



AUTO ALLIANCE
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September 24, 2018

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation (Deemed-to-Comply)

Chair Nichols and Board members:

The Alliance of Automobile Manufacturers¹ (Alliance) represents 12 car and light truck manufacturers affected by the potential changes to the deemed to comply (DTC) provision in the “Notice of Public Hearing to Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation”² (hereafter “2018 DTC Rulemaking”). We worked closely with the California Air Resources Board (CARB) and staff to develop the 2012 regulations, including the DTC provision currently in the regulations.

We recommend that the Board defer this issue and instead direct Staff to continue working with their federal counterparts, automakers, and other stakeholders to develop consensus regulatory changes meeting CARB’s statutory mandates to protect public health, welfare, and the environment, while considering the national implications of any decision—including what a split program would mean for various stakeholders and for overall GHG emissions. We also attach and hereby incorporate the comments we previously submitted on May 31 regarding potential alternatives to the 2018 DTC Rulemaking.

Maintaining One National Program is Critical

The Alliance continues to actively support a single national program (EPA, NHTSA, and CARB) covering all fifty states that drives ongoing improvements in fuel economy and greenhouse gas (GHG) emissions. The current One National Program (ONP) enables automakers to make predictable investments in a nationwide fleet of light-duty vehicles that advance, on a national scale, both reductions in GHG emissions and increases in fuel economy over time. While we

¹ Alliance members include BMW, FCA, Ford, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, Volkswagen, and Volvo. Please visit www.autoalliance.org for further information.

² Notice of Public Hearing to Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation, 32-Z Cal. Regulatory Notice Reg. 1263 (Aug. 10, 2018), available at <https://www.arb.ca.gov/regact/2018/leviii2018/leviiinotice.pdf> (hereinafter Notice of Public Hearing).

believe the available data supports our view that the fuel economy and GHG standards originally developed for model years 2022–2025 need to be adjusted to reflect market realities, we continue to support standards requiring continued fleet average improvements in GHG emissions and fuel economy through the 2026 timeframe.

We have made this position clear in the media and in Congressional testimony. Moreover, in a recent White House meeting, the Alliance urged the Trump Administration to pursue solutions that preserve CARB's partnership in ONP. We were pleased when the White House and CARB subsequently issued a joint press statement at the end of August expressing the "shared goal of achieving one national set of standards for vehicle fuel economy and greenhouse gas emissions."³

We are optimistic that continued dialogue can enable all stakeholders to find the common ground to continue ONP. The Initial Statement of Reasons (ISOR) notes that "CARB has been, and remains, willing to consider well-founded and necessary changes to the program, including flexibilities that reduce compliance costs, so long as they continue to provide the necessary greenhouse gas emission reductions."⁴ We appreciate CARB's willingness to consider changes to the current program and will continue working with all stakeholders toward a revised set of ONP regulations that is workable for all parties.

A decision to eliminate or modify the DTC provision now is premature. If CARB were to adopt the proposal in this ISOR, the DTC provision would need to be changed yet again if a consensus can be reached on a revised set of ONP regulations. Rather than this duplication of effort, we recommend that CARB maintain its current regulations as written, including the DTC provision, and continue working with EPA, NHTSA, automakers, and other stakeholders to develop consensus regulatory changes that will continue ONP. If consensus cannot be reached, and EPA and NHTSA issue a final rule, then CARB could consider its options with a full understanding of the EPA and NHTSA revised standards and the lead time that manufacturers will then need.

If CARB Removes the DTC Provision, It Must Make Other Changes to Its Regulations

Under the current regulatory regime, in place since the 2012 model year (MY), automakers comply with EPA GHG regulations through the national program and are thereby deemed to comply with California GHG regulations for light- and medium-duty vehicles (hereafter "CA GHG regulations"). If ARB removes the DTC provision, automakers will have to participate both in the CA GHG regulatory program for California and the Section 177 states (S177 states) and in the federal regulatory program. However, the current CA GHG regulations did not contemplate the need, nor provide a reasonable path and timing, for manufacturers to transition from complying through only the current EPA regulatory program to complying through both the EPA

³ See *Joint Statement Between the White House, DOT, EPA, and the California Air Resources Board (CARB) on Safe Vehicles Rule*, U.S. DEPARTMENT OF TRANSPORTATION, <https://www.transportation.gov/briefing-room/joint-statement-between-white-house-dot-epa-and-california-air-resources-board-carb> (Aug. 29, 2018).

⁴ Notice of Public Hearing at page 4.

and the CA GHG programs. Since there are significant differences between the two programs, a number of issues would need to be resolved.

If the DTC provision is removed, either in this rulemaking or in a future one, CARB will need to modify the CA GHG regulations to deal with various issues, including the necessary lead time, associated with transitioning from ONP to two separate compliance programs—subject to federal approval.⁵

Attached as Appendix 1 is a list of some of the substantive differences between the CA and EPA GHG regulations and compliance programs. The list in Appendix 1 is not exhaustive and does not identify specific regulatory fixes, nor does it express support for such an approach. Perhaps, most importantly, Appendix 1 does not address the lead time that manufacturers would need to implement substantial changes.

The list included in Appendix 1 highlights the fact that significantly deviating from the current ONP structure would not be a simple matter, and that any change to the DTC provision would need to be accompanied by a host of other regulatory changes to enable a workable transition—if at all possible. At present, we believe the time of CARB Staff and the auto industry is better spent on efforts to preserve ONP. If it turns out that a compromise cannot be reached to maintain ONP, we recommend that CARB staff and automakers work to develop appropriate regulatory changes, while including lead time, to support the transition that would need to occur.

California Would Need a New Waiver to Institute the Proposed Regulation

The proposed change to the DTC provision would limit automakers' options for complying with the California GHG regulations for vehicles sold in California and S177 States and would impact the costs and stringency of manufacturers' overall GHG obligations. Such a revision would constitute a substantial change to the current CARB regulations for which EPA issued a waiver of federal preemption on December 30, 2012. The DTC provision was relied upon by CARB to establish the grounds for a waiver of its Advanced Clean Cars Program based upon both the Clean Air Act Section 209 waiver requirements that the California standards be as protective, in the aggregate, as applicable federal standards and that the California standards and test procedures are consistent with Clean Air Act Section 202.⁶ Accordingly, the proposed change would require the issuance of a new waiver under Section 209 of the Clean Air Act.

⁵ Cal. Code Regs. tit. 13, §§ 1961.2, 1961.3. CARB would also need to obtain approval from EPA under Section 209 of the Clean Air Act in order to enforce revised standards as discussed on page 3..

⁶ The deemed-to-comply federal compliance option was a basis for EPA granting a waiver for the California standards for the 2012–2016 MYs and for the 2017–2025 MYs. See 76 Fed. Reg. 34,693 (June 14, 2011) (waiver for DTC provision for 2012–2016 MYs), 78 Fed. Reg. 2112 (Jan. 9, 2013) (waiver for 2017–2025 MYs with DTC provision). As EPA observed in the Advanced Clean Cars waiver decision, “CARB maintains that the standards and lead time are technologically feasible even before CARB proposes to amend its LEV III GHG regulations to allow National Program compliance to serve as compliance in California. It will be *undeniably true* should California adopt its ‘deemed to comply’ rule as planned.” *Id.* at 2132 (emphasis added). Note also EPA’s statement that “California’s accompanying enforcement procedures would be inconsistent with section 202(a) if the federal and

Conclusion

The Alliance's paramount goal is to find a pathway to a workable set of ONP standards and regulations that can be supported by CARB, the federal government, and industry. During this critical period, while the federal government is considering input on a range of proposed standards, we recommend that the Board focus its energies on working with stakeholders to help preserve ONP. If that effort fails, CARB and other stakeholders can turn their attention to the DTC provision, as well as the many other regulatory uncertainties that would need to be addressed if the DTC provision is amended or eliminated.

We appreciate the opportunity to provide our comments and look forward to working with CARB on implementation and future regulations.

Sincerely,



Steve Douglas
Senior Director, Energy & Environment

Copy: Richard Corey
Steve Cliff
Annette Hebert
Analisa Bevan
Michael McCarthy
Sarah Carter

Attachments

California test procedures conflict, i.e., if manufacturers would be unable to meet both the California and federal test requirements with the same test vehicle." *Id.*¹ 40 C.F.R. § 86.1865-12(k).

APPENDIX 1

1. National versus California Credit Banks

- a. Currently, automakers have a national GHG credit bank in tons of carbon dioxide equivalent (CO₂e).¹ The CA GHG regulations provide no direction to automakers transitioning back to California's regulations. Would the automaker transfer a proportional amount of credits from the national credit bank to the CA/S177 credit bank? What happens if the automaker has a deficit? Is the automaker required to go back and reassess its credits and debits based on CA/S177 fleet averages? If so, over what period? How are vehicles credited in prior years, using the EPA or CA GHG regulations?
- b. Rather than tons of CO₂e, California's regulations are based on grams per mile (g/mi) of CO₂e.² To our knowledge, there is no procedure in the CA GHG regulations that specifies how to weight vehicle miles traveled (VMT) to convert tons to g/mi.

2. Flexibilities: Flexibilities and incentives in the CA GHG regulations are far more constrained than those in the EPA regulations, leading to a discontinuity between the current EPA and CA GHG regulations.

- a. Zero Emission Vehicles (ZEVs) and Transitional Zero Emission Vehicles (TZEVS): While EPA GHG regulations assign 0 g/mi to miles driven on electricity or hydrogen,³ CA GHG regulations assign a non-zero value based on formulae.⁴ Likewise, while the EPA GHG regulations provide a multiplier of 1.5 for each battery electric vehicle (BEV) or Fuel Cell Electric Vehicle (FCEV) and 1.3 for each plug-in hybrid electric vehicle (PHEV) in MY 2021,⁵ CARB provides no multiplier. Given the stringency of California's ZEV regulations,⁶ the combination of assigning non-zero upstream emissions and providing no multipliers for these vehicles significantly increases the stringency of the CA GHG regulations over that of the federal regulations.
- b. Off-cycle credits: The CA and EPA GHG regulations have vastly different treatments of off-cycle technologies that provide demonstrable GHG emission reductions (*e.g.*, active aerodynamics, high efficiency exterior lighting, engine start-stop, etc.).⁷ For example, in the pre-approved credit list:

¹ 40 C.F.R. § 86.1865-12(k).

² Cal. Code Regs. tit. 13, § 1961.3.

³ 40 C.F.R. § 86.1866-12.

⁴ Cal. Code Regs. tit. 13, § 1961.3(a)(4).

⁵ 40 C.F.R. § 86.1866-12(b).

⁶ Cal. Code Regs. tit. 13, § 1962.2.

⁷ Compare Cal. Code Regs. tit. 13, § 1961.3(a)(8)(A) with 40 C.F.R. § 86.1869-12.

- i. The credit values differ between CA and EPA regulations;
 - ii. CA GHG regulations require a minimum percentage of production to receive the credit; and
 - iii. CA GHG regulations omit alternative method process (probably due to a drafting error).
- c. Direct Air Conditioning (AC) leakage credits: CA GHG regulations contain a greater penalty for leakage of even low-global warming potential refrigerants.⁸
 - d. Advanced pick-up truck incentives: CA GHG regulations contain higher minimum production requirements and at the same time less flexibility in meeting the requirements.⁹

3. **Certification and In-Use Carbon Dioxide (CO₂) Standards:**

- a. The EPA GHG regulations require CO₂ determination based on the highest sales subconfiguration of each model type.¹⁰ The CA GHG regulations require CO₂ determination of each unique combination of both model type and footprint.¹¹ Of course, a single model type could have multiple footprints (*e.g.*, different tires). Consequently, the identical fleet of vehicles could have slightly different CO₂ result values between CA and EPA based on the regulations.
 - b. The California in-use requirements are based on model type or potentially an average of multiple configurations and subconfigurations.¹² EPA evaluates in-use compliance on subconfiguration data, if available.¹³
4. **Certification Gasoline**: The EPA GHG regulations and test procedures allow the use of E0 through 2019 model year (MY)¹⁴ and, while we are still in discussions with EPA for post-2019 MY certification gasoline, we expect EPA to at least carry over data generated using E0 beyond the 2019 MY. The CA GHG regulations require testing on E10 (either federal or California).¹⁵ If EPA extends the allowance for E0 (either as a certification fuel or for carryover data), this would result in an extraordinary amount of testing.

⁸ Compare Cal. Code Regs. tit. 13, § 1961.3(a)(6) with 40 C.F.R. § 86.1867-12.

⁹ Compare Cal. Code Regs. tit. 13, § 1961.3(a)(9) with 40 C.F.R. § 86.1870-12.

¹⁰ 40 C.F.R. § 86.1865-12.

¹¹ Cal. Code Regs. tit. 13, § 1961.3(a)(1)(C)(1).

¹² Cal. Code Regs. tit. 13, § 1961.3(a)(10).

¹³ 40 C.F.R. § 86.1818-12(d).

¹⁴ 40 C.F.R. § 600.117.

¹⁵ Cal. Air Res. Board, 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

5. **Durability Demonstration**: EPA's test procedures provide for either a multiplicative deterioration factor (DF) of 1 or an additive DF of 0 to determine full useful life emissions.¹⁶ California's test procedures eliminate this provision after 2016 MY.¹⁷ The impact of California's unique requirement is unclear beyond adding burden to California's process.
6. **AC17 Testing for AC Efficiency Credits**: To receive credits for more efficient AC systems, manufacturers must provide test results so demonstrating. However, there is a wide disparity between the federal testing currently required¹⁸ and what would be required by CA GHG regulations.¹⁹
7. **Additional Testing and Reporting**: While correcting the above, we recommend that CARB streamline its regulations to reduce the testing and reporting burden on automakers attempting to comply with both CA and EPA GHG regulations if CARB is permitted by EPA to have a separate testing and reporting program. For example:
 - a. There could be a new test burden if the basis for compliance and certification is not the federal GHG/fuel economy test.
 - b. Applying for off-cycle credits could lead to different test and data requirements.
 - c. Reporting unique California calculations could lead to a substantial reporting burden since CARB's E-Cert system does not currently support this reporting.
 - d. Pre-model year reporting would double (CA and EPA) with no environmental benefit.
8. **GHG Full Useful Life (FUL)**: The California FUL is longer than the Federal FUL requirement. The Federal Full Useful Life (FUL) is 10 years/120,000 mi for light-duty vehicles and light light-duty trucks, and 11 years/120,000 miles for heavy light-duty trucks and medium-duty passenger vehicles.²⁰ The California FUL is 15 years/150,000 miles for passenger car, light-duty vehicles, and medium-duty vehicles.²¹ This will need to be addressed.
9. **AC Direct Emission Credit**: California requires additional data or description to get AC direct credit.

Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles at II-2 *et al.* (2015) (hereinafter "CA Test Procedures").

¹⁶ 40 C.F.R. § 86.1823-08(M).

¹⁷ CA Test Procedures AT F-1.

¹⁸ 40 C.F.R. § 86.1868-12.

¹⁹ CA Test Procedures at E-55 to E-56.

²⁰ 40 C.F.R. § 86.1805-17(b).

²¹ CA Test Procedures at C-1.

10. **AC17 Test Vehicle Selection:** There is a different selection method between the California and the Federal requirements. Additional AC17 tests will be required for California compliance.
11. **Off-Cycle Credit (5-Cycle Methodology):** The California regulation requires additional data or descriptions to get credit if the manufacturer cannot get more than 2% fuel economy improvement by the 5-cycle methodology.
12. **Full-Size Pickup High-Efficiency Credit Calculation:** The California definition is more severe than the Federal definition: in the California regulation, AC direct and high efficiency credit value is not considered when judging full-size pickup credit.