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RESPONSE TO COMMENTS ON EMERGENCY AMENDMENTS TO

310 CMR 7.40

The Massachusetts Low Emission Vehicle Program

March 2019

REGULATORY AUTHORITY:

**Massachusetts General Law, Chapter 111, Sections 142A through 142E, 142K & 142M,
Massachusetts General Law Chapter 21A, Sections 2 and 8, and
Massachusetts General Law Chapter 21N**

The Massachusetts Department of Environmental Protection (MassDEP) filed emergency amendments to 310 CMR 7.40, the Low Emission Vehicle (LEV) Program regulation, with the Massachusetts Secretary of State on December 13, 2018. These amendments were effective upon filing and were published in the Massachusetts Register on December 28, 2018. In accordance with the public process requirements of Massachusetts General Laws (M.G.L.) Chapter 30A, and with the intent to adopt these emergency amendments as a permanent regulation, MassDEP published a notice in the Boston Globe and the Worcester Telegram & Gazette on December 28, 2018, announcing a public hearing and public comment period on the amendments filed as the emergency regulation. MassDEP held a public hearing on January 28, 2019, at its offices in Boston. The comment period closed on February 8, 2019. MassDEP received comments from one commenter, Julia Rege, Senior Director, Environment & Energy, Association of Global Automakers, Inc., as summarized and responded to below.

I. SUMMARY OF COMMENTS AND RESPONSES

Comment: "Massachusetts cannot adopt these amendments at this time because they have not yet received a waiver from the United States Environmental Protection Agency (EPA). Under

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Section 177 of the Clean Air Act, Massachusetts may adopt a California motor vehicle emission standard (or an amendment to that standard) if ‘such standards are identical to the California standards **for which a waiver has been granted for such model year.**’ While California’s 2018 ‘deemed-to-comply’ rulemaking has been finalized by the state, the EPA has not granted a waiver for those amendments. Past EPA waiver decisions have made it clear that where an amendment to a California regulation increases the underlying stringency of the California program—as the revocation of the deemed-to-comply provision does—California must obtain a new waiver. In light of the foregoing, any action by the Massachusetts to adopt California requirements at this time would violate Section 177 of the Clean Air Act.” [Footnotes omitted]

Response: MassDEP disagrees with the commenter. MassDEP does not agree that California requires a new waiver from EPA under these circumstances, because there has been no change of the state standards for which California has already obtained a waiver. MassDEP agrees with the opinion of California Air Resources Board (CARB), as iterated in its *Final Statement of Reasons on Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation*¹ (page 41) in the response to the same comment, that a new waiver is not required.

Moreover, even if California were to need a new waiver under these circumstances, MassDEP need not wait until such waiver is obtained before concluding this rule-making.

Comment: “Massachusetts’ adoption of the deemed-to-comply amendments is premature for the additional reason that California and the federal government have been urged to find a common-sense solution that continues the unified national program (the ‘One National Program’) for regulating motor vehicle fuel economy and GHG emissions, and that sets meaningful and continued increases in vehicle efficiency standards, while also meeting the needs of America’s drivers.... The continuance of One National Program will negate the need for any such rulemaking from California and the other Section 177 states.”

Response: MassDEP disagrees with the commenter. MassDEP’s LEV amendments ensure that the Commonwealth remains compliant with Massachusetts General Law chapter 111, Section 142K and continues to make crucial progress towards reducing GHG emissions to meet limits under the Massachusetts Global Warming Solutions Act. This effort is especially relevant now given the February 21, 2019 announcement that officials from the White House, Department of Transportation, EPA, and the Trump Administration have decided to withdraw from negotiations with CARB and move forward with the proposed federal SAFE Rule.

¹ <https://www.arb.ca.gov/regact/2018/leviii2018/fsorleviii18.pdf>

II. FINDINGS UNDER THE MASSACHUSETTS LOW EMISSION VEHICLE STATUTE

M.G.L. c. 111, Section 142K, requires that MassDEP adopt the state of California's motor vehicle emissions standards when it finds "that said emissions standards and a compliance program similar to the state of California's will ... achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program for any such model year." In addition, MassDEP is required by federal statute to amend the Massachusetts regulations so they continue to be identical to California's. The final amendments to 310 CMR 7.40, adopt the latest revisions to California's LEV III GHG emissions regulations to ensure the current program's emission benefits are maintained for model years 2021 through 2025. The revisions clarify that the "deemed to comply" option (which allows compliance with EPA's vehicle regulations as an alternative to complying with California's regulations) only applies to the EPA vehicle standards that are currently codified in 40 CFR Part 86, Subpart S.

The modifications in this rulemaking do not constitute a change from Massachusetts' current standards and are intended to ensure the expected emissions benefits from the program are achieved. The rulemaking will not have an adverse impact on the economy, business creation, or employment.

III. REVISIONS TO EMERGENCY REGULATION

MassDEP received the two comments summarized above and did not make any changes to the emergency regulation in response.