

September 24, 2018

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

Via electronic submittal:

https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=leviii18&comm_period=A

Re.: Notice of Public Hearing to Consider Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation

Dear Ms. McReynolds:

Thank you for the opportunity to comment on the proposed amendments to the “deemed to comply” provisions of the Low-Emission Vehicle III Greenhouse Gas Emission Regulation (LEV III GHG standards) at 13 C.C.R. 1961.2 and 1961.3. EDF appreciates the California Air Resources Board (CARB)’s efforts to ensure clarity in regulated entities’ options for compliance with the LEV III greenhouse gas (GHG) standards. However, EDF respectfully takes the position that this action is not necessary. Both the record for and goals of California’s LEV III GHG standards make abundantly clear that this compliance flexibility was not intended to operate in any scenario in which the fundamental aims of the program would be significantly undermined. If CARB does proceed with this amendment, we respectfully urge that CARB make any such changes contingent on a weakening of the federal Clean Car Standards that becomes final and fully implemented.

EDF is a non-partisan, non-governmental environmental organization representing over two million members nationwide. Since 1967, EDF has linked law, policy, science, and economics to create innovative, equitable, and cost-effective solutions to today’s most pressing environmental problems. EDF pursues initiatives at the state and national levels to protect human health and the environment. Among these initiatives, EDF has worked to reduce climate-destabilizing and health-harming emissions from the transportation sector and improve vehicle fuel economy. EDF has participated as a stakeholder in earlier CARB rulemaking processes, and submitted a comment on May 31, 2018 in response to the earlier *Request for Public Input on Potential Alternatives to a Potential Clarification of the “Deemed to Comply” Provision for the LEV III Greenhouse Gas Emission Regulations for Model Years Affected By Pending Federal Rulemakings*.¹

The CARB Staff Report: Initial Statement of Reasons (ISOR) for the proposed amendment indicates that this action is being proposed to provide regulatory certainty and to ensure necessary GHG emission

¹ Comment Letter from Center for Biological Diversity, Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and Union of Concerned Scientists Re: Request for Public Input on Potential Alternatives to a Potential Clarification of the “Deemed to Comply” Provision for the LEV III Greenhouse Gas Emission Regulations for Model Years Affected By Pending Federal Rulemakings (May 31, 2018), *available at* <https://www.arb.ca.gov/lists/com-attach/14-leviii-ghgdtc2018-ws-UT0AY1QhV3BSMVUn.pdf>.

reductions and public health protections are achieved in the context of the U.S. Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) joint notice of proposed rulemaking, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42986 (August 24, 2018), which, if finalized, will flatline GHG and fuel economy standards at 2020 levels through 2026. Indeed, if the national Clean Car Standards are weakened as proposed, state programs to reduce GHG emissions from the transportation sector will become even more crucial to achieving the reductions necessary to protect public health and curb the effects of climate change.

There is no question that California has a continued need to address the impacts of criteria and climate pollution on the state's residents. California communities continue to suffer from some of the worst air quality in the United States: California is home to 19 of the 25 most ozone-polluted counties, and the cities of Los Angeles, San Diego, San Jose-San Francisco, Bakersfield, Visalia-Porterville-Hanford, Sacramento, Redding-Red Bluff, and Chico all had a higher average number of unhealthy days in 2017 than in 2014-2016.² Likewise, California has more than 10 of the 25 counties with the worst short term and annual PM_{2.5} pollution.³ While many California cities experienced lower than average particle pollution in 2017, Los Angeles—home to over 10 million Californians – still had higher particle levels year-round.⁴

As highlighted in the ISOR, increased temperatures associated with climate change will increase conditions conducive to higher ground-level ozone, meaning that programs to reduce emissions of ozone precursors, such as the oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) emitted from motor vehicles, will need to be even more effective to achieve healthy air quality in California's polluted counties and cities. And California is already experiencing severe weather events and natural disasters that are exacerbated by climate change, including drought, reduced winter mountain snowpack, flooding, wildfires, and increased forest infestation of tree-killing insects.⁵

Likewise, the record is exceedingly clear that the LEV III GHG standards are both feasible and effective in addressing these harms. Since development and promulgation of the national Clean Car Standards and California's parallel LEV III GHG standards, the record established by EPA, NHTSA and CARB has shown with increasing assurance that these programs are eminently feasible and cost-effective. The July 2016 draft Technical Assessment Report, which marked the culmination of a rigorous multi-year review conducted jointly by EPA, NHTSA, and CARB and examined a wide range of technical issues relevant to GHG emissions and fuel economy standards, concluded that a wider range of technologies existed for manufacturers to use to meet the MY 2022-2025 standards at costs that were similar or lower than those projected in the 2012 rule; that the auto industry, on average, was over-complying with the first several years of the program; and that over-compliance had occurred concurrently with consecutive years of sales increases.⁶

² See American Lung Association, *State of the Air 2018*, available at <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>.

³ *Id.*

⁴ *Id.*

⁵ ISOR at 23.

⁶ *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025*, EPA-420-D-16-900 (July 2016).

Based on this report, EPA affirmed in January 2017 that the standards were appropriate, that no further action was necessary, and that, if anything, the record, including the state of technology and the pace of technology development and implementation at that time, could support the adoption of more stringent standards for MY 2022-2025.⁷ Following California's parallel technical review process, CARB adopted a resolution finding that the technical and economic evidence supporting the 2022-2025 LEV standards was definitive and conclusive, and no adjustments to the stringency of the standards were warranted.⁸

As outlined in comments from the California Department of Finance on the Standardized Regulatory Impact Assessment (SRIA) Equivalent Document, California's LEV III GHG standards will keep emissions from cars and light-duty trucks to approximately 92 MMT in 2030, compared to 103 MMT if automakers complied only with the proposed weakened federal standards.⁹ As noted in the ISOR, maintaining these expected reductions is crucial to achieving California's climate goals, including reductions in GHG pollution of 40 percent below 1990 levels by 2030, and 80 percent reductions below 1990 levels by 2050.¹⁰

We recognize CARB's concern, then, that the proposed weakening of the National Clean Car Standards could imperil this much-needed progress in California. However, as indicated in our earlier comment submission, EDF continues to disagree that any clarification of the "deemed to comply" compliance flexibility is necessary. A reading of the deemed to comply provision that allows manufacturers to certify compliance with the LEV III GHG standards by complying with a severely weakened federal program would render the California program and California authority to administer it meaningless. For this reason, it is wholly unreasonable to assume that CARB intended such an outcome when adopting the deemed to comply provision in 2012.

The record makes clear the provision was meant to operate only if the federal standards are not substantially changed. First, CARB's July 2011 commitment letter to then Secretary LaHood and Administrator Jackson makes clear that the deemed to comply provision would apply to "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."¹¹ CARB conditioned its plans to adopt the provision on its review of the contents of EPA's final rule for the MY 2017-2025 standards and did not commence adoption of the provision until EPA had finalized its rulemaking for those model years.¹² The CARB resolution adopting the deemed to comply provision states clearly that one of the bases for adoption

⁷ *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation*, EPA-420-R-17-001 (January 2017).

⁸ <https://www.arb.ca.gov/msprog/acc/mtr/res17-3.pdf>.

⁹ Appendix E: Comments from the California Department of Finance on the SRIA Equivalent Document, available at <https://www.arb.ca.gov/regact/2018/leviii2018/appe.pdf>.

¹⁰ ISOR at 3.

¹¹ Letter from CARB Chairman Mary Nichols to Department of Transportation Secretary Ray LaHood and EPA Administrator Lisa Jackson (July 28, 2011), available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0799-0590>. Global Automakers quotes this description of the compliance option in its own concurrent commitment letter, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0799-0590>.

¹² California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years, 78 Fed. Reg. 2112, 2115 (January 9, 2013). See also California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment, 77 Fed. Reg. 53199, 53200 (August 31, 2012).

was that “the final federal rule at a minimum preserved the greenhouse reduction benefits set forth in U.S. EPA’s December 1, 2011 Notice of Proposed Rulemaking for 2017 through 2025 model year passenger vehicles (76 Fed. Reg. 74854 (December 1, 2011)).”¹³ Moreover, the resolution is conditioned on the Board’s finding that “[t]he proposed amendments are necessary to effectuate a carefully balanced compromise between ARB, the auto industry, and the federal government that will preserve California’s ability to regulate greenhouse gases while retaining equivalent or greater emission reductions.”¹⁴

Furthermore, CARB described its commitment to accept compliance with the federal GHG standards as being

no different from the numerous times that EPA has followed California’s lead—blazing a new trail as a laboratory for innovation—by catching up to or harmonizing with California’s standards. . . . CARB maintains that its actions are simply furthering the Congressional design of Section 209(b): to ensure that California can protect public health and welfare by ensuring its ability to separately implement and enforce necessary emission reductions through its own regulatory mechanisms. Therefore CARB can continue to set standards that in the first instance are more stringent, then may become as stringent and subsequently . . . become more stringent should EPA lessen the stringency of the federal GHG emission standards.¹⁵

More recently, CARB reiterated its intent both in the January 2017 Summary Report on the Advanced Clean Cars Midterm Review and in the Board’s March 2017 resolution affirming that no adjustments to the program were warranted. Following EPA’s January 2017 final determination that the standards remained appropriate and did not need to be changed, CARB determined in the 2017 Summary Report on the Midterm Review that “the deemed-to-comply provision adopted by ARB to allow compliance with national GHG standards that preserved the GHG-reduction benefits of the California-specific GHG standards still puts California on track to achieve the projected GHG reductions from the 2025 model year fleet” and that “[c]ompliance with the current national GHG standards for model years 2022-2025

¹³ Resolution 12-35, New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2017-2025 to Permit Compliance Based on Federal Greenhouse Gas Emissions Standards and Additional Minor Revisions to the LEV III and ZEV Regulations (November 15, 2012), *available at* <https://www.arb.ca.gov/regact/2012/leviiidtc12/res12-35.pdf>. Resolution 12-11 (January 2012) similarly directed the Executive Officer

to either propose modifications to the approved regulatory amendments, or to return to the Board with a new regulatory proposal, to accept compliance with the 2017 through 2025 MY National Program as compliance with California’s greenhouse gas emission standards in the 2017 through 2025 model years, if the Executive Officer determines that U.S. EPA has adopted a final rule that at a minimum preserves the greenhouse reduction benefits set forth in U.S. EPA’s December 1, 2011 Notice of Proposed Rulemaking for 2017 through 2025 model year passenger vehicles.

The resolution was made on the basis that

it is staff’s intent to allow manufacturers to demonstrate compliance with California’s greenhouse gas regulations for the 2017 through 2025 model years by demonstrating compliance with the greenhouse gas requirements of the 2017 through 2025 MY National Program, provided that U.S. EPA’s Final Rule does not weaken the proposed federal standards and the Program’s reduction in greenhouse gas emissions.

See also 78 Fed. Reg. at 2136.

¹⁴ *Id.*

¹⁵ 78 Fed. Reg. at 2128-29.

will result in equivalent or greater GHG benefits (at the same or lower cost to manufacturers) than originally projected for California and accordingly, consistent with the U.S. EPA Final Determination, changes to the stringency of the national or California GHG standards are not necessary or warranted.”¹⁶ However, CARB explicitly stated that,

These findings on the benefits to California are based on an analysis assuming the existing national GHG standards. If the stringency of the national GHG standards were substantially changed, despite the Final Determination by U.S. EPA based on a comprehensive record demonstrating that the existing standards should be maintained, these findings would likely be different. In that event, California could revisit whether it would have to conduct a new analysis to determine whether compliance with a new National Program would be an appropriate approach under California’s LEV III program to address California’s unique air quality challenges and its mandates to achieve aggressive GHG reductions to protect public health and the environment.¹⁷

The Board’s resolution following CARB’s midterm review tracks this understanding:

Given that the greenhouse gas emission reduction benefits to California from accepting compliance with the 2022 through 2025 model year National Program are equal to or better than the benefits that would otherwise accrue from vehicles sold in California and those states that have adopted California’s LEV III greenhouse gas standards as provided in Section 177 of the Clean Air Act; [g]iven U.S. EPA has issued a Final Determination affirming the 2022 through 2025 model year national greenhouse gas standards will remain as adopted, it is appropriate to continue California’s participation in the 2017 through 2025 model year National Program by maintaining the “deemed to comply” provision allowing for compliance with the adopted U.S. EPA greenhouse gas standards for the 2022 through 2025 model years[.] If the stringency of the 2022 through 2025 model year National Program greenhouse gas emission standards were substantially changed, . . . these findings on the comparative benefits to California from accepting compliance with the National Program would likely be different.¹⁸

EPA has likewise described the effect of the deemed to comply provision as follows: “CARB’s ‘deemed to comply’ regulation, adopted by CARB’s Board on November 15, 2012 and final action taken by CARB’s Executive Officer on December 6, 2012, allows automobile manufacturers to demonstrate compliance with CARB’s GHG standards by complying with EPA’s GHG standards *which were published for those MYs.*”¹⁹

In light of these clear statements, the record provides sufficient clarity to regulated entities that the aim of the deemed to comply provision was to provide a compliance flexibility that would nevertheless ensure the achievement of the pollution reductions promised by the current federal Clean Car Standards

¹⁶ California Advanced Clean Cars Midterm Review, Summary Report for the Technical Analysis of the Light Duty Vehicle Standards (January 2017), *available at* https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf.

¹⁷ *Id.*

¹⁸ Advanced Clean Cars Midterm Review, Resolution 17-3 (March 24, 2017), *available at* <https://www.arb.ca.gov/msprog/acc/mtr/res17-3.pdf>.

¹⁹ 78 Fed. Reg. 2112-13 (emphasis added).

and by the California program. As such, it is EDF's position that no formal rulemaking is necessary to amend the provision.

If CARB does proceed with finalization of the amendment, EDF respectfully urges CARB to consider making clear that promulgation of the changes are contingent upon finalization of a *weakening* of the national Clean Car Standards,²⁰ such that if the national program remains substantially the same as California's LEV III GHG standards, amendments to the deemed to comply provisions would not go into effect.

Thank you for your consideration of these comments.

Respectfully submitted,

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²⁰ Such a weakening would almost certainly be the subject of legal challenges, and would face serious risk of being invalidated upon judicial review, given the fundamental legal and technical flaws inherent in the notice of proposed rulemaking.