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## **BUREAU OF WASTE PREVENTION DIVISION OF CONSUMER AND TRANSPORTATION PROGRAMS**

### **Summary of Comments and Response to Comments on the Proposed Amendments to the Regulation**

**310 CMR 7.40:**

### **The Massachusetts LOW EMISSION VEHICLE PROGRAM**

**Regulatory Authority: M.G.L. c. 111, Sections 142A through 142M**

**March 2011**

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## I. SUMMARY OF RESPONSE TO COMMENTS ON 310 CMR 7.40: THE LOW EMISSION VEHICLE PROGRAM REGULATION

Comments were received from the following organizations:

1. The Association of Global Automakers, Inc. (Global Automakers)<sup>1</sup>
2. Subaru of America, Inc.
3. U.S. Environmental Protection Agency

The Massachusetts Department of Environmental Protection (MassDEP) filed amendments to 310 CMR 7.40, the Low Emission Vehicle (LEV) Program regulation, with the Massachusetts Secretary of State as an emergency regulation on December 3, 2010. These amendments were effective upon filing and were published in the Massachusetts Register on December 24, 2010. In accordance with the public review process requirements of Massachusetts General Laws (M.G.L.) Chapter 30A, MassDEP made the amendments available for public review, published notification of the amendments, and held a public hearing in order to solicit public comment on the regulation. The public comment period ended January 31, 2011 and relevant comments have been summarized below:

1. Comment: Global Automakers, Inc. commented on the notification requirements for the Greenhouse Gas (GHG) emissions levels. Global Automakers made the following specific comments:
  - a) The advanced notification required for selecting Option 2 for model years (MYs) 2011 and 2012 “presents a physical impossibility for a manufacturer to comply because those specified timing/dates have already passed.” Minor wording changes should be made to reflect this situation.
  - b) MassDEP should streamline the reporting requirements by establishing a common set of reporting procedures for all the LEV states to ease the administrative burden for the automakers.

Response: MassDEP revised sections 310 CMR 7.40(5)(i)(1) and 7.40(5)(i)(2) to address the notification requirement. MassDEP extended the notification date until May 2, 2011 for MYs 2009-2012. Automobile manufacturers must notify MassDEP of their selection by this date.

Since the request to streamline the LEV Program reporting requirements is not relevant to this rulemaking, MassDEP will take these comments under advisement and may consider such revisions in a subsequent rulemaking.

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<sup>1</sup> Global Automakers’ members are American Honda Motor Co., American Suzuki Motor Corp., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America LLC, Kia Motors America, Inc., Mahindra & Mahindra Ltd., Maserati North America, Inc., McLaren Automotive Ltd., Nissan North America, Inc., Mitsubishi Motors North America, Inc., Peugeot Motors of America, Subaru of America, Inc., Toyota Motor North American Inc., ADVICS North America, Inc., Delphi Corporation, Denso International America, Inc., and Robert Bosch Corporation.

2. Comment: Subaru of America, Inc. commented on the notification and reporting requirements for MYs 2009-2011 for the Greenhouse Gas (GHG) emissions levels. Subaru of America, Inc. made the following specific comments:

- a) Subaru of America, Inc. urged MassDEP to eliminate the advanced notification requirements and recommended that MassDEP contact the California Air Resources Board (ARB) for their declared MYs 2009-2011 GHG reporting options.
- b) The amendments are unclear as to whether automobile manufacturers are required to submit GHG reports starting with MY 2009 or MY 2010 and that “MassDEP should obtain this information directly from ARB.”

Response: Section 310 CMR 7.40(5)(i)(1) has been revised and now applies to MYs 2009-2011. Automobile manufacturers are required to notify MassDEP of their GHG reporting options and submit their GHG reports starting MY 2009. For the advanced notification requirement, automobile manufacturers must notify MassDEP of their selection by May 2, 2011 for MYs 2009-2011. For the GHG reporting requirement, automobile manufacturers have until May 2, 2011 to file MYs 2009 and 2010 reports with MassDEP. For the 2011 MY, the GHG report shall be filed with MassDEP by March 1<sup>st</sup> of the calendar year succeeding the end of the model year.

MassDEP cannot obtain the GHG reporting options and the GHG reports that the automobile manufacturers submitted to ARB from ARB because some of this information has been claimed “business confidential.” Therefore, MassDEP must obtain these reports directly from the automobile manufacturers.

3. Comment: The U.S. Environmental Protection Agency (EPA) noted that Massachusetts’ GHG requirements should remain consistent with California regulations. In addition, MassDEP should update its State Implementation Plan (SIP). EPA made the following specific comments:

- a) MassDEP also needs to include the language in the second paragraph of 310 CMR 7.40(5)(i)(2) in section 310 CMR 7.40(5)(i)(1) in order to clarify the reporting requirements for 2009-2011 MYs.
- b) In the GHG Technical Support Document, the MY should read 2016 instead of 2116.
- c) “Since Massachusetts LEV Program is in the Massachusetts SIP, Massachusetts should continually update what is in its SIP.”

Response: MassDEP added the GHG reporting requirements for MYs 2009-2011 in section 310 CMR 7.40 (5)(i)(1). Automobile manufacturers must submit the reports to MassDEP by May 2, 2011 for MYs 2009 and 2010. For the 2011 MY, the report

shall be filed with MassDEP by March 1<sup>st</sup> of the calendar year succeeding the end of the model year.

MassDEP changed 2116 MY to 2016 in the Technical Support Document.

As part of its SIP for ozone, Massachusetts submits only those portions of the California LEV program that apply to criteria pollutants for which a SIP is required. Since GHGs are not currently designated as criteria pollutants under the Clean Air Act (the “Act”), Massachusetts does not intend to submit these particular amendments as part of our SIP for ozone. In event any of the various mobile source GHG pollutants are designated by the Administrator as criteria pollutants under §108 of the Act, we will of course consider submitting the GHG portions of our California LEV program as part any required SIP.

## II. FINDINGS UNDER THE MASSACHUSETTS LOW EMISSION VEHICLE STATUE

In accordance with M.G.L. c. 111, Section 142K, MassDEP assessed the air quality impacts of adopting the California GHG requirements and reviewed the extensive analysis performed by ARB in the development of the standards. The standards will harmonize with the federal standards and will, in the aggregate, achieve greater overall emission reductions of all motor vehicle pollutants than federal vehicle emission standards.<sup>2</sup> In addition, the results of the analysis showed that adoption of the California GHG standards will result in increased benefits from a single, nationwide program to reduce light-duty GHG emission that will ultimately result in reduced air pollution and GHG emissions.

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<sup>2</sup> Background Document and Technical Support, Massachusetts Low Emission Vehicle, 310 CMR 7.40 (LEV II rulemaking), November 21, 1999.