

State of California  
AIR RESOURCES BOARD

Resolution 09-53

September 24, 2009

Agenda Item No.: 09-8-7

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 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 section 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 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 CO<sub>2</sub>-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: the United States Environmental Protection Agency 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 benefits as the Pavley regulations for the 2012 – 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 EPA -adopted equivalent greenhouse gas standards for 2012-2016 model years;

WHEREAS, the current proposed amendments to the Pavley regulations address the first two commitments made by California (the third commitment is tentatively scheduled for consideration by the Board in December of this year);

WHEREAS, based on comments received after the notice for this item was published, the staff has recommended modifications to the original proposal that would allow manufacturers to calculate their fleet average greenhouse gas values based on the number of vehicles produced and delivered for sale in California, the District of Columbia, and Section 177 States, rather than actual sales data that manufacturers claim can be skewed by sales between dealers in different states;

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, 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 effectuate 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;

Because currently manufacturers must report production and delivery values to states that have adopted the California standards there should be little additional cost to report those same values to ARB;

The additional flexibility provided by the proposed amendments would reduce the burden manufacturers' allege state by state compliance imposes;

The staff's recommended modifications to the originally proposed Pavley amendments are appropriate to reflect new vehicle distribution logistics;

All of the approved amendments are necessary, appropriate, and technologically feasible; and

WHEREAS, the Board further finds that:

The amendments approved herein will not have a significant adverse impact on the environment;

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 sections 1961 and 1961.1, Title 13, California Code of Regulations, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments to section 1961.1, Title 13, California Code of Regulations, and the "California and Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty-Vehicles," set forth in Attachment B, after making the modified regulatory language, and additional supporting documents and information, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted 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 adopted 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 the Environmental Protection Agency 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 the Environmental Protection Agency 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 09-53, as adopted by the Air Resources Board.

/s/

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Monica Vejar, Clerk of the Board

Resolution 09-53

September 25, 2009

**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 August 6, 2009.
- 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 August 6, 2009.
- Attachment C:** Staff’s Suggested Modifications to the Originally Proposed Regulation Order (Distributed at the September 25, 2009 Board hearing)
- Attachment D:** Staff’s Suggested Modifications to the Originally Proposed “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” (Distributed at the September 25, 2009 Board hearing)