

October 2, 2018

Submitted Electronically

Ms. Rachel Sakata
Oregon Department of Environmental Quality
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

Dear Ms. Sakata:

Subject: Oregon’s Low Emission Vehicle Rules – 2018 Update

The Association of Global Automakers, Inc.¹ (Global Automakers) appreciates the opportunity to provide comments on the Oregon Department of Environmental Quality’s (DEQ) proposal to update its existing Low and Zero Emission Vehicle Program rules to match revisions adopted by California in 2013, 2014, 2015, 2016, and 2018. In our comments below, we raise several procedural concerns with respect to DEQ’s process and California’s actions to revoke the state’s “deemed to comply” provision. Global Automakers requests that DEQ hold action on the most recent California proposal (2018) until after the regulation has been finalized through the required necessary regulatory and statutory process. The DEQ should, however, act immediately to complete the all regulatory updates prior to 2018.

DEQ’s Process

Oregon initially adopted the California LEV program in 2005 and, in doing so, committed to following Section 177 of the Clean Air Act, which requires Oregon’s requirements to be identical to California. Your proposal acknowledges this very fact. Nevertheless, your proposal describes how, even though California made five updates to its rules over a period of five years, the DEQ has not until now proposed to update its requirements as required. Updating your requirements once in every five years is not acceptable and not consistent with the Clean Air Act.

Now, the DEQ is acting to update its program only after learning that the federal government might revise greenhouse gas (GHG) rules in a manner that your state opposes. This is, quite simply, not how Section 177 was supposed to work. Failure to maintain your program requirements results in increased complexity and regulatory uncertainty, and updating your requirements once in every five years is not in keeping with the spirit of the law. We hope that in the future the DEQ takes more seriously its obligation to ensure identity with California’s emission standards and does so by updating its requirements on a more frequent basis, preferably, immediately after CARB codifies a change to its program each time, rather than only in times of political uncertainty.

¹ The Association of Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Global Automakers works with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policies that improve motor vehicle safety, encourage technological innovation, and protect our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans’ quality of life. Our members’ share of sales and production in the United States is nearly 45 percent and growing. For more information, visit www.globalautomakers.org.



California's "Deemed to Comply" Provision

As part of this rulemaking, the DEQ is proposing to adopt California's proposed amendment to its "deemed to comply" provision, which allows vehicle manufacturers to comply with the U.S. Environmental Protection Agency's (EPA) GHG regulations as an alternative to complying with California's state-specific requirements. California's requirements are not identical to those existing at the federal level, and Global Automakers believes that in their current form the California requirements will need additional amendments in order to be implemented and feasible. Global Automakers also believes that CARB's proposed regulatory change requires a waiver from EPA.² Section 177 of the Clean Air Act specifies that states may only adopt California standards for which a waiver has been granted.

In its notice, DEQ writes that in August of this year, the EPA "issued a notice of proposed rulemaking indicating it would freeze the greenhouse gas vehicle emission standards to 2020 levels." DEQ additionally notes that, while the federal rule is not final, California has issued a proposed revision to its LEV III GHG standards to "clarify" that the "deemed to comply" option will cease to be available if the EPA adopts a rule that alters, in any manner, the previously-adopted federal GHG regulations for model years 2021 through 2025.

It is important to note that this is but one of many options in which the EPA, along with the National Highway Safety Traffic Administration, is requesting public comment. To be clear, Global Automakers has urged California and the federal government to find a "common sense" solution that continues the goal of a unified national program, or "One National Program," and sets meaningful and continued increases in vehicle efficiency standards, while also meeting the needs of America's drivers.³

As the DEQ should be aware, the public has been provided until October 24, 2018 to provide comments on the federal rulemaking proposal and only until September 24, 2018 to submit written comments to California Air Resources Board (ARB) on its proposal to revise the "deemed to comply" provision, a full month in advance of the federal process.⁴

While ARB's decision to amend the "deemed to comply" option is premature given the ongoing federal process, the fact is, the ARB has yet to complete the rulemaking process necessary to make this change. ARB's Board voted to move the regulation forward on September 28, 2018, but this action does not make the regulation final. In California, a rule change does not become final when it is approved by the Board, and rules approved by the Board must be reviewed and approved by the California Office of Administrative Law. This typically takes months, not days or weeks, to result in a final rule.

In light of the foregoing, any action by the Oregon DEQ to adopt California requirements that have yet to be codified and for which there exists no waiver would violate Section 177 of the Clean Air Act. We also find it ironic that after failing to update its rules to maintain consistency with California's LEV program

² See Global Automakers' comments submitted to the California Air Resources Board on September 24, 2018 at https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=leviii18&comment_num=29&virt_num=26.

³ Global Automakers' Statement on U.S. EPA and DOT Propose Fuel Economy Standards for MY 2021-2026 Vehicles, August 2, 2018, <https://www.globalautomakers.org/posts/press-release/fuel-economy-nprm>.

⁴ Global Automakers has provided comments to ARB that recommend deferring action on the proposed amendments, and instead refocusing efforts, in good faith, to work on a national program that continue year-over-year fuel economy improvements.



amendments for a period of five years, the DEQ is now in a hurry to propose and adopt rules that have neither been adopted nor codified in California or by the federal waiver process.

To maintain compliance with Section 177, the DEQ must defer taking action on the “deemed to comply” provision until California’s Office of Administrative Law has approved the amendment and until after the EPA approves California’s request for waiver to implement these amended regulations.

Please feel free to contact me with any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Rege".

Julia M. Rege
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