TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE LOW-EMISSION VEHICLE III GREENHOUSE GAS EMISSION REGULATION

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation.

DATE: September 27, 2018

TIME: 9:00 A.M.

LOCATION: California Environmental Protection Agency
California Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., September 27, 2018, and may continue at 8:30 a.m., on September 28, 2018. Please consult the agenda for the hearing, which will be available at least ten days before September 27, 2018, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on August 10, 2018. Written comments not physically submitted at the hearing must be submitted on or after August 10, 2018, and received **no later than 5:00 p.m. on** September 24, 2018. CARB requests that when possible written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail: Clerk of the Board, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 38550, 38566, 39500, 39600, 39601, 43013, 43018, 43018.5, 43101, 43104, and 43105. This action is proposed to implement, interpret, and make specific California Health and Safety Code, sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, and 43211.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected:

Proposed amendment to California Code of Regulations, title 13, sections 1961.2 and 1961.3 and to the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as last amended September 2, 2015, incorporated by reference in Title 13, CCR, section 1961.2.

Background and Effect of the Proposed Regulatory Action:

Overview

In order to address the need to further reduce vehicle emissions and achieve California's goal of reducing climate changing greenhouse gas emissions, in January 2012, CARB adopted its second generation of greenhouse gas emission standards for light-duty vehicles as part of the Low-Emission Vehicle III (or LEV III) program. The LEV III regulations established increasingly stringent greenhouse gas standards for 2017 through 2025 model year light-duty vehicles, and maintained the stringency for subsequent model years. These regulations were adopted by the Board as part of the Advanced Clean Cars rulemaking package that also includes the state's zero-emission vehicle (ZEV) regulation.

California's greenhouse gas emission programs for light-duty vehicles (passenger vehicles) are a fundamental component of the State's strategy to protect the health of its citizens and its natural resources, including from the threats of climate change.[1] California's programs have operated successfully in tandem with complementary standards set by other agencies for many years. Recognizing the value of a national

[1] California Air Resources Board. *California's 2017 Climate Change Scoping Plan.* (November 2017). available at: https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf

program, California has accepted compliance with greenhouse gas emission standards adopted by the United States Environmental Protection Agency (U.S. EPA) for the 2012 through 2025 model years. To do so, CARB adopted the so-called "deemed to comply" option, which allows compliance with U.S. EPA's regulations as an alternative to complying with California's regulations for these model years, because the U.S. EPA standards, at the time, would deliver equivalent greenhouse gas emission reductions as California's standards.[2,3]

One important element of the originally adopted federal greenhouse gas emission standards was a requirement that U.S. EPA later conduct a midterm evaluation (MTE) to re-assess the appropriateness of the greenhouse gas emission standards for the 2022 through 2025 model years. This report was required by law to be based upon a comprehensive joint Technical Assessment Report,[4,5] consisting of hundreds of pages of analysis and documentation, which was prepared jointly by U.S. EPA, CARB, and National Highway Traffic Safety Administration (NHTSA) staff. The purposes of the MTE was to evaluate updated information to determine if the standards should be strengthened, maintained at their current level of stringency, or weakened. On January 13, 2017, U.S. EPA released its Final Determination[6] to maintain the current National Program of greenhouse gas emission standards for 2022 through 2025 model year vehicles, finding that automakers are well positioned to meet the standards at lower costs than previously estimated.

CARB also conducted a California-specific Midterm Review[7] of the appropriateness of these standards, which also examined a number of other issues relating to the LEV III regulations and ZEV regulation, and issued a report on the findings. Based on the CARB Midterm Review, the Board concluded (in Resolution 17-3[8]) that:

> Given U.S. EPA has issued a Final Determination affirming the 2022 through 2025 model year federal greenhouse gas standards will remain as adopted, it is appropriate to continue California's participation in the 2017 through 2025 model year National Program by maintaining the "deemed to comply" provision allowing for compliance with the adopted U.S. EPA greenhouse gas standards for the 2022 through 2025 model years.

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[2] All manufacturers are currently exercising the option of complying with the federal greenhouse gas emission standards.

[3] Although California's light-duty greenhouse gas regulations also apply to model years beyond 2025, the "deemed to comply" option is not available for the 2026 and subsequent model years. Consequently, the 2026 and subsequent model years are not addressed in this rulemaking.

[4] *See* 40 C.F.R. § 86.1818-12(h)(2).

[5] U.S. EPA, NHTSA, CARB, *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025* (July 2016), available at: https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockey=P100OXEO.PDF

[6] U.S. EPA, *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* (January 2017, EPA-420-R-17-001), available at: https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2015-0827-6270&attachmentNumber=1&contentType=pdf.

[7] California Air Resources Board. *California's Advanced Clean Cars Midterm Review*, (January 18, 2017), available at: https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf.

[8] State of California, Air Resources Board, Resolution 17-3. March 24, 2017. Agenda Item No.: 17-3-8. Advanced Clean Cars Midterm Review. available at: https://www.arb.ca.gov/msprog/acc/mtr/res17-3.pdf.

On April 13, 2018, the U.S. EPA issued a notice withdrawing its previous Final Determination for the MTE of the federal passenger vehicle greenhouse gas regulations and issuing a revised 11-page Final Determination that the federal greenhouse gas standards are not appropriate, "may be too stringent," and should be changed.[9] The U.S. EPA did this without properly explaining why it was departing from the extensive evidence within the Technical Assessment Report, and without sharing any data or analysis with CARB or adequately explaining the reasons for reaching a different conclusion than had been reached by the previous well-reasoned Final Determination.

On August 1, 2018, as a consequence of the U.S. EPA's new Final Determination, the Acting Administrator for the U.S. EPA and the Deputy Administrator for NHTSA signed a joint Notice of Proposed Rulemaking (NPRM) that would, if finalized, significantly weaken the U.S. EPA's standards and which purports to attack California's long-standing authority in this area. The NPRM stated it would provide a 60-day comment period, commencing from the time of publication in the Federal Register.

The NPRM proposes to arrest U.S. EPA's carbon dioxide (CO_2) emissions targets at the levels set for model year 2020. The proposal would also limit the standards to CO_2 tailpipe emissions and would fail to address other, more potent greenhouse gas emissions from vehicles. The agencies also proposed to find CARB's greenhouse gas and ZEV standards preempted by federal law, and to withdraw the waiver of federal preemption that the U.S. EPA granted to California in 2013 for the greenhouse gas and ZEV requirements of its Advanced Clean Cars program, at 78 Federal Register 2,112 (Jan. 9, 2013).

This proposal is contrary to the facts and the law. It is belied by the comprehensive, multi-year analysis of the initial Final Determination that found the standards cost-effective and achievable. It frustrates Congressional intent, upheld by the Supreme Court and lower federal courts, in the Clean Air Act and the Energy Policy and Conservation Act to conserve energy and protect the environment by setting maximum feasible standards. It jeopardizes the successful coordinated National Program for reducing these emissions that has helped position the auto industry for continued innovation and competitiveness in an international market.

This threat of weakening the standards of the unified National Program, left unaddressed, could substantially slow progress towards the emission reductions needed to address the serious threat climate change poses to California, the country, and the world. Thus, U.S. EPA has now stated both that the current rigorous standards are inappropriate - necessitating this rulemaking - and doubled down by stating that it intends to abandon the rigorous federal standards that the record supports. This will force upon regulated entities and the public considerable uncertainty as to the fate of the unified National Program. And it will obscure the clear path that it laid through the coming years to save money and resources and achieve the pollution reductions necessary to protect our health and environment. Issuance of this federal NPRM affirms the importance of CARB taking this proposed action to be clear California is maintaining the current standards.

[9] 83 Fed.Reg. 16,077 (April 13, 2018).

Current Proposal

CARB is proposing amendments to the LEV III greenhouse gas emission regulation to clarify that the "deemed to comply" option is available only for the currently adopted federal greenhouse gas regulations (incorporated in the Code of Federal Regulations and last amended on October 25, 2016). These clarifying amendments will ensure that the effects of any federal weakening for model years 2021 through 2025 are not felt in California during those model years. Weakening the standards, as U.S. EPA has proposed, would be unfounded and contrary to the intent of the Clean Air Act. Such an unfounded weakening removes a material predicate of California's decision to accept compliance with U.S. EPA standards. This clarification is thus consistent with the fundamental understandings underlying the current unified National Program for light-duty emission control.

CARB may also consider other changes to the sections affected, as listed on page 2 of this notice, during the course of this rulemaking process. Specifically, CARB requests comments on potential flexibilities that might allow for continued compliance with the federal standards, or reward national actions to promote cleaner vehicles.

Objectives and Benefits of the Proposed Regulatory Action:

The proposed amendments will ensure that appropriate and necessary greenhouse gas emission reductions and public health protections[10] are achieved by California's standards. They are also important for maintaining the pace of greenhouse gas emission reductions that are necessary to achieve our statutory targets, and to address extraordinary and compelling conditions in California.[11] Achieving these targets is critical for helping to combat the effects of climate change, including raging wildfires, coastal erosion, disruption of water supply, threats to agriculture, spread of insect-borne diseases, and continuing health threats from air pollution. The proposed amendments are also consistent with the extensive technical determinations from the 2017 Final Determination and CARB's MTR, showing that the standards are appropriate. These proposed amendments will provide predictability for manufacturers to make the necessary investments in cleaner vehicles for Californians that have reduced climate, public health and welfare impacts, promote innovation, and are less costly to operate.

CARB remains committed to a national program that is based on a robust technical foundation and sound economic analysis, such that it fulfills CARB's statutory mandates to protect public health and welfare and the environment. CARB has been, and remains, willing to consider well-founded and necessary changes to the program,

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[10] Although the vehicle standards in question directly regulate greenhouse gas emissions, and the LEV III criteria pollutant emission fleet average standards are not being changed, reducing greenhouse gases is critically important to protect public health in California. Greenhouse gases worsen climate change; in turn, climate change results in hotter weather conditions that are already eroding California's ability to attain and maintain compliance with ambient air quality standards. Moreover, criteria pollutant emissions in California from the production and delivery of petroleum and gasoline could change as a result of the federal action, thus increasing public health risks.

[11] Senate Bill 32 (Chapter 249, Statutes 2016, Pavley) requires that the state reach 40 percent emission reductions below 1990 levels by 2030 Executive Order S-3-05 sets a goal of 80 percent emission reductions below 1990 levels by 2050.

including flexibilities that reduce compliance costs, so long as they continue to provide the necessary greenhouse gas emission reductions. Federal action that is consistent with these principles could render this CARB rulemaking unnecessary.

There are no expected benefits to public safety or worker safety as a result of this rulemaking.

Comparable Federal Regulations:

As mentioned, although the current California and federal greenhouse gas regulations for 2021 through 2025 model year light-duty vehicles are equivalent in stringency, U.S. EPA has stated that the federal standards "are inappropriate and may need to be weakened."[12] The proposed amendments are necessary to preserve the emission benefits of the current California LEV III greenhouse gas regulation by safeguarding against the unwarranted relaxation of the standards and resulting loss of California emission reductions for model years 2021 through 2025 due to the linkage of the California regulation and federal passenger vehicle greenhouse gas regulation.

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.

MANDATED BY FEDERAL LAW OR REGULATIONS (Gov. Code, §§ 11346.2, subd. (c), 11346.9)

The proposed regulatory action is not mandated by federal law or regulations.

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

The determinations of the Board's Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

[12] 83 Fed.Reg. 16,077 (April 13, 2018).

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The Executive Officer has made an initial determination that the proposed regulatory action would 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.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

The proposed amendments do not qualify as major regulations, because they would leave current regulatory conditions intact. Accordingly, the proposed amendments will not have an economic impact on California businesses and individuals compared to a baseline of current conditions, and formal requirements for major regulations do not apply. However, in the interest of transparency, staff have prepared a thorough economic analysis of these proposed amendments, commensurate with analyses done for major regulations, and it is available as Appendix D to the Initial Statement of Reasons (ISOR). This Standard Regulatory Impact Assessment (SRIA) Equivalent Document was submitted to the California Department of Finance on June 7, 2018. Comments received from the California Department of Finance are in Appendix E to the ISOR and are summarized below.

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed regulatory action is to preserve the California greenhouse gas emission reductions anticipated from the LEV III light-duty vehicle greenhouse gas emission regulation.

A summary of these benefits is provided, please refer to "Objectives and Benefits," under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion beginning on page 4.

California Department of Finance Comments on the *SRIA Equivalent Document and CARB Responses:*

Comment from the California Department of Finance:

> Finance generally concurs with the methodology used to estimate impacts of proposed regulations. If the federal standards were to change, the timing and details would be important to model in order to assess any impacts to California. However, if the sensitivity analysis captures most of the components, only the magnitudes of estimates may change.

CARB Response:

> Thank you for your review. We will update the analysis in the Standard Form 399 and other documents, as appropriate, if there are any developments at the federal level.

Business Report (Gov. Code, §§ 11346.5, subd. (a)(11); 11346.3, subd. (d)):

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California. The proposed amendments do not include new reporting requirements or modify existing reporting requirements.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses, because they would not change the stringency of the current regulations. Because the stringency would not change in California, the regulations will continue to result in net cost savings for small business through more efficient motor vehicles, which will be more cost-effective to own and operate than in the absence of the standards, as previously estimated when the regulations were initially adopted.

Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

ENVIRONMENTAL ANALYSIS

When the Advanced Clean Cars Program was proposed in 2012, CARB prepared an environmental analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). The EA, included in Appendix B of the ISOR entitled Appendix B: Draft Environmental Analysis for the Advanced Clean Cars Program, dated December 7, 2011, determined the Advanced Clean Cars Program could result in adverse impacts to aesthetics, air quality, and noise, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, traffic and utilities, however the portion of the program specific to the LEV III regulation did not find any adverse environmental impacts. Staff has determined that no additional environmental review is required for the current proposed amendments because there are no changes that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects in the prior 2011 EA. The basis for reaching this conclusion is provided in Chapter VI of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;

- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envié un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Mike McCarthy, Chief Technology Officer, Emissions Compliance, Automotive Regulations and Science Division at (626) 771-3614 or (designated back-up contact) Sarah Carter, Staff Air Pollution Specialist, Emissions Compliance, Automotive Regulations and Science Division at (626) 575-6845.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Public Hearing to Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, beginning on August 7, 2018.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, at (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory

language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at http://www.arb.ca.gov/regact/2018/leviii2018/leviii2018.htm

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: August 6, 2018

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.