FIAT CHRYSLER AUTOMOBILES

October 20, 2014

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

Re: Chrysler Group LLC Comments on the Proposed Amendments to the LEV III Criteria Pollutant Requirements for Light- and Medium-Duty Vehicles, the Hybrid Electric Vehicle Test Procedures, and the Heavy-Duty Otto-Cycle and Heavy-Duty Diesel Test Procedures

Air Resources Board Members:

Chrysler Group LLC ("Chrysler") appreciates the opportunity to provide comments on the amendments proposed by the California Air Resources Board ("ARB") to the LEV III rules. Chrysler's comments that follow concern ARB's proposal to retain the 5-year credit life for NMOG+NOx credits, rather than extending the credit life to eight years to harmonize California's LEV III rules with the federal Tier 3 rules promulgated by the U.S. Environmental Protection Agency ("EPA"). California should harmonize its credit life strategy with the EPA Tier 3 approach to best serve ARB's goal of early actions to optimize air quality benefits. Also—as currently structured—ARB's LEV III rules raise a legal concern regarding compliance with Clean Air Act requirements for lead time and stability for vehicles above 6,000 pounds GVWR, and, that resolving the policy concerns underlying lead time and stability (by harmonizing with the Tier 3 credit life for all vehicles) would best address this legal concern.

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ARB previously extended the credit life for NMOG+NOx credits to five years as part of the LEV III rules. Chrysler appreciates the consideration of ARB staff in recognizing the challenges that manufacturers face in complying with both new criteria pollutant standards and new greenhouse gas ("GHG") standards within the same time frame. In addition, it is important to note that large-volume manufacturers, such as Chrysler, must also comply with California's Zero Emission Vehicle ("ZEV") mandate. Taken together, these requirements are significantly capital and resource intensive, and Chrysler (as well as other manufacturers) must carefully plan in advance for investments in and introduction of new technologies and designs to achieve required results.

In promulgating the Tier 3 rules, EPA determined that extending the credit life to eight years in a tiered fashion would afford manufacturers greater flexibility without adversely impacting the overall emission reductions the program is intended to achieve. *See* 79 Fed. Reg. 23,414, 23,481 (Apr. 28, 2014). In reaching this conclusion, EPA stated:

> After considering the views expressed by manufacturers as well as the implementation schedules of this Tier 3 rule and the 2017 light-duty GHG rule, we believe that the temporary up-to-8-year credit life available to manufacturers during the phase-in period provides substantial flexibility to address manufacturer uncertainties about future technology development and product planning during implementation of the Tier 3 program. We also believe this longer credit life provision will alleviate most if not all concerns expressed by manufacturers with respect to the challenges they may encounter by simultaneous implementation of the two programs.

Id. Consequently, EPA adopted a tiered approach to credit life: (i) credits generated in model years ("MYs") 2017 through 2022 are subject to an 8-year credit life; (ii) credits generated in MYs 2023 and 2024 are subject to a 7-year and 6-year credit life, respectively; and (iii) credits generated after MY 2024 are subject to a 5-year credit life. *Id.*

Chrysler urges ARB also to extend the life of NMOG+NOx credits to up to eight years to match Tier 3. First, extending the credit life would address the lead time and stability concern by providing manufacturers with certainty regarding future criteria emissions compliance for a near-term investment in advanced GHG technologies for the future, knowing a mechanism is in place to manage risk and recoup this investment. Second, extending the credit life would create near-term environmental and public health benefits because manufacturers would be incentivized to introduce cleaner vehicles in the near-term.

These considerations are discussed in greater detail below.

I. Eight-Year Credit Life Will Provide Manufacturers with Greater Flexibility and Alleviates Legal Concerns Regarding Lead-Time and Stability

Extending the credit life to eight years affords manufacturers flexibility in planning their emission control technology investments. The Clean Air Act ("CAA") directly addresses this consideration with respect to vehicles in excess of 6,000 pounds gross vehicle weight rating ("GVWR") by providing that manufacturers must be afforded four years of lead time and a three-year period of "stability" (*i.e.*, no changes to the standards) to comply with new automobile emission standards. Specifically, the CAA states:

> Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

42 U.S.C. § 7521(a)(3)(C). This statutory requirement is intended to ensure that manufacturers of such vehicles are afforded sufficient lead time and stability to develop and refine and then recoup their investments in new technology required to comply with more stringent standards.

As currently formulated, the LEV III rules violate this clear statutory requirement. The LEV III rules apply to all light-duty vehicles, including vehicles in excess of 6,000 pounds GVWR, including, for example, light-duty trucks[1] and medium-duty vehicles.[2] *See* 13 C.C.R. § 1961. And yet, the LEV III rules impose strict standards that decline continuously on an annual basis. *See, e.g.*, 13 C.C.R. § 1961.2. These annually-declining standards plainly violate the CAA's three-year stability requirement with respect to vehicles in excess of 6,000 pounds GVWR.

We also observe that this violation is grounds for EPA to deny a waiver for the LEV III rules (or any subsequent iteration of the rules) under Section 209(b)(1)(C) of the CAA. Specifically, Section 209(b)(1)(C) of the CAA provides that a waiver shall not be granted if the administrator finds that "such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title [Section 202(a) of the CAA]." 42 U.S.C. § 7543(b)(1)(C). As described above, Section 202(a)(3)(C) of the CAA requires that standards applicable to vehicles in excess of 6,000 pounds GVWR "shall apply for a period of no less than 3 model years." 42 U.S.C. § 7521(a)(3)(C). Since the annually-declining LEV III standards plainly violate this requirement because they do not apply for a period of three model years, they are inconsistent with CAA Section 202(a)(3)(C) and are vulnerable to legal challenge.

The extended credit life that Chrysler and others manufacturers seek, and that EPA incorporated in the Tier 3 rules, provides an alternative mechanism to provide manufacturers flexibility in planning their emission control and GHG technology investments. It is this very flexibility that Congress sought to afford manufacturers in enacting the lead time and stability requirements in CAA Section 202(a)(3)(C). Put another way, affording manufacturers extended credit life alleviates to some degree the very real challenges that manufacturers face in having continually to develop, year-over-year, new technologies as a result of annually-declining standards, and would provide manufacturers with an alternative mechanism to account for the statutorily mandated four years of lead time and three years of stability. This, of course, does not resolve the legal problem created by violation of clear statutory requirements applicable to ARB standards. However, if ARB were to adopt the 8-year credit life approach, Chrysler would be satisfied that ARB has adequately addressed the lead time and stability concerns through an alternative mechanism. As with Tier 3, Chrysler would find ARB's harmonization with the federal 8-year credit life approach sufficient to resolve its concerns and would not in that circumstance have reason to raise the lead-time and stability legal problem.

[1] "Light-duty truck" means "any 2000 and subsequent model motor vehicle . . . rated at 8,500 pounds gross vehicle weight or less. . . ." 13 C.C.R. § 1900(b)(11).

[2] "Medium-duty vehicle" means "any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle . . . having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds." 13 C.C.R. § 1900(b)(13).

II. Eight-Year Credit Life Will Have Immediate Environmental and Public Health Benefits

Adopting a tiered, 8-year credit life for NMOG+NOx credits would also incentivize manufacturers to produce lower-emitting vehicles earlier than if credits expire after only five years. It is well known that powertrain technology development typically has a long lead time and a long payback time. If a manufacturer decides now to implement an advanced technology package that would reduce GHG emissions significantly, the manufacturer has to account for the fact that current criteria emissions control technologies might not keep that GHG package compliant with criteria emissions standards beyond five years. To address that, the manufacturer could look to generate NMOG+NOx credits in the early years; but, if the life of those credits were only five years, this uncertainty of future NMOG+NOx compliance stemming from the implantation of the advanced GHG technology likely would deter manufacturers from making the initial investment and launch of the GHG technology. As such, having assurance of compliance under LEV III that their early credits live through the eighth year, manufacturers could justify the immediate investment in an advanced GHG technology. In fact, ARB recognizes this situation in its Initial Statement of Reasons ("ISOR") for the proposed amendments, in stating that the technologies that could be introduced to meet GHG requirements in later model years are less developed, and it could be difficult for manufacturers simultaneously to meet the most stringent criteria pollutant requirements. *See* ISOR at 28. ARB is also aware that there are certain highly effective GHG technologies that, if implemented, are more challenged to meet the near-zero NMOG+NOx standards. As a result, manufacturers have a strong incentive to generate early credits to mitigate the risks associated with uncertainty over the investment and GHG versus criteria emissions technologies that compete against one another in the future. This incentive would be substantially reduced, however, if such credits were limited to 5-year credit life, because without extending the credit life to eight years, manufacturers would face too much uncertainty regarding the value and need for the credits to justify the investment. As a result, retaining the 5-year credit life will lead manufacturers to forego achievable air quality benefits afforded with 8-year credit life.

In its ISOR, ARB provided two responses to industry's recommendation to extend the credit life to eight years. First, ARB expressed concern that an 8-year credit life could impair compliance with ozone ambient air quality standards in 2032. Yet, at the same time, ARB acknowledged that an 8-year credit life would provide substantial benefit to achieving compliance with ozone ambient air quality standards in 2023[3]. Chrysler respectfully submits that ARB's concern regarding a standard in effect some 18 years hence elevates regulatory policy above public health. Right now, ARB has a real and substantial opportunity to achieve significant criteria emission reductions by incentivizing manufacturers to introduce lower-emitting vehicles in the near term. ARB's speculative concerns regarding compliance with ambient air quality standards in 2032 — again, 18 years from now — should not supersede efforts to incentivize manufacturers to achieve emissions reductions that will benefit public health and the environment today.

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[3] ISOR at 28; "Specifically, California has key ozone ambient air quality compliance dates in 2023 and 2032 calendar years and shifts in vehicle emissions earlier versus later will likely help for 2023 compliance but hurt for 2032 compliance."

Second, ARB observed that it is premature at this time to extend credit life because of uncertainties related to possible technologies for later model years. Chrysler respectfully submits that ARB has it backwards: Manufacturers will be less likely to pursue significant near term investment in advanced GHG control technologies if their criteria emissions over-compliance now would not provide the insurance and flexibility to address the manufacturers' central concern in meeting the LEV III standards (while also implementing technologies required to meet the GHG and ZEV standards) in later model years. In other words, there is no going back: if ARB later agrees that it should have extended the credit life to 8 years, at that time it will be too late to secure the benefits that could have been achieved. Chrysler and other manufacturers need to know—now—that investment today will allow the proper development of technology to alleviate the uncertainty in later model years. If ARB retains the 5-year credit life now, yet revisits its decision later, it will be too late. Moreover, ARB can alleviate any concern of under performance by imposing an anti-backsliding provision to assure that manufacturers in the later years do not relax emissions from their previously-certified products.

In short, ARB has an opportunity to incentivize manufacturers in the near-term to put cleaner vehicles on the road that will benefit public health and the environment. Therefore, Chrysler recommends that ARB extend the NMOG+NOx credit life to up to eight years, in line with the federal Tier 3 program.

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We appreciate the efforts of staff and the Board as it worked with industry and other stakeholders in promulgating LEV III. For the reasons set forth above, Chrysler requests that ARB extend the life of NMOG+NOx credits to up to eight years to harmonize with the federal Tier 3 rules. We look forward to future outreach efforts and cooperative interaction with staff and Board members to foster the overall success of the Advanced Clean Cars program.

In addition, Chrysler is a member of the Alliance of Automobile Manufacturers and fully supports the comments submitted under the Alliance's and the Association of Global Automakers's cover and oral testimony.

If you have any questions, please contact Frank Krich of my staff at (248) 576-5497 or fak6@chrysler.com.

Sincerely,

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