

# Executive Order R-23-006

## *Relating to Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation*

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 powers and duties granted to and imposed by 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 March 23, 2023, the Board approved Resolution 23-15, which delegated to the Executive Officer the authority 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 Resolution 78-10, with the delegation of power terminating on December 31, 2023;

Whereas, Resolution 23-15 further specified 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 (MD) and heavy-duty (HD) 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 Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (hereinafter Omnibus regulation);

Whereas, on-road HD vehicles and engines are significant sources of oxides of nitrogen (NOx), and particulate matter (PM) emissions in California;

Whereas, in March 2017, CARB approved the 2016 State Strategy for the California State Implementation Plan (SIP), which among other measures, included two HD engine and vehicle measures, the Low-NOx Engine Standard – California Action, and the Lower In-Use Emission Performance Level, which are critical for attaining federal health-based air quality standards for ozone in 2031 in the South Coast and San Joaquin Valley air basins, as well as PM2.5 standards in the next decade;

Whereas, on August 27, 2020, the Board approved for adoption the Omnibus regulation, which implemented the HD measures in the 2016 State Strategy for the California SIP and established exhaust emission standards for NOx for 2024 and subsequent model HD trucks that are significantly more stringent than currently applicable California and federal exhaust emission standards for HD trucks;

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

Whereas, on July 5, 2023, CARB, the Truck and Engine Manufacturers Association (EMA), the members of EMA that manufacture MD and HD on-road engines, and Ford Motor Company signed "The Clean Truck Partnership (CTP)" agreement, which advances the development of zero-emission vehicles for the commercial trucking industry and provides flexibility for manufacturers to meet emissions requirements while still reaching the state's climate and emission reduction goals;

Whereas, in the CTP agreement, CARB, in pertinent part, committed to propose amendments to the legacy engine provisions in the Omnibus regulation to provide additional compliance flexibility to manufacturers to maintain originally anticipated engine supplies and address customer demands for new engines for the 2024 through 2026 model year period without impacting the emission benefits from existing regulations;

Whereas, consistent with the terms in the CTP agreement, staff has proposed amendments to the Omnibus regulation, as set forth in Appendices A and B to the Initial Statement of Reasons (ISOR or Staff Report) released to the public on August 1, 2023, and modified regulatory language in response to comments received since the Staff Report was released, as set forth in Appendices A, B, and C to the 15-Day Notice of Public Availability of Modified Text released to the public on December 6, 2023;

Whereas, CARB is designated as the state agency responsible for preparing the SIP as required by the federal Clean Air Act (the Act; 42 U.S.C. § 7401 et seq.);

Whereas, CARB plans to submit the proposed regulatory action to the United States Environmental Protection Agency (U.S. EPA) for approval as a revision to the California SIP required by the federal Clean Air Act;

Whereas, the Board has not reserved the power to adopt and submit SIP revisions to itself;

Whereas, CARB has determined that the proposed amendments meet the requirements of the Clean Air Act and are necessary for inclusion in the SIP;

Whereas, the proposed regulatory action would be submitted as a SIP revision because it amends regulations intending to reduce emissions of air pollutants to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA under the Clean Air Act.

Whereas, federal law set forth in §110(l) of the Clean Air Act and title 40, Code of Federal Regulations (CFR), §51.102 requires that one or more public hearings, or opportunity for the public to request a public hearing, preceded by at least 30 days notice and opportunity for review, must occur prior to the adoption and submittal to U.S. EPA of any SIP revision;

Whereas, the proposed amendments were developed in an open public process, in consultation with affected parties, through a public workshop on February 13, 2023, and other outreach efforts, and these efforts are expected to continue;

Whereas, CARB has conducted public outreach via a pre-regulatory workshop and meetings with engine manufacturers both individually and collectively, and other outreach efforts, followed by the publication of a 45-Day Notice and public comment period including instructions to the public on how to request a public hearing;

Whereas, on August 4, 2023, CARB made available for 45-day public comment the proposed amendments to the Omnibus regulation, as set forth in Appendices A and B of the Staff Report released to the public on August 1, 2023;

Whereas, CARB received requests for a public hearing within the specified timeframe, and a duly noticed public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

Whereas, the notice for the Executive Officer hearing was published on September 15, 2023;

Whereas, on October 20, 2023, the Executive Officer conducted a public hearing to consider the proposed amendments to the Omnibus regulation;

Whereas, modified regulatory language and supporting documentation were circulated for public comment, with the changes to the originally proposed text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44 and Government Code section 11340.85, from December 6, 2023, through December 21, 2023;

Whereas, a total of 67 written comments were received during the initial 45-day (including during the Hearing) and the subsequent 15-day comment periods, and those comments were considered by the Executive Officer;

Whereas, staff will finalize the Final Statement of Reasons including staff's responses to the comments received;

Whereas, CARB's regulatory program, which 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 amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter VI of the Staff Report; and

Whereas, in consideration of the Notice of Proposed Rulemaking, the Staff Report, 15-Day Notice, the documents and evidence referenced and incorporated in these documents, and written comments and public testimony on the proposed amendments, the Executive Officer finds that:

1. The Omnibus regulation establishes emissions standards and accompanying test procedures for new 2024 and subsequent model year diesel and Otto-cycle engines used in on-road MD and HD vehicles in three phases: requirements applicable from the 2024 to 2026 model years, requirements applicable from the 2027 to the 2030 model years, and requirements from the 2031 and subsequent model years;
2. The Omnibus regulation currently contains provisions intended to ease manufacturers' transition to the more stringent Omnibus NOx emission standards; specifically, such provisions provide manufacturers the option to certify 2024 and 2025 model year HD diesel engines rated below 525 brake horsepower (bhp) to the current NOx and PM exhaust emission standards of 0.20 grams per brake horsepower-hour (g/bhp-hr) and 0.01 g/bhp-hr, respectively, provided such manufacturers offset any resulting NOx or PM deficits with credits obtained from the heavy-duty zero emission (HD-ZE) averaging set. If a sufficient number of credits from the HD-ZE averaging set is not available, or such credits are not available below a specified cost threshold, a manufacturer may use credits from the same combustion engine averaging set. If a manufacturer does not have a sufficient quantity of credits to offset deficits at the end of the 2026 model year, a manufacturer can elect to conduct projects in disadvantaged communities that offset the excess emissions within five years;
3. The Omnibus regulation currently limits the number of legacy engine (as defined in title 13 California Code of Regulations §1956.8(a)(2)(C)3) sales to 45 percent of a manufacturer's total HD diesel sales in California in the 2024 model year, and 25 percent of a manufacturer's total HD diesel California sales in the 2025 model year, and requires a manufacturer to certify one or more diesel engine families to the full Omnibus NOx standards specified in title 13 California Code of Regulations §1956.8(a)(2)(C)1 in the same year it is utilizing this option to certify legacy engines;
4. In early 2023, CARB staff became aware of changes to some manufacturers' product plans for 2024 through 2026 model years. Although the technology needed for production of Omnibus compliant diesel-fueled HD engines is currently available, some manufacturers did not intend to produce diesel-fueled Omnibus complaint engines for some categories of trucks in California;
5. In light of the potential impacts to fleets from the absence of Omnibus compliant HD diesel-fueled engines for some categories of trucks in California, additional compliance flexibility is needed in the Omnibus regulation to enable manufacturers to more smoothly transition to the Omnibus standards in the 2024 through 2026 model years;
6. The proposed amendments provide manufacturers additional compliance flexibility because they would now extend the provision allowing manufacturers to sell legacy engines to the 2026 model year, and allow manufacturers to sell larger quantities of medium HD engines as legacy engines in the 2024 and 2025 model years;
7. The proposed amendments also provide manufacturers additional compliance flexibility by allowing them to certify and sell legacy engines prior to receiving the Executive Order

for an Omnibus-compliant engine family, and by specifying that manufacturers may start working on the projects in disadvantaged communities in the 2024 or 2025 model years;

8. The proposed amendments also revise the definition of “California Sales Volume” to provide additional flexibility to manufacturers in tracking which products are sold as new in the California market and which products are sold in other states;
9. The proposed amendments are emissions-neutral and do not pose any adverse impacts on the California emissions inventory because the amendments require manufacturers to offset all excess NOx and PM emissions deficits generated by the sale of legacy engines in California by using credits from the HD-ZE averaging set, using credits derived from the same HD diesel engine averaging set as the legacy engine, or conducting projects in disadvantaged communities that offset the excess emissions within five years;
10. The proposed amendments are consequently not projected to provide any additional emission reductions beyond those projected in the Omnibus regulation, nor are they projected to result in any emissions increases from the emissions reductions projected for the Omnibus regulation;
11. The reporting requirements applicable to businesses in the proposed amendments are necessary for the health, safety, and welfare of the people of the State;
12. The proposed regulations are necessary, appropriate, and technologically feasible;
13. The economic and fiscal impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in Chapter VIII of the Staff Report;
14. No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of the Executive Officer would be more effective at carrying out the purpose for which the amendments are being proposed or would be as effective and less burdensome to affected entities than the proposed amendments;
15. The proposed amendments are consistent with CARB’s environmental justice policies and do not disproportionately impact people of any race, culture, income, or national origin; and
16. The proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment.

Now, therefore, be it resolved that the Executive Officer hereby adopts amendments to sections 1956.8, 1971.1, and 1971.5, title 13 California Code of Regulations, as set forth in Appendix A, and the test procedures incorporated by reference by these regulations, as set forth in Appendix B of the Staff Report released to the public on August 1, 2023 and Appendices B and C as set forth in the 15-Day Notice released to the public on December 6, 2023.

Be it further resolved that the adopted regulatory text may be further revised with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

Be it further resolved that if the Executive Officer determines no additional, sufficiently -related modifications to the regulatory text are appropriate, the Executive Officer shall submit the rulemaking package for the rulemaking action to the Office of Administrative Law for approval. The Executive Officer may revise the adopted regulatory text with grammatical and other non-substantial changes, indicate them as such, and add them to the rulemaking record. If the Executive Officer determines that additional sufficiently-related substantial modifications are appropriate, the Executive Officer shall make the modified regulatory text available for public comment, with any additional supporting documents and information, for at least 15 days, and the Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate and make them available for public comment for at least 15 days. The Executive Officer may either approve or disapprove proposed changes in regulatory language under Government Code section 11346.8(c).

Be it further resolved that the Executive Officer hereby determines that the amendments adopted herein will not cause California motor vehicle engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

Be it further resolved that the Executive Officer shall, upon adoption, forward the amendments to U.S. EPA with a request for a waiver or a confirmation that the amendments are within the scope of an existing waiver or of a submitted waiver request of federal preemption pursuant to section 209(b), as appropriate.

Be it further resolved that the Executive Officer hereby adopts the amendments as revisions to the California SIP.

Be it further resolved that the Executive Officer shall, after adoption, submit the amendments, together with the appropriate supporting documentation, to the U.S. EPA for approval as a revision to the California SIP as required by the federal Clean Air Act, to be effective, for purposes of federal law, upon approval by U.S. EPA.

Be it further resolved that the Executive Officer will work with the U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

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

Be it further resolved that the Executive Officer certifies pursuant to 40 CFR section 51.102 that the proposed SIP revision was adopted after notice and public hearing as required by 40 CFR section 51.102.

Executed this 28th day of December, 2023 at Sacramento, California.

  
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Steven S. Cliff, Ph.D.,  
Executive Officer

Attachments