

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 FOR MODEL YEARS 2012-2016 TO PERMIT COMPLIANCE BASED ON FEDERAL GREENHOUSE GAS EMISSION STANDARDS

Public Hearing Date: February 25, 2010  
Agenda Item No.: 10-2-3

**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 FOR MODEL YEARS 2012-2016 TO PERMIT COMPLIANCE BASED ON FEDERAL GREENHOUSE GAS EMISSION STANDARDS," released January 7, 2010, 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 allow manufacturer compliance with United States Environmental Protection Agency (U.S. EPA) standards to be deemed as compliant with California's standards for the 2012 through 2016 model years.

The rulemaking was initiated by the January 7, 2010 publication of a notice for a February 25, 2010 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 January 7, 2010. 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 Appendix A to the Staff Report. The text of 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), was included as Appendix B to the Staff Report. The Staff Report and its attachments were also posted on the ARB's Internet site for the rulemaking at: <http://www.arb.ca.gov/regact/2010/ghgpv10/ghgpv10.htm> .

On February 25, 2010, 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 10-15, in which it approved the originally proposed amendments.

In accordance with section 11346.8 of the Government Code, the Resolution directed the Executive Officer to incorporate any 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.

Subsequent to the hearing, staff determined it appropriate to issue a 15-day notice, accommodating a number of modifications based on comments received during the 45-day comment period, before U.S. EPA publishes its Final Rule. These modifications provide manufacturers with compliance flexibility by allowing them to demonstrate to ARB their compliance with the National greenhouse gas program by providing ARB with any documentation provided to them by EPA verifying compliance, rather than requiring an “official” document from EPA. Modifications were also made to the regulatory language that allow manufacturers to submit this documentation to ARB within 30 days after receiving approval by U.S. EPA, rather than requiring them to submit it by May 1. These changes also included the addition of language to clarify what factors the Executive Officer will consider in reviewing for approval a manufacturer’s plan to offset greenhouse debits, and conforming changes to indicate the status of the National greenhouse gas program in the Federal Register. 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. Three sets of comments were received during the supplemental comment period that ran from March 11, 2010 to March 26, 2010. After considering these comments, the Executive Officer issued Executive Order R-10-006, adopting the amendments to CCR, title 13, and amending or adopting the incorporated documents.

Subsequent to the release of the 15-day notice, staff noticed a couple of inconsistencies in the proposed modified regulatory language and test procedure language. These non-substantive mistakes to the test procedure language, described below, have been corrected in the final versions of this document.

#### Non-Substantive Corrections to the Regulations

Throughout the regulations, instances of “greenhouse requirements” have been made consistent with “greenhouse gas requirements” by using the latter consistently throughout.

#### Non-Substantive Corrections to the Test Procedures

1. In response to the 45-day comment in section II.A.1, below, in the regulatory text accompanying the 15-day notice the word “official” was removed from the two places in which it appeared in section 1961.1(a)(1)(A)(ii)b.. Language that should be identical to this section of the regulations also appears in section E.2.5.1(ii)(b) of the test procedures. However, when the proposed 15-day changes to the test procedures were released, the word “official” was only removed from one place in section E.2.5.1(ii)(b). The final, adopted regulations correct this oversight and maintain consistency by also removing the second instance of “official” in test procedure section E.2.5.1.(ii)(b).
2. In response to the 45-day comment in section II.A.2, below, clarifying language was added to section 1961.1(a)(1)(A)(ii)c. of the regulations to provide greater guidance as to a manufacturer’s obligations in the event of a

net debit situation in model years 2009-2011. The new regulatory language, as modified in the 15-day notice became:

c. If a manufacturer has outstanding greenhouse gas debits at the end of the 2011 model year, as calculated in accordance with 1961.1(b), the manufacturer must submit to the Executive Officer a plan for offsetting all outstanding greenhouse gas debits by using greenhouse gas credits earned under the National greenhouse gas program before applying those credits to offset any National greenhouse gas program debits. Upon approval of the plan by the Executive Officer, the manufacturer may demonstrate compliance with this section 1961.1 by demonstrating compliance with the National greenhouse gas program. Any California debits not offset by the end of the 2016 model year National greenhouse gas program reporting period are subject to penalties as provided in this Section 1961.1.

Language that should be identical to this section of the regulations also appears in section E.2.5.1(ii)(c) of the test procedures. However, the wording of the proposed 15-day changes to the test procedures is slightly different than that of the regulations. E.2.5.1(ii)(c) of the test procedures says:

(c) If a manufacturer has outstanding greenhouse gas debits at the end of the 2011 model year, as calculated in accordance with E.3.2, the manufacturer must submit to the Executive Officer a plan for offsetting all outstanding greenhouse gas debits by using greenhouse gas credits earned under the National greenhouse gas program before applying those credits to offset any National greenhouse gas program debits. Any California debits not offset by the end of the 2016 model year National greenhouse gas program reporting period are subject to penalties as provided in section E.3.2. Upon approval by the Executive Officer, the manufacturer may demonstrate compliance with this section E.2.5 by demonstrating compliance with the National greenhouse gas program.

There are two non-substantive differences between the proposed 15-day language in section 1961.1(a)(1)(A)(ii)c. of the regulations and section E.2.5.1(ii)(c) of the test procedures that have been corrected in the final adopted version of the test procedures. First, the words “of the plan” that were added to the second sentence of the regulatory language have also been added to the test procedure language. This is nonsubstantive both because it aligns with the controlling regulatory text, and because it simply restates what the Executive Officer would be approving. Second, the last sentence that was added to the regulations – and also to the middle of the test procedure paragraph – was simply moved from the middle to the end of that test procedure paragraph, in parallel with the regulatory text.

3. As in the regulations, throughout the test procedures, instances of “greenhouse requirements” have been made consistent with “greenhouse gas requirements” by using the latter consistently throughout.

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 thirteen written letters and/or e-mails commenting on the proposal during the 45-day comment period prior to and/or at the February 25, 2010 hearing. At the hearing, the Board received oral testimony from the Association of International Automobile Manufacturers, the Alliance of Automobile Manufacturers, the Clean Cars Coalition, the American Lung Association, and Sierra Club California.

### **A. COMMENTS PRESENTED PRIOR TO OR AT THE HEARING**

#### **Comments Concerning the Regulations**

1. Comment: Under 1961.1(a)(1)(A)(ii)b., for manufacturers that select the National program as a compliance pathway, CARB requires the manufacturer to submit a copy of the official EPA determination of compliance to CARB. First, the word “official” seems to imply the issuance of a formal document by EPA, but this is not the case in our experience. Second, it is possible that a manufacturer may not receive a confirmation letter from EPA until some time after the CARB required reporting deadline of May 1<sup>st</sup>. Ford recommends that 1961.1(a)(1)(A)(ii)b. be revised to remove the word “official,” so that any documentation verifying compliance from the EPA to a manufacturer is deemed sufficient. We also recommend eliminating the May 1<sup>st</sup> deadline and replacing it with a requirement that the documentation verifying compliance from the EPA be submitted to CARB within 30 days of receipt by the manufacturer. (Cynthia Williams for Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company )

Comment: CARB should provide greater guidance as to the requirements for showing compliance with the joint National Program. Proposed Section 1961.1(a)(1)(A)(ii)b. provides that manufacturers opting into the joint National Program must, no later than May 1 of the calendar year following the close of the model year “submit to ARB a copy of the official report that it submitted to EPA as required under 40 CFR §86-1865-12 for demonstrating compliance with the National greenhouse gas program and the official EPA determination of compliance.” It is not clear what CARB means by the term “compliance” with the federal GHG standards. Because of the provisions for carrying credits back, “compliance” with the EPA program for a specific model year may not be determined until several years after the close of the model year. Moreover, administrative delays could cause a final determination of compliance to occur after May 1 of the next calendar year. CARB should clarify that “compliance” with the joint National Program required under Section 1961.1(a)(1)(A)(ii)b. does not mean that manufacturers must meet the standard every single model year, but rather is based on compliance as determined by EPA under its regulations. (Michael J. Stanton, President and CEO, Association of International Automobile Manufacturers, Inc. (AIAM))

Agency Response: ARB has modified the proposed regulatory language as requested by Ford. This language should also address AIAM’s concerns.

2. Comment: The regulations should provide greater guidance as to a manufacturer’s obligations in the event of a net debit situation in model years 2009-2011. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB agrees and has added regulatory language to address this comment.

3. Comment: If a manufacturer that opts out of the California program were to fail to comply with Federal standards in the 2012-16 period, that manufacturer would be subject to Federal enforcement, probably by both EPA and NHTSA. There would be no justification for California and potentially the Section 177 states to “pile on” such a manufacturer by seeking to enforce this situation as a separate violation of state standards, and no environmental or energy security benefits would result from separate state enforcement. We urge CARB to clarify its regulations by stating that it does not intend to pursue duplicative enforcement in such a situation. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB disagrees with the premise of the commenter’s hypothetical that a manufacturer can “opt out” of the California program. Both currently (as waived by U.S. EPA at 74 Fed.Reg. 32744 (July 8, 2009)) and after these Amendments are finalized a manufacturer cannot “opt out” of the California program. Instead, the subject amendments will permit a manufacturer to use compliance with the National Program for certain model years to suffice as compliance with California’s program. A manufacturer availing itself of this option to obtain the purported cost savings and logistical benefits manufacturers have sought in this rulemaking thus indeed runs the risk of being in violation of both programs; failure to show compliance with the National Program, if chosen, would mean they are not in compliance with California’s standards. Therefore, no change to the regulation is warranted.

4. Comment: CARB proposes to adopt references to EPA's requirement for a manufacturer in-use testing program. Given the lack of any indication that carbon dioxide emissions rates will deteriorate in-use, there is no environmental need that would justify such a program. It is our understanding that CARB does not intend to adopt its own in-use test program, but we urge CARB to make clear in the final rulemaking notice that there is no such intent. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB agrees and has modified the proposed regulatory language to address this comment.

#### **Comments Concerning Statements Made by ARB in ISOR**

5. Comment: Emissions from electricity generation should be accounted for upstream, not attributed to electric and hybrid electric vehicles. The Alliance supports, for the 2012-2016 timeframe, EPA's decision to assign a fleet average of zero grams per mile CO<sub>2</sub> for electric vehicles, the electric portion of plug-in hybrid electric vehicles, and extended range electric vehicles. While the Alliance understands that ARB staff advocated upstream emissions accounting for these vehicles, we do not believe this is appropriate. (Julie Becker's testimony at hearing, Vice President, Environmental Affairs, Alliance of Automobile Manufacturers (Alliance))

Comment: The accurate evaluation of and accounting for upstream (fuel production) emissions are an important step in reducing green house gas emissions from transportation. However, we believe that upstream emissions should be addressed outside the vehicle regulatory environment since they are outside the direct control of automobile manufacturers. Therefore, we believe that the 0 g/mi value proposed in the NPRM is appropriate for the vehicle GHG regulation. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota)

Agency Response: This comment refers to background statements made by ARB in the Initial Statement of Reasons for this rulemaking, rather than to specific proposed regulatory changes and does not make any textual change recommendation. Therefore, the comment does not require an ARB response. We note, however, that ARB continues to support the position that it is appropriate to assign a non-zero grams per mile of CO<sub>2</sub> value to these types of vehicles based on upstream emissions.

6. Comment: In the January 7, 2010, Staff Report/Initial Statement of Reasons ("ISOR"), CARB restated its concerns with certain aspects of the Federal proposal. In particular, it questioned the advanced technology credits and credit multipliers, the criteria for qualifying for early credits, and advocated the need for a backstop standard. In our view, the advanced technology and early credits under the Federal system are essential to assure the feasibility of the proposed standards. Manufacturers' needs for such credits should be evaluated in the context of the historic nature of the proposed standards (in terms of the dramatic changes the standards will necessitate in vehicle design) and the economic environment in which manufacturers are being called upon to implement these changes. The early credits provide an essential safety valve for the transition to the aggressive new standards program. (Michael J. Stanton, President and CEO, AIAM)

Comment: EPA is proposing National advanced technology vehicle (ATV) credits for battery electric vehicles, plug-in hybrid electric vehicles (PHEV), and fuel cell electric vehicles during the 2012-2016 model year timeframe to promote these important technologies. Toyota fully agrees and supports this direction, including the inclusion of PHEVs. Since PHEVs will be in an early stage of commercialization during the 2012-2016 model years, Toyota believes that PHEVs should continue to be incentivized through eligibility for ATV credits through this timeframe. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota)

Agency Response: This comment refers to background statements made by ARB in the Initial Statement of Reasons for this rulemaking, rather than to specific proposed regulatory changes and does not make any textual change recommendation. Therefore, the comment does not require an ARB response. We note, however, that ARB continues to support the position that credits assigned to advanced technology vehicles should strike a balance between advanced vehicle development and protecting greenhouse gas reductions.

7. Comment: Toyota does not support the addition of a backstop requirement as requested by CARB. While EPA appears to have broad discretion in setting the structure of GHG standards under the Clean Air Act, we believe NHTSA's ability to set backstop standards is limited to the domestic passenger car fleet. The addition of backstops by EPA would represent a further lack of harmonization between the two federal regulations. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota)

Agency Response: This comment refers to background statements made by ARB in the Initial Statement of Reasons for this rulemaking, rather than to specific proposed regulatory changes and does not make any textual change recommendation. Therefore, the comment does not require an ARB response. We note, however, that ARB continues to support the position that a backstop measure should be included in the final National greenhouse gas rule to guarantee that emission reductions are achieved, regardless of any unforeseen changes in the fleet mix.

8. Comment: At several points in the ISOR, CARB suggests that its continued support for the National Program may depend on whether EPA makes changes to its proposed standards that CARB believes are necessary to ensure that the federal standards are of equivalent stringency to the Pavley standards. However, the commitment letters or "Rose Garden agreements", as some refer to them, do not require that the federal standards be of equivalent stringency to the Pavley standards. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: This comment refers to background statements made by ARB in the Initial Statement of Reasons for this rulemaking, rather than to specific proposed regulatory changes and does not make any textual change recommendation. Therefore, the comment does not require an ARB response. Nonetheless, the commenter is too selective here in its representations from the Letter of Commitment signed by Chairman Nichols and the Joint Notice of Intent. The statements cited from the ISOR merely

reflect, as noted in the Letter of Commitment, California's expectation that the National program would be substantially equivalent to the standards cited in the Joint Notice of Intent which ARB determined would be equivalent on a fleet wide basis to the Pavley regulations.

9. Comment: The bases and underlying assumptions for a determination by CARB that the National Program does not achieve equivalent or greater greenhouse gas benefits than the Pavley regulations should be transparent. The benefits analysis in the ISOR purports to show the comparative benefits of the proposed National Program as compared with the Pavley regulations. However, these two regulatory programs are structured differently and measure compliance differently. For example, the National Program is based on a footprint approach whereas the Pavley regulations provide unitary standards. Also, the programs have different provisions for accruing credits and debits and different vehicle classifications between the passenger car and light truck fleets. The California program exempts intermediate sized manufacturers from compliance requirements for several years, while the federal program provides only limited "alternative" standards for these manufacturers. The ISOR does not explain the assumptions and methodology underlying its evaluation of these and other differences in the programs or its comparison of the benefits of the two programs. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: The basis and underlying assumptions used to calculate the relative benefits of the Pavley regulations and the National program were clearly explained in the Initial Statement of Reasons (ISOR). The data sources, spreadsheets and baseline values against which the emission benefits of the two programs were calculated were identified and referenced in the ISOR and readily available to the Commenter. Concerning the structural differences between the two programs noted by the Commenter, as explained in the ISOR, the values used for the National program were derived from a table in the Federal Register listing federal fleet emissions that addressed those differences. Regarding the treatment of Intermediate Volume Manufacturers by the Pavley regulations, staff determined that most manufacturers currently meeting this classification will become Large Volume Manufacturers (LVM) in the time frame of the federal program, thus subject to the requirements for LVMs.

10. Comment: CARB proposes to require manufacturers to submit to it the same emissions data the manufacturers must submit to EPA under the Federal GHG program. In addition, CARB proposes to require manufacturers to submit separate emissions test and sales data for California and each of the section 177 states. Such a reporting requirement is inconsistent with the commitment letters and the National Program, and is unnecessary. According to the commitment letters, these regulatory amendments are to provide that "compliance with the GHG emissions standards adopted by EPA shall be deemed compliance with the California GHG emissions standards." The ISOR provides no justification for requiring manufacturers to provide data for each individual state, and such data is not needed to show compliance with the amended regulations. In the event that a manufacturer opts into the federal program, all that should be required to verify compliance is to demonstrate compliance with the federal program as determined by EPA under its regulations. (Michael J. Stanton, President and CEO, AIAM)



Agency Response: This comment refers to statements made by ARB in the Initial Statement of Reasons for this rulemaking, regarding reporting requirements for manufacturers electing to comply with the National greenhouse gas program for model years 2012-2016. However, for the 2012–2016 model years, a manufacturer that complies with California’s greenhouse gas regulations by demonstrating compliance with the National greenhouse gas program does not have to submit separate emissions test and sales data for California and each of the section 177 states.

11. Comment: The ISOR states that “[u]pon release of the Final Rule, Board staff will issue 15-day changes, which will finalize California’s adoption of this rule.” ISOR at 4 (emphasis added). However, this is not what California law requires for finalization of regulations. Before the regulatory amendments become final and have the force of law, California’s Office of Administrative Law must approve them. See Cal. Govt. Code §§ 11343, 11343.4, 11349.1(a), 11349.3. See, e.g., July 24, 2007, letter from Tom Cackette to U.S. Environmental Protection Agency Re Waiver of Preemption at 27 (“ARB’s regulations indeed are not final and enforceable under state law until California’s Office of Administrative Law (OAL) approves them and submits them to California’s Secretary of State.”) Cal. Gov. Code Secs. 11349.3 and 11343-11343.8.”). (Michael J. Stanton, President and CEO, AIAM)

Agency Response: This comment refers to background statements regarding rulemaking procedure made by ARB in the Initial Statement of Reasons for this rulemaking, rather than to specific proposed regulatory changes and does not make any textual change recommendation. Therefore, the comment does not require an ARB response. We note, however, that because the Board approved the subject regulatory amendments at its February 25, 2009 public hearing with direction to the Executive Officer to make minor modifications thereto available for comment, ARB’s final “adoption” of the amendments will be by Executive Order issued by its Executive Officer. We agree with the commenter that the amended regulations will then become operative or effective under state law after OAL review and approval.

### **Comments In Support of Amendments**

12. Comment: I support the CARB on this issue 500%. (Robert E. Fisher, MSW)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

13. Comment: The Pennsylvania Department of Environmental Protection (DEP) supports the proposed amendments to California’s greenhouse gas emission standards for new passenger motor vehicles, which would allow vehicle manufacturers to demonstrate compliance with CARB’s greenhouse gas standards by demonstrating compliance with the National Program.

DEP agrees that CARB’s proposal should be contingent on EPA and US DOT maintaining the stringency of the greenhouse gas standards in the final rulemaking for the National Program. DEP supports CARB’s position that

early emission credits should be limited to electric and fuel cell vehicles, and that these credits should only be generated when manufacturers meet or exceed California's standards. DEP also supports CARB's position that EPA should reevaluate the approach currently proposed by EPA for generating additional emission credits for advanced technology vehicles. EPA's current proposal could allow manufacturers to earn unreasonably numbers of credits and could result in lower actual emission reductions than anticipated at the onset of the National Program. DEP also supports CARB's position that EPA should include a backstop measure to ensure emission reductions are achieved, regardless of unanticipated changes to the vehicle fleet. (Kenneth R. Reisinger, Acting Deputy Secretary, Pennsylvania Department of Environmental Protection)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

14. Comment: I applaud the California Air Resources Board (CARB) for setting a high national bar for greener vehicles. As CARB acts to accept compliance with new national standards for a clean cars program, CARB should ensure that we get what we have been promised -- national standards that deliver the equivalent reductions to California's strong standards.

I encourage CARB to keep up the hard work and urge the Board to make sure that national standards are as stringent as California's for new vehicle models from 2012 to 2016. I also support CARB's setting new standards for model years 2017-2025. California must continue being a leader when it comes to greener vehicles. (Megan Norris and 4,602 Sierra Club California members)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

15. Comment: Our organizations are pleased to submit these comments in support of the ARB staff's proposed amendment to the California Clean Cars program to allow automakers to demonstrate compliance for model years 2012 through 2016 by complying with U.S. Environmental Protection Agency vehicle greenhouse gas emission standards (yet to be finalized).

Unfortunately, it is unclear at this time whether the final rule will preserve the emission benefits of the California program. While we strongly support Board approval of the proposed amendment, we recommend ARB staff immediately report to the Board if the final U.S. EPA rule does not adequately address the concerns staff expressed in their Initial Statement of Reasons published January 7, 2010. We share staff's concerns on the following:

1. In its final rule, U.S. EPA must maintain the stringency of the GHG standards proposed in the NPRM.
2. An emissions backstop is needed to ensure the U.S. EPA greenhouse gas program delivers its forecasted emission benefits.
3. The rule should include upstream emissions for electric, plug-in and hydrogen vehicles, and adjust credits assigned to these vehicles.
4. Early action credits should be limited.

(oral testimony: Jamie Knapp, Clean Cars Coalition and Bill Magavern, Sierra Club California; written submittal signed by: Bonnie Holmes-Gen, American

Lung Association in California; John Shears, CEERT; Shankar Prasad, Coalition for Clean Air; Bernadette Del Chiaro, Environment California; Danielle Fugere, Friends of the Earth; Roland Hwang, NRDC; Bill Magavern, Sierra Club California; Patricia Monahan, Union of Concerned Scientists)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

16. Comment: We feel strongly these regulations offer critical clean air, climate change and health benefits. And we're very enthusiastic that the leadership of the Board is bringing a program that broadcasts these benefits across the country. So we applaud CARB staff for acting in good faith to harmonize our rules with the national rules so we can finalize next month. We also share CARB's concerns that equivalent emission reductions must be achieved in the final rule and staff should be monitoring that to make sure you come back and ensure that all the reductions are guaranteed in the final project. (Will Barrett, American Lung Association California)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

17. Comment: We fully support that program, the harmonized national program, and we greatly appreciate the commitments that California has made to align your program with the national program. And we support the proposal today which provides the option of compliance with the federal program as an option in California. We did submit a few (written) questions to the staff where we believe some clarifications are in order in the regulations. And we'll be working with staff on clarifying those in the 15-day process. Nothing is major; just little edits here and there we think would improve the readability and understandability of the regulation. And finally, we believe, as we've said before, we believe it is very imperative for all of us to work together. (oral testimony: John Cabaniss, Director, Environment & Engineering, AIAM)

Agency Response: We appreciate this comment, for which no response is needed because it is supportive of the staff proposal.

### **Comments Against Amendments**

18. Comment: I am writing to express my opposition to the proposed new rules regulating emissions in California. Although I believe the science of global warming is sound, I think the direction the board is taking is draconian and will do nothing to solve the problem worldwide. (Tom Magdaleno)

Agency Response: In AB 1493 the Legislature required ARB to adopt greenhouse gas emission standards for motor vehicles, thereby establishing the necessity and authority for both the original regulations adopted in 2004 and the subject amendments thereto. These amendments are not "new rules" to make the 2004 greenhouse gas standards more stringent, but rather provide manufacturers with additional flexibility to show compliance with the original regulatory standards.

19. Comment: I find this regulation a massive intrusion into the lives of citizens and an unreasonable requirement. I do not see how California taking this action can have any impact on man caused Global Warming (assuming such a phenomenon even exists). All I see is an attempt by the State to collect fines.

I also do not see how enforcement will work. This is a meaningless action which will only drive away people and businesses from a State which already has too many regulations and laws. (Aynov Tanaka)

Agency Response: See response to comment 18.

20. Comment: I oppose this proposal. This gives one more opportunity for the ASP to charge for something. I always inflate my tires to the maximum recommended pressure. (Charlene Saunders)

Agency Response: See response to comment 18.

21. Comment: Let's stop this job killing proposal now! California contributes less than 1% of all global green house gases worldwide. These mandates will have zero impact on the any climate change. All this does is drive tax paying business to leave our state and is a job Killer! (Preston Riseling)

Agency Response: See response to comment 18.

22. Comment: Government Employees and entities make up a majority of our collective carbon emitters and so, in California, create the "overwhelmingly evident climate change we all fear". As such I propose that, before we further tax the populace who is already overburden with financial hardship, we perform two actions: 1) Mandate a part-time legislative body; this would reduce the significant carbon emissions generated by travel by "representatives" by air and car to Sacramento. 2) Reduce the amount of Government employees, this will accomplish two basic principals, reducing pollution generated by their vehicles, and reduce the tax burden on the tax payers allowing them to invest in green technology. (Patrick Patton)

Agency Response: See response to comment 18.

23. Comment: My advice to ARB Bureaucrats (YOU!) is to REDUCE emissions by have manufacturing done in California. Reduce costs to employers drastically! Create employment, here! Reduce your impact on California taxpayers starting with these emissions standards. (Don Heichel)

Agency Response: See response to comment 18.

### **Comments Outside the Scope of this Rulemaking**

24. Comment: Toyota supports the proposed standards for the 2016 model year with the caveat that the rate of increase in the proposed passenger car targets for 2011-2012MY seems to be inconsistent with the subsequent model years. Therefore, Toyota recommends that this be adjusted by

“smoothing” the curves between 2011 and 2016 model years to be more consistent with product and technology development cycles. This concern does not apply to the truck curves since there is a different shape of the base (2011 model year) curve. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota Motor Engineering & Manufacturing North America, Inc. (Toyota))

Agency Response: The fleet average emission curves to which Toyota refers are part of the National passenger vehicle greenhouse gas regulations. ARB need not respond to this comment because it is not directed at the subject proposed action.

25. Comment: The standards embodied in the May 19, 2009 agreement pose a substantial challenge for the industry, and EPA should provide as much flexibility as possible so long as credits are based on actual overcompliance. Therefore, Toyota supports EPA’s proposed early credit pathways. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota)

Agency Response: The early credit pathways to which Toyota refers are part of the National passenger vehicle greenhouse gas regulations. ARB need not respond to this comment because it is not directed at the subject proposed action.

26. Comment: As part of a September 2009 rulemaking, amendments to California’s passenger vehicle greenhouse gas regulations were adopted that allow a manufacturer to use Corporate Average Fuel Economy (CAFE) data to demonstrate compliance with California’s regulations. These amendments require a manufacturer that elects to use CAFE data to calculate the CO<sub>2</sub>-Equivalent Values based on the vehicle “subconfigurations,” which are the smallest vehicle group for which CAFE data is available. Ford suggests modifying this regulatory language to replace the term “subconfiguration” with “model type.” (Cynthia Williams for Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company )

Agency Response: ARB need not respond to this comment because it is not directed at the subject proposed action. ARB will continue to work with industry to address their concerns, as appropriate. No additional response needed.

27. Comment: Currently, 1961.1(a)(1)(A)(i)1, Option 2b., requires manufacturers to notify CARB of their intent to elect compliance with Option 2 for the 2011 and later model years “prior to the start of the applicable model year.” Because a model year may begin January 2<sup>nd</sup> of the calendar year preceding the model year, manufacturers may already be producing 2011 MY vehicles in advance of the adoption of these amendments. Ford recommends that 1961.1(a)(1)(A)(i)1, Option 2b. be revised to allow the manufacturer to notify the Executive Officer of their intent to elect compliance with Option 2 for the 2011 and later model years within 30 days of the effective date of the amendments. (Cynthia Williams for Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company )

Comment: The regulations state that manufacturers must notify CARB prior to the start of the 2011 model year if they intend to comply with 2011 standards on the basis of their combined California plus section 177 state fleet. For some vehicles the 2011 model year could begin as early as January 2, 2010, before CARB's rule takes effect. CARB should specify a date certain for the deadline for a manufacturer to request fleet combination for the 2011 model year as it did for the 2009 and 2010 model years. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB need not respond to this comment because it is not directed at the subject proposed action. However, we note 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. No additional response needed.

28. Comment: Further clarification regarding the use of CAFE Program data is needed in section H.4.5(a)(i) of the test procedures. The proposed language states that a manufacturer choosing Option B "must submit a comprehensive list of all emission test results used to calculate its Corporate Average Fuel Economy, including the test vehicle description and identification number, for each subconfiguration and the number of vehicles produced and delivered for sale under Option 1 and 2 in section E.2.5.1.1, as applicable, that are represented by the subconfiguration." (Cynthia Williams for Robert D. Brown, Director, Vehicle Environmental Engineering, Environmental & Safety Engineering, Ford Motor Company )

Agency Response: ARB need not respond to this comment because it is not directed at the subject proposed action. ARB will continue to work with industry to address their concerns, as appropriate.

29. Comment: ARB requires manufacturer to submit emission test results of all sub configurations used to calculate CAFE and actual sales volume represented by those sub-configurations. In addition, ARB is requiring that the data be broken down state-by-state. Since the data is not currently available state-by-state at the sub-configuration level, it is extremely burdensome to prepare this data as proposed in the regulation. If ARB insists on requiring this data, optional methods such as submission by configuration using the average of subconfiguration values should be permitted. Another alternative could be the use of a state average for each manufacturer's fleet (car/truck) multiplied times the already submitted manufacturer's sales volumes. (Michael Lord, Manager, Vehicle Regulation and Certification Engineering, Toyota)

Agency Response: ARB need not respond to this comment because it is not directed at the subject proposed action. ARB will continue to work with industry to address their concerns, as appropriate.

## **B. COMMENTS SUBMITTED DURING THE 15-DAY COMMENT PERIOD**

## **Comments Addressing Proposed 15-day Changes**

30. **Comment:** No on this bill. We already have one in place it been working just fine you are just trying to find more ways to take our money and jobs from us. The more you fine our business in California, the more they are just going to leave. Now I don't know where you are from, I know you are not even thinking about how to make more money in California or even thinking how our kids going to make money in this state, they can't make money if there's no jobs or if they want to start a business they got to deal with all the fine you are posing. Think about it if no one is working you can't get PAY.....  
(Kelvin Johnson)

**Agency Response:** See response to comment 18.

31. **Comment:** The GISS/HADCRU/IPCC models are so flawed as to be totally worthless. They fail to model the reality of conditions on Earth. They mis-apply the Greenhouse Warming Effect. If more CO<sub>2</sub> does NOT cause more warming, then there is no reason to Cap or reduce emissions. However as Hansen points out, the increasing temperature data is complete enough to document that warming exists, the data on incoming energy, the sole source used in the models, has essentially not increased since the 1960s, so there MUST be some other source of energy, eg gravity, that is causing the very real warming. (John Dodds)

**Agency Response:** See response to comment 18.

32. **Comment:** Section 1961.1(a)(1)(A)(i)1.b states that manufacturers must notify ARB in writing prior to the start of MY 2011 regarding a manufacturer's intent to combine its fleets under Option 2. We recommend that ARB revise section 1961.1(a)(1)(A)(i)1.b to require the manufacturer to notify the Executive Officer of its intent to comply with Option 2 before the beginning of the model year or, in the case of the 2011 model year, 30 days following the effective date of these regulations, whichever occurs later. (Michael J. Stanton, President and CEO, AIAM)

**Agency Response:** See response to comment 27.

33. **Comment:** Section 1961.1(a)(1)(A)(ii)c states that any manufacturer that has outstanding California GHG debits remaining at the end of model year 2011 must submit to ARB a plan for offsetting those debits. This provision goes on to state that the plan must show that all remaining ARB debits are offset "by using greenhouse gas credits earned under the National greenhouse gas program before applying those credits to offset any National greenhouse gas program debits." California has no direct regulatory authority over the Federal program, and AIAM therefore does not believe that CARB has the power to require a forfeiture of Federal credits, even if this requirement is set forth in a compliance plan. Moreover, AIAM continues to believe that this requirement is inconsistent with the May 2009 commitment letters, which provide that in the 2012 model year and thereafter, compliance with the federal program will be "deemed" to be compliance with the California program, should a manufacturer opt for this compliance path.

We urge ARB to delete the sentence in paragraph c that states “[u]pon approval of the plan by the Executive Officer, the manufacturer may demonstrate compliance with this section 1961.1 by demonstrating compliance with the National greenhouse gas program.” There is no basis for conditioning access to the National program option on compliance with 2009-2011 ARB standards. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB disagrees with this comment and is making no changes in response to it. Offsetting debits for the 2009-2011 model years – which again ARB believes manufacturers are unlikely to accrue – is not directly regulating the Federal program but is ensuring compliance with California’s 2009-2011 model year standards. Because nothing in the parties’ respective commitment letters directly addresses the issue of the interplay between California’s commitments for the 2009-2011 and 2012-2016 model years, ARB has properly interpreted the letters to make each part meaningful and effective. Without a debit offset mechanism, manufacturers could accrue unlimited debits in those years thus rendering those standards null, which would conflict with our commitment that the effective emissions limits for these years “...do not change....” ARB has thus provided a rational basis for the subject language.

34. Comment: To the extent that the amended regulation contains any provision concerning outstanding California GHG debits at the end of model year 2011, it should account for the fact that the existing ARB greenhouse gas regulations allow other methods for offsetting debits in addition to accruing credits in subsequent years. Manufacturers should be able to avail themselves of the full range of methods provided under ARB regulations. (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB believes that the 15-day modifications to the regulations provide sufficient flexibility to allow manufacturers to tailor their compliance plans to incorporate reasonable strategies for achieving compliance.

35. Comment: ARB’s section 1961.1(a)(1)(A)(ii)b allows manufacturers to demonstrate compliance with EPA standards by providing ARB the applicable model year CAFE Report and documentation provided to them by EPA verifying compliance. ARB modified this provision to eliminate a requirement for submittal of an “official” document from EPA. The section was also modified to allow manufacturers to submit the documentation to ARB within 30 days after receiving approval by EPA, rather than requiring them to submit it by May 1. These changes are helpful, but it is still not clear that any EPA “determination of compliance” document will exist for a given model year. Instead, we believe it is likely that EPA will issue end-of-model year status reports which indicate the GHG level achieved by a given manufacturer along with credits earned or used, and the manufacturer’s credit balance. Rather than requiring manufacturers to submit a “determination of compliance” document (which may or may not exist), ARB should revise the regulation to refer to “end-of-model-year reports from EPA.” (Michael J. Stanton, President and CEO, AIAM)

Agency Response: ARB believes that the 15-day modifications to the regulations are appropriate for providing manufacturers with sufficient



flexibility for demonstrating compliance with the National greenhouse gas program. Upon release of the final rule for the National greenhouse gas program, ARB will re-examine whether additional regulatory changes are appropriate.