

Staff Report

Submission of Waiver and Authorization Measures into the California SIP

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AIR RESOURCES BOARD

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I. BACKGROUND

The federal Clean Air Act (Act) establishes the U.S. Environmental Protection Agency (U.S. EPA) as the governmental body with primary authority to enact emission standards and other emission-related requirements for new motor vehicles and engines and certain new nonroad engines and vehicles. The Act also provides that California may adopt and enforce emission standards and other emission-related requirements from new motor vehicles and engines, certain new nonroad engines and vehicles, and in-use nonroad engines and vehicles, provided U.S. EPA issues California a waiver or authorization. Under section 209 of the Act, the U.S. EPA Administrator must grant California a waiver or authorization if California determines that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards, unless the Administrator makes specified findings. California has utilized the section 209 waiver and authorization mechanism for decades to establish emission standards and emission-related requirements for new motor vehicles and engines, and new and in-use nonroad engines and vehicles that address California's particular needs.

California has relied on regulations covered by U.S. EPA waivers or authorizations (waiver/authorization measures) in State Implementation Plans (SIPs) for meeting federal ambient air quality standards. Historically, U.S. EPA policy allowed California to utilize pollution reductions resulting from waiver/authorization measures in SIPs without requiring that those measures be separately included in the California SIP.

II. STATE IMPLEMENTATION PLAN SUBMISSION

On May 20th, 2015, in *Committee For A Better Arvin, et al. v. U.S. EPA, et al.* (No. 11-73924), the Ninth Circuit U.S. Court of Appeals ruled that U.S. EPA had erred in approving California SIPs that relied on reductions from waiver/authorization measures without specifically including those measures in the SIP. Consequently, to facilitate U.S. EPA approval of California's pending and future SIP submittals, California must now submit those waiver/authorization measures upon which it relies into the SIP. Accordingly, ARB staff has compiled the Waiver/Authorization List (Appendix A) which includes measures that have already been granted waivers or authorizations or ARB-approved measures that are anticipated to be granted waivers or authorizations in the future.

III. ENVIRONMENTAL ANALYSIS

A. Introduction

This analysis provides the basis for ARB's determination that the proposed action is exempt from the requirements of CEQA. A brief explanation of this determination is provided in Section B below. ARB'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 the California Environmental Quality Act (CEQA) (14 CCR 15251(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. ARB, 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 (17 CCR 60000-60008). If the action is finalized, a Notice of Exemption will be filed with the State Clearinghouse for public inspection.

B. Analysis

ARB has determined that the proposed action is exempt from CEQA under the “general rule” or “common sense” exemption (14 CCR 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 action is exempt because it is administrative in nature, consisting only of the submission of previously-adopted ARB regulations which have been granted waivers or authorizations, to U.S. EPA for inclusion in the State Implementation Plan. The submission of these previously adopted regulations does not create any new requirements. Based on ARB’s review it can be seen with certainty that there is no possibility that the proposed action may result in a significant adverse impact on the environment; therefore, this activity is exempt from CEQA.

IV. SUMMARY OF PROPOSED ACTION

Staff recommends that the Board approve the Waiver/Authorization List, and direct staff to submit those sections of the waived or authorized measures from the Waiver/Authorization List that are appropriate for the SIP to U.S. EPA for inclusion in the California SIP, with those sections to be effective, for purposes of federal law, upon approval by U.S. EPA. For those measures that have not yet been granted a waiver or authorization, we recommend the Board direct staff to submit those measures to U.S. EPA for inclusion in the California SIP once the process has been completed and approved.

**Submission of Waiver and Authorization
Measures into the California SIP
Appendix A: Waiver/Authorization List**

Appendix A – Waiver/Authorization List

Rulemakings with Waivers and Authorizations Granted

	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
1	<p>“LEV III” Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks and Medium-duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles (Advanced Clean Cars) and</p> <p>Amendments to the New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2017-2025 to Permit Compliance Based on Federal Greenhouse Gas Emission Standards and Additional Minor Revisions to the LEV III and ZEV Regulations</p>	<p>1/26/12</p> <p>11/15/12</p>	<p>78 FR 2112 (1/9/13)</p>	EPA-HQ-OAR-2012-0562	Waiver

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
2	"LEV II" and "CAP 2000" Amendments to the California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles; and LEV II “Follow-Up” Amendments (Proposal to Consider Requiring Certain Federal Light and Medium Vehicles to Certify in California) Second and Third Sets of Follow-Up Amendments to the LEV II Regulations Amendments to the Low-Emission Vehicle Regulations, Including Particulate Standards for Gasoline Vehicles, More Stringent Emission Standards for Fuel-Fired Heaters and Administrative Revisions	11/5/98 12/7/00 11/15/01	 68 FR 19811 (4/22/03) 70 FR 22034 (4/28/05)	 A-2002-11 EPA-HQ-OAR-2004-0057	New Waiver Waiver & subsequent within the scope confirmations

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
2	and Adoption of Minor Amendments to the Low-Emission Vehicle Regulations Technical Amendments to the Motor Vehicle Evaporative and Exhaust Emission Test Procedures	12/12/02 6/22/06 (TP Amends)	75 FR 44948 (7/30/10)	EPA-HQ-OAR-2010-0238	Waiver & subsequent within the scope confirmations
3	Regulations to Reduce Emissions from Diesel Engines on Commercial Harbor Craft Operated within California Waters and 24 Nautical Miles of the California Baseline	11/15/07 9/2/08 EO	76 FR 77521 (12/13/11)	EPA-HQ-OAR-2011-0549	Authorization
4	New Emission Standards, Fleet Requirements, and Test Procedures for Forklifts and Other Industrial Equipment	5/25/06 3/2/07 EO	77 FR 20388 (4/4/12)	EPA-HQ-OAR-2011-0830	Authorization
5	Regulations to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While at Berth at a California Port	12/6/07 10/16/08 EO	76 FR 77515 (12/13/11)	EPA-HQ-OAR-2011-0548	Authorization
6	Regulation for In-Use Off-Road Diesel Vehicles and Subsequent Amendments (California In-Use Off-Road Diesel Fueled Fleets)	5/25/07 7/26/07 12/11/08 1/22/09 7/23/09 12/17/10	78 FR 58090 (9/20/13)	EPA-HQ-OAR-2008-0691	Authorization (initial adoption + 2008, 2009, and 2010 amendments)

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
7	Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards and 2012 Amendments to Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards	12/8/05 9/22/11	77 FR 9916 (2/21/12) 80 FR 26249 (5/7/15)	EPA-HQ-OAR-2010-0862 EPA-HQ-OAR-2014-0060	Authorization and Waiver Within the scope of prior authorization and new authorization
8	Small Off-Road Engine (SORE) Exhaust and Evaporative Emissions Control Regulations and 2008 Amendments to SORE Regulations	9/25/03 11/21/08	71 FR 75536 12/15/06 80 FR 26041 5/6/15	EPA-HQ-OAR-2005-0133 EPA-HQ-OAR-2014-0036	Authorization Within the scope of prior authorization
9	Amendments to Off-Road Compression-Ignition Engine Regulations: 2000 and Later Emission Standards, Compliance Requirements and Test Procedures and 2004-2005 Amendments to the California Off-Road Emissions Regulation for Compression-Ignition Engines and Equipment	1/27/00 12/9/04	75 FR 8056 (2/23/10)	EPA-HQ-OAR-2008-0670	Authorization

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
10	Airborne Toxic Control Measure (ATCM) for Portable Diesel-Fueled Engines	2/26/04	77 FR 72846 (12/6/12)	EPA-HQ-OAR-2011-0101	Authorization
11	Statewide Portable Equipment Registration Program (PERP) and Subsequent Amendments (1998, 2005, 2006, and 2007)	3/27/97 7/31/07 EO 12/10/98, 2/26/04, 6/22/06 3/22/07	77 FR 72851 (12/6/12)	EPA-HQ-OAR-2011-0102	Authorization
12	Rulemaking for Incorporation of Federal Exhaust Emission Standards for 2008 and Later Model-Year Heavy Duty Gasoline Engines and the Adoption of Minor Amendments to the Low-Emission Vehicle Regulations	12/12/02 9/05/03 EO	75 FR 70237 (11/17/10)	EPA-HQ-OAR-2006-0018	Waiver
13	Amendments to More Stringent Emission Standards for 2007 and Subsequent Model Year New Heavy-Duty Diesel Engines	10/25/01	70 FR 50322 8/26/05	EPA-HQ-OAR-2004-0132	Waiver
14	Requirements to Reduce Idling Emissions From New and In-Use Trucks, Beginning in 2008	10/20/05	77 FR 9239 2/16/12	EPA-HQ-OAR-2010-0317	Waiver and Authorization

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
15	Emission Standards and Test Procedures for New 2003 and Later Spark-Ignition Inboard and Sterndrive Marine Engines	7/26/01 6/6/02 EO	72 FR 14546 (3/28/07)	EPA-HQ-OAR-2004-0403	Authorization
	and 2005 Amendments to Inboard and Sterndrive Boat Regulations	11/17/05	76 FR 24872 (5/3/11)	EPA-HQ-OAR-2004-0403	Authorization
16	Amendments to the California Exhaust Standards for On-Road Motorcycles	12/10/98	71 FR 44027 8/3/06	EPA-HQ-OAR-2004-0486	Waiver
17	Amendments to the Current Spark-Ignition Marine Engine and Boat Regulations	7/24/08 6/5/09 EO	80 FR 26032 5/6/15	EPA-HQ-OAR-2013-0024	Within the scope of prior authorization and new Authorization
18	Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRUs), TRU Generator Sets, and Facilities Where TRUs Operate and 2010 Amendments to the TRU ATCM	2/26/04	74 FR 3030 (1/16/09)	EPA-HQ-OAR-2005-0123	Authorization
		11/18/10	78 FR 38970 (6/28/13)	EPA-HQ-OAR-2012-0741	Within the scope of prior authorization
19	2006 Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines	7/20/06	79 FR 6584 2/4/14	EPA-HQ-OAR-2012-0742	Within the scope of prior authorization and new Authorization

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	Board Action	ARB Hearing Date	Approved by U.S. EPA	Docket Number *	U.S. EPA Action
20	On-Board Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines (HD OBD)	7/21/05	73 FR 52042 (9/8/08)	EPA-HQ-OAR-2006-0844	Waiver
	and 2010 Amendments to HD OBD Requirements	5/28/09	77 FR 73459 (12/10/12)	EPA-HQ-OAR-2011-0816	Within the scope and new waiver

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Rulemakings with Waivers/Authorizations Pending U.S. EPA Action

	Board Action	ARB Hearing Date	Docket Number *	U.S. EPA Action
1	2011 Amendments to the Regulations to Reduce Emissions from Diesel Engines on Commercial Harbor Craft Operated within California Waters and 24 Nautical Miles of the California Baseline	6/24/10	EPA-HQ-OAR-2014-0534 11/24/14	Pending Authorization
2	2008 Amendments to the Current Regulations for Large Spark-Ignition Engines with an Engine Displacement Less Than or Equal to One Liter and 2010 Amendments to the Off-Road <i>Large</i> Spark-Ignition Engine Fleet Requirements	11/21/08 12/17/10	EPA-HQ-OAR-2014-0533	Pending Authorization
3	2007, 2009, and 2010 Amendments to the ATCM for Diesel-Fueled Portable Engines	3/22/07 12/12/08 1/28/10	EPA-HQ-OAR-2014-0798	Pending Authorization
4	2011 Amendments to SORE, Tier 4 Off-Road CI, and Certification Fuel for Off-Road SI Engines, Equipment and Vehicles (Align with U.S. EPA)	12/16/11	EPA-HQ-OAR-2014-0535	Pending Authorization
5	2011 Amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate	10/21/11	N/A	Pending Authorization
6	1997, 2003, 2007, 2010, 2012 and 2013 Amendments to On-Board Diagnostics System Requirements For Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles and Engines	12/12/96 4/25/02 9/28/06 5/28/09 1/06/12 8/23/12	A-99-45 (1997 and 2003 Amendments) EPA-HQ-OAR-2013-0573 (2007, 2010, 2012 and 2013 Amendments)	Pending Waiver Pending Waiver
7	2013 Amendments to HD OBD Requirements	08/23/12	EPA-HQ-OAR-2013-0699	Pending Waiver

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Completed Rulemakings For Which Waivers/Authorizations Have Not Been Submitted

	Board Action	ARB Hearing Date	ARB Rulemaking Documentation
1	Heavy-Duty Diesel In-Use Compliance Regulation and 2007 and 2011 Amendments	9/28/06 12/6/07 6/23/11	http://www.arb.ca.gov/regact/inuse06/inuse06.htm http://www.arb.ca.gov/regact/2007/hdiuc07/hdiuc07.htm http://www.arb.ca.gov/regact/2011/hdiuc11/hdiuc11.htm
2	Optional Reduced Emission Standard for Heavy-Duty Engines	12/12/13	http://www.arb.ca.gov/regact/2013/hdghg2013/hdghg2013.htm
3	Amendments to the Heavy-Duty Hybrid-Electric Vehicles Certification Procedures	12/12/13	http://www.arb.ca.gov/regact/2013/hdghg2013/hdghg2013.htm
4	Amendments to the Low Emission Vehicle III Criteria Pollutant Requirements for Light- and Medium-Duty Vehicles, the Hybrid Electric Vehicle Test Procedures, and the Heavy-Duty Otto-Cycle and Heavy-Duty Diesel Test Procedures and 2010 Amendments to Plug-in Hybrid Electric Vehicle Test Procedures	10/23/14 1/22/09 & 5/28/09	http://www.arb.ca.gov/regact/2014/leviii2014/leviii2014.htm http://www.arb.ca.gov/regact/2008/phev09/phev09.htm
5	Amendments to the Zero Emission Vehicle Regulation	10/23/14 & 5/21/15	http://www.arb.ca.gov/regact/2014/zev2014/zev2014.htm
6	Adoption of Evaporative Emissions Control Requirements for Spark-Ignition Marine Watercraft	2/19/15	http://www.arb.ca.gov/regact/2015/simw2015/simw2015.htm
7	Adoption of Evaporative Emission Control Requirements for Off-Highway Recreational Vehicles	7/25/13	http://www.arb.ca.gov/regact/2013/ohrv2013/ohrv2013.htm

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