March 22, 2011

The Honorable Ed Whitfield
U.S. House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Representative Whitfield:

Thank you for the opportunity to elaborate on my testimony before the Energy and Power Subcommittee. Below please find responses to the questions from The Honorable Fred Upton.

1. **In your testimony, you state that relying on the authority of DOT, without EPA fuel economy/GHG regulations for MY 2012-16, “the rulemaking would have resulted in 35% more pollution and 25% more oil consumption.”**

   a) **Since the Obama Administration states that the EPA and DOT joint fuel economy/GHG rulemaking is “harmonized and consistent,” how is it possible that the absence of EPA’s regulation would result in 25% more oil consumption?**

We agree with the Obama Administration that the National Program is “harmonized and consistent”. Manufacturers may comply with both standards with the same vehicles, using the same tests. Congress has given both Environmental Protection Agency (EPA) and Department of Transportation (DOT) separate and potentially conflicting responsibilities to regulate vehicles; these two independent agencies have cooperated to produce a single program that accomplishes these goals. As EPA and National Highway Traffic Safety Administration (NHTSA) wrote in the final rule, “The compliance program design establishes a single set of manufacturer reporting requirements and relies on a single set of underlying data. This approach still allows each agency to assess compliance with its respective program under its respective statutory authority.”

In general, the harmonization of greenhouse gas emissions reduction and corporate average fuel economy standards allows the National Program to achieve greater emission reductions, fuel savings, and consumer and societal benefits at lower cost than would be achieved by one program in isolation. In this case, the sum truly is greater than the parts.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.*
*For a list of simple ways you can reduce demand and cut your energy costs, see our website: [http://www.arb.ca.gov](http://www.arb.ca.gov).*

California Environmental Protection Agency

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Our estimate of additional oil savings (as well as GHG pollution and cost savings) for the EPA standards is derived from the EPA’s and NHSTA’s own analysis of the joint final rule. According to the joint final rule, NHTSA’s Corporate Average Fuel Economy (CAFE) portion of the joint rule would result in a total of 58.6 billion gallons of fuel saved during the “lifetime” of vehicles produced during the 2012-2016 timeframe, while the EPA rule under Clean Air Act (CAA) authority is estimated to result in 77.7 billion gallons of fuel saved by these vehicles. Thus the combined strength of the joint rule, utilizing the benefits of different program structures and policy goals, harmonized and consistent in compliance, results in 33% more fuel savings than if the rule relied on NHTSA authority alone. Put another way, the nation would lose one quarter of the oil savings of the National Program if the rule just relied on NHSTA authority.

That the National Program achieves greater emissions reductions and fuel savings than the CAFE standards alone is a result of the different underlying statutory authority that results in different program components. The four key differences are: 1) unlike the Energy Policy Conservation Act (EPCA), the CAA allows for the crediting of direct emission reductions and indirect fuel economy benefits from improved air conditioners, allowing for greater compliance flexibility and lower costs; 2) EPCA allows Flexible Fuel Vehicle (FFV) credits through model year 2019, whereas the EPA standard requires demonstration of actual use of a low carbon fuel after model year 2015; 3) EPCA allows for the payment of fines in lieu of compliance but the CAA does not; and 4) treatment of intra firm trading of compliance credits between the cars and light trucks categories.

b) Please identify the source and explain the methodology supporting your contention that the absence of EPA’s regulation would result in 35% more pollution.

Our estimate of additional pollution savings, (as well as oil savings), for the EPA standards is based on EPA’s and NHSTA’s own analysis of the joint final rule as published in the Federal Register. According to NHTSA, the MY2012-16 CAFE rule alone would reduce greenhouse gas emissions by a cumulative 636 million metric tons over the lifetime of vehicles produced in model years 2012-2016. EPA predicted their rule would reduce emissions from these vehicles by 962 million metric tons. Thus, the combined EPA/NHTSA rule reduces total pollution from vehicles produced during this period by 51% more than the NHTSA rule alone. Without the Clean Air Act authority, there would be 34% loss in pollution reductions, and similarly we can expect that if future rulemakings were only able to utilize the fuel economy focus and circumscribed analytic framework of NHTSA’s process, these too would result in more pollution.

\footnote{See Federal Register, Vol. 75, No. 88, Friday, May 7, 2010, pages 25342 to 25348.}
2. On January 20, 2009, the day President Obama took office, there was one single national fuel economy standard (i.e., CAFE). Today there are three different standards, under three different sets of rules, administered by three different agencies (DOT, EPA and CARB).

a) Does CARB support a single national fuel economy standard?

Yes, CARB has always been a strong supporter of national fuel economy standards. We are also emphatic supporters of national pollution control standards for vehicles under the Clean Air Act, as well as our own and other states' rights to adopt pollution control standards for vehicles when necessary to protect the health and welfare of our residents. CARB is also unequivocally and emphatically supportive of the current National Program of harmonized pollution control and fuel economy standards. Harmonizing these standards brings greater health, economic, and energy security benefits to consumers and our nation, and reduces administrative burden for government and compliance costs for industry. Harmonized emissions and fuel economy standards for vehicles are truly a win-win-win outcome of which California is proud to be a part.

CARB remains strongly committed to working in full partnership, per its May 2010 letter of commitment, with EPA and NHSTA to develop technically sound standards for vehicle model years after 2016 that meet the statutory obligations of the respective agencies. The joint announcement by CARB, EPA and NHSTA to coordinate its proposal release for September 1, 2011, is yet another example of CARB’s strong commitment to the National Program.

b) Despite all the differences between the three different fuel economy programs by DOT, EPA and CARB listed above, you claim the three different regulatory regimes are the “functional equivalent” of a single national standard. If fuel economy is unrelated to motor vehicle greenhouse gas emissions, as CARB contends, how is a “functionally equivalent” single national standard possible?

The test of a “functionally equivalent” single national standard is simple: can a manufacturer build a single national fleet and develop a single set of testing data that will demonstrate compliance with EPA, NHSTA and CARB standards? The answer is yes. As described above, manufacturers are able to build a single fleet and develop a common set of reporting data that allows compliance with both the EPA and NHSTA standards. In addition, in February of 2010,

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2 The claim in the question is incorrect. CARB has never claimed that there is no relation between the pollution emitted by burning fossil fuels and the rate at which they are burned. CARB merely maintains the fact that pollution control and fuel economy are not identical – fuel economy and pollution control regulations have different public policy objectives, utilize different incentive and flexibility features, and there are technologies that reduce pollution that are not counted under fuel economy measures, and some fuel economy improvements do not reduce emissions commensurately.
CARB adopted amendments to its regulations that allow manufacturers to use demonstration of compliance with EPA greenhouse gas standards as demonstration of compliance with CARB's program.

Three agencies with different statutory missions and regulations; one fleet, and one set of compliance data. From the perspective of industry, this is the functional equivalent of a single national program.

Going forward, as the federal agencies, California, auto manufacturers, and other stakeholders work together on Phase 2 of the National Program for model years 2017 and beyond, we expect this coordination to be even more seamless. California and the federal agencies have access to the same technical analyses and are benefitting from each other's different expertise to assess capability and cost. We are looking at the different flexibilities and incentives built into our respective programs to create a harmonized program that achieves the cleanest cars at least cost, preserves consumer choice, safety, and affordability, and encourages 21st century technologies with breakthrough potential to achieve American energy security and sustainable low-carbon transportation.

3. As you know, other states may adopt the CA LEV program under Section 177 of the Clean Air Act. However, my understanding is that under California law, CARB regulators can only take into account factors in California when setting a fuel economy/GHG regulation. Job loss, consumer acceptability and choice, highway safety, and any other factor important to the other 49 states cannot be considered when CARB sets a fuel economy/GHG standard. For the record, if CARB was aware that an auto parts factory in Michigan could close because of changes to CA LEV, would CARB take the potential for job loss in Michigan into account when setting a fuel economy/GHG standard?

As I stated in my testimony, there is indeed a long history of other States adopting California’s new motor vehicle standards to provide their citizens the public health benefits of cleaner burning “California Cars”. Each of these states completes their own full regulatory analysis before they adopt our standards, and is able to look at each of the factors important to them, including the benefits of more consumer choice in efficient vehicles and the jobs and economic benefits that accrue to their states when consumers’ spend less money on foreign oil and more on Main Street businesses.

I think the evidence of history is best: other states, and the federal government, have consistently adopted each of California’s successive standards precisely because they are well-designed, cost-effective, and environmentally and economically beneficial for those states and the nation.
The question is based on false assumption. California can and does consider consumer, employment, safety or other factors in setting pollution emission standards. In fact, nothing in California law prohibits our agency from considering these factors. The Assembly Bill 1493 legislation that mandated GHG standards requires consideration of consumer choice and model availability, and CARB routinely assesses factors such as these in response to comments. For example, we provided exhaustive responses to comments on employment effects and consumer choice issues in our Final Statement of Reasons – the equivalent of EPA and DOT responses to comments in federal Final Rules. These analyses do not stop at the California border.

It is worth noting that in our rulemaking process for the MY 2009-2016 standards and in the litigation that ensued, not one auto manufacturer, parts manufacturer, auto dealer, or industry expert identified a single facility that would close due to California’s regulations. Instead, we – and later a federal court in Vermont5 – heard general speculation and heated rhetoric about purported job loss. As I described in my testimony, this “sky is falling” story has fortunately been proven not to be the reality of motor vehicle emission control under the Clean Air Act. Regarding greenhouse gas regulation in particular, the auto industry continues to rebound in no small part due to California’s standards persistently pushing manufacturers to produce the cleaner, more efficient vehicles consumers want.


California is fully committed to the process of developing harmonized national standards for model years 2016-2025. We have demonstrated that commitment by participating in joint technical meetings with industry and adjusting our timelines to fit the federal schedule. Despite some indications of industry efforts to derail the process, we fully expect that successful completion of this process will result in a similar, single compliance system, the functional equivalent of one national standard, then as now.

With the continued cooperation among DOT, EPA, and CARB, we are all on track to propose our 2017-2025 standards on a coordinated schedule, targeted for September 1, 2011. From that point, all three agencies will go through their statutory notice-and-comment period, final rule drafting, and in ARB’s case, consideration and final decision by the full Air Resources Board. The time between proposed and final rule is a function of the number and complexity of the comments received, any necessary revisions to the rule, and the final decision of the Board.

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3 Cal. Health & Saf. Code § 43018.5(d)(2)
Between the proposed and final rules, there will of course be ongoing coordination between all agencies as we work to maintain a harmonized result. There are differences between California and federal administrative procedure that may give the appearance of inconsistency but in fact do not interfere with the goal. For example, after the CARB Board considers a draft regulation, there are up to nine months for changes to be noticed and adopted before the rules goes into effect. No such process exists at the federal level. Even after final rules are promulgated revisions may be made to ensure a single compliance system.

As a point of historical note, the current National Program came into effect after a much more tortuous process. California’s pollution emissions standards were originally approved in September 2004. It was not until 2009 that EPA and NHTSA promulgated national regulations that achieved roughly equivalent emission reductions to California and the 13 states that adopted California standards. When they did, California proposed revisions to our rule to increase flexibility and allow compliance with the federal program to fulfill compliance with California’s rule. These revisions were adopted in February 2010, and allow for the harmonized National Program that we enjoy today. This shows that technical variations in individual agencies’ regulatory timelines – like differences in statutory authority or how we credit alternative technologies – are not fundamental barriers to a harmonized National Program.

Thank you for giving me the opportunity to respond to your questions. Please let me know if you have any further questions.

Sincerely,

[Signature]

James N. Goldstone
Executive Officer

cc: The Honorable Bobby L. Rush, Ranking Member,
    Subcommittee on Energy and Power