

State of California
AIR RESOURCES BOARD

ZERO-EMISSION AIRPORT SHUTTLE REGULATION

Resolution 19-16

June 27, 2019

Agenda Item No.: 19-6-2

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, sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility for systematically attacking the serious air pollution problem caused by motor vehicles;

WHEREAS, sections 39012 and 39606 of the Health and Safety Code authorize the Board to adopt standards of ambient air quality for each air basin in consideration of the public health, safety, and welfare, including, but not limited to, health, illness, irritation to the senses, aesthetic value, interference with visibility, and effects on the economy;

WHEREAS, sections 39500 and 40000 of the Health and Safety Code designate CARB as the agency responsible for control of emissions from motor vehicles;

WHEREAS, section 39516 of the Health and Safety Code provides that any power, duty, purpose, function, or jurisdiction which the state Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that the state Board, by affirmative vote recorded in the minutes of the state Board, specifically has reserved the same for the state Board's own action; and the Executive Officer may re-delegate to his subordinates unless, by state Board rule or express provision of law, the Executive Officer is specifically required to act personally;

WHEREAS, in section 39650 of the Health and Safety Code, the Legislature declares that it is the public policy of the state that emissions of toxic air contaminants should be controlled to levels which prevent harm to the public health;

WHEREAS, sections 39655, 39658 and 39659 of the Health and Safety Code authorizes the Board to establish airborne toxic control measures for toxic air contaminants;

WHEREAS, section 39667 of the Health and Safety Code authorizes the Board to regulate emissions of toxic air contaminants from vehicular sources;

WHEREAS, in section 43000.5 of the Health and Safety Code, the Legislature declares that the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, and the Board should take immediate action to implement both short- and long-range programs of across the board reductions in vehicle emissions and smoke;

WHEREAS, sections 43013, 43100, 43101, 43102, 43104, and 43806 of the Health and Safety Code authorize the Board to adopt emission standards, in-use performance standards, and test procedures to control air pollution caused by motor vehicles;

WHEREAS, section 43018 of the Health and Safety Code authorizes the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards for ambient air quality at the earliest practicable date;

WHEREAS, section 43105 of the Health and Safety Code provides that no new motor vehicle or engine required under Part 5 of Division 26 of the Health and Safety Code to meet emission standards shall be sold to the ultimate purchaser, ordered or delivered for sale to the ultimate purchaser, or registered in this state, if the manufacturer has violated emission standards or test procedures and has failed to take corrective action, which may include recall of vehicles or engines, specified by the Board in accordance with its regulations; and provides that the Board shall establish procedures for determining, and the facts constituting, compliance or failure of compliance pursuant to section 43105;

WHEREAS, section 43106 of the Health and Safety Code provides that each new motor vehicle or engine required under Part 5 of Division 26 of the Health and Safety Code to meet the emission standards established pursuant to section 43101 shall be, in all material respects substantially the same in construction as the test motor vehicle or engine that has been certified by the Board in accordance with Article 1, Chapter 2, Part 5, Division 26 of the Health and Safety Code;

WHEREAS, section 43701, subdivision (b), of the Health and Safety Code directs the Board, in consultation with the State Energy Resources Conservation and Development Commission, and after a public hearing, to adopt regulations that require that heavy-duty diesel motor vehicles subject to subdivision (a) of section 43701 to utilize emission control equipment and alternative fuels;

WHEREAS, in section 43801 of the Health and Safety Code, the Legislature declares that emission of air pollutants from motor vehicles is a major contributor to air pollution within the State of California and, therefore, declares its policy to encourage the development and testing of various types of low-emission motor vehicles, which would

contribute substantially to achieving a pure and healthy atmosphere for the people of this state;

WHEREAS, the Legislature has enacted the California Global Warming Solutions Act of 2006 (Assembly Bill 32 (AB 32), stats. 2006, ch. 488, Health & Saf. Code § 38500, et seq.), which declares that global warming poses a serious threat to the economic well being, public health, natural resources, and the environment of California, and requires a comprehensive multi-year program to reduce California's greenhouse gas (GHG);

WHEREAS, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's findings that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and the Legislature's intent that CARB coordinate with state agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32, and design emissions reduction measures to meet the statewide emissions limits for GHGs in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38510 of the Health and Safety Code designates CARB as the State agency charged with monitoring and regulating sources of GHG emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or categories of sources;

WHEREAS, section 38566 of the Health and Safety Code directs the Board to adopt rules and regulations to achieve the maximum technologically feasible and cost effective GHG emissions reductions authorized by this division, the state Board shall ensure that statewide greenhouse gas emissions are reduced to at least 40 percent below the statewide GHG emissions limit no later than December 31, 2030;

WHEREAS, section 39602 of the Health and Safety Code provides that the Board is designated the air pollution control agency for all purposes set forth in federal law; and the Board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C., Sec. 7401, et seq.); and, to this end, shall coordinate the activities of all districts necessary to comply with that act; and notwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act;

WHEREAS, section 39602.5 of the Health and Safety Code provides that the Board shall adopt rules and regulations pursuant to Section 43013 that, in conjunction with

other measures adopted by the state Board, the districts, and the United States Environmental Protection Agency, will achieve ambient air quality standards required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) in all areas of the state by the applicable attainment date, and to maintain these standards thereafter, the state Board shall adopt these measures if they are necessary, technologically feasible, and cost effective, consistent with Section 43013; and if necessary to carry out its duties under this section, the state Board shall adopt and enforce rules and regulations that anticipate the development of new technologies or the improvement of existing technologies. The rules and regulations shall require standards that the state Board finds and determines can likely be achieved by the compliance date set forth in the rule;

WHEREAS, Senate Bill 32 (SB 32, stats. 2016, ch. 249), was signed into law to expand upon the California Global Warming Solutions Act of 2006 to reduce GHG emissions to 40 percent below the 1990 level by 2030;

WHEREAS, in recognition of the devastating impacts of climate change emissions on California, Governor Arnold Schwarzenegger, in June 2005, signed Executive Order S-3-05, June 1, 2005, which established the following GHG emission targets:

- By 2010, reduce GHG emissions to 2000 levels;
- By 2020, reduce GHG emissions to 1990 levels; and
- By 2050, reduce GHG emission 80 percent below 1990 levels;

WHEREAS, Governor Edmund G. Brown Jr., in Executive Order B-16-12, March 23, 2012, reaffirmed a 2050 GHG emission reduction target for the transportation sector of 80 percent below 1990 levels;

WHEREAS, Governor Edmund G. Brown Jr., in Executive Order B-30-15, April 29, 2015, established a 2030 GHG emission reduction target of 40 percent below 1990 levels, in order to ensure California meets its target of reducing GHG emissions to 80 percent below 1990 levels by 2050;

WHEREAS, CARB's 2016 Mobile Source Strategy, May 16, 2016, identifies several potential technology advancing measures needed to achieve California's air quality and climate goals, including measures to accelerate the deployment of zero-emission shuttles and a low-NOx emission standard;

WHEREAS, in March 2017, the Board adopted the State Strategy for the State Implementation Plan, which identifies the deployment of zero-emission airport shuttles as a necessary component for California to achieve established near- and long- term air quality and climate mitigation targets;

WHEREAS, Governor Edmund G. Brown Jr., in Executive Order B-48-18, January 26, 2018, established a goal of at least 5 million zero-emission vehicles on California roads by 2030;

WHEREAS, Governor Edmund G. Brown Jr., in Executive Order B-55-15, September 10, 2018, established a new statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045, and maintain net negative emissions thereafter;

WHEREAS, in collaboration with its partners, including the California Energy Commission and California Public Utilities Commission, CARB is working to accelerate development of zero-emission technology by continuing to invest in commercialization of various technologies, building on previous investments; and focusing on technology critical to meeting the state's 2030 climate and criteria emission goals; and input from stakeholders and industry is critical to developing a successful investment strategy and identify funding priorities;

WHEREAS, the Low Carbon Fuel Standard (LCFS) program allows entities using fuels with a lower-carbon intensity to generate LCFS credits, thereby creating an additional revenue stream for the transit agencies while stimulating the low carbon fuel market;

WHEREAS, the Alternative Certification Requirements and Test Procedures for Heavy-Duty Electric and Fuel-Cell Vehicles and Proposed Standards and Test Procedures for Zero-Emission Powertrains would help support the industry as the state continues to roll out its suite of heavy-duty zero-emission measures;

WHEREAS, in Resolution 18-21, May 25, 2018, CARB approved allocations for Volkswagen Environmental Trust Funds that included \$130 million for zero-emission transit, school, and shuttle replacements, with at least 50 percent of the allocation expected to benefit disadvantaged or low-income communities;

WHEREAS, airport shuttles serve to transport passengers to and from airports;

WHEREAS, several California airport shuttle operators are currently utilizing zero emission shuttles as part of their normal daily operation;

WHEREAS, airport shuttles operate on fixed routes, at low speeds, and under frequent stop-and-go driving cycles, which are ideal applications for electric drivetrains with regenerative braking;

WHEREAS, the knowledge and experience gained from deploying zero-emission airport shuttle technologies is enabling market expansion into other zero-emission vehicle applications;

WHEREAS, staff proposed the proposed Zero-Emission Airport Shuttle regulation, as set forth in Appendix A to the Initial Statement of Reasons (ISOR) released to the public on December 31, 2018;

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, CARB prepared a draft environmental analysis under its certified regulatory program entitled *Draft Environmental Analysis Prepared for the Proposed Zero-Emission Airport Shuttle Regulation and Zero-Emission Powertrain Certification Regulation* (Draft EA), included as Appendix B to the ISOR, and released it along with the ISOR for 45 days of public comment from January 4, 2019, through February 19, 2019;

WHEREAS, the Draft EA concluded that implementation of the proposed Zero-Emission Airport Shuttle Regulation has the potential to result in the following short-term and long-term impacts: beneficial impacts on air quality, energy demand, and GHGs; less than significant impacts or no impacts, on energy, mineral resources, population employment, housing, public service, and recreation; and potentially significant impacts on aesthetics, agricultural and forest resources, short-term air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, noise, mineral resources, transportation and traffic, and utilities and service systems. Many of the identified potentially significant adverse impacts are primarily related to short-term, construction-related activities. This explains why some resource areas are identified above as having both less-than-significant impacts and potentially significant impacts. Please refer to the Draft EA for further details;

WHEREAS, on February 21, 2018, the Board conducted a public hearing on the proposed Zero-Emission Airport Shuttle regulation and the Draft EA prepared for the proposal;

WHEREAS, following the public hearing, the Board adopted Resolution 19-8 directing the Executive Officer to make the modified regulatory language in Attachment B to that resolution, and any additional appropriate conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer was further directed to consider written comments submitted during the public review period and make any additional appropriate conforming modifications available for public comment for at least 15 days, evaluate all comments received during the public comment periods, including comments on the Draft EA, and prepare written responses to EA comments as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a). The Executive Officer was directed to present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments on the Draft EA, along with the Final EA, for consideration for approval, and the finalized regulation for consideration for adoption;

WHEREAS, following the Board hearing, the modified regulatory language and supporting documentation were circulated for 15-day public comment period, 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 May 9, 2019, through May 24, 2019;

WHEREAS, staff reviewed written comments received on the draft EA and prepared written responses to those comments in a document entitled *Response to Comments on the Environmental Analysis Prepared for the Zero-Emission Airport Shuttle regulation* (Response to EA Comments);

WHEREAS, on June 24, 2019, staff posted on the rulemaking page the Final EA, which includes minor revisions, and the Response to EA comments;

WHEREAS, prior to the duly noticed public hearing held on June 27, 2019, staff presented the Final EA and the Response to EA Comments, as set forth in Attachments B and C to this resolution, to the Board for consideration;

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; and

WHEREAS, in consideration of the ISOR, written comments, and public testimony, the Board finds that:

A viable zero-emission shuttle market has now developed with several shuttle owners beginning to electrify their fleets, several shuttle manufacturers announcing zero-emission shuttle production, and zero-emission shuttle production facilities moving to California;

The Zero-Emission Airport Shuttle regulation is crafted to ensure a successful and orderly transition to a zero-emission fleet by 2035;

The Zero-Emission Airport Shuttle regulation is referenced by the State Implementation Plan as a necessary program for meeting the State's goals and requirements to reduce greenhouse gas, criteria pollutant, and toxics emissions;

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;

The Zero-Emission Airport Shuttle regulation will not have a 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;

No reasonable alternatives 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; and; and

The proposed regulation is consistent with the Board's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the Final EA, set forth in Attachment B to this resolution, was completed in compliance with CARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed and considered the information therein before taking action to approve the regulation..

BE IT FURTHER RESOLVED that the Board approves the Response to EA Comments set forth in Attachment C to this resolution.

BE IT FURTHER RESOLVED that in consideration of the Final EA, the Response to EA Comments, and the entirety of the record, the Board adopts the Findings and Statement of Overriding Considerations set forth in Attachment D to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts sections 95690.1, 95690.2, 95690.3, 95690.4, 95690.5, 95690.6, 95690.7, and 95690.8, Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 14, California Code of Regulations, as set forth in Attachment A.

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 the Board directs the Executive Officer to finalize the Final Statement of Reasons, submit the completed rulemaking package to the Office of Administrative Law, and transmit the Notice of Decision with the Response to EA Comments to the Secretary of the Natural Resources Agency for posting.

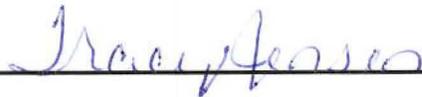
BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209 of the Federal Clean Air Act, that the requirements related to the control of emissions adopted as part of the regulations adopted herein are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions of high concentrations of people and motor vehicles, vulnerability to climate change, and the geographic and climate conditions of the state, and that the adopted requirements are consistent with the provisions of sections 202(a) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California motor vehicle 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 regulations to the Environmental Protection Agency with a request for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 19-16 as adopted by the California Air Resources Board.



Tracy Jensen, Manager, Legal Office

Resolution 19-16

June 27, 2019

Identification of Attachments to the Board Resolution

- Attachment A*:** *Final Regulation Order for the Zero-Emission Airport Shuttle Regulation, Adopt new sections 95690.1, 95690.2, 95690.3, 95690.4, 95690.5, 95690.6, 95690.7, and 95690.8, Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 14, California Code of Regulations*
- Attachment B*:** *Final Environmental Analysis Prepared for the Zero-Emission Airport Shuttle regulation, released to the public June 24, 2019,*
- Attachment C*:** *Response to Comments on the Environmental Analysis Prepared for the Zero-Emission Airport Shuttle Regulation, released to the public June 24, 2019,*
- Attachment D*:** *Findings and Statement of Overriding Considerations*

***Attachments A, B, C, and D are NOT attached to the proposed resolution; they are simply described on this page.**