



September 24, 2018

Mary D. Nichols
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation

Dear Chair Nichols,

Thank you for the opportunity to comment on the California Air Resources Board's ("CARB") "Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation." Tesla submits the following comments in support of the proposal in advance of the CARB public hearing on this matter.ⁱ

Tesla's mission is to accelerate the world's transition to sustainable energy. Since the company's founding in 2003, our goal has been to accelerate the advent of sustainable transport by bringing compelling mass-market electric cars to market as soon as possible. Moreover, Tesla believes the world will not be able to solve the climate change crisis without directly reducing air pollutant emissions – including carbon dioxide and other greenhouse gases - from the transportation and power sectors. Tesla shares the State of California's air quality, clean transportation, and climate goals.

To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles, and energy generation and storage systems, and also installs and maintains such systems. Tesla conducts vehicle manufacturing and assembly operations at its California facilities in Fremont and Lathrop.

Tesla is one of the largest manufacturing employers in California and the only automaker building electric vehicles (EVs) at scale in the state and, further, the only automaker building any kind of passenger vehicle at scale in California. Tesla employs more than 20,000 workers in California and is on track to produce well over 200,000 zero emission vehicles in 2018. As the recent report "The Economic Contribution of Tesla in California" finds, Tesla also supports over 31,000 additional jobs in the state, and the company's economic impact in California goes far beyond that of its immediate employees and includes infusing over \$4 billion into the California economy in 2017 alone.ⁱⁱ

As an automobile manufacturer, Tesla is subject to regulation under the U.S. Environmental Protection Agency ("U.S. EPA") greenhouse gas vehicle emissions standards ("Light-Duty Vehicle GHG Standards") and National Highway Traffic Safety Administration ("NHTSA") corporate average fuel economy ("CAFE") program. Tesla is also subject to regulation under California's Low-Emission

Vehicle III Greenhouse Gas Emission Regulation (“LEV III GHG Standards”), and California’s Zero Emission Vehicle (“ZEV”) Regulation. Tesla strongly supports CARB’s efforts to maintain the stability and stringency of the California LEV III GHG Standards.

I. Tesla Supports the Continued Regulatory Stability Embodied in the Current Federal and State Light Duty GHG Vehicle Standards

Tesla supports the carefully crafted Federal and State approach to regulatory stability for motor vehicles manufacturers that the “deemed to comply” regulation embodied, and recognizes that appropriate proposed changes to that provision are designed to continue to confer that promise.

The consistent and strong existing One National Program standards embodied in “deemed to comply” are necessary to support continued job growth, to save lives, and to ensure that automakers make investments in a cleaner transportation future for America. Nothing in the administrative records of U.S. EPA, NHTSA, or CARB supports a weakening of the current standards.

As noted earlier, the regulatory certainty provided by these standards has contributed to billions of dollars in investments in the U.S. by Tesla and many other companies involved in clean transportation. Given this investment, CARB is correct to clarify that “deemed to comply” was intended to support manufacturers and their dependence upon the benefits from the existing One National Program.

II. Tesla Supports CARB’s Goal of Maintaining the Current Level of Public Health Protection Provided by the LEV III GHG Standards

Tesla supports CARB’s objective to ensure greenhouse gas emissions reductions from light-duty vehicles are maintained at levels needed to protect the public health and welfare of California residents. Indeed, California has a compelling need to reduce greenhouse gas emissions at least at the levels contained the current LEV III GHG Standards.

As CARB’s Advanced Clean Cars Midterm Review Resolution 17-3 recognized, California continues to suffer from the nation’s worst air pollution and numerous counties and areas remain in states of non-attainment for existing federal and state ozone standards.ⁱⁱⁱ This year alone, the South Coast Air Basin, for example, has exceeded the national 8-hour ozone standard of 0.070 ppm on 132 days.^{iv} As the U.S. EPA found in 2009, before the completion of its existing U.S. EPA Light-Duty Vehicle GHG Standards, increasing greenhouse gas emissions have harmful impacts on local and regional air quality^v. For example, the U.S. EPA found that:

- “Increases in regional ozone pollution relative to ozone levels without climate change are expected due to higher temperatures and weaker circulation in the United States and other world cities relative to air quality levels without climate change. Climate change is expected to increase regional ozone pollution, with associated risks in respiratory illnesses and premature death.”^{vi}
- “Climate change can affect ozone by modifying emissions of precursors, atmospheric chemistry, and transport and removal. There is now consistent evidence from models and observations that 21st century climate change will worsen summertime surface ozone in polluted regions of North America compared to a future with no climate change.”^{vii}

- “In addition, there is an expectation that there will be an increase in levels of ambient ozone, leading to increased risk of morbidity and mortality from exposure to ozone. All of these are effects on human health, and all of them are associated with the effect on climate from elevated atmospheric concentrations of greenhouse gases.”^{viii}
- “Reducing ozone levels in California cities and agricultural areas is expected to become harder with advancing climate change. California and many other commenters note that ‘California’s high ozone levels—clearly a condition Congress considered—will be exacerbated by higher temperatures from global warming.’”^{ix}

Consistent with these U.S. EPA findings, and numerous subsequent scientific findings, California has adopted its “deemed to comply” resolutions and existing regulation to reflect a level of greenhouse gas emissions reduction that is both achievable and at levels that help meet the state’s identified public health protection and air pollution reduction needs. Unless CARB has determined that California’s air quality concerns have receded, the level of protection established by the “deemed to comply” provision and the existing EPA GHG Light-Duty Standards remain a necessary minimum. Allowing for “deemed to comply” regulation to encompass new regulations that diminish this level of needed public health protection – as would be the case with U.S. EPA’s proposed “Safer Affordable Fuel Efficient (SAFE) Vehicles Proposed Rule for Model Years 2021-2026”^x - would result in CARB running afoul of the very statutory mandates and directives CARB recites in the preamble of Resolution 17-3.

III. California’s “Deemed to Comply” Amendments Should Focus on Achieving the GHG Emissions Reductions Equivalent to the Levels Found in Existing MY-2017-2025 U.S. EPA Light-Duty Vehicle GHG Standards

As described in the proposal, CARB’s adoption of its “deemed to comply” regulation^{xi} at 13 CCR §1961.3(c) was clearly intended to find the existing U.S. EPA GHG Light-Duty Vehicles Standards provided an equivalent level of public health protection when compared to the LEV III GHG Standards. As CARB testified in support of obtaining the Advanced Clean Car Program waiver:

However, we’ve continued to deliver on our promises to align this as much as possible. So, notwithstanding the differences, we’ve continued to work with both federal agencies and the auto industry. The rule as we have it now is very close and very closely parallels federal regulation adopted in August, *and as a result we believe that it will have very similar effectiveness to our rule.*

We therefore are following through on our commitment to adopt a “deemed to comply” provision.^{xii}

Consistent with this testimony, CARB should ensure that any amendment to its regulations is durable enough to ensure recognition of federal equivalency will only occur when the current levels of GHG reductions are maintained or increased.

Accordingly, CARB’s regulatory amendment should ensure the existing stringency in emissions reduction but do so in a manner that maintains CARB’s flexibility. In this regard, the current amendment has room for improvement. The CARB proposal seeks to retain stringency by amending 1961.3 so that “deemed to comply” references only the specific published U.S. EPA regulation as in existence as of October 25, 2016. This is unnecessarily rigid and would require further regulatory

action to allow for federal equivalence if the existing federal regulations should be altered in ways that maintain or accelerate the level of greenhouse gas emissions reduction achieved by the existing U.S. EPA Light-Duty Vehicle GHG Standards.

While U.S. EPA's SAFE Vehicles Proposed Rule would unnecessarily diminish the stringency of the existing U.S. EPA Light-Duty Vehicle GHG Standards, Tesla believes CARB's amendment should allow CARB to deem a future amendment to U.S. EPA's standards to be sufficient for compliance with California's standards, so long as the amended federal standards would achieve commensurate, or greater, emissions reductions as the existing U.S. EPA Light-Duty Vehicle GHG Standards. While Tesla supports the CARB proposal, we therefore believe it could be refined to make CARB's "deemed to comply" authority flexible and durable enough, without requiring CARB to undertake additional regulatory amendments in the event the federal program should be altered in a way that maintains or increases its stringency.

Accordingly, CARB could achieve this by amending section 1961.3(c) as follows (with suggested revisions to CARB's proposed regulatory amendments shown by underscoring and ~~striking through~~):

The optional compliance approach provided by this section 1961.3 (c) shall not be available for 2021 through 2025 model year passenger cars, light duty trucks, and medium-duty passenger vehicles if the Executive Officer determines that the projected level of greenhouse gas emission reduction benefits achieved by the national fleet average CO2 standards in the "2017 through 2025 MY National Greenhouse Gas Program"^{xiii} is ~~altered~~ not preserved via a final rule published in the Federal Register subsequent to October 25, 2016.

California is taking much-needed action to reduce air pollutant emissions from transportation – a sector that accounts for 50 percent of the state's greenhouse gas emissions and 80 percent of smog-forming pollutants.^{xiv} Tesla's vehicles, all assembled in California, help to reduce the emission of harmful air pollutants across communities throughout California and directly contribute to California's goal of 5 million zero emission vehicles (ZEVs) cars on the road by 2030.^{xv} At a time when recent reports show California's transportation sector emissions have grown,^{xvi} Tesla has demonstrated its zero emission vehicles can garner widespread consumer acceptance and provide a significant contribution to the GHG emissions reduction consistent with the State's long-term goals.^{xvii}

Tesla's experience is consistent with CARB's views that the existing standards are achievable through readily available technologies and at lower cost than anticipated initially in the 2012 joint rulemaking. Accordingly, Tesla strongly supports CARB's efforts to maintain the stability and stringency of the California LEV III GHG Standards.

Respectfully submitted,



Joseph Mendelson
Senior Counsel

ⁱ See also, Tesla, Comments submitted in response to CARB's "Request for Public Input on Potential Alternatives to a Potential Clarification of the "Deemed to Comply" Provision for the LEV III Greenhouse Gas Emission Regulations for Model Years Affected by Pending Federal Rulemakings," (May 31, 2018).

ⁱⁱ IHS Markit, [The Economic Contribution of Tesla in California](#) (May 2018).

ⁱⁱⁱ CARB, [Resolution 17-3](#) (March 24, 2017)

^{iv} CARB, [Air Quality and Meteorological Information System](#) (last visited Sept. 24, 2018).

^v EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act; Final Rule, [74 Fed. Reg. 66496](#) (Dec. 15, 2009).

^{vi} 74 Fed. Reg. at 66525.

^{vii} 74 Fed. Reg. at 66525.

^{viii} 74 Fed. Reg. at 66527.

^{ix} EPA, Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles; Final Notice, [74 Fed. Reg. 32763](#) (Jul. 8, 2009).

^x NHTSA and EPA, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks," [83 Fed. Reg. 42817](#) (Aug. 24, 2018)

^{xi} See, 13 CCR §1961.3(c)

^{xii} Statement of Tom Cackette, CARB, Proceedings of Hearing Regarding Waiver Request for California's Advanced Clean Car Program, Docket No. EPA-HQ-OAR-2012-0562, (September 19, 2012) at 13. <https://www.regulations.gov/document?D=EPA-HQ-OAR-2012-0562-0026> (emphasis added).

^{xiii} Tesla supports the definition of "2017 through 2025 MY National Greenhouse Gas Program" as contained in CARB's proposed amendment of 13 CCR §1961.3(f)(25). See, [CARB, Appendix A – Proposed Regulation Order](#).

^{xiv} See, Office of Gov. Edmund G. Brown, Jr., [Governor Brown Takes Action to Increase Zero-Emission Vehicles, Fund New Climate Investments](#) (Jan. 26, 2018)

^{xv} See, *Id.*

^{xvi} See e.g., Next10, [2018 California Green Innovation Index, 10th Edition](#) (Aug 30, 2018); Bloomberg, [California Car Emissions Rise as Trump's Cuts to Standards Loom](#) (Aug 30, 2018).

^{xvii} See, endnote XI.