



Mercedes-Benz

Mercedes-Benz USA, LLC  
A Daimler Company

December 9, 2009

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

**Re:** November 24, 2009 Proposed Amendments to Passenger Motor Vehicle Greenhouse Gas Emission Standards Comment: Proposed Clarification of Subsection 1961.1(a)(1)(A)1

To Whom It May Concern:

The regulatory amendments currently under consideration are intended to implement specific commitments that the California Air Resources Board (CARB) made in May of 2009 in an agreement among the federal government, California and the auto industry to establish a national program for regulating greenhouse gas (GHG) emissions from motor vehicles. That agreement is contained in a document published in the Federal Register at 74 Fed. Reg. 24007 (May 22, 2009) and reflected in multiple letters from CARB and auto industry published in May 2009 on EPA's website ("May 2009 GHG commitment letters").<sup>1</sup>

In particular, as a part of the agreement captured in the May 2009 GHG commitment letters, CARB committed to revise its GHG regulations to permit compliance demonstrations based on fleet averages of not just California sales, as currently provided in the regulations, but of all sales across California and all jurisdictions that have adopted California regulations under Section 177 of the Clean Air Act (i.e., other states and the District of Columbia, also known as "177 states" or "CARB states") during the period prior to adoption of federal standards.<sup>2</sup>

Mercedes-Benz U.S.A. ("MBUSA") supports the overall goal of the proposed amendment to expand the fleet averaging pool for demonstrating compliance with the GHG regulations during the transition period to nationally applicable standards. MBUSA markets vehicles in all 50 states, and every vehicle marketed is certified to both California and federal vehicle standards. Thus, we have significant interest in the proposed amendments, particularly the modification identified as "1" on page 2 of the November 24, 2009 Notice and described as follows:

*1. Section 1961.1(a)(1)(A)1.d. has been modified to allow compliance with the fleet average greenhouse gas requirements to be based on the number of*

---

<sup>1</sup> The letters can be found at <http://www.epa.gov/oms/climate/regulations.html>.

<sup>2</sup> The other states are: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Due to the timing of their respective state's adoption, Maryland and New Mexico sales are not part of the multi-state compliance averaging option until the 2011 model year.

Mercedes-Benz USA, LLC  
One Mercedes Drive  
P.O. Box 350  
Montvale, NJ 07645-0350  
Phone (201) 573-0600  
Fax (201) 573-0117  
[www.MBUSA.com](http://www.MBUSA.com)



*vehicles “produced and delivered for sale” in California and other states within the pooled average rather than on actual vehicle sales in those states. (emphasis added)*

This paragraph suggests that manufacturers cannot use actual vehicle sales data to establish compliance with the fleet average greenhouse gas requirements. This implication is of some concern to manufacturers like MBUSA for whom the distinction between numbers of vehicles delivered to a state for potential sale and the number of vehicles actually sold can be different. For the reasons detailed below, MBUSA believes that, to the extent a manufacturer collects actual sales data and wishes to use it for compliance purposes, basing fleet average compliance on actual sales data is superior from both a legal and policy perspective than basing it on the vehicles delivered by a manufacturer to a state for potential sale irrespective of whether the vehicles are actually sold and placed into service in that state. Thus, MBUSA recommends that CARB should modify its proposed language in Section 1961.1(a)(1)(A)1 as detailed below to clarify that manufacturers have the option to use actual sales data for fleet compliance averaging purposes. As also detailed further below, the proposed changes are consistent with the intent and purpose of the GHG regulatory programs adopted by California and Section 177 states, with each individual state’s legal authority to regulate vehicle manufacturers for the purpose of improving air quality for the citizens in their own state, and with the May 2009 GHG Commitment letters signed by CARB and industry with regard to the transitional pooling option for fleet compliance averaging.

**I. CARB Should Revise Section 1961.1(a)(1)(A)(1) to Clarify that Manufacturers May Use Actual Sales Data to Calculate Fleet Averages As Long as the Approach is Consistent with Respect to all States**

CARB originally proposed language for Section 1961.1(a)(1)(A)(1) that required manufacturers to provide “production, delivery and sales values” separately for the District of Columbia and each state in the average, indicating appropriately that actual sales figures are relevant to determining fleet averages. The revised version now requires that manufacturers provide the number of vehicles “produced and delivered for sale” in each state.

CARB’s proposed language change reflects a recommendation made in a comment filed by the Association of International Automobile Manufacturers, September 14, 2009 (“AIAM Comment”). In that comment at p. 4, AIAM “recommends that this subsection be revised to track the language of the rest of the regulation, which refers to ‘*vehicles that are produced and delivered for sale* in California.’ (citing 13 CCR 1961.1(a)(1).” AIAM explained in support of the recommended change that “Vehicles are not generally ‘produced’ for individual states so there is no ‘production’ value specific to California or any other state.” Further, AIAM stated, “Similarly, once vehicles are delivered for sale in a state, manufacturers do not track the location of actual sales, which could occur in other states due to dealer transfers. ... Accordingly, AIAM believes that the proposed regulatory amendments should be changed to remove the requirement that manufacturers report sales data for each and every Section 177 state.” Id.

MBUSA agrees that manufacturers do not produce vehicles for particular states, but we disagree with the assumption that no manufacturer tracks the location of actual sales. In the case of MBUSA, at least, we track actual sales locations assiduously as that is the most relevant number for determining future production and distribution patterns for our company. In any given year, cars are distributed to MBUSA dealers on the basis of a number of factors. Dealers are then free to address the broad range of variability in consumer purchase patterns from year to year by transferring vehicles with other dealers in and outside California. As a result, the actual number of vehicles that are delivered to a state for potential sale may well vary from the number of cars that are actually sold in the state. To the extent that a manufacturer accounts for actual vehicle sales in each state regardless of the deliveries to that state, the most accurate count of vehicles that will actually impact that state's air quality is actual vehicle sales.

Thus, MBUSA urges CARB to revise its proposed amendments further to clarify that for those manufacturers who do track actual sales in California and other jurisdictions subject to CARB regulations, they have the option to calculate fleet averages based on actual sales data. This can be accomplished by simply adding relevant language following references to "produced and delivered for sale" in three places in subsection 1961.1(a)(1)(A)(1), as follows:

- 1) In paragraph 1, in the sentences describing Option 1, revise sentence to insert "*or that are sold*" after "are produced and delivered for sale"
- 2) In the sentence describing Option 2, revise sentence to insert "*or that are sold*" after "are produced and delivered for sale"; and
- 3) In the subsection labeled "d.", revise sentence to insert "*or that are sold*" after "produced and delivered for sale."

Revised as proposed, the relevant portions of the subsection would read as below (additions underlined):

1. *For each model year, a manufacturer must demonstrate compliance with the fleet average requirements in this section 1961.1(a)(1)(A) based on one of two options applicable throughout the model year, either:*
  - Option 1: the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in this section 1961.1, and are produced and delivered for sale or are sold in California; or*
  - Option 2: the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in this section 1961.1, and are produced and delivered for sale or are sold in California, the District of Columbia, and all states that have adopted California's greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act (42 U.S.C. s7507).*

a. ....

*d. "A manufacturer that selects compliance Option 2 must provide to the Executive Office separate values for the number of vehicles produced and delivered for sale or the number of vehicles sold in the District of Columbia and for each individual state within the average.*

## **II. Clarifying that Actual Sales Data May be Used for Averaging Fleet Compliance is of Practical and Legal Significance to MBUSA and Other Manufacturers Whose Deliveries for Potential Sale in a State Differ from their Deliveries for Actual Sale in a State**

For MBUSA and other similarly situated smaller-scale, and possibly other international manufacturers, there is a practical need for the proposed changes. While for many domestic and larger manufacturers the number of vehicles sold and placed into service in California, or other Section 177 states, may in fact be virtually equivalent to the number of cars that the manufacturer delivers into the state for retailing purposes, for manufacturers like MBUSA the gap in the number of cars delivered to a state and the number of cars sold in a state can vary. MBUSA has a 50-state dealer distribution plan. Thus, MBUSA assumes that Mercedes dealers will negotiate dealer transfers as needed to distribute cars according to consumer demand, including interstate transfers, and that the mere delivery of cars to dealerships in a state for potential sale does not equate either to an intent to sell all of those cars in that state or the factual result of selling all those cars in that state.

Moreover, the relative size of a manufacturer's fleet is also significant: the smaller the fleet, the more susceptible it will be to changes in consumer preferences from state to state, and the greater likelihood that interstate dealer transfers will occur in response to consumer requests, creating greater discrepancies between deliveries to a state and actual sales figures for that state. The proposed language changes would serve to clarify that in the case of manufacturers, like MBUSA, who do track actual sales data, that such data may be used for fleet compliance averaging as long as the same approach is taken with respect to all included states.

The proposed language change is also important to manufacturers because of the practical impact of over and under compliance in generating credits and debits in the transition period to a federal program. In its August 7, 2009 Initial Statement of Reasons (ISOR), CARB indicates that "in the unlikely event debits are incurred they must be equalized within the five model years provided in the regulation ... Under the proposed pooling option, debits that are not equalized in the time specified must be apportioned between California and the Section 177 states according to their new vehicle sales in the model year the debits are first accrued." ISOR at p. 4 (emphasis added). Thus, even if a manufacturer is pooling sales from all CARB states for fleet average compliance purposes, the state by state individual sales numbers (which in the case of manufacturers like MBUSA can vary depending upon whether deliveries for potential sale are counted or whether deliveries for actual sale are counted) can have significant impacts on compliance burdens and obligations now and in the future. In light of the potential for significant

future impacts based on sales data, MBUSA urges CARB to clarify that actual sales data may be used for fleet averaging during the transition period to a federal program.

As addressed in the next sections, the proposed changes are also consistent with the intent and purpose of the CARB GHG regulatory programs adopted by California and Section 177 states, with each individual state's legal authority to regulate vehicle manufacturers for the purpose of improving air quality for the citizens in their own state, and with the May 2009 GHG Commitment letters signed by CARB and industry with regard to the transitional pooling option for fleet compliance averaging.

### **III. Use of Data on Actual Sales to Calculate Fleet Averages is Consistent with the Policy Goals of States in Adopting GHG Regulations to Improve Air Quality Within their Jurisdictions**

The goal of CARB's regulatory programs is to protect and improve the air quality in California. Similarly, the goal of Section 177 states that adopt CARB's regulations is to improve air quality in their own jurisdictions. See, e.g., multiple letters from Section 177 states in May of 2007 in support of California's request for a waiver under CAA Section 209(b) for California's GHG standards, virtually uniformly stating they adopted CARB's regulations because their own state "has a vital interest in reducing global warming emissions from vehicular and other sources in our state" (emphasis added).<sup>3</sup>

Notably, many of these states adopted such programs to help achieve compliance with NAAQS and other air quality goals and thus need to accurately estimate their impact locally within the state. As CARB's August 7, 2009 ISOR indicated, actual sales data "in sufficient detail to allow staff to easily calculate the fleet average greenhouse gas emissions for new passenger cars and light-duty trucks sold in California in each model year," are needed by the state "to track progress in meeting the targeted GHG emission reductions from the transportation sector called for in AB 32," and other states need sales data for similar purposes. ISOR at p. 5. As CARB's staff recognizes, and as reflected in the staff's originally proposed language, such impacts are most accurately characterized by actual sales.

Thus, the more accurately that reported "sales" estimate actual sales in a state, the better opportunity states will have to accurately estimate emissions impacts in their jurisdictions as well as other potential unidentified impacts of the regulations. As CARB acknowledges, how pooling will impact how manufacturers will comply with the GHG regulations is unknown, ISOR at p. 7. While CARB states that "staff anticipates that there will be no significant emissions impact from this proposal because it does not fundamentally change the fleet average greenhouse gas requirements," CARB also admits that it does not know exactly how manufacturers will comply

---

<sup>3</sup> This statement is found for example in letters from Connecticut, Maine, Maryland, Oregon and Pennsylvania. Similarly, Massachusetts indicated that the waiver would help the state "realize the air quality benefits of reducing GHG from mobile sources in Massachusetts" (emphasis added). The May 2007 letters from Section 177 states can be found online at: <http://www.cleancarscampaign.org/web-content/cleanairact/cleanairact.html>.

and that pooling emissions for all states “may result in minor changes in greenhouse gas reductions within the individual states due to the portability of credits and debits incurred by the manufacturers.” ISOR at p. 7 (emphasis added). Obviously, the more accurate the state by state sales data used to determine fleet compliance averaging, even when data are pooled, the better the ability of states to identify any geographically-based emissions impacts that may occur.

**IV. Use of Data on Actual Sales to Calculate Fleet Averages is Consistent with the Legal Authority of States to Regulate Vehicle Sales for the Health and Welfare of Citizens within their Jurisdictions**

It is clear that a State’s authority generally to regulate under Section 209 is founded on the State’s interest in protecting the health of its own citizens. In the context of CARB’s GHG regulations, a State’s ability to impose costly emission control requirements on manufacturers and citizens is founded on the State’s right to make policy choices for the health and welfare of its own citizens. It is the actual sales of CARB compliant vehicles in a state that impact the air quality in that state. Further, a State’s ability to monitor and evaluate the impacts of its adoption of CARB’s GHG standards on air quality in the State is better served by obtaining and evaluating data that most closely reflects actual sales in the state and thus actual emissions from vehicles operating in the state (to the extent the data are available and a manufacturer chooses to provide them) rather than data pertaining to deliveries for potential sale in a state if those deliveries do not result in vehicle operation in the state.

**V. Averaging Fleet Compliance Based on Actual Sales is Consistent with the Agreement Terms Stated in the May 2009 GHG Commitment Letters**

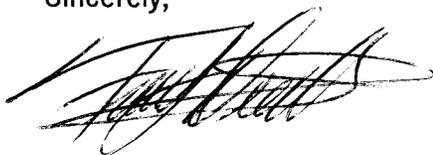
The letters that industry and CARB signed in May 2009 uniformly referred to a commitment by CARB to regulate “the fleet of vehicles sold in California and [Section 177] states” and to “expand the averaging pool for compliance purposes from the fleet of vehicles sold in California to the larger fleet of vehicles sold in California and these other states.” See, e.g., CARB’s May 2009 GHG Commitment letter, as well as those of multiple manufacturers and automobile industry associations.

CARB’s clarifying language as recommended here by MBUSA would be consistent with the express terms of the agreement that was struck and would clarify any confusion arising with regard to the ability to determine fleet compliance averages based on actual vehicle sales data if determined by a manufacturer to collect and submit such data.

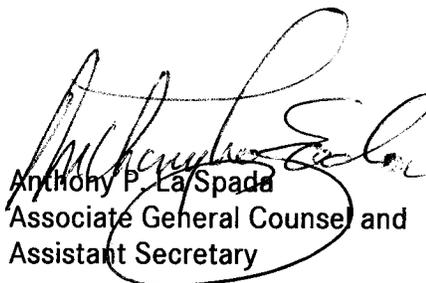
**Conclusion**

MBUSA appreciates CARB's thoughtful consideration of the comments provided here and adoption of the proposed language revision to clarify that actual sales data may be used for fleet averaging compliance under Subsection 1961.1(a)(1)(A)1.

Sincerely,



Frank J. Diertl  
General Manager  
Engineering Services



Anthony P. LaSpada  
Associate General Counsel and  
Assistant Secretary