

REQUEST FOR AN EARLY EFFECTIVE DATE
Pursuant To Government Code Section 11343.4(b)(3)

The California Air Resources Board (CARB or Board) requests, pursuant to Government Code section 11343.4(b)(3), that the Office of Administrative Law (OAL) prescribe an "earlier effective date" for the Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation that was adopted on September 28, 2018. CARB believes that the following demonstrates "good cause" for OAL to prescribe an earlier effective date- i.e., an effective date to coincide with the filing of the regulations with the Secretary of State.

DEMONSTRATION OF GOOD CAUSE

Background of Prior CARB Low-Emission Vehicle III Greenhouse Gas (GHG) Emission Regulation

In July 2011, automakers, California, U.S. EPA (EPA), and the National Highway Traffic Safety Administration (NHTSA) committed to a series of actions that would allow for the development of nationwide greenhouse gas (GHG) emission standards and complementary corporate fuel economy (CAFE) standards for model years 2017 through 2025 that would meet the needs of California as well as the nation as a whole. As part of that agreement, California committed to a continuation of a "deemed to comply" option that allowed acceptance of the federal program compliance for model years 2017 through 2025 as an option to compliance with California's comparable GHG emission standards, with the understanding that the option would provide equivalent or better overall greenhouse gas reductions in the state compared to California's program. California also understood that any changes to the national program would be based on extensive technical review jointly conducted by all three agencies.

Consistent with the national program commitment, in 2012, CARB adopted its second generation of greenhouse gas emission standards for light-duty vehicles as part of the Low-Emission Vehicle III (or LEV III) program. The LEV III regulations established increasingly stringent GHG standards for 2017 through 2025 model year light-duty vehicles, and maintained the stringency of those standards for subsequent model years. CARB adopted the LEV III program as part of the Advanced Clean Cars rulemaking package that also includes the state's zero-emission vehicle (ZEV) regulation. California's greenhouse gas emission programs for light-duty vehicles (passenger vehicles) are a fundamental component of the State's strategy to protect the health of its citizens and its natural resources, including from the threats of climate change

Later that year, with the involvement of CARB, EPA and NHTSA adopted federal passenger vehicle greenhouse gas standards and fuel economy standards (2012 Final Rule) that were consistent with the California standards. The 2012 Final Rule is referred to as the "2017 through 2025 model year National Program." Since the federal program was expected to achieve GHG emission reductions that are equivalent to the California program, CARB modified the LEV III regulations to continue to allow the

“deemed to comply” option beyond model year 2016, by accepting federal compliance with the EPA standards as sufficient to demonstrate compliance with California’s standards for the 2017 through 2025 model years.

One important element of the originally adopted federal GHG emission standards was a requirement that EPA later conduct a midterm evaluation (MTE) to re-assess the appropriateness of the greenhouse gas emission standards for the 2022 through 2025 model years. This report was required by law to be based upon a comprehensive joint Technical Assessment Report,^{1,2} consisting of hundreds of pages of analysis and documentation, which was prepared jointly by EPA, CARB, and NHTSA staff. The purpose of the MTE was to evaluate updated information to determine if the standards should be strengthened, maintained at their current level of stringency, or weakened.

On January 13, 2017, EPA released its Final Determination³ to maintain the current National Program of greenhouse gas emission standards for 2022 through 2025 model year vehicles, finding that automakers are well positioned to meet the standards at lower costs than previously estimated.

CARB also conducted a California-specific Midterm Review⁴ of the appropriateness of these standards, which also examined a number of other issues relating to the LEV III regulations and ZEV regulation, and issued a report on the findings. Based on the CARB Midterm Review, the Board concluded (in Resolution 17-3) that:

Given U.S. EPA has issued a Final Determination affirming the 2022 through 2025 model year federal 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.

On April 13, 2018, EPA issued a notice withdrawing its previous Final Determination for the MTE of the federal passenger vehicle greenhouse gas regulations and issuing a revised 11-page Final Determination that the federal greenhouse gas standards are not appropriate, “may be too stringent,” and should be changed.⁵ EPA did this without properly explaining why it was departing from the extensive evidence within the Technical Assessment Report, and without sharing any data or analysis with CARB or

¹ See 40 C.F.R. § 86.1818-12(h)(2).

² U.S. EPA, NHTSA, CARB, *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* (July 2016), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockey=P100OXEO.PDF>

³ U.S. EPA, *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* (January 2017, EPA-420-R-17-001), available at: <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2015-0827-6270&attachmentNumber=1&contentType=pdf>.

⁴ California Air Resources Board. *California’s Advanced Clean Cars Midterm Review*, (January 18, 2017), available at: https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf.

⁵ 83 Fed.Reg. 16,077 (April 13, 2018).

adequately explaining the reasons for reaching a different conclusion than had been reached by the previous well-reasoned Final Determination.

On August 1, 2018, as a consequence of EPA's new Final Determination, the Acting Administrator for EPA and the Deputy Administrator for NHTSA signed a joint Notice of Proposed Rulemaking (NPRM) that would, if finalized, significantly weaken EPA's standards and which purports to attack California's long-standing authority in this area. The NPRM stated it would provide a 60-day comment period, commencing from the time of publication in the Federal Register. The NPRM proposes to arrest EPA's carbon dioxide (CO₂) emissions targets at the levels set for model year 2020. The proposal would also limit the standards to CO₂ tailpipe emissions and would fail to address other, more potent greenhouse gas emissions from vehicles. The agencies also proposed to find CARB's greenhouse gas and ZEV standards preempted by federal law, and to withdraw the waiver of federal preemption that the EPA granted to California in 2013 for the greenhouse gas and ZEV requirements of its Advanced Clean Cars program, at 78 Federal Register 2,112 (Jan. 9, 2013).

EPA's and NHTSA's proposal is contrary to the facts and the law, is belied by the comprehensive, multi-year analysis of the initial Final Determination that found the standards cost-effective and achievable, and, in pertinent part, jeopardizes the successful coordinated National Program for reducing GHG emissions from light-duty vehicles that has helped position the auto industry for continued innovation and competitiveness in an international market.

CARB Rulemaking Action

In order to address the threat posed by EPA and NHTSA's above described proposal, CARB has adopted amendments to the LEV III GHG regulation to clarify that the "deemed to comply" option is available only for the currently adopted federal greenhouse gas regulations (incorporated in the Code of Federal Regulations and last amended on October 25, 2016). These clarifying amendments will ensure that the effects of any weakening of the federal standards for model years 2021 through 2025 are not felt in California during those model years. Weakening the federal standards, as proposed by EPA, would be unfounded and contrary to the intent of the Clean Air Act, and removes a material predicate of California's decision to accept compliance with EPA standards.

Demonstration of Good Cause

The federal proposal introduces significant uncertainty to CARB, regulated entities, and the public regarding the fate of the current unified program that constitutes a credible threat that could: substantially slow progress towards the emission reductions needed to address the serious threat posed by climate change to California, nation, and the world; waste billions of gallons of gasoline; and cost consumers significant amounts of money to purchase excess amounts of fuel.

Furthermore, twelve other states and the District of Columbia have exercised their authority, pursuant to section 177 of the federal Clean Air Act to adopt CARB's standards as their own, and vehicle sales in California and those states are projected to comprise approximately a third of the domestic auto fleet. Due to the capital-intensive nature of the automotive industry, production decisions for the affected model years need to be made in the near future, and those decisions will significantly influence whether California can maintain needed progress to meet the critical statewide air pollution and greenhouse gas emission reduction goals necessary to protect public health and welfare. California state law requires that CARB achieve greenhouse gas reductions by at least 40 percent below 1990 levels by 2030⁶, and also directs CARB to develop "alternative regulations" for mobile sources if existing programs fall short of their projected greenhouse gas emission benefits.⁷ Accordingly, if expected reductions from the current program do not materialize, or are prevented from occurring, the required emission reductions may need to be achieved from other sectors, including potentially from transportation fuel sectors (e.g. petroleum extraction and refining industries) by appropriate regulatory means.

Moreover, CARB is aware that states using CARB standards also need lead-time to appropriately make regulatory decisions, potentially including whether to follow CARB's program or follow potentially less rigorous federal standards. All of these decisions must be considered this year, given the production cycle of the auto industry, and to respond appropriately to the federal processes that have been set in motion on the same timeline.

An early effective date is therefore needed to implement these requirements as soon as possible, which will benefit California by ensuring that the federal proposal will not substantially slow progress towards the emission reductions needed to address the serious threat posed by climate change to California, nation, and the world; by ensuring that CARB will not be impaired in meeting its statutory mandate to reduce GHG emissions; will provide states that have adopted California's GHG emission standards lead time to make regulatory decisions; and will provide vehicle manufacturers sufficient time to make production decisions for 2021 through 2025 model year vehicles.

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⁶ Senate Bill 32 (Chapter 249, Statutes 2016, Pavley) requires that the state reach 40 percent emission reductions below 1990 levels by 2030. Executive Order S-3-05 sets a goal of 80 percent emission reductions below 1990 levels by 2050.

⁷ Health & Safety Code § 38590.