

State of California
AIR RESOURCES BOARD

Resolution 10-15

February 25, 2010

Agenda Item No.: 10-2-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the State of California has become increasingly concerned about humankind's contribution to climate change and the potential and likely impacts of that change on the Earth in general and on California in particular;

WHEREAS, California's passenger vehicles and light-duty trucks are the single largest contributor of greenhouse gas emissions in the state, producing approximately 40 percent of all such emissions;

WHEREAS, California enacted Assembly Bill (AB) 1493 (Health and Safety Code section 43018.5; Pavley), which directs the Board to develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles, beginning with the 2009 model year;

WHEREAS, in a 2004-2005 rulemaking, the Board adopted the "Pavley regulations," which reduce greenhouse gas emissions from passenger vehicles by approximately 30 percent between 2009 and 2016 by establishing a mechanism requiring each manufacturer to phase-in a progressively cleaner mix of vehicles from year to year with the option of credit trading;

WHEREAS, the Pavley regulations are contained primarily in title 13, California Code of Regulations, section 1961.1 and 1961, which incorporates by reference the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles";

WHEREAS, the Legislature has enacted the Global Warming Solutions Act of 2006 (AB 32; Health and Safety Code section 38500 et seq.), which declares that global warming poses a serious threat to the environment of California and creates a comprehensive multi-year program to reduce greenhouse gas emissions that cause global warming;

WHEREAS, in December 2008, the Board adopted a Scoping Plan to chart ARB's course toward meeting the requirements of the Global Warming Solutions Act of 2006;

WHEREAS, the Pavley regulations provide about 27.7 million metric tons in greenhouse gas reductions, or about 16 percent of the 174 million metric ton CO₂-equivalent reductions needed to return to 1990 greenhouse gas emissions levels by 2020, which makes them the single largest emission reduction measure identified in the Scoping Plan;

WHEREAS, since Board approval in 2004, motor vehicle manufacturers and their trade associations have challenged the Pavley regulations in numerous federal and State court proceedings and have opposed California's request for a United States Environmental Protection Agency (U.S. EPA) waiver of preemption under the federal Clean Air Act to allow California to enforce its adopted standards;

WHEREAS, one focus of manufacturer arguments in opposing U.S. EPA's granting of a waiver to California has been that other states, exercising their right under section 177 of the Clean Air Act to adopt California's vehicle emission standards, will create an unmanageable "patchwork" of different programs due to variations in the mix of vehicles sold in each of the states;

WHEREAS, on May 19, 2009, challenging parties, individual automakers, California, and the federal government memorialized commitments to undertake a series of actions that would resolve these current and potential future disputes over the California standards through model year 2016;

WHEREAS, the May 19, 2009, commitment letters contained the following commitments and understandings: U.S. EPA and the United States Department of Transportation would propose a federal program to reduce greenhouse gases and improve fuel economy, respectively, from passenger vehicles, to achieve equivalent or greater greenhouse gas emission reduction benefits as the Pavley regulations for the 2012 through 2016 model years; manufacturers and related entities would ultimately drop current, and forego similar future legal challenges, including challenging a waiver grant (which occurred June 30, 2009 (74 Fed.Reg. 32744 (July 8, 2009))); and California would amend the Pavley regulations to (1) allow manufacturers to demonstrate compliance with the fleet average greenhouse gas emission standard by "pooling" California, the District of Columbia, and Section 177 State vehicle sales, (2) allow manufacturers to use emission data from the federal Corporate Average Fuel Economy program to demonstrate compliance with the Pavley regulations, and (3) accept compliance with U.S. EPA-adopted equivalent greenhouse gas standards for 2012-2016 model years;

WHEREAS, in September 2009, the Board approved amendments to the Pavley regulations to address commitments (1) and (2) above made by California;

WHEREAS, the current proposed amendments to the Pavley regulations address the commitment (3) above made by California;

WHEREAS, California's commitment to accept compliance with U.S. EPA-adopted greenhouse gas standards as compliance with California's standards in the 2012 through 2016 model years has been and remains contingent on U.S. EPA adopting a final rule that at a minimum preserves the greenhouse gas reduction benefits of the Pavley regulations;

WHEREAS, on September 28, 2009, U.S. EPA and the United States Department of Transportation jointly issued a Notice of Proposed Rulemaking (NPRM) for 2012 through 2016 model year passenger vehicles that proposes a coordinated federal greenhouse gas and fuel economy program for light-duty vehicles, referred to as the National Program (74 Fed. Reg. 49454 (September 28, 2009));

WHEREAS, preserving the greenhouse gas reduction benefits of the Pavley regulations will require U.S. EPA to adopt greenhouse gas standards that will achieve on average 250 grams/mile of CO₂ in model year 2016 across the light-duty fleet, as proposed in the NPRM, and any compliance flexibility that is included in the final rule must not significantly and demonstrably diminish the emission reduction benefits of the National Program;

WHEREAS, the National Program rule has not been finalized but is expected to be finalized by the end of March 2010;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, staff has proposed the current amendments based on its understanding of the GHG reductions that can be achieved via the NPRM, and has prepared a comparison of emissions reductions estimated from the current versus the proposed amended Pavley regulations that would accept National Program compliance for the 2012-2016 model years; and

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code.

WHEREAS, the Board finds that:

The proposed amendments are necessary to implement 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 emission reductions;

The additional flexibility provided by the proposed amendments would reduce the burden that manufacturers allege is imposed by state by state compliance; and

All of the proposed amendments are necessary, appropriate, and technologically feasible.

WHEREAS, the Board further finds that:

The proposed amendments will achieve equal or better greenhouse gas emission reduction benefits from model year 2012-16 light-duty vehicles compared to those sold in California and states that have adopted California's Pavley standards as provided in Section 177 of the Clean Air Act;

The proposed amendments will not have any significant adverse impacts on the environment, provided that U.S. EPA adopts greenhouse gas standards that will achieve on average 250 grams/mile of CO₂ in model year 2016 across the light-duty fleet, as proposed in the NPRM, and that any compliance flexibility and the interim standards for model years 2012-2015 included in the final rule do not significantly diminish the emission benefits of the National Program;

While the California motor vehicle emissions regulations as amended herein are different from the federal regulations administered by U.S. EPA, the California regulations approved herein are authorized by State law; and

The approved amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the ability of California businesses to compete with businesses in other states.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves amendments to sections 1961 and 1961.1, title 13, California Code of Regulations, as set forth in Attachment A hereto, and amendments to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," released January 7, 2010, as set forth in Attachment B hereto, both contingent on the assumption that the final National Program achieves equivalent or better greenhouse gas emission benefits as the original Pavley regulations for model years 2012-2016.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, upon release of a U.S. EPA Final Rule promulgating the National Program, to reevaluate the greenhouse gas emission reduction benefits of that U.S. EPA Final Rule to determine it will achieve equivalent or better greenhouse gas emission benefits as the original Pavley regulations for model years 2012-16.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulations set forth in Attachment A or the test procedures set forth in Attachment B are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulations and test procedures. If the Executive Officer determines that additional conforming modifications are appropriate, the Executive Officer shall adopt the modified regulations and test procedures after making the modified language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the subject amendments to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that if the Executive Officer determines that the U.S. EPA Final Rule does not achieve equivalent or better greenhouse gas emission benefits as the original Pavley regulations for model years 2012-16, the Board directs the Executive Officer to return the amendments to the Board for further consideration.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations approved herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the California emission standards and test procedures as approved herein will not cause the California requirements to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of U.S. EPA pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption, forward the regulations to U.S. EPA with a request for a waiver or confirmation that the regulations are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the Clean Air Act, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 10-15, as adopted by the Air Resources Board.

/s/

Sandra Bannerman, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation Order for “Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards,” as set forth in Appendix A to the Initial Statement of Reasons, released January 7, 2010.

Attachment B: Proposed amendments to the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” released January 7, 2010.