(h)). As such, this legislation directs CARB to assess fees to cover its reasonable costs, with specific considerations for impacts on industry and environment. This new requirement is housed in HSC section 43019.1. The fees collected will be deposited into the newly established Certification and Compliance Fund (CCF), created specifically to support mobile source certification, audit, and compliance activities.

¹ Title 13, California Code of Regulations, Section 38560 added with SB 85 in 2019

Also in 2018, Assembly Bill 2381 (Carrillo, Chapter 713, Statutes of 2018) became law. This statute directs CARB to enhance its certification, audit, and compliance activities for new motor vehicles to detect defeat devices or other software used to evade emission testing and allows CARB to recover its reasonable costs. Cost recovery for this activity is capped at \$5 million per year with CPI annual adjustments. The fees collected will also be put into the newly established CCF to support mobile source certification, audit, and compliance activities.

The following year, on June 27, 2019, SB 85 (Committee on Budget and Fiscal Review, Chapter 31, Statutes of 2019) removed the cap on existing fee authority housed in HSC section 43019, expanded the activities covered, and redirected the fees collected to the CCF. Under this legislation, CARB is directed to develop by regulation a schedule of fees for the certification, audit, and compliance of motor vehicles and engines sold in the state to cover the state board's reasonable costs of implementing the certification, audit, and compliance program.

Objectives and Benefits of the Proposed Regulatory Action:

This proposed rulemaking is the result of legislative directives to create a more fiscally sustainable funding solution for CARB's mobile source certification, audit, and compliance programs that is based on greater recovery of costs from the businesses that benefit from receiving CARB certification for their products. This proposed rulemaking addresses fees paid by manufacturers to obtain approvals necessary for CARB's existing mobile source certification and compliance programs. This proposed regulation does not change the stringency of current emission standards nor does it create new emission standards. Rather, it establishes upfront fees to fund certification and compliance actions that are already conducted by CARB. Manufacturers of products that are covered by this proposed regulation will be required to pay this fee upon request for services conducted by CARB.

The proposed regulation provides for new fees and increases existing fees, thereby reducing reliance on existing funds and creating a more fiscally sustainable funding solution. The increased new fiscal revenue to CARB and ultimately to the State of California is \$261,074,129 over a ten-year period, with annual revenue from \$9,348,828 in 2022 to \$31,313,368 in 2031 to support the CARB programs that protect public health and safety. New regulations are required along with the repeal of Title 13 CCR sections 1990-1994 to implement these Legislative directives.

The total cost to implement the mobile source certification and compliance programs in 2022 is estimated at about \$50 million. Staff's proposal sets up a phased-in fee schedule, starting in calendar year 2022 and fully implemented in 2024. On-Road mobile source fees would be annually adjusted by CPI. Reduced

fees include those adjusted for lower CARB workload, to support CARB policy to expand zero-emission technologies, and to assist small businesses and companies with low California sales. The newly proposed fees combined with historical fee collection would cover a high percentage of total costs for CARB's certification and compliance programs, but would not reach 100 percent. Although we may not have a 100 percent (full-cost) recovery at the time, this is what CARB reasonably expects that the market can bear based on their feedback from industry and staff's analysis. CARB will strive for getting this program to as close to net-zero when possible in the future through planning and development of our existing and future programs. The unrecovered program costs will continue to be offset by existing funds as they represent a benefit to the state. Staff expects minimal or no impact on the processing time for certifications because of this funding structure.

Description of Regulatory Action:

On March 2, 2021, CARB released the Notice of Public Hearing (45-Day Notice) and Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), titled "Public Hearing to Consider Proposed Mobile Source Certification and Compliance Fees," for public review. The Staff Report contains a description of the rationale for the proposed amendments. On March 2, 2021, all references relied upon and identified in the Staff Report were made available to the public. CARB received eleven written comments during the 45-day comment period in response to the public hearing notice, and written and oral comments were presented at the Board Hearing.

On April 22, 2021, CARB conducted a public hearing to consider the proposed certification and compliance fees. At the hearing, the staff also presented modifications to the regulations originally proposed in the Staff Report, in response to comments received after the Staff Report was published. These proposed modifications changed the fee payment process to allow "refunds" instead of "credits".

At the conclusion public hearing, the Board approved Resolution 21-9, which approved for adoption the proposed regulatory language set for in Appendix A of the Initial Statement of Reasons. Resolution 21-9 also directed the Executive Officer to incorporate the modifications presented at the hearing, as set forth in Attachment A to the resolution, into the originally proposed regulatory text, with such other conforming modifications as may be appropriate. The Executive Officer was directed to make the modified regulation (with the modifications clearly identified) and any additional documents or information available for a supplemental public comment period. The Executive Officer was also directed to consider any comments on the modifications received during the supplemental comment period. The Executive Officer was then directed to (1) adopt the modified regulation as it was made available for public comment, with any appropriate conforming additional modifications; (2) make all

modifications available for public comment for an additional period of at least 15 days; and (3) present the regulation to the Board for further consideration if warranted.

Subsequent to the hearing, staff identified additional conforming modifications in response to public comments received during the 45-day comment period. These post-hearing modifications were incorporated into the text of the proposed regulation, along with the modifications specifically identified at the hearing, and were made available for a 15-day comment period, beginning on May 24, 2021, and ending on June 8, 2021, with a Notice of Public Availability of Modified Text (“first 15-day notice”).

The proposed first 15-day notice included modifications to correct errors in the original proposal, clarifications to the carry-over and partial carry-over definitions, expansion of the on-road motorcycle low volume vehicle and engine families to add an additional three vehicle and engine families for low volume manufacturers, and added new fee categories for specially constructed vehicles, certified engine packages, specially constructed vehicle certified engine package extensions, specially produced motor vehicle certified engine packages, and specially produced motor vehicle manufacturers.

In light of the supplemental comments received during the first 15-day comment period, the staff determined that additional modifications were necessary. A Second Notice of Public Availability of Modified Text (“second 15-day notice”) identifying the additional substantive modifications was made available for a second 15-day comment period starting on July 12, 2021, and ending on July 27, 2021, by issuance of a Second Notice of Public Availability of Modified Text, which included an attachment: Attachment A – “Proposed Second 15-day Modifications to the Proposed Mobile Source Certification and Compliance Fees.” No comments were submitted during the second supplemental comment period.

The proposed second 15-day changes delay by one year the phase-in of the fees applicable to four certification categories that were newly defined as part of the first 15-day notice. These categories are: specially constructed vehicle certified engine packages, specially constructed vehicle certified engine package extensions, specially produced motor vehicle certified engine packages, and specially produced motor vehicle manufacturer.

Comparable Federal Regulations:

The United States Environmental Protection Agency (U.S. EPA) has a certification fees programs for certain categories of on-road and off-road mobile sources. The U.S. EPA fee program is based on the actual costs to conduct the activities to ensure mobile source certification and compliance. Similar to CARB’s approach, U.S. EPA surveyed its certification and compliance program staff in 2002 to determine the amount of work that was conducted in various parts of their mobile

source certification and compliance programs. Their fee determination is based on costs per certification approval. The federal regulation was promulgated in 2003 and the fees are annually adjusted by the number of approvals and a cost of living index.

U.S. EPA's certification fee program does not in any way reimburse CARB for its costs to conduct its own mobile source certification and compliance program. In addition, CARB's mobile source certification and compliance programs are broader and covers additional emission sources and activities which are not covered in the U.S. EPA 2002 fee program. Therefore, there are no federal regulations that address the same issues as CARB's proposed regulations.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations. As noted above and throughout the Staff Report, the fee regulations currently in effect contain requirements for some similar categories of mobile sources. CARB has carefully drafted the Proposed Regulation to supersede the existing regulations, as appropriate.