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September 27, 2018

VIA FEDEX & EMAIL:

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

Enclosed please find:

Public Comments for: California Regulation and Certification Procedures for Light-Duty Engine Packages for Use in New Light-Duty Specially-Produced Motor Vehicles for 2019 and Subsequent Model Years

Submitted by Jesse Glickenhaus on behalf of Scuderia Cameron Glickenhaus LLC

Thank you for your consideration.

Best,

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Enclosure (1)

Public Comments for: California regulation and Certification Procedures for Light-Duty Engine Packages for Use In New Light-Duty Specially-Produced Motor Vehicles for 2019 And Subsequent Model Years

Submitted by Jesse Glickenhau on behalf of Scuderia Cameron Glickenhau LLC

September 27, 2018

We are a NHTSA-approved SPMV manufacturer who wishes to build and sell SPMV in the State of California, and we are eager to work with CARB to ensure our SPMVs are CARB compliant. We have three main comments.

First, no additional CARB regulations are required in order for a SPMV to produce a CARB-emissions compliant and California legal SPMV under the FAST Act.

Second, a minor but crucial change is that the CARB proposed definition of SPMV as defined under proposed Regulation § 2209.1(17)-(A) should be identical with the first section of the Federal Fixing America's Surface Transportation Act's (FAST Act) definition.

Third, The second minor but crucial change is to remove the requirement under the proposed Regulation § 2209.4(a) that the SPMV manufacturer is registered and approved by the Environmental Protection Agency: As a low volume manufacturer that produces fewer than 5,000 vehicles per year, such EPA registration and approval is not required by the EPA itself.

We are prepared, if our proposed changes are accepted, to immediately begin manufacturing SPMV in the State of California, buying components and contracting for services from many small businesses and local suppliers. We are prepared to spend over \$500,000 during the next 12 months starting immediately, all within the State of California to engineer and build the first run of these vehicles. We anticipate our investments related to our SPMVs and could easily top \$10 million dollars per year spent in the State of California alone starting in 2020. Additionally, we currently have two dealers outside the State of California who are willing to open up dealerships in California, or partner with existing dealerships in California as soon as our vehicles are certified by CARB. We are prepared, if our changes are accepted, to manufacture up to 100 SPMV per year in the State of California, which we would sell in California and around the United States through our dealer networks.

If CARB makes these minor changes, it will allow the regulation to more fully meet its goals and provide the added benefit of creating jobs in California.

I. No additional CARB regulations are required in order for a SPMV to produce a CARB-emissions compliant and California legal SPMV under the FAST Act

Under the FAST Act of 2015, if a Low-Volume Manufacturer installs an engine which “is covered by an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced,” and that manufacturer installs the engine in compliance with written instructions from the Engine Manufacturer that includes evaporative emissions equipment and monitoring, that Low-Volume Manufacturer’s vehicle has met its requirements under the Clean Air Act and under CARB. (FAST Act §. 24405(b) (as long as the Manufacturer meets the additional requirements listed for how the engine must be installed, etc.)) It is our intention to install such an engine and evaporative emissions monitoring equipment in all of our SPMVs.

The language “covered by an Executive order subject to regulations promulgated by the California Air Resources Board” does not in any way require that CARB promulgate new regulations. When Congress intends to provide additional authority or require additional regulations it uses the words “Shall” or “May” (*See* FAST Act §. 24405 ““(1) IN GENERAL.—The **Secretary shall**—”; ““(2) REGISTRATION REQUIREMENT.—To qualify for an exemption under paragraph (1), a low-volume manufacturer shall register with the **Secretary at such time, in such manner, and under such terms that the Secretary determines appropriate. The Secretary shall** establish...”; ““(B) WRITTEN NOTICE.—**The Secretary may** require” (Emphasis added)(In virtually every paragraph of the FAST Act prior to the paragraph about the California Air Resources Board, Congress dictates what the Secretary “shall” or “may” do.)) The lack of Congressional direction for that CARB “shall” or “may” promulgate new regulations strongly implies that CARB’s existing Executive Orders for engines are sufficient to meet Air Quality regulations under the FAST Act.

Furthermore, the FAST Act states that the necessary CARB Executive Order was “subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced,” (FAST Act §. 24405(b)). The past tense of the verb “promulgated” implies that CARB regulations and Executive Orders that already existed could be used by SPMV manufacturers to create a federally compliant SPMV.

If this proposed regulation does not pass, we believe that NHTSA-approved Low-Volume Manufacturers (SPMV manufacturers) could create CARB-compliant SPMVs by using an engine from a current model year, that has a CARB Executive Order, as long as the engine was installed with written instructions from the engine manufacturer and included any evaporative emissions monitoring equipment required under the Executive Order.

CARB believes that it does have the authority to create additional regulations specific for SPMVs, and Scuderia Cameron Glickenhaus LLC is excited to work with CARB through existing or new regulations to create CARB-compliant SPMVs.

II. Importance of Aligning CARB Proposed SPMV Definition with Federal ‘replica’ definition

The proposed regulation’s definition of SPMV is more restrictive than the FAST Act’s definition and this more restrictive definition prevents the proposed regulation from fully achieving its stated

goals. By making the proposed regulation's definition identical to the FAST Act's definition, the proposed regulation will more fully achieve its stated goals.

A. CARB's proposed definition of replica (SPMV) is more restrictive than the FAST Act's definition

CARB's currently proposed definition of SPMV § 2209.1(17)-(A) states:

(17) "Specially produced motor vehicle" or "SPMV" means a newly produced current model year passenger car or light-duty truck, with a gross vehicle weight rating (GVWR) at or below 8,500 pounds, that meets all of the following requirements:

(A) Resembles the body of an on-road motor vehicle, on an overall 1:1 scale (+/- 10 percent), that had been commercially manufactured for sale not less than 25 years ago, with a production run of at least 500 units, before the manufacture of the current model year motor vehicle;

The proposed regulation's definition is significantly different than the Federal Fixing America's Surface Transportation Act's (FAST Act) definition of a Replica Motor Vehicle, which defines:

“(B) REPLICA MOTOR VEHICLE.—The term ‘replica motor vehicle’ means a motor vehicle produced by a low-volume manufacturer and that—

“(i) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and

“(ii) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

FAST Act §. 24405(b)(7)(B)(i)-(ii) EXEMPTION FOR LOW-VOLUME MANUFACTURERS.— Definitions

CARB's proposed definition of a replica (SPMV) is clearly more restrictive than the definition in the FAST Act. (“resembles” for CARB vs “intended to resemble” for the FAST Act; CARB's additional restrictions of: “on-road”; “on an overall 1:1 scale (+/- 10 percent)”; “commercially”; “for sale”; “not less than 25 years ago,”; and “with a production run of at least 500 units,”)

B. CARB's proposed more restrictive definition prevents the regulation from achieving its stated goals

There are two problems that arise from CARB's proposed definition being more restrictive than the FAST Act's definition.

First, CARB's proposed definition means the regulations are prevented from fully achieving the stated objective.

"The objective of the proposed regulation is to create a path for manufacturers to sell low emitting replica cars in California as new vehicles." (Notice of Public, 3)

The "Problem that the proposal is intended to address" is to "establish a certification process for new light-duty certified engine packages for use in an SPMV" for SPMV manufacturers selling up to 325 vehicles per year under the Fixing America's Surface Transportation Act (FAST Act). (Initial Statement of Reasons, 2.) Furthermore, "Staff anticipates NHTSA will verify that a SPMV manufacturer is qualified to produce SPMVs and that *per the FAST Act's language, the SPMV produced resemble the body of another motor vehicle that was made at least 25 years ago*. (Initial Statement of Reasons, 3, emphasis added.)

This more restrictive definition prevents CARB from achieving its goals. Here are two case studies of why. CARB has used the example of a SPMV who wishes to make Ford GT40s (Initial Statement of Reasons, 1; Notice of Public Hearing, 3.) The Ford GT40s clearly fit the FAST Act's definition (and intention of the Act) but do not meet CARB's more restrictive definition. Ford only manufactured 87 Ford GT40s in the 1960s: Ford manufactured nowhere close to the 500 cars required by the proposed regulation's definition. (Keeshin, Ben, "Watch This Le Mans-Winning Ford GT40 Being Restored to Perfection," The Drive June 7, 2016, <http://www.thedrive.com/vintage/3859/watch-this-le-mans-winning-ford-gt40-being-restored-to-perfection>.) It is also arguable about whether or not they were manufactured "for sale" as required by the proposed CARB definition. Most were manufactured for racing, and although approximately 30 road-legal versions were produced, it was more for the requirement of meeting the homologation racing rules than for the purposes of producing them for sale. When they were produced, Ford had difficulty selling any. Yet the Ford GT40s clearly meet the FAST Act's definition (without the requirements of "manufactured for sale," without the restriction on the "1:1 scale (+/- 10 percent)", and without the restriction of "with a production run of at least 500 units".

Here is another example of the proposed regulation's more restrictive definition preventing NHTSA-approved/ NHTSA compliant SPMV's from being certified and sold in California. Scuderia Cameron Glickenhaus LLC is a NHTSA-approved SPMV Manufacturer (Low Volume Manufacturer) whose models have already been accepted and approved by NHTSA in our application and also in our NHTSA-approved VIN decoder and other documents, (NHTSA, <https://vpic.nhtsa.dot.gov/MfrPortal/Manufacturers/SubmissionDetails/6361?h=1>) but whose models might not meet the proposed CARB regulation's SPMV definition.

For example, our new Baja Boot is based off and "intended to visually resemble" the original 1967 General Motors Baja Boot, and meets the FAST Act's replica definition. We are prepared to immediately begin manufacturing this SPMV in California and offering it for sale in California as soon as it meets CARB regulations. However, the vehicle would not meet CARB's proposed regulations because the original manufacturer did not produce 500 units.

See the two photos for a visual example.

Original Baja Boot



New SPMV Boot that is NHTSA-Approved/compliant but which does not meet proposed CARB SPMV Definition



If the CARB proposed regulation's definition of SPMV differs and is more restrictive than the definition under the FAST Act, SPMV manufacturers may have 49-state legal SPMVs with no mechanism to make these vehicles legal in California.

The second problem with CARB's more restrictive definition of SPMV is CARB lacks the statutory authority to regulate the number of vehicles originally produced, how precisely the

replica scales to the original, or anything else about the appearance or definition of the replica that differs in any way from the FAST Act's definition. (FAST Act §. 24405(b), the only mention of the California Air Resources Board)

CARB's authority under the FAST Act is limited to establishing procedures to create an EO/CARB-certified replica as allowed under the FAST Act.

(b) VEHICLE EMISSION COMPLIANCE STANDARDS FOR LOW-VOLUME MOTOR VEHICLE MANUFACTURERS.—Section 206(a) of the Clean Air Act (42 U.S.C. 7525(a)) is amended by adding at the end the following new paragraph: “(5)(A) A motor vehicle engine (including all engine emission controls) may be installed in an exempted specially produced motor vehicle if the motor vehicle engine is from a motor vehicle that is covered by a certificate of conformity issued by the Administrator for the model year in which the exempted specially produced motor vehicle is produced, or the motor vehicle engine is covered by an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced, and—

III. Proposed regulation requires Environmental Protection Agency certification that is not required by the FAST Act or the Environmental Protection Agency

The second change we recommend is to remove the requirement under the proposed § 2209.4(a) that the SPMV manufacturer is registered and approved by the Environmental Protection Agency.

Under the FAST Act, SPMV manufacturers are required to use an EPA-certified engine from another manufacturer, which is used by the manufacturer in a new vehicle produced within 24 months of when the new SPMV is used. This means the engines will be certified by the engine manufacturers. CARB's proposed regulations address this requirement, and we do not take issue with this requirement.

However, there are no requirements for the SPMV or the SPMV manufacturer to become certified by the Environmental Protection Agency. Under the 2015 Federal Legislation, which CARB's proposed regulation is seeking to address (Initial Statement of Reasons, 1), as a low volume manufacturer that produces fewer than 5,000 vehicles per year, such EPA registration and approval is not required by the EPA itself.

CARB should not require EPA certification that the EPA itself does not require.

While we will use EPA certified engines as required by the FAST Act, we are not required as low volume manufacturers producing fewer than 5,000 cars per year to undergo EPA certification as a vehicle manufacturer using engines produced by other manufacturers.

Under 48 CFR § 86.1838–01, describing the Environmental Protection Agency's Small-volume manufacturer certification procedures “The small-volume manufacturer certification procedures described in paragraphs (b) and (c) of this section are optional.” (48 CFR § 86.1838–01(a).) These

procedures are optional for a Low Volume Manufacturer producing fewer than 5,000 vehicles per year.

If a manufacturer's aggregated sales in the United States, as determined in paragraph (b)(3) of this section are fewer than the number of units specified in paragraph (b)(1)(i) of this section [5,000 or 15,000 units], the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.
(48 CFR § 86.1838-01(b)(ii).)

Proposed CARB regulation language stating that SPMV manufacturers show an EPA certification that is not required by the EPA or the FAST Act produces an unnecessary financial and regulatory hurdle for SPMV manufacturers. This hurdle could delay or permanently prevent Scuderia Cameron Glickenhaus LLC and other SPMVs manufacturers from being able to certify SPMVs in California. The second issue with the proposed regulation's requirement for SPMV manufacturers to show their EPA certification is that it is unclear whether CARB has the statutory authority to require this EPA certification when no Federal legislation requires such certification.

IV. Conclusion

Overall, Scuderia Cameron Glickenhaus LLC is excited to work with CARB to produce CARB-complaint, California Legal SPMVs for sale in California. Scuderia Cameron Glickenhaus LLC believes the language of the proposal's definition of replica/SPMV needs to be identical to the definition in the FAST Act, and the proposal should not require certifications by the EPA that are not required by Federal legislation or regulations.

Although Scuderia Cameron Glickenhaus LLC does not believe the proposed regulations are necessary to accomplish this goal, we support the proposed CARB regulation and believe that if it passes with our proposed minor changes, it will bring jobs both in manufacturing and in auto dealerships to the State of California. Scuderia Cameron Glickenhaus LLC is committed to invest over \$500,000 during the next 12 months starting immediately, if these proposed changes are accepted into the final regulations. Scuderia Cameron Glickenhaus LLC also has plans starting in 2020 to spend at least \$10 million per year in the State of California for further designing, engineering, development and manufacture of these SPMVs if CARB accepts these proposed changes and we are able to have a SPMV that is CARB-compliant and legal in the State of California.

We are hopeful that CARB will make these minor but crucial changes and then pass this proposed regulation, and that Scuderia Cameron Glickenhaus can begin investing immediately in these vehicles within the State of California.