State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO NEW PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS

Public Hearing Date: September 24, 2009
Agenda Item No.: 09-8-7

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), entitled "Notice of Public Hearing to Consider Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards," released August 7, 2009[1], is incorporated by reference herein.

In this rulemaking, the Air Resources Board (ARB or Board) is adopting amendments to California's new passenger motor vehicle greenhouse gas regulations. These amendments include the following primary elements:

Allowing manufacturers to meet the fleet average greenhouse gas emission requirements by "pooling" the California and Clean Air Act Section 177 State Vehicle sales;

Allowing the use of data from the federal Corporate Average Fuel Economy (CAFE) program to demonstrate compliance with California's new passenger motor vehicle greenhouse gas regulations; and

Incorporation of a number of administrative amendments to align them with current federal requirements.

The rulemaking was initiated by the August 6, 2009 publication of a notice for a September 24, 2009 public hearing to consider the proposed amendments. A Staff Report: Initial Statement of Reasons (the Staff Report) was also made available for public review and comment starting August 6, 2009. The Staff Report, which is incorporated by reference herein, describes the rationale for the proposal. The text of the proposed amendments to title 13, California Code of Regulations (CCR) sections 1961 and 1961.1 was included as an Appendix to the Staff Report. These documents were also posted on the ARB's Internet site for the rulemaking at: http://www.arb.ca.gov/regact/2009/ghgpv09/ghgpv09.htm . Also posted on the internet site were the proposed amendments to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," which is incorporated by reference in section 1961(d).

On September 24, 2009, the Board conducted the public hearing, at which it received oral and additional written comments. At the conclusion of the hearing, the Board adopted Resolution 09-53, in which it approved the originally proposed

[1] The "Date of Release" for this rulemaking was Friday, August 7, 2009. However, due to the implementation of the Governor's Executive Order S-13-09 requiring furloughs on this and other Fridays, the actual posting date for this rulemaking was Thursday, August 6, 2009.

amendments and one significant modification: Section 1961.1(a)(1)(A)1.d., has been modified to allow compliance with the fleet average greenhouse gas requirements to be based on the number of vehicles “produced and delivered for sale” in California and other states within the pooled average rather than on actual vehicle sales in those states. This modification makes these regulations consistent with the Low-Emission Vehicle and Zero-Emission Vehicle program requirements. Sections E.2.5.1.1.4. and H.4.5(a)(iv) and (v) of the of the "California and Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty-Vehicles," which also incorporate this requirement have similarly been changed.

These modifications had been suggested by staff in two documents entitled “Proposed Modified Text of the Regulations to Amend the New Passenger Motor Vehicle Greenhouse Gas Emission Standards” and “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” that were distributed at the hearing and were Attachments C and D, respectively, to the Resolution. Attachments C and D showed excerpts of the originally proposed amendments to the regulations and incorporated documents, with the text of all suggested modifications clearly identified. In accordance with section 11346.8 of the Government Code, the Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period of at least 15 days. He was then directed either to adopt the amendments with such additional modifications as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the comments.

A number of additional clarifying 15-day modifications were also made to the regulations, based on comments received during the 45-day comment period and during subsequent discussions with manufacturers that indicate that some of the regulatory language, as contained in the 45-day notice, was being incorrectly interpreted. These modifications included the addition of language to clarify how to calculate credits and how reporting requirements would apply for a manufacturer that elects to use CAFE data to demonstrate compliance with California’s greenhouse gas regulations. All of these changes were included in the amended 15-day regulatory language and test procedure language.

The text of all of the modifications to the originally proposed amendments to the regulations and incorporated documents was made available for a supplemental 15-day comment period by issuance of a “Notice of Public Availability of Modified Text” and supporting documents. Four comments were received during the supplemental comment period that ran from November 24, 2009 to December 9, 2009. After considering these comments, the Executive Officer issued Executive Order R-10-002, adopting the amendments to CCR, title 13, and amending or adopting the incorporated documents.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and providing the rationale for the modifications made to the originally proposed regulatory text. The FSOR also contains a summary of the comments the Board received on the proposed regulatory amendments during the formal rulemaking process and the ARB’s responses to those comments.

The Board has determined that this regulatory action will not result in a mandate to any local agency or school district, whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary savings to state agencies.

No alternatives were considered to lessen the impact on small business, because small businesses will not be impacted by these proposed amendments.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Board received nine written letters and/or e-mails commenting on the proposal during the 45-day comment period prior to and/or at the September 24, 2009 hearing. At the hearing, the Board received oral testimony from the Association of International Automobile Manufacturers.

A. COMMENTS PRESENTED PRIOR TO OR AT THE HEARING

Comments Addressing "Pooling" Amendments

1. Comment: The proposed requirement for reporting state-specific data for each Section 177 state is inconsistent with the goal of reducing compliance burdens through fleet pooling. (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

   Agency Response: A manufacturer that chooses to demonstrate compliance with the Pavley regulations using the "pooling" option will be required to submit data to ARB, which shows that the mix of vehicles delivered to states (including the District of Columbia) within the pool meets the fleet average requirements each year. Manufacturers will also be required to provide ARB with a state-by-state breakdown of this data. This is needed to identify the portion of the greenhouse reductions that may be credited towards meeting the goals of California's AB 32 and similar programs in the other pooled states. Furthermore, ARB does not believe that this reporting requirement imposes an undue burden on manufacturers. Since manufacturers know where they send their vehicles, this data is available.

2. Comment: Sales in Pennsylvania should not be included in the pooling because that state does not have its own fleet-average GHG emissions requirements. (Michael J. Stanton, President and CEO, AIAM)

   Agency Response: ARB disagrees with this comment for the pool for the reasons given in Comment 3. This same commenter also stated (Comment 26) that the relevant regulatory section need not specifically list each Section 177 state – a comment with which ARB agrees – because the language of Clean Air Act Section 177 speaks for itself. See also Agency Response to Comment 4.

3. Comment: The Pennsylvania Department of Environmental Protection understands that an automobile manufacturer has questioned whether Pennsylvania's regulations incorporate California's GHG standards for motor vehicles, and that the Association of International Automobile Manufacturers (AIAM) questions whether Pennsylvania sales should be included in the pool of vehicle sales in Section 177 states. Please be assured that Pennsylvania's regulations do include California's GHG standards and that Pennsylvania sales belong in the pool. Under Pennsylvania law, Pennsylvania's 1998 adoption and incorporation by reference of California regulations automatically incorporated all later amendments and additions California has made and will make to its regulations. *Pennsylvania Statutory Construction Act*, 1 Pa.C.S.A. § 1937(a). Consequently, Pennsylvania has in place the current California LEV II program, including the California GHG regulations.

   Additionally, the reports required to be submitted to demonstrate compliance with the non-methane organic gas fleet average in Pennsylvania include reports of annual sales in Pennsylvania, contrary to the assertion of AIAM that our regulations do not require separate reporting of sales in Pennsylvania." (Kenneth R. Reisinger, Acting Deputy Secretary, Pennsylvania Department of Environmental Protection)

   Agency Response: ARB agrees with this comment.

4. Comment: The District of Columbia, Pennsylvania, and New Jersey do not have regulations authorizing them to enforce fleet average GHG standards for vehicles delivered for sale within their borders. Therefore, vehicles delivered for sale in these states should not be included in the volumes used for purposes of determining compliance with Option 2. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

   Comment: We do not find that the GHG regulations are effective in the District of Columbia. Therefore, references to the District of Columbia should be eliminated from the GHG regulations. (Naoyuki Osaki, General Manager, Environmental & Safety Engineering Department, Mazda)

   Agency Response: The pooling amendments apply to sales in those states (and the District of Columbia) that have adopted California's greenhouse gas program in accordance with the requirements of the Clean Air Act, and their own state-specific laws. Section 177 is self-executing, that is, at any given time the states that can enforce California's standards in their state exists as a matter of law and requires no specific state listing and no further response here. Nevertheless, ARB disagrees with the commenters' assertions regarding Pennsylvania, as discussed in response to Comments 2. and 3. above. The commenter's assertion regarding New Jersey is puzzling and appears to be in error because their highlighted portion within Section 7:27-29.13(g) specifically includes the subject Section 1961.1 and because, like Pennsylvania, subsections (b) and (f) of that Section prospectively incorporates by reference future amendments – such as the subject amendments – to California's standards. It appears that the commenter may

be correct regarding the District of Columbia, at least as to model years before 2012.

5. Comment: Section 177 of the Clean Air Act allows a state to "adopt and enforce" California's vehicle emission standards for a particular model year, if "California and such State adopt such standards at least two years before commencement of such model year." Thus, a state is not authorized under the Clean Air Act to "enforce" a California vehicle emissions standard unless it has promulgated regulations that meet the two-year lead-time requirement of Section 177. The National Program agreement in principle provides that only vehicles in states that can enforce the California GHG standards should be included in the aggregated total for purposes of determining compliance. Therefore, California's regulations should clarify: 1) that the vehicles counted under Option 2 must be from states that can enforce the California GHG standards, and 2) that one prerequisite for enforcement is that the two-year lead-time requirement of Section 177 is satisfied. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

   Agency Response: The pooling amendments apply to sales in those states (and the District of Columbia) that have adopted California's greenhouse gas program in accordance with the requirements of the Clean Air Act, and their own state-specific laws. It is not clear whether the commenter is arguing that the pooling amendments cannot apply until two years after Board approval or adoption, but that interpretation would both run counter to the manufacturers' stated desire to exercise Option 2 as amended herein, and would unduly impede other States from exercising their rights under Section 177. See *Motor Vehicle Manufacturers Assoc. v. New York Department of Environmental Conservation,* 810 F.Supp. 1331, 1347-48 (U.S. Dist. Ct. N.D. NY (1993)) (holding Section 177 state may adopt California regulations that have not received a Section 209(b) waiver).

6. Comment: AIAM recommends that the regulatory amendments specifically provide that vehicle sales in a Section 177 state shall not be included in the calculation of debits that are subject to penalties unless such state has had its program in place for at least five model years. Thus, for example, vehicle sales in Maryland or New Mexico will not be used in calculating any penalties under the regulations until the 2016 model year, and vehicle sales in Arizona will not be used in calculating any penalties under the regulations until the 2017 model year. (Michael J. Stanton, President and CEO, AIAM)

   Agency Response: Debits that are subject to penalties are calculated separately for California, the District of Columbia, and each individual state that is included in the fleet average greenhouse gas requirements for a given model year. Penalties accrue if greenhouse gas debits are not equalized within five model years after they are earned. Since the greenhouse gas fleet average does not apply in Maryland or New Mexico until the 2011 model year, penalties would not be calculated for these states prior to the 2016 model year. The recommended change is therefore unnecessary.

7. Comment: The expanded definition of "California" to include the Section 177 States should therefore also apply to subsection 1961.1(a)(1)(A). (Michael J. Stanton, President and CEO, AIAM)

Agency Response: The definition of "California" has only been expanded to identify and clarify those sections of the regulations to which the Option 2 pooled sales apply. Subsection 1961.1(a)(1)(A), contains requirements for both Option 1 (individual state) and Option 2 (pooled) in certification. Since the expanded definition of "California" does not apply to Option 1, it is not necessary to expand the definition of "California" for this entire subsection.

8. Comment: In section 2.5.1.1.4 of the draft regulatory language, it states that a manufacturer that selects Option 2 must provide to the Executive Officer production, delivery, and sales values separately for District of Columbia and for each individual state within the average. Because manufacturers do not track dealer sales or dealer trades, Ford recommends that this language be revised to remove the sales reporting requirement. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

   Agency Response: ARB agrees with this recommendation and has modified the regulatory language accordingly.

9. Comment: In section 3.2.3.1., CARB modified the language for calculating the number of passenger cars and LDT1s not meeting the state board's emission standards to reference California vehicles only, but did not do the same for the number of LDT2s and MDPVs. Ford recommends that consistent language is used for all vehicles. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

   Agency Response: ARB agrees with this recommendation and has modified the regulatory language accordingly.

10. Comment: It is unclear from this language how CARB intends to address the question of the enforcement of the GHG emissions regulations and the collection of statutory penalties under the California Health and Safety Code for those manufacturers that choose the pooling option. AIAM believes that CARB should consult further with the Section 177 States and the industry to develop an approach that is legally defensible and workable. (Michael J. Stanton, President and CEO, AIAM)

    Agency Response: The comment is addressed by the proposed modifications to title 13, CCR section 1961.1 (b)(3)(A), which state that for a manufacturer demonstrating compliance using the pooling option, the emission debits that are subject to a civil penalty under Health and Safety Code section 43211 shall be calculated separately for California, the District of Columbia, and each individual state that is included in the fleet average greenhouse gas requirements. The civil penalty for non-compliance in a Section 177 state or in the District of Columbia will be based on the emission debits calculated for that individual state or in the District of Columbia in accordance with the applicable non-compliance penalties for that state or for the District of Columbia.

Comments Addressing CAFE Amendments

11. Comment: Mazda believes that the calculation using CAFE data should be based on the Model Type Group instead of the GHG vehicle test group because CAFE is calculated based on Model Type Group (referred to 40 CFR Part 600 Subpart F) while the California fleet GHG is calculated with CO_2 for each GHG vehicle test group. (Naoyuki Osaki, General Manager, Environmental & Safety Engineering Department, Mazda Motor Corporation (Mazda))

    Agency Response: ARB agrees that it is appropriate to modify this section to better accommodate language used in the CAFE program. However, the "Model Type Group" is too large a group to allow ARB to verify a manufacturer's fleet average calculations. Instead, ARB has modified this section to allow a manufacturer that elects to demonstrate compliance with California's greenhouse requirements using CAFE data to calculate the CO_2-Equivalent Values based on the vehicle "subconfigurations," which are smaller groupings used in the CAFE program.

12. Comment: We request that CARB allow an option to calculate the grams per mile CO_2 from CAFE data using the carbon content of gasoline or diesel. (Naoyuki Osaki, General Manager, Environmental & Safety Engineering Department, Mazda)

    Agency Response: ARB does not believe that a third compliance option is needed. CAFE program data covers all passenger vehicles sold in California. So, a manufacturer that elects to demonstrate compliance with California's greenhouse gas regulations using this data will be able to do so using available CAFE data, without the need for additional testing.

13. Comment: Ford agrees with CARB's revision in section 2.5.2.1 that allows manufacturers to demonstrate compliance with GHG requirements by substituting the term 1.9 CO_2 - equivalent grams per mile for the terms "296 x N_2O + 23 x CH_4" in the CO_2 - equivalent value calculation. Ford believes that further clarification regarding the use of CAFE Program data is required in the section. Ford recommends that the regulatory language should be amended to specify that "metro-highway grams per mile average CO_2 - equivalent values may be used in lieu of "city" and "highway" grams per mile average CO_2 - equivalent values. Both methods will yield identical CO_2 - equivalent values. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

    Agency Response: Automobile manufacturers are required to submit both city and highway fuel economy results to U.S. EPA in order to demonstrate compliance with CAFE, the federal fuel economy program. It would, therefore, not be a burden to manufacturers to submit both city and highway data to ARB. This data is needed for ARB to audit a manufacturer's greenhouse gas data using U.S. EPA's CAFE database.

14. Comment: In section 3.4, CARB states that a manufacturer that elects to use CAFE Program emissions data to demonstrate compliance with the greenhouse gas requirements must use all of the data that is used by the U.S. Environmental Protection Agency to determine a manufacturer's

corporate average fuel economy for the applicable model year, may forego testing of the "worst case"configuration. In some cases there may be Federal-only model type groups, if such a case exists, then the California volume would be zero, thus this model type group would not contribute to the greenhouse gas fleet average. For this reason, Ford recommends that the language be revised as follows: "A manufacturer that elects to use CAFE Program emissions data to demonstrate compliance with the greenhouse gas requirements may use, as appropriate, the data used by the U.S. Environmental Protection Agency…" (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

Agency Response: ARB is requiring all CAFE data be used to demonstrate compliance with the fleet average greenhouse gas requirements, in order to avoid the potential for "cherry picking" of data. This could be possible if the overly vague qualifier "may use, as appropriate" was added to the regulatory language.

15. Comment: In section 4.5(v), Ford believes that manufacturers that have elected to demonstrate compliance under Option 2, should be given the option to use Model Type Group. Ford recommends that the regulatory language be modified accordingly. (Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

    Agency Response: ARB agrees that it is appropriate to modify this section to accommodate language used in the CAFE program. However, in order to verify a manufacturer's fleet average calculations, ARB needs more data than "Model Type Group" will provide. ARB has, therefore, modified this section to allow a manufacturer to report data from the CAFE program using the CAFE term "subconfiguration," which is the smallest vehicle group for which CAFE data is available.

Comments In Support of Amendments

16. Comment: The Pennsylvania Department of Environmental Protection supports the proposed amendments to California's greenhouse gas emission standards for new passenger motor vehicles and test procedures for light- and medium-duty vehicles. (Kenneth R. Reisinger, Acting Deputy Secretary, Pennsylvania Department of Environmental Protection)

    Agency Response: This comment is supportive of the staff proposal. No response needed.

17. Comment: The North East States for Coordinated Air Use Management (NESCAUM) supports the *Proposed Amendments to New Passenger Vehicle Greenhouse Gas Emission Standards*. (Coralie Cooper, Transportation Program Manager, NESCAUM)

    Agency Response: This comment is supportive of the staff proposal. No response needed.

18. Comment: The New Mexico Environment Department (NMED) strongly supports CARB's proposed amendments. NMED appreciates CARB's inclusion of New Mexico as part of the multi-state compliance averaging option beginning in the 2011 model year despite the fact that there is on-going litigation challenging New Mexico's Motor Vehicle Greenhouse Gas Standards. (Jim Norton, Director, Environmental Protection Division, State of New Mexico Environment Department)

    Agency Response: This comment is supportive of the staff proposal. No response needed.

Comments Outside the Scope of this Rulemaking

19. Comment: My family is totally against any additional regulation of Motor Vehicles with respect to Greenhouse Gas Emissions. There is absolutely zero evidence that CO_2 emissions propose any hazard whatsoever on our environment, but an amazing amount of evidence on how such regulations hurt our families and state economy. (Robert J. Sandor)

    Agency Response: This comment addresses issues outside the scope of this rulemaking. In AB 1493 the Legislature required ARB to adopt greenhouse gas emission standards for motor vehicles, and ARB adequately estimated economic impacts that could occur from these amendments. No response needed.

20. Comment: High efficiency ethanol engines could offer an additional 20 to 30 percent reduction to carbon over the numbers being discussed today. Along with this, ethanol has the potential to displace 25 percent more oil by approaching the next generation of FFV's from the perspective of efficiency and mileage capabilities. By listing the emission of carbon per horsepower hour, this is the most straight forward approach to evaluating cars, trucks or any other engine application. Carbon per horsepower hour would see significant reduction when ethanol is used. Ethanol can achieve much higher efficiency then gasoline and has demonstrated higher efficiencies of even the most advanced diesels with significant reductions of not only carbon but other harmful emissions. What many need to realize at the California ARB is that in order for cellulose ethanol to be successful, we need to raise the value for ethanol. (Steve Vander Griend, ICM Inc.)

    Agency Response: This comment addresses issues outside the scope of this rulemaking. No response needed.

21. Comment: We request that the A/C direct emission reduction credits and/or A/C indirect emission reduction credits, which are approved based on MAC 2009-01, be accepted for the GHG standard A/C direct emission allowance and the A/C indirect emission allowance. (Naoyuki Osaki, General Manager, Environmental & Safety Engineering Department, Mazda)

    Agency Response: This comment addresses issues outside the scope of this rulemaking. No response needed.

22. Comment: The ISOR states that in the "unlikely" event a manufacturer has accrued net debits at the end of the 2011 model year and then transitions to

the federal program for the 2012 model year and beyond, "California will likely require that manufacturers opting into the federal program will offset any debits incurred in California by earning a commensurate number of credits in the federal program and retiring those credits rather than using them to meet their federal obligations…." ISOR at 4. AIAM believes that this issue should be addressed in connection with EPA's GHG rulemaking in consultation with CARB and the industry. The most equitable solution would be to allow for both credits and debits accrued in the California program to be carried over into the EPA program. The regulatory mechanism for achieving this result, however, should be a matter for the federal program and related rulemaking and not the CARB rulemaking. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: This comment does not pertain to proposed regulatory changes for this rulemaking. The issue raised by the commenter will be addressed in a future rulemaking. No additional response needed.

23. Comment: CARB should seek a within the scope determination for these amendments. (Michael J. Stanton, President and CEO, AIAM)

    Agency Response: This comment addresses issues outside the scope of this rulemaking in that it does not seek a regulatory text change, and therefore no response is needed. ARB notes that Board Resolution 09-53 directs the Executive Officer to seek this determination post-adoption if appropriate.

24. Comment: In describing the regulatory and legal background for these proposed amendments, the ISOR states that "[m]anufacturers agreed to ultimately drop current, and forego similar future legal challenges, including challenging a waiver grant, which occurred June 30, 2009." Although it is not part of the actual regulatory amendments, AIAM feels that this statement is an inaccurate description of the commitments undertaken by the automobile industry and, thus, merits comment to avoid future confusion. The industry never committed to foregoing all "similar future legal challenges." Rather, the industry only agreed "to dismiss all such litigation (and not to renew any such litigation) with respect to MYs 2009-2016. (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

    Agency Response: ARB agrees that this comment addresses issues outside the scope of this rulemaking. No response needed.

B. COMMENTS SUBMITTED DURING THE 15-DAY COMMENT PERIOD

Comments Addressing Proposed 15-day Changes

25. Comment: For the 2011 and later model years, a manufacturer that selects compliance Option 2 must notify the Executive Officer of that selection, in writing, prior to the start of the applicable model year or must comply with Option1. Since the 2011 model year officially begins on January 2, 2010, and it is unlikely that these amendments will be effective before that date, AIAM recommends that the 2011 model year be moved to subsection a. along with 2009 and 2010, and that subsection b. be revised to apply to 2012 and later model years. (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

Agency Response: This comment addresses issues outside the scope of this rulemaking. However, it should be noted that since these amendments will not become effective prior to January 2, 2010, a manufacturer will not be required to notify the Executive Officer of its selection of Option 2 prior to the start of the 2011 model year. Rather, ARB will enforce the aforementioned reporting requirement once these amendments have been approved by California's Secretary of State.

26. Comment: The State of Pennsylvania opted into the California LEV II program but expressly stated its intent not to enforce the fleetwide greenhouse gas emissions standards in Pennsylvania. While it is unnecessary to amend this section to specifically list each Section 177 state, auto manufacturers do need direction from CARB on which states CARB expects to be included in the annual reports. AIAM recommends that CARB address this matter in a subsequent Manufacturer Advisory Circular (MAC), which can be updated from year-to-year, as needed, to reflect which states should be covered by the annual report. (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

    Agency Response: See responses to comments 2, 3, and 4, above. ARB agrees that it is unnecessary to amend this section to specifically list each Section 177 state, as those state requirements exist independently as a matter of law. We will consider the commenter's suggestion for a MAC or similar guidance document.

27. Comment: In Subsection 1961.1 (a)(1)(B)1.a., the proposed new language for Option B reads: Option B: For a manufacturer that elects to demonstrate compliance with the greenhouse gas requirements using CAFE data, "GHG vehicle test group" shall mean "subconfiguration" in this subsection 1961(a)(1)(B)1.a.

    While AIAM agrees with this change generally, one clarification is needed. While CAFE data is usually available at the subconfiguration level (especially for higher sales volume subconfigurations), CAFE data is not always available for lower sales volume subconfigurations. Therefore, the regulation should provide for these cases by adding the following language to the end of this provision: ". . . except where CAFE subconfiguration data do not exist manufacturers may substitute available CAFE configuration data." (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

    Agency Response: In cases where EPA allows a manufacturer to submit configuration data rather than subconfiguration data to demonstrate compliance with CAFE requirements, ARB will also accept configuration data to demonstrate compliance with California's greenhouse gas regulations.

28. Comment: CARB should revise the regulations to clarify that actual sales data may be used to calculate fleet averages as long as the approach is consistent with respect to all states. (Frank J. Diertl, General Manager, Engineering Services and Anthony P. La Spada, Associate General Counsel and Assistant Secretary, Mercedes-Benz USA, LLC)

Agency Response: ARB modified the regulation to specify that a manufacturer calculate its greenhouse gas fleet average based on the number of vehicles produced and delivered for sale in California. This proposed language is consistent with the requirement for determining compliance with a manufacturer's non-methane organic gas fleet average requirement and with determining compliance with zero-emission vehicle requirements. Therefore, in those cases where actual sales data is used by a manufacturer to demonstrate compliance with these other two programs, ARB will also accept sales data to demonstrate compliance with the greenhouse gas regulations.

29. Comment: The proposed requirement to do calculations and report data at the "subconfiguration" level would create unnecessary and costly burdens. Ford suggests modifying the proposed regulations to replace the term "subconfiguration" with the term "model type," a change that would reduce the burden on manufacturers while still providing CARB with all of the data it needs for purposes of administering and enforcing its GHG regulations. (Cynthia Williams for Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company)

    Agency Response: ARB is requiring that a manufacturer report data from the CAFE program using the CAFE term "subconfiguration," because it is the smallest vehicle group for which CAFE data is available. EPA is also proposing to require that a manufacturer report subconfiguration data to demonstrate compliance under the proposed National greenhouse gas program for passenger vehicles, which will take effect in the 2012 model year. Data at the subconfiguration level is needed in order to verify a manufacturer's fleet average greenhouse gas emission calculations for California, since "Model Type Group" data has already been sales weighted several times based on national sales and may not reflect the mix of vehicles in California.

General Comment

30. Comment: I do not support any more restrictions on our vehicles. You are wasting tax dollars and it needs to stop. I do not support this. Let the people decide what they want to drive by what they choose to purchase. Get government out of our lives! (Nicole Hickey)

    Agency Response: This comment addresses issues outside the scope of this rulemaking. No response needed.