

**Comments of the Association of Global Automakers, Inc. Concerning the
California Air Resources Board’s Initial Statement of Reasons and Proposed Amendments
to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation**

Board Item leviii18

September 24, 2018

The Association of Global Automakers (Global Automakers)¹ appreciates the opportunity to comment on the California Air Resources Board’s (CARB) August 7, 2018 Initial Statement of Reasons on the Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation (ISOR). The CARB proposal would amend California’s light-duty vehicle greenhouse gas (GHG) emissions regulations to narrow the so-called “deemed to comply” provision, which allows automakers to comply with California’s regulations by showing compliance with the United States Environmental Protection Agency’s (EPA) GHG emission standards. Global Automakers does not agree with this action at this time, as explained in the following comments, and we provide several alternatives for the Board’s consideration.

Global Automakers understands that these proposed amendments stem from CARB’s concerns about potential changes to the federal programs for light-duty GHG emissions and Corporate Average Fuel Economy (CAFE) currently being considered by the EPA and National Highway Traffic Safety Administration (NHTSA). Global Automakers maintains, however, that the best outcome for all stakeholders is one that results in a unified national program between EPA, NHTSA and California. Such an outcome – a unified national program – would obviate the need for California’s proposed amendments.

With the release of the federal Notice of Proposed Rulemaking (NPRM), discussions between the Administration, California, and the other stakeholders have just begun. Global Automakers is pleased to hear that discussions have started in earnest, but the results of those discussions will not be fully known until the final rule is released.

Therefore, we believe that CARB’s proposed amendments is premature at this time. Should CARB finalize these amendments before the federal rulemaking process is complete, it could lock the state into a position that would make further negotiation with the federal Administration impossible.

¹ The Association of Global Automakers, Inc. represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and addresses environmental needs. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans’ quality of life. **Our members account for 56 percent of new vehicle sales and 56 percent of green vehicle sales in California.** For more information, visit www.globalautomakers.org.

Moreover, adjusting California’s regulations to withdraw from the “One National Program” would entail more than simply revoking the “deemed to comply” provision. As they stand right now, California’s regulations would be unworkable if automakers were required to comply with them without reliance on the national compliance option. CARB would need to include in its rulemaking package mechanisms to help smooth compliance, particularly in the states that have adopted CARB’s standards, but whose fleets are substantially different from California’s. CARB would also have to seek a waiver for its proposed amendments.

Thus, we have three requests related to CARB’s proposed actions.

- First, Global Automakers would like the Board to direct staff to participate fully and in good faith in negotiations with the Administration on fuel economy and GHG emissions standards that would maintain “One National Program,” continuing the progress the auto industry has made on improving fuel economy and GHG emissions performance; providing environmental benefits for the nation as a whole; and ensuring that automakers have the flexibility to produce a wide range of vehicles that meet the diverse needs of customers.
- Second, we would like the Board to defer action on today’s proposed amendments until such time as all parties are better informed as to whether a national solution can be crafted that meets the regulatory and environmental goals of California.
- Third, if CARB finds it necessary to move forward with the proposed amendments, additional regulatory amendments are needed to CARB’s program. Thus, the agency should work with stakeholders on amendments and compliance alternatives necessary for implementation of CARB’s regulations without the “deemed to comply” provision.

Global Automakers’ position throughout the midterm evaluation process has been straightforward: while the current EPA GHG emission standards through model year (MY) 2025 need to be adjusted for a number of reasons—including ensuring feasibility, accounting for the latest data, and including necessary compliance tools for cost-effective and smart solutions to reduce GHG emissions—in the end, we seek (a) strong and achievable standards that require year-over-year improvements in fuel economy and GHG emissions performance; (b) a regulatory structure that promotes flexible and cost-effective compliance pathways, encourages investment in advanced technologies, and provides real world efficiency benefits; and (c) a continuation of “One National Program” that is harmonized to the greatest extent possible between EPA, NHTSA and the State of California. A bifurcated system – with California and national standards implemented separately – is not efficient or practical; it unnecessarily constrains manufacturer resources and consumer choice. Global Automakers will continue to work toward a national, unified program that provides the right frame to encourage innovation and technology investment.

Global Automakers provides additional details regarding our position on CARB’s proposed amendments in the following sections.

“Deemed to Comply” Amendments

The August 7, 2018 ISOR states that CARB is considering an option whereby

...this regulatory proposal amends the “deemed to comply” option to ensure the emission benefits from compliance in the model years 2021 through 2025 of the current program are maintained. Specifically, CARB is proposing amendments to California’s light-duty greenhouse gas emission regulations to clarify that the “deemed to comply” option is available only if the currently adopted federal greenhouse gas regulations remain in effect, which will prevent any federal weakening for model years 2021 through 2025 from being felt in California during those model years.²

CARB’s action would not change any of the regulatory requirements in the state’s GHG regulations but would take whatever regulatory action is needed to “clarify” that “deemed to comply” is predicated on the federal standards remaining in effect, or unchanged from today.³

CARB further states in its ISOR that

Now that U.S. EPA has stated that it intends to abandon the rigorous U.S. EPA standards the record supports, regulated entities and the public confront considerable uncertainty as to the fate of the program, undermining the goals of the unified national program to provide a clear path towards necessary pollution reductions.⁴

While we recognize CARB’s concern that the federal regulations have proposed to stop progress, the federal government has only just begun a public engagement process, the outcome of which is yet unknown. The federal government has in fact proposed several options for public input, and it is our hope that the agencies work in good faith to find an appropriate policy outcome for the nation that will reinforce, not undermine, the goals of a unified national program.

For the reasons explained below, Global Automakers opposes CARB’s purported “clarification” or any other move that would effectively revoke its “deemed to comply” provision for any model year through 2025. Doing so would violate the State’s earlier commitments to support the “One National Program” for motor vehicle fuel economy and GHG regulations. Moreover, the proposed “clarification” is contradicted by the language in California’s regulations, which does

² See ISOR at 3.

³ Additionally, CARB makes the argument that it was always been its intent to have “deemed to comply” tied to the federal standards on the books, which in the case of the midterm review would have been starting in MY 2022. Yet CARB is taking liberalities by going one step further with this proposed clarification, and making its amendments applicable to MY 2021, rather than MY 2022. In other words, if CARB had originally added language in the regulations about the applicability of “deemed to comply,” it would have been MY 2022-2025, and a separate amendment would have been necessary to address any concerns with MY 2021.

⁴ See ISOR at 6.

not limit the “deemed to comply” provision to the EPA regulations promulgated in 2012, but rather includes any amended EPA regulations that are published in the Code of Federal Regulations.

Instead of taking the anticipated action, Global Automakers encourages CARB to work with EPA and NHTSA on revised CAFE and GHG standards that are strong and achievable, provide meaningful year-over-year environmental improvements, and encourage investment in the next-generation of fuel-saving technologies.

Global Automakers Supports One National Program

In 2009, the automobile industry and regulators from CARB, EPA, and NHTSA reached a historic agreement for “One National Program” (ONP) to address motor vehicle fuel economy and GHG emissions in a coordinated and harmonized fashion. This commitment resulted in joint standards promulgated by NHTSA and EPA in 2010, covering MY 2012 through 2016 (commonly referred to as “ONP1”) and provided a smart and efficient solution to ongoing, costly litigation regarding GHG standards.⁵ For its part, CARB amended its GHG emissions regulations for those model years to include a “deemed to comply” provision whereby automakers could show compliance with its state GHG emission standards by complying with EPA’s MY 2012-2016 GHG regulations.⁶

As EPA and NHTSA explained in their ONP1 final rule, their joint rule would “allow automakers to meet both the NHTSA and EPA requirements with a single national fleet, greatly simplifying the industry’s technology, investment and compliance strategies.”⁷ California’s action to adopt the “deemed to comply” provision in ONP1 would “allow the single national fleet used by automakers to meet the two federal requirements and to meet California requirements as well.”⁸ Without ONP1, the U.S. market would have been split in two; states representing approximately 40% of the market would have one set of standards, and the other 60% of the market would have another.

The ONP is therefore important to the industry’s competitiveness. It ensures that automakers’ compliance costs are not needlessly and wastefully increased, and it enables manufacturers to devote resources to developing fuel-saving and other vehicle technologies that benefit the customer.

⁵ Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010).

⁶ 13 C.C.R. § 1961.3(c).

⁷ Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324, 25,329 (May 7, 2010).

⁸ *Id.*

Agreement to Extend the One National Program through MY 2025 While Providing for a Midterm Evaluation

After ONP1 was finalized, EPA, NHTSA, CARB and the auto industry started working on a framework for the second phase of the ONP (“ONP2”), which would cover MY 2017 through 2025. The process for ONP2 started with EPA’s and NHTSA’s October 2010 Notice of Intent for 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards (NOI).⁹ This NOI expressed the agencies’ intent to promulgate standards for MY 2017-2025 and provided a range of scenarios for improving fuel economy and GHG emissions performance over those years—*i.e.*, ramp rates of 3%, 4%, 5% and 6%.¹⁰ The NOI also considered the idea of a “Mid-term Standards Review” of the latter year standards and requested comment on the form such a review should take.¹¹

After the publication of the NOI, the industry, CARB and the federal agencies continued to discuss what the contours of ONP2 would look like. These discussions culminated in “Commitment Letters” signed by the various industry participants and CARB in July 2011. The Commitment Letters anticipated final MY 2017-2025 GHG and CAFE regulations consistent with the scenarios outlined in the NOI and also a robust “Midterm Evaluation” of the latter-year standards.

The Midterm Evaluation was necessary because NHTSA is statutorily prevented from promulgating fuel economy standards more than five years at a time,¹² and because the GHG standards were being set more than ten years into the future. It was therefore important for the agencies to reevaluate the many assumptions underlying the rule that may not hold true in the long term—assumptions on matters such as the effectiveness and costs of fuel-saving technologies, the price of gasoline, and consumer demand for vehicles with higher fuel economy.

All parties to the Commitment Letters recognized that the Midterm Evaluation could result in the standards being increased, decreased, or kept the same after they were finalized. As EPA subsequently explained in the NPRM for ONP2: “Where EPA decides that the standards are not appropriate, EPA will initiate a rulemaking to adopt standards that are appropriate under section 202(a), which could result in standards that are either less or more stringent.”¹³

Against this backdrop, CARB made several pledges in its July 2011 Commitment Letter. One was to “fully participate in the mid-term evaluation.” Another was to revise its state GHG

⁹ 75 Fed. Reg. 62,739 (Oct. 13, 2010).

¹⁰ 75 Fed. Reg. at 62,745.

¹¹ *Id.* at 62,749.

¹² See 49 U.S.C. § 32902(b)(3)(B) (providing that NHTSA may promulgate regulations prescribing “average fuel economy standards for at least 1, but not more than 5, model years” at a time).

¹³ See 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards (Proposed Rule), 76 Fed. Reg. 74,854, 74,986 (Dec. 1, 2011).

emission standards to provide a “deemed to comply” provision with respect to the EPA GHG standards. Importantly, the “deemed to comply” provision would be part of California’s regulations even if the EPA standards were to be amended after 2012 as part of the Midterm Evaluation. Specifically, CARB’s Commitment Letter states:

California commits to propose to revise its standards on GHG emissions from new motor vehicles for model-years (MYs) 2017 through 2025, such that compliance with the GHG emissions standards adopted by EPA for those model years that are substantially as described in the July 2011 Notice of Intent, *even if amended after 2012*, shall be deemed compliance with the California GHG emissions standards, in a manner that is applicable to states that adopt and enforce California’s GHG standards under Clean Air Act (CAA) Section 177.¹⁴ (*emphasis added*)

In 2012, EPA and NHTSA finalized their rulemaking for ONP2, which was “a continuation of a harmonized and consistent National Program” for CAFE and GHG emissions.¹⁵ In the preamble, the agencies once again highlighted the fact that

Continuing the National Program in coordination with California will help to ensure that all manufacturers can build a single fleet of vehicles that satisfy all requirements under both federal programs as well as under California’s program, which will in turn help to reduce costs and regulatory complexity while providing significant energy security, consumer savings, and environmental benefits.¹⁶

Per its commitment, CARB finalized rulemakings in 2012 to: (a) promulgate California’s GHG emission standards for MY 2017 through 2025, and (b) provide a “deemed to comply” provision.¹⁷ CARB then sought and obtained a waiver from EPA for these regulatory amendments, which was approved and which the industry did not contest.¹⁸

EPA Completed its Midterm Evaluation of the MY 2022-2025 Standards and Found that Adjustments Should be Made

As anticipated in the Commitment Letters, ONP2 provided for a Midterm Evaluation of the MY 2022-2025 standards. This evaluation was to be: (a) based on the most up-to-date data concerning the state of the auto industry, (b) completed by April 2018, and (c) coordinated with a

¹⁴ July 28, 2011 Commitment Letter from Mary Nichols (CARM Commitment Letter) at 2 (emphasis added).

¹⁵ See 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012).

¹⁶ *Id.* at 62,630.

¹⁷ 13 C.C.R. § 1961.3.

¹⁸ See 78 Fed. Reg. 2112 (Jan. 9, 2013).

statutorily-required NHTSA rulemaking, which was required to promulgate *de novo* standards for those model years. The preamble to the 2012 Final Rule stated that “[i]n order to align the agencies’ proceedings for MYs 2022–2025 and to maintain a joint national program, if the EPA determination is that its standards will not change, NHTSA will issue its final rule concurrently with the EPA determination.”¹⁹ However, after the 2016 election, the prior administration rushed through a Final Determination, in contravention of its anticipated April 2018 timeline, and without coordinating with NHTSA, which hadn’t even published a proposed rule for MY 2022-2025, let alone a final rule.²⁰

Global Automakers and other stakeholders asked the new EPA Administrator to reconsider this finding, which the EPA Administrator correctly did. On April 2, 2018, EPA issued a new Determination finding that, based on the most up-to-date data, the current standards need to be adjusted.²¹ Importantly, the 2018 Determination is just an initial step in a detailed rulemaking process. EPA and NHTSA then followed this action by issuing a joint NPRM proposing a range of options for CAFE and GHG emissions standards. After a public comment period, the agencies will issue a joint final rule.

It is our understanding that representatives from CARB have already held discussions with regulators from EPA and NHTSA concerning the potential for a joint outcome for the MY 2022-2025 standards, and that more discussions are scheduled. Global Automakers has expressed its hope that California will be an important part of this rulemaking process, and that the result will be standards that maintain One National Program and build on the industry’s success on continuing to improve fuel economy and reduce GHG emissions.

¹⁹ 77 Fed. Reg. at 62,633.

²⁰ Despite several parties’ insistence, including CARB, that the Final Determination’s findings were based on good data and technical analysis, the former EPA Administrator all but admits that the standards alone were insufficient. The EPA Administrator at that time acknowledges that while the standards may be feasible at the current levels, that “several commenters spoke to the need for additional incentives or flexibilities in the out years of the program including incentives that could continue to help promote the market for very advanced technologies, such as electric vehicles. My determination, based on the record before me, is that the 2022-2025 standards...[are] appropriate under section 202 and do not need to be revised. ***This conclusion, however, neither precludes nor prejudices the possibility of a future rulemaking to provide additional incentives for very clean technologies or flexibilities that could assist manufacturers with longer term planning without compromising the effectiveness of the current program.*** The EPA is always open to further dialogue....” (*emphasis added*) This text alone suggests that perhaps the standards alone were insufficient through MY 2025. (“EPA Administrator’s signed Cover Letter to the Final Determination (January 12, 2017)”, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/epa-administrators-signed-cover-letter-final>.)

²¹ 83 Fed. Reg. 16,077.

CARB’s Proposed “Clarification” Would Effectively Revoke the State’s Commitment to the One National Program

The CARB ISOR states that the Board is considering its clarification on the “deemed to comply” provision because of EPA’s Determination that the federal GHG standards “may be too stringent” and EPA and NHTSA’s joint NPRM would pose a “threat of weakening the standards of the unified national program.”²²

As an initial matter, Global Automakers notes that CARB’s anticipated action is contrary to the spirit of ONP2, as expressed in the parties’ Commitment Letters. In its letter, California committed to: (a) a Midterm Evaluation of the MY 2022-2025 standards that may result in changes to the federal regulations, and (b) accepting compliance with EPA’s MY 2017- 2025 GHG standards “even if amended after 2012” as part of the Midterm Evaluation. Notably, CARB’s Commitment Letter says nothing about revoking the “deemed to comply” provision should the EPA standards change; indeed, it says just the opposite.²³

The auto industry relied on CARB’s commitment and made several of its own. For instance, the industry committed to not challenging the final EPA/NHTSA rules established in 2012, and to not contest CARB’s request for a waiver for its MY 2017-2025 GHG standards. Indeed, in Global Automakers’ Commitment Letter, we expressed our understanding that CARB had committed not to remove the national compliance option irrespective of what the outcome of the Midterm Evaluation may be.²⁴

EPA shared this understanding of CARB’s commitment to maintain the “deemed to comply” provision after the Midterm Evaluation. This is reflected in CARB’s September 14, 2012 Initial Statement of Reasons for the rulemaking to adopt the “deemed to comply” provision. Describing the interplay between the Midterm Evaluation and California’s adoption of the “deemed to comply” provision, CARB states:

US EPA and the U.S. Department of Transportation also committed to re-evaluate the state of vehicle technology no later than April 1, 2018, to determine whether any adjustments to the stringency of the 2022 through 2025 model year national greenhouse gas standards, adopted as a result of these commitments, are appropriate. This re-evaluation of vehicle technology is referred to federally as a ‘Mid-term Evaluation’ and in prior Board documents as the ‘Mid-term Review.’ ... In addition to California’s Commitments [to participate in the federal Midterm Evaluation], *EPA has stated its understanding that* “The rules submitted to EPA for a waiver under the CAA will include such a mid-term evaluation” and “*that California’s 2017–2025 standards to be submitted to EPA for a waiver under the*

²² See ISOR at 2 and at 6.

²³ CARB, however, did retain “all rights to contest final actions taken or not taken by EPA or NHTSA as part of or in response to the mid-term evaluation.” CARB Commitment Letter at 3.

²⁴ See July 21, 2011 Letter from Michael J. Stanton to Ray LaHood and Lisa Jackson.

Clean Air Act will deem compliance with EPA greenhouse gas emission standards, even if amended after 2012, as compliant with California's. (76 Fed. Reg. at 74987).²⁵ (*emphasis added*)

This history makes it clear that all stakeholders involved in crafting ONP2 anticipated that California would adopt a “deemed to comply” provision for the MY 2017-2025 standards, and to maintain that provision even if the EPA standards were to be amended in response to the Midterm Evaluation.

While it is true that the political dynamics have shifted considerably since the development of ONP2 and that the preferred pathway proposed by the federal agencies falls short of meeting both CARB’s and Global Automakers’ desired outcomes, Global Automakers hopes that all the relevant parties will uphold their commitments to ONP – first by coming to the table for real and in-depth discussions about what it takes to maintain ONP, and second to uphold the important policy goals the Program was designed to achieve without prematurely acting on efforts to undo previous commitments.

The Proposed Regulatory Action to Revoke the “Deemed to Comply” Provision Amounts to a Significant Change to the California Standards for which a Waiver was Previously Granted by EPA

In the ISOR, CARB states that it is “proposing amendments to California’s light-duty greenhouse gas emission regulations to clarify that the ‘deemed to comply’ option is available only if the currently adopted federal greenhouse gas regulations remain in effect ...”²⁶

First, CARB’s proposed action is not a clarification. It is an amendment to the text of California’s regulations and a significant substantive change to automakers’ compliance obligations. We reiterate, as noted above, that the proposed amendments are inconsistent with the commitment the State made in 2011 to accept compliance with the EPA GHG standards, even if those standards were to be amended as part of the Midterm Evaluation.

The “deemed to comply” provision currently in the California regulations provide as follows:

For the 2017 through 2025 model years, a manufacturer may elect to demonstrate compliance with this section 1961.3 by demonstrating compliance with the 2017

²⁵ Staff Report, Initial Statement of Reasons for Rulemaking; Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2017-2025 to Permit Compliance Based on Federal Greenhouse Gas Emission Standards and Additional Minor Revisions to the LEV III and ZEV Regulations (Sept. 14, 2012) at 3.

²⁶ See ISOR at 3.

through 2025 MY National greenhouse gas program, [provided certain procedural prerequisites are met].²⁷

The term “2017 through 2025 MY National greenhouse gas program” is defined in the regulations. It means:

...the national program that applies to new 2017 through 2025 model year passenger cars, light-duty-trucks, and medium-duty passenger vehicles as adopted by the U.S. Environmental Protection Agency *as codified in 40 CFR Part 86, Subpart S*.²⁸

The language CARB chose for this definition is critical, because it reflects CARB’s deliberate intent to tie the “deemed to comply” provision to the EPA GHG regulations that are found in 40 CFR Part 86, Subpart S—whatever those standards may be (*i.e.*, those that were promulgated in 2012 or as amended by EPA after 2012).

CARB’s intent in this regard is made clear when one contrasts the “deemed to comply” provision in ONP2 with a similar “deemed to comply” provision in ONP1 for MY 2009-2016. CARB’s GHG regulations for ONP1 also had a “deemed to comply” provision:

For the 2012 through 2016 model years, a manufacturer may elect to demonstrate compliance with this section 1961.1 by demonstrating compliance with the 2012 through 2016 MY National greenhouse gas program²⁹

There, however, the regulations define the “2012 through 2016 MY National greenhouse gas program” as:

...the national program that applies to new 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles *as adopted by the U.S. Environmental Protection Agency at 75 Fed. Reg. 25324 (May 7, 2010)*, as incorporated in and amended by the ‘California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.³⁰ (*emphasis added*)

The “deemed to comply” provision in ONP1 was tied specifically to the EPA regulations promulgated in the 2010 final rule. If CARB had intended for the “deemed to comply” provision in ONP2 to apply only to the EPA standards promulgated by EPA in 2012 and not to any

²⁷ 13 C.C.R. § 1961.3(c).

²⁸ 13 C.C.R. § 1961.3(f)(25) (*emphasis added*).

²⁹ 13 C.C.R. § 1961.1(d)(A)(ii).

³⁰ 13 C.C.R. § 1961.1(e)(7) (*emphasis added*).

amended standards—as the supposed “amendment” would find—then it would have used the same language as it did in ONP1.

CARB’s decision not to do so was to account for the fact that the EPA standards may change as a result of the Midterm Evaluation and to comport with its Commitment Letter. The plain language of 13 C.C.R. § 1961.3(c) thus provides that if EPA amends the GHG emission standards set forth in 40 CFR Part 86, Subpart S, manufacturers may still rely on those federal standards for the “deemed to comply” provision.

CARB proports in this rule that:

Since the proposed amendments do not change the stringency of the LEV III greenhouse gas regulations, they would not alter the compliance responses of the regulated entities or result in any changes that affect the physical environment.³¹

While it is true the proposed amendments do not change the stringency of California’s numeric standards, they do in fact alter the “compliance responses of regulated entities,” because they (a) require more stringent compliance than a federal program may require, thereby changing course from what was promised under the ONP agreements, (b) require differences in how compliance is tested and reported to California that differ from the federal program, which represents increased cost, burden, and alterations in product planning – aspects of which were left unaddressed by CARB in previous regulatory amendments since ONP and “deemed to comply” were instead put into place, and (c) will require increased efforts to balance and manage fleets in all Section 177 States, since many of them have significantly different fleet make-ups and consumer preferences compared to the California market.³²

Therefore, if CARB were to finalize the proposed amendments, the result would be a regulatory program that is different from (and significantly more burdensome than) the California GHG standards that were granted a Section 209(b) waiver from EPA in 2013. Consequently, they would not become effective unless and until CARB seeks and obtains a waiver from EPA.³³

³¹ See ISOR at 34.

³² There are currently 12 states and the District of Columbia that adopted California’s LEV program. The state of Colorado is in the process of adopting these standards as well, which will add another level of complexity and added level of burden through expansion of the California program into yet another state.

³³ We note that the proposed amendments would not qualify for a “within the scope” determination. Rather, they would be subject to a full analysis under Clean Air Act Section 209(b) because the result would be a much more stringent California program than was otherwise intended. Where a CARB regulatory amendment is “geared toward increasing the underlying stringency of the program,” or “add[s] a new pollutant or other emission standard,” then that “would require full waiver consideration” under the standard set forth in Section 209(b). See *In the Matter of California State Motor Vehicle Pollution Control Standards; Amendments to California Zero Emission Vehicle (ZEV) Regulation; 2003-2008 Model Years Within the Scope Request; 2007 and Subsequent Model Years Waiver Request*, Decision Document, at 20 (December 21, 2006). Removing or altering the “deemed to comply” provision is “geared toward increasing the underlying stringency of the program” because: (a) having to comply with a California-specific GHG program is more stringent—and would require greater fleet-wide GHG reductions in

CARB Needs Additional Regulatory Amendments to Create a Workable Set of Regulations; “Deemed to Comply” Amendments are Insufficient on Their Own

While we understand that CARB is looking for a simple approach to maintaining the standards through MY 2025, a “clarification” to the “deemed to comply” provision is insufficient on its own and leaves automakers with new compliance challenges. More specifically, CARB asserts that

These proposed amendments do not have any impacts on projected emission reductions in California given they are only clarifying the option for “deemed to comply” and *do not change the standards for compliance with the California regulations*. Specifically, given the federal standards are *nearly identical* to the California regulations...³⁴ (*emphasis added*)

This is incorrect, because the California regulations are not identical to the federal regulations. They are “nearly identical” but in fact differ in many fundamental ways that shift the burden of compliance, even if the targeted GHG reductions match the federal targets. Therefore, these amendments on their own are insufficient to provide automakers with clear and implementable regulations, and additional regulatory amendments and guidance are needed, including, but not limited to:

- **Banked Credits and Debits:** Manufacturers have been earning GHG credits under the federal program, but there is no clarification on what to do with credits (or debits) earned under the EPA program for MY 2017 and beyond, which will be necessary to consider in implementation of a California program.
- **Off-Cycle Technology & AC GHG Emission Reductions:** These regulatory mechanisms are important tools that encourage additional manufacturer investment in GHG-reducing technologies and allow for a smart, efficient and cost-effective approach to compliance that can be best tailored to each model’s specific needs. Global Automakers wholeheartedly supports inclusion of these regulatory provisions.

CARB’s proposed action, however, creates challenges that are outside the scope of the federal program, for instance:

- The CARB regulations has a 10% technology rate minimum requirement for off-cycle technology. This requirement is not included in the EPA program and puts increasing stress on manufacturers to change and update product plans if they hope to earn regulatory credits for inclusion of this technology. CARB’s provision, as it stands, discourages real GHG emission benefits from technologies

California—than the California regulation with the “deemed to comply” provision, and (b) California’s GHG emissions regulations do not include some of the programmatic elements that the federal program has, which provide manufacturers with alternate compliance pathways and regulatory tools, thus easing the regulatory burden.

³⁴ See ISOR at 4.

applied in limited application. Global Automakers recommends that CARB eliminate this 10% technology requirement in order to promote technology investment and real world GHG benefits and to ensure this overly prescriptive and restrictive provision does not result in a more stringent scenario that would have otherwise been required under a unified national program.

- Some off-cycle technology credit values, again which represent real GHG benefits from additional technology added to the vehicle, are slightly different from that under EPA program. These differences are problematic, because again, they can result in different and altered product plans, and therefore, would create implementation challenges that would not otherwise exist today under a unified program. Global Automakers recommends that CARB align the values of off-cycle technology credit values consistent with those in the federal program.
 - Further, Global Automakers has been working with the federal agencies for some time on expanding and adding to the off-cycle technology tables, to provide consistent off-cycle technology credit values, encourage more investment in these technologies, and improve upon the ability to earn credits for technologies with known and approved credit values. CARB should also be working on regulatory amendments to expand its table as well.
 - There are also key differences between CARB’s requirements for air conditioner testing and what the federal program requires. As of now, CARB requires AC17 test for AC credits, whereas the EPA program uses a technology credit through MY 2019 and then use of AC17 testing from MY 2020 on. It is unclear if this difference will have an impact on the program, particularly if CARB’s regulatory amendments begin with MY 2022, but nonetheless, more attention is needed to this difference. Just as importantly, Global Automakers has previously requested efforts to streamline the AC17, that would reduce testing burden with no impact on the actual test results. CARB should work with automakers to identify and update the AC17 test.
- **Vehicle Electrification:** While we understand that CARB has separate regulations to mandate electrification of the fleet, nonetheless, some of the provisions in the federal regulations related to electrification are important and necessary in helping automakers expand battery, fuel cell and hybrid electric options in the fleet. CARB’s current sales of plug-in hybrid, battery and fuel cell electric vehicles (collectively “EVs”) may suggest to the agency that no additional action is needed in these areas, but CARB’s EV market is unique compared to anywhere else in the U.S.

To the extent other states follow California’s regulations, additional efforts are needed to help expand and support electrification in these markets, and therefore, CARB needs to consider important regulatory mechanisms that can assist in expanding electric offerings,

smoothing compliance challenges across diverse markets, and ultimately encouraging more investment in electrification.³⁵ For instance:

- First and foremost, CARB needs to continue requirements for zero grams per mile upstream.³⁶ The state is taking significant actions to control and ensure GHG emission from electricity generation are reduced and also to increase renewability. This point highlights the fact that upstream emissions are totally separate from automaker efforts to increase electrification, and incorporation of zero grams per mile for upstream emissions can be an important mechanism to encourage additional electrification above what California may otherwise be mandating.
- In addition, Global Automakers has consistently advocated for the extension of advanced technology multipliers.³⁷ Multipliers encourage investment in electrification technologies, which continue to be more expensive than traditional petroleum-fueled vehicle options. Multipliers are especially important in helping smooth compliance in states and regions where electrification is not supported to the same extent as California and where it takes additional resources and efforts to encourage sales of these vehicles. Plus, since CARB has itself recognized that EVs on their own do provide emissions benefits when managed through a fleet emission average standard,³⁸ to the extent the goal is to increase electrification of

³⁵ Of the states that follow the California regulations, to date:

- Nine adopted California's ZEV requirements, in addition to the LEV and GHG programs.
- Washington, Delaware and the District of Columbia only follow the LEV and GHG programs.
- Pennsylvania only enforces the LEV program.
- Colorado is in the process of adopting the LEV and GHG programs and is still considering adoption of the ZEV mandate.

Each of these states has unique fleet characteristics and different levels of development of electric vehicle infrastructure and incentives compared to California.

³⁶ CARB's regulations require accounting for upstream emissions of all fuel sources. This requirement is unnecessary and duplicative. CARB separately controls and regulates the carbon intensity and renewability of fuel sources through a variety of existing regulatory programs, like the Low Carbon Fuel Standard and its Renewable Portfolio Standard. To also require automakers to include these values in the vehicle GHG program results in double counting of a factor outside the control of automakers. It is also a significant departure from the federal program, resulting in a more stringent program than automakers were otherwise prepared to comply. Therefore, Global Automakers recommends that CARB eliminate the upstream requirements for all fuels from its GHG program.

³⁷ Letter from The Edison Electric Institute (EEI), Alliance of Automobile Manufacturers (Alliance), American Public Power Association (APPA), Association of Global Automakers (Global Automakers), and National Rural Electric Cooperative Association (NRECA) to U.S. DOT Secretary Chao and EPA Administrator Pruitt, May 22, 2018 at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0006> and Memorandum to Docket EPA-HQ-OAR-2018-0283, Meetings with the Alliance of Automobile Manufacturers on April 16, 2018 and Global Automakers on April 17, 2018, July 11, 2018 at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0022>, p. 10-12.

³⁸ CARB notes: "...manufacturers may certify their vehicles to any of the applicable emission standards... This flexibility enables a manufacturer to sell some high-emitting vehicle models as long as enough lower-emitting vehicle models are sold to achieve the applicable fleet-average emission standards... The fleet average requirements

the U.S. fleet, regulatory mechanisms that encourage this investment across the U.S. as a whole should be considered and included.

- Another important aspect of electrification is the use of hybrid technology. While hybrid vehicles have been considered a success in the California market, there are still additional benefits to hybridization that should be recognized and encouraged. For instance, in many regions, hybrids continue to lay the foundation for customer transition into EVs. CARB should therefore consider ways to support hybrid technologies.
- **Test Procedures and Test Fuel:** Significant differences in test procedures and reporting have always existed between California and EPA testing. While these differences should have been solved by ONP, the reality is that CARB has always maintained separate testing and reporting requirements, often based on slightly different criteria than EPA.³⁹ A separation from ONP will increase these differences, potentially requiring duplication in testing, generation of new data, and additional resources to be expended to prove out compliance with a California program, with no actual emission benefit, beyond what may already be occurring today.

For instance, CARB has nuances in its vehicle definitions for weight class and vehicle types (i.e. passenger car, light-duty truck, and medium-duty vehicles). There are also many open questions about what test vehicles will meet CARB’s criteria if CARB implements its own regulations, and these questions are critical to the ability to plan, implement and comply with California’s regulations.

CARB also requires different test fuels. With ongoing EPA efforts to address open issues related to EPA’s change in test fuel to “E10”, this may result in further divergence with CARB’s test fuels and further complicate testing and compliance planning. In combination, this means a significant additional test burden on manufacturers with little to no real emissions benefits and increased burden, and cost, of compliance under differing criteria. In fact, these differences represent significant regulatory changes if CARB implements separate regulations and can result in changes and alterations in compliance plans for a separate California regulatory program.

- **Small Volume Manufacturers:** Another area that would need to be addressed should CARB proceed with these amendments concerns the treatment of small volume manufacturers (SVM). Under California regulations, SVMs are those with total U.S. sales

ensure that air quality benefits do not suffer as a result of an automaker producing fewer ZEVs.” (CARB, Initial Statement of Reasons. September 2, 2014 at <https://www.arb.ca.gov/regact/2014/zev2014/zev14isor.pdf>.)

³⁹ For example, see “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 of October 8, 2015 and “California Non-Methane Organic Gas Test Procedures for 2017 and Subsequent Model Year Vehicles” as of October 8, 2015. Despite a unified national program, it is our understanding that CARB has continued to implement different criteria under these test procedures, which can hold manufacturer certification. Additionally, this test procedure includes outdated references and needs to be aligned with current federal regulations to the extent it references EPA Part 86.

of fewer than 5,000 units for the three most recent consecutive model years, and they may seek from CARB an alternative fleet-average requirement.⁴⁰

The unique situations facing SVMs under the GHG program are, we believe, well understood by CARB:

- The ability of SVMs to meet the generally applicable GHG standards is restricted due to their relatively long product redesign cycles, limited resources, and narrow product lines in relation to the larger manufacturers.
- The market for the vehicles produced by the SVMs is keyed to luxury and high-performance attributes, which do not generally align well with high levels of fuel efficiency and low carbon emissions.

There are similar provisions in the federal standards, and many SVMs seeking to invoke the “deemed to comply” provision have petitions pending with EPA and NHTSA for alternative standards. In petitioning for alternative standards, SVMs must navigate separate administrative processes at NHTSA and EPA. We are now faced with the prospect of a third process in the state of California, due to the pending “deemed to comply” rulemaking. Having three separate government agencies undertaking essentially the same regulatory task, with overlapping administrative waste, potentially conflicting results, and negligible resulting benefits, would be an irrational outcome with negligibly small impact given the small number of vehicles involved. By contrast, the staff resource and administrative burdens associated with the SVM process are disproportionately large. We encourage CARB to find a better solution for addressing this issue.

In the event that CARB were to revoke the “deemed to comply” provision, then the pending petitions concerning any time frames after MY 2020 before EPA could not be used to show compliance with the California standards. According to CARB regulations, eligible SVMs seeking an alternative standard must submit a completed application no later than 36 months prior to the start of the first model year to which the alternative standards would apply.⁴¹ That could create a situation where an SVM would be unable to rely on compliance with the federal standards and would be too late to apply for an alternative standard from CARB. Any decision to revoke the “deemed to comply” provision would need to be accompanied by a mechanism to transition SVMs that have not already applied to CARB for alternative standards.

Global Automakers urges CARB to streamline their processes for the future, to enable a single GHG standards application by SVMs, culminating in the issuance of harmonized standards (i.e., standards of equivalent stringency, enabling manufacturers to meet both agencies’ requirements with a single compliance plan). Alternatively, Global Automakers recommends that CARB maintain “deemed to comply” indefinitely for the SVMs, regardless of any other amendments to the deemed-to-comply provision.

⁴⁰ 13 C.C.R. § 1961.3(a)(3).

⁴¹ 13 C.C.R. § 1961.3(a)(3)(C)(2).

Therefore, if CARB were to move forward with its proposed amendments, it cannot do so without additional regulatory action to make its GHG regulations workable and feasible. Despite CARB’s often nimble approach to regulations, meaning separate future regulations could be enacted following this rule, it is generally not good policy to adopt regulatory changes without the full and complete amendments needed to ensure a program is workable. In addition, while the standards in place may be appropriate for and tailored to California’s fleet, they may not be properly accounting for differences in markets outside of California; this point may also necessitate further consideration.

Global Automakers asks that CARB hold on any action to adopt the “deemed to comply” amendment at the September board meeting, in part to continue promising discussions over a unified national program, but also to provide CARB staff with adequate time to fully assess and develop the necessary regulatory amendments to support any divergence from the ONP and “deemed to comply” provision.

CARB Should Consider Additional Alternatives to its Contemplated Action

The ISOR contains only two alternatives: “Alternative 1 – Eliminate “Deemed to Comply” and Increase Stringency of California’s Standards,” and “Alternative 2 – Eliminate “Deemed to Comply” and Weaken the Stringency of California Standards.” However, there are other alternatives CARB should consider.

First, the preferred path, and thus the option that requires full CARB attention at this time, is continuation of a unified national program. Therefore, one of the alternatives CARB should consider is maintaining the “deemed to comply” provision and working with the federal Administration on workable national standards for MY 2022-2025. We reiterate that the national program as it stands does need adjustments, and as a result, continuation of the national program will differ from the standards currently adopted by EPA. This reality in no way suggests that this pathway should be rejected by CARB at this time, as is suggested under its Alternative 2 approach. Rather, CARB staff need to be integrally involved in assessing and reviewing the federal program and looking for ways to maximize environmental benefits across the nation.

We urge California to remain engaged with the federal regulators on MY 2022-2025 standards that are strong and achievable and that account for current market realities. GHG emission standards that are applicable in all 50 states provide greater overall benefits than standards applicable to only a portion of the market. Moreover, striking the appropriate regulatory balance will maximize automaker investment in fuel-saving technologies and maintain the competitiveness of the U.S. auto industry in this space—especially if the regulations recognize how increased harmonization and programmatic flexibilities can ease compliance burdens while maintaining the goals of the ONP. It should be our collective goal to continue working to achieve this goal; the federal Notice of Proposed Rulemaking is currently taking comment on what such approaches could be to inform a transparent and public regulatory process.

In the event CARB were to move forward with rulemaking to revoke the “deemed to comply” provision, another alternative CARB should consider is one that includes the regulatory amendments discussed above to ensure adequate guidance and compliance flexibility in California and 13 other states. Without these changes, Global Automakers is concerned that California’s program will increase burden and create compliance challenges that were otherwise addressed through the “deemed to comply” provision associated with ONP. In addition, California’s new vehicle market differs from the rest of the nation, and while California’s GHG regulations allow for “pooled” reporting with Section 177 States, it is yet unclear how the market differences between California and Section 177 States ultimately impact compliance with the California regulations. For example, California’s new vehicle market remains car dominant, when the rest of the nation is moving to trucks; has a lower amount of all-wheel drive (AWD) vehicles; and has the highest percent of electric vehicles compared to Section 177 States, as shown in Table 1.

TABLE 1
Comparison of New Vehicle Sales in California, Section 177 States, and the United States

Jurisdiction	New Electric-Drive Vehicle Market Share ⁴²	Percent Sales of AWD v. 2WD Vehicles (%)	Percent of New Car v. Truck Sales (%)
California	10.2%	27/73	47/53
Western S177 States	6.0%	68/32	30/70
Colorado	3.7%	75/25	26/74
Oregon	6.3%	65/35	30/70
Washington	8.1%	64/36	34/66
Eastern S177 States	2.7%	67/33	31/69
Connecticut	3.2%	74/26	33/67
District of Columbia	6.3%	49/51	47/53
Delaware	2.9%	55/45	34/66
Massachusetts	3.5%	21/29	31/69
Maryland	3.6%	51/49	37/63
Maine	3.1%	78/22	22/78
New Jersey	2.2%	64/36	36/64
New York	2.6%	71/29	29/71
Pennsylvania	2.3%	68/32	30/70
Rhode Island	2.4%	68/32	22/67
Vermont	3.8%	80/20	23/77
All 50 States	3.4%	45/55	33/67

Source: IHS Global Vehicle Registration Data for January through June 2018.

Thus, if CARB were to move forward with its proposed amendment, it is important to recognize that what works for California likely is not feasible or achievable elsewhere.

⁴² “Electric-drive vehicles” includes hybrid electric, plug-in electric, and fuel cell electric vehicles.

CARB may also want to consider an alternative that focuses on the state’s goal of increasing the market penetration of electric-drive vehicles, which will play an important role in reducing emissions from the light duty sector well into the future. As we explained in our March 17, 2017 comments on California’s Advanced Clean Cars Midterm Review, the best way to do this is not to focus on arbitrary numeric mandates, but rather to enact policies and incentives that will spur the market for these vehicles.

California has already taken a significant step in this regard with Governor Brown’s Executive Order B-48-18, which increases funding for California’s Clean Vehicle Rebate Project and building out the infrastructure for electric charging and hydrogen refueling stations. It is thus no surprise that California has led the market for electric vehicles, including plug-in hybrid, battery and fuel cell electric vehicles, through hundreds of millions of dollars of state investment in consumer purchase incentives; electric charging and hydrogen refueling infrastructure; state policy development and market-building mechanisms; addressing codes, standards and permitting; agency implementation and planning resources; and tireless efforts to find new ways to encourage consumers to go electric. This investment has paid off, resulting in California’s new electric vehicle market share exceeding six percent, when the rest of the nation’s new electric vehicles sales barely exceed one percent. California should work with the Section 177 States to ensure that they are making a commensurate investment in the electric-drive vehicle market.

There may also be other appropriate alternatives to consider—e.g., alternatives that maintain the GHG-reduction benefits of a national program. Given the timing of CARB’s action at the same time that the outcome of the federal rulemaking process is ongoing, quite uncertain, and in an open public comment period through late October, it is difficult to engage on other alternatives with California prior to understanding the outcome of the federal program. In addition, Global Automakers has indicated willingness to work with California on regulations that extend beyond MY 2025, but we need to first ensure the programs through MY 2025 can be implemented, are feasible, and work for California and the states that follow California.

For these reasons, Global Automakers recommends that CARB defer action on this proposal until an outcome on the federal standards is more certain. In the interim, CARB staff should be fully committed to working to achieve a unified national program with year-over-year improvements in fuel efficiency and adequate programmatic flexibilities to ensure feasible, cost-effective standards. If at some point, CARB and the Board determine this regulation must proceed, then at that time, CARB will need to engage with stakeholders to more fully assess and amend its regulations to ensure a robust and flexible regulatory program that encourages technology innovation and investment in fuel efficient products that customers in California and 13 other states want and need.

* * *

Thank you for your consideration of these comments. In addition to these comments, we have attached a short overview of our comments that were provided to CARB board members in advance of the September 27-28, 2018 meeting. If you have any questions, please feel free to



contact Julia Rege, Director of Environment & Energy at jrege@globalautomakers.org or (202) 650-5555.



“DEEMED TO COMPLY” AND POP REBATE:

18-7-5: Proposed Amendments to the LEV III GHG Emission Regulation

Global Automakers opposes ARB’s proposal to amend the LEV III GHG “deemed-to-comply” provision for the following reasons:

- A unified national program between EPA, NHTSA and ARB, is the best path forward. This would obviate the need for ARB’s proposed amendment.
- ARB’s action is premature and could inadvertently derail important discussions on how to maintain a national program that provides benefits to all Americans. This action’s timing is misaligned with the federal Notice of Proposed Rulemaking.
- This amendment is counter to ARB’s previous commitments to accept the midterm review results even if they alter the federal standards.
- This action lacks other necessary regulatory changes to support a feasible and implementable ARB GHG program.
- ARB will need to request a waiver for approval from the EPA.

Global Automakers supports the goals of:

- Annual fuel economy and GHG emissions improvements that continue environmental progress and provide a level-playing field for automakers to compete on technology, yet adjustments to the current EPA GHG standards are necessary
- Advancements in motor-vehicle technology, including the transition to lower carbon transportation and vehicle electrification
- A regulatory structure that promotes flexible and cost-effective compliance pathways, encourages technology investment and provides real benefits
- Continuance of “One National Program” with California to avoid a patchwork of disjointed, costlier regulations and/or protracted, uncertain litigation

Global Automakers recommends the following actions for the Board:

1. Defer action on the proposal, until such a time when there is clarity regarding the outcome of a unified national program.
2. Redirect staff efforts to focus on development of a unified national program.
3. Further investigate necessary regulatory amendments to make California’s program feasible if the deemed-to-comply provision was removed.

BACKGROUND


The California Air Resources Board’s (ARB) September 2018 meeting will cover two items of interest to Global Automakers, the proposed clarifications to the “deemed to comply” provision of the light-duty greenhouse gas (GHG) standards and the creation of a Point-of-Purchase (POP) Clean Fuel Rewards for electric vehicles under the Low Carbon Fuel Standard.

The following summarizes our comments and recommendations on these topics.

GLOBAL AUTOMAKERS

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18-7-4: Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels – Creation of the POP Electric Vehicle Rebate

Global Automakers supports the adoption of the LCFS proposal.

More specifically, Global Automakers agrees and supports the creation of Statewide Clean Fuel Rewards for electric vehicles, also known as “POP Into Electric.” We have worked with the utilities and other stakeholders over the past few months to conceptualize a program that will provide value and upfront savings for customers that choose to buy electric.

This Clean Fuel Reward is important and necessary to assist in the transition to lower carbon transportation, and it will:

- Help encourage and accelerate sales of electric vehicles that use clean electricity fuel
- Encourage electrification of all vehicle models
- Provide a larger reward than currently offered under existing utility programs
- Be simple to implement at the point of purchase
- Be complementary to existing state programs, like CVRP, HOV stickers, equity programs, etc., and be an important supplement as federal tax credits phase out
- Support the state’s climate change and environmental goals

ABOUT US

The Association of Global Automakers, Inc. represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations.