

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO THE LOW-EMISSION VEHICLE III GREENHOUSE GAS EMISSION REGULATION

Sections Affected: Proposed amendment to title 13, California Code of Regulations, section 1961.3 and to the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as last amended September 28, 2018, incorporated by reference therein.

Background:

Overview

In order to address the need to further reduce vehicle emissions and achieve California's goal of reducing climate changing greenhouse gas emissions, in January 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 greenhouse gas standards for 2017 through 2025 model year light-duty vehicles, and maintained the stringency for subsequent model years. These regulations were adopted by the Board 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.¹ California's programs have operated successfully in tandem with complementary standards set by other agencies for many years. Recognizing the value of a national program, California has accepted compliance with greenhouse gas emission standards adopted by the United States Environmental Protection Agency (U.S. EPA) for the 2012 through 2025 model years. To do so, CARB adopted the so-called "deemed to comply" option, which allows compliance with U.S. EPA's regulations as an alternative to complying with California's regulations for these model years, because the U.S. EPA standards, at the time, would deliver equivalent greenhouse gas emission reductions as California's standards.^{2,3}

¹ California Air Resources Board. *California's 2017 Climate Change Scoping Plan*. (November 2017). available at: https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf

² All manufacturers are currently exercising the option of complying with the federal greenhouse gas emission standards.

³ Although California's light-duty greenhouse gas regulations also apply to model years beyond 2025, the "deemed to comply" option is not available for the 2026 and subsequent model years. Consequently, the 2026 and subsequent model years are not addressed in this rulemaking.

One important element of the originally adopted federal greenhouse gas emission standards was a requirement that U.S. 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.^{4,5} That report encompassed hundreds of pages of analysis and documentation and was prepared as required, jointly by U.S. EPA, CARB, and National Highway Traffic Safety Administration (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, U.S. EPA released its Final Determination⁶ 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 had been previously estimated.

CARB also conducted a California-specific Midterm Review⁷ 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)⁸ 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, the U.S. EPA published a notice withdrawing its previous Final Determination for the MTE of the federal passenger vehicle greenhouse gas regulations and issuing a revised Final Determination that the federal greenhouse gas standards are not appropriate, "may be too stringent," and should be changed.⁹ The U.S. EPA did this without adequately explaining why it was departing from the extensive evidence within the Technical Assessment

⁴ See 40 C.F.R. § 86.1818-12(h)(2).

⁵ 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/P1000XEO.PDF?Dockey=P1000XEO.PDF>

⁶ 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>.

⁷ 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.

⁸ State of California, Air Resources Board, Resolution 17-3. March 24, 2017. Agenda Item No.: 17-3-8.

Advanced Clean Cars Midterm Review. available at: <https://www.arb.ca.gov/msprog/acc/mtr/res17-3.pdf>.

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

Report, and without sharing any data or analysis with CARB or adequately explaining the reasons for reaching a different conclusion than had been reached by the previous well-reasoned Final Determination.

On August 24, 2018, as a consequence of the U.S. EPA's new Final Determination, the Acting Administrator for the U.S. EPA and the Deputy Administrator for NHTSA published a joint Notice of Proposed Rulemaking (NPRM) that would, if finalized, significantly weaken the U.S. EPA's standards and which purports to attack California's long-standing authority in this area.

The NPRM proposes to arrest U.S. 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 U.S. 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).

This proposal is contrary to the facts and the law. It is belied by the comprehensive, multi-year analysis of the initial Final Determination that found the standards cost-effective and achievable. It frustrates Congressional intent, upheld by the Supreme Court and lower federal courts, in the Clean Air Act and the Energy Policy and Conservation Act to control greenhouse gas emissions from motor vehicles, and to conserve energy and protect the environment by setting the maximum feasible fuel economy standards. It jeopardizes the successful coordinated National Program for reducing greenhouse gas emissions from motor vehicles that has helped position the auto industry for continued innovation and competitiveness in an international market.

This threat of weakening the standards and breaking the unified National Program, left unaddressed, would substantially slow progress towards the emission reductions needed to address the serious threat that climate change poses to California, the country, and the world.

The Board's Regulatory Action:

At its September 28, 2018 public hearing, the Board approved the proposed amendments to the LEV III greenhouse gas emission 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 federal weakening for model years 2021 through 2025 are not felt in California during those model years. Weakening the standards, as U.S. EPA has proposed, would be unfounded and contrary to the intent of the Clean Air Act and the evidence before CARB and the U.S. EPA.

Such an unfounded weakening removes a material predicate of California's decision to accept compliance with U.S. EPA standards. This clarification is thus consistent with the fundamental understandings underlying the current unified National Program for light-duty emission control, and CARB's reservation of its rights to enforce its own motor vehicle emission standards.