

Proposed with 15-Day Modifications

State of California
Air Resources Board

Proposed Mobile Source Certification and Compliance Fees

Resolution 21-9

April 22, 2021

Agenda Item No.: 21-3-2

Whereas, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

Whereas, in section 43000 of the Health and Safety Code, the Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State, and sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility of air pollution control from motor vehicles;

Whereas, today, stringent emission standards cover not only cars and trucks, but nearly every mobile source vehicle, engine, and piece of equipment that is powered by a combustion engine;

Whereas, the proposed regulation will establish new fees, and increase existing fees, to fund mobile source certification, audit, and compliance activities that are already conducted by CARB to protect public health and safety, and the environment by reducing greenhouse gas emissions, oxides of nitrogen, diesel particulate matter, and other air contaminants,

Whereas, the proposed regulation will thereby reduce reliance on existing funds and create a more fiscally sustainable funding solution for CARB;

Whereas, State law prohibits the sale of new motor vehicles or new mobile source engines within California unless they have been certified by CARB to meet applicable emission standards and requirements;

Whereas, Vehicle Code section 27156 prohibits the installation, sale, offer for sale, or advertisement of aftermarket parts that alter or modify the original design or

performance of the motor vehicle or engine emission control system without an exemption by CARB from California's anti-tampering laws;

Whereas, manufacturers of mobile sources are required to demonstrate compliance with these requirements through CARB's certification and compliance programs;

Whereas, section 43019 of the Health and Safety Code authorizes CARB to adopt a schedule of fees for the certification, audit, and compliance of motor vehicles and engines sold in the state;

Whereas, section 43019.1 of the Health and Safety Code authorizes CARB to adopt a schedule of fees for the certification, audit, and compliance of off-road or non-vehicular engines and equipment, aftermarket parts, and emission control components sold in the state;

Whereas, section 43019.1 of the Health and Safety Code directs CARB in adopting the schedule of fees to work with affected industries and consider impacts on industry and the environment, if enacting a partial fee that does not fully cover the costs of certification activities;

Whereas, section 43202.5 of the Health and Safety Code 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;

Whereas, section 43202.6 of the Health and Safety Code allows CARB to impose fees on manufacturers of new motor vehicles to recover its reasonable costs in implementing section 43202.5 provided the fees do not exceed \$5 million per year, adjusted annually by the California Consumer Price Index;

Whereas, staff has proposed repeal of Chapter 1, sections 1990 through 1994 and adoption of new Chapter 16, Articles 1 through 7, sections 2900 through 2914, Title 13 California Code of Regulations, as set forth in Appendix A to the Initial Statement of Reasons (ISOR or Staff Report) released to the public on March 2, 2021, and modified regulatory language developed in response to comments received since the ISOR was released, as set forth in Attachment A to this resolution;

Whereas, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

Whereas, staff has determined that the proposed regulation is 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 VII of the Staff Report;

Whereas, a 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 Board finds that:

The proposed regulation meets the statutory requirements 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 as identified in sections 43019, 43019.1, 43019.2, 43202.5, and 43202.6 of the Health and Safety Code;

The proposed regulation was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the proposed regulation considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed regulation is consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, income, or national origin;

On the basis of the whole record, including the environmental analysis included in the Staff Report, no substantial evidence exists to support a fair argument that the proposed regulation will result in any significant adverse impacts on the environment; and

The proposed regulation is 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 Board hereby approves for adoption the proposed repeal of Chapter 1, sections 1990 through 1994; and new Chapter 16, Articles 1 through 7, sections 2900 through 2914, Title 13 California Code of Regulations, as set forth in Appendix A of the Initial Statement of Reasons released to the public on March 2, 2021.

Be it further resolved that if there is a possibility that any modifications to the regulation made available for one or more 15-day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by CARB's regulations at title 17, CCR, section 60004.

Be it further resolved that the Board directs the Executive Officer to make the modified regulatory language in Attachment A, and any additional conforming modifications that are appropriate, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate modifications.

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Identification of Attachments to the Board Resolution

Attachment A: Staff's Suggested Modifications to the Original Proposal
(Distributed at the April 22, 2021, CARB hearing)

Attachment A

Staff's Suggested Modifications to the Proposed Mobile Source Certification and Compliance Fees

(Distributed at the April 22, 2021, Board hearing)

This attachment shows the modifications to the originally proposed regulatory language for sections 2901 and 2902, title 13 of the California Code of Regulations (CCR). The originally proposed regulatory language is new and is shown without underline for easier reading. The suggested modifications to the proposed regulation are shown in double underline to indicate additions and ~~double-strikeout~~ to indicate deletions.

Shown below are only those portions of the originally proposed regulation that have been modified; for some portions for which no modifications are proposed, the text has been omitted and the omission indicated by "* * * * *".

There are no additional suggested modifications to the originally proposed amendments to sections 1990, 1991, 1992, 1993, 1994, 2900, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, and 2914, title 13, CCR.

Additional changes are also described and modified regulatory language will be developed by staff as described, and the modified language will be made available to the public for a fifteen-day comment period prior to final adoption.

1. Amend title 13, CCR, section 2901 to read as follows:

§ 2901. Definitions.

* * * * *

~~“Fee credit” means a balance that may be used to pay future fees under Chapter 16 only.~~

* * * * *

“Receipt of payment” means the date the fee that meets the criteria for the selected category and fee type is received by the California Air Resources Board, for the purpose of calculating ~~fee credits~~ refunds.

* * * * *

2. Amend title 13, CCR, section 2902 to read as follows:

§ 2902. Fee Payment, and Refunds, ~~and Credits~~.

* * * * *

(b) Refunds.

~~No refund of certification fees shall be given.~~

~~(c) Credits.~~

Upon written request to the California Air Resources Board, a ~~“fee credit”~~ refund shall be ~~earned by~~ issued to an applicant for any certification fee paid by that applicant pursuant to Articles 2, 3, and 4, if the criteria in this subsection are met and no certification was granted. ~~Credits~~ Refunds shall not be ~~earned~~ issued for application fees paid pursuant to Articles 5, 6, and 7.

Criteria for Fee Credit <u>Refund</u>	Fee Credit <u>Refund</u> (% of certification fee paid)
Withdrawal of application 0-15 calendar days from receipt of payment, or the date the Executive Officer notifies the applicant the submitted payment is not appropriate under subdivision (4)	100%
Certification fee paid, no application submitted	100%
Withdrawal of application 16-45 calendar days from receipt of payment, or the date the Executive Officer notifies the applicant the submitted payment is not appropriate under subdivision (4)	50%
Withdrawal of application 46 or more calendar days from receipt of payment, or the date the Executive Officer notifies the applicant the submitted payment is not appropriate under subdivision (4)	No credit - <u>refund</u>

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