May 1, 2008

Ms. Lori Andreoni
Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

SUBJ: Emission Control and Smog Index Label Regulations 2nd 15-Day Notice

Dear Ms. Andreoni:

The Alliance of Automobile Manufacturers (Alliance), a trade association of 10 car and light-truck manufacturers, submits the following comments with respect to the subject 2nd 15-Day Notice published on April, 4, 2008 (hereafter, "2nd 15-Day Notice")[1]. The Alliance has worked constructively with the California Air Resources Board (ARB) staff to develop this regulation, and we appreciate its consideration of our concerns with the California Environmental Performance Label (CEPL).

Summary of Concerns

The Alliance supports nationwide greenhouse gas (GHG) labeling that provides consumers information that enables them to make an informed decision about a vehicle's GHG emissions. As you know, the Environmental Protection Agency (EPA) regulations already require manufacturers to apply fuel economy labels, and EPA's Green Vehicle Guide allows consumers to compare annual greenhouse gas emissions for each model type. Section 105 of the Energy Independence and Security Act (EISA), passed by Congress in December, 2007, requires the Department of Transportation, in consultation with the Department of Energy and EPA, to promulgate new regulations on GHG labeling in the near future. In light of the information already available to consumers, and the information to come, we believe an additional state-mandated GHG label is

[1] Public Hearing to Consider Amendments to the Emission Control and Smog Index Labels Regulation, Notice of Public Availability of Modified Text and Availability of Additional Documents and Information, Public Availability Date April 4, 2008.

redundant, unnecessary, and likely to cause confusion among consumers. With this in mind, the Alliance does not support mandatory GHG labeling as currently proposed in the 2nd 15-Day Notice. We believe the proposal is preempted by federal law and is also inconsistent with the explicit direction set forth in Board Resolution 07-26.

Further, the California Global Warming Solutions Act of 2006 (AB 32 (Nunez)) specifically directs the Board to adopt requirements that promote consistency with federal programs and streamline GHG reporting requirements. This direction appears to promote the use of the existing EPA greenhouse gas data in lieu of a state-specific mandate. The CEPL could refer customers to these data and could provide any added caveats or generic adjustments to account for methane, nitrous oxide or other carbons/fluorides needed for completeness.

Even assuming GHG labeling is appropriate, lawful, and warranted, the 2nd 15-Day Notice has some technical concerns. It limits manufacturers to using worst-case certification test data (with only minor adjustments for certain factors); creates the potential for competitive harm by imposing relatively lower scores on products within large test groups; and provides manufacturers with insufficient time to prepare or respond. Moreover, the 2nd 15 day notice purports to require an instant changeover to a different testing and calculation methodology in the event that a CAA 209 waiver is granted for CARB's GHG regulations. The lack of a transition period creates the potential for problems and competitive issues.

The Alliance recommends a voluntary labeling program using specified data that is already from testing conducted for California and Federal certification programs.

Finally, we would like to note that if ARB proceeds with this proposal, manufacturers must have final design specifications for the label no later than June 1, 2008, in order to efficiently comply with the January 1, 2009, implementation date specified in the 2nd 15-Day notice.

The remainder of this letter outlines these concerns in greater detail, and provides our recommendation to address them.

Detailed Comments

1. **Preemption of Labeling Requirements by EPCA**: As outlined in our letter of June 19, 2007, the Federal Energy Policy and Conservation Act (EPCA) expressly provides that with a Federal fuel economy labeling standard in place, "a State or political subdivision of a State may adopt or enforce a law or regulation on disclosure of fuel economy or fuel operating costs …only if the law or regulation is identical to that [federal] requirement." 49 U.S.C. 32919. A Federal fuel economy labeling regulation has been in place since the 1977 model year. As you know, vehicle CO_2 emissions are directly and inversely proportional to fuel economy. Vehicle manufacturers already use CO_2 emission data to calculate vehicle fuel economy in miles per gallon and federal fuel economy label values under federal regulations. Low GHG emissions translate to high fuel economy and vice-versa, making for a redundant label. Moreover, since the California GHG label values are not calculated using the same methodology as the federal fuel economy data, there is a high likelihood that there will be inconsistencies between the state GHG labels and the federal fuel economy labels, causing unnecessary confusion among consumers (i.e. high fuel economy but low GHG score). Therefore, we believe the GHG portion of the new ARB Environmental Performance Label is preempted by federal law. It should be modified to allow for a voluntary labeling program, using methods consistent with those used under the federal fuel economy program (see "Recommendation for a Voluntary Labeling Program" Section below), by manufacturers who may wish to do so.

2. **Failure to Follow Board Direction**: Board Resolution 07-26 (June 21, 2007) states in part as follows:

> "WHEREAS, based on the information in the public record, including the staff report and testimony provided at the hearing, the Board finds that:
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> …
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> 3. If the regulations adopted pursuant to Health and Safety Code section 43018.5 regarding greenhouse gas emissions do not remain in effect, **the smog index amendments proposed herein can and should be implemented by deleting the greenhouse gas score and label depiction thereof and adjusting the label format accordingly**; and…" (Emphasis added)

Unless and until a CAA 209 waiver is issued for CARB's GHG program, those regulatory provisions are not in effect and not enforceable.[2] Under such circumstances, Board Resolution 07-26 directed staff to delete the greenhouse gas score and label depiction and adjust the format accordingly. By continuing to include the greenhouse gas score as part of the label, the 15-Day notice fails to follow the Board's explicit direction. Since ARB staff is authorized to act only in accordance with the Board's direction, staff should drop the global warming score from the proposed regulations. Failure to do so would violate principles of delegation of authority under California administrative law.

Items 1 and 2 above both provide compelling reasons why CARB should drop its mandatory GHG labeling program and instead consider a voluntary program that parallels the existing EPA GHG data (and consequently the anticipated federal GHG labeling program) and better complies with AB 32 (Nunez) requirements for consistency with Federal programs. The Alliance strongly recommends that CARB adopt this course of action.

Having said that, the Alliance offers additional comments on the substance of the proposed GHG labeling program.

[2] CAA Section 209(a) provides that states may not "adopt or attempt to enforce" state emissions standards in the absence of an EPA waiver under Section 209(b).

1. **Lack of Transition Period if CAA 209 Waiver is Granted:** The proposed regulations purport to require an immediate change to a different set of testing and calculation protocols in the event a CAA 209 waiver is granted. Section 3.(a)(1) requires that "If California received a waiver of federal preemption under the Clean Air Act…then the global warming emissions value is the CO_2-equivalent value as calculated in accordance with Title 13, California Code of Regulations, Section 1961.1(a)(1)(B) and certified pursuant thereto." When the 15-Day notice was released, and at present, U.S. EPA has denied the ARB's waiver request, and California is pursuing judicial review of that decision. In the event that this decision is reversed in the future, Section 3.(a)(1) does not provide any lead time or transition period for the testing, reporting, and labeling requirements specified therein. Manufacturers cannot change testing protocols and label values overnight. ARB should not promulgate regulations that could lead to a chaotic situation with inconsistent label values and thereby defeat the purpose of the regulations, which is to provide information enabling consumers to make an informed decision. ARB should delete this provision from the proposed regulations. If the waiver is granted at some point in the future, ARB should revise these regulations accordingly to ensure consistent label values and provide adequate lead-time.

2. **Information Unavailable for MDPVs**: The proposed regulations require manufacturers to calculate the GHG score using a combined CO2-equivalent (CO2e) value using CO2 values from testing conducted on the city and highway cycles and reported to ARB in accordance with ARB Mailout MSO #2007-03. However, MDPVs are not currently tested on the highway cycle and only city data is reported to ARB in accordance with Mailout #2007-03. Consequently, the combined CO2 value for city and highway cycles will not be available for MDPVs until 2011 MY when MDPVs are required to incorporate fuel economy labeling. Using only city values would inappropriately shift the GHG score too low for MDPVs and testing MDPVs with the shortened lead time (8 months) for the highway cycle will cause containability issues for MDPVs as majority of the California and Federal certification testing has already been completed. New vehicles may have to be procured and additional testing will have to be scheduled, run, and analyzed to provide the necessary highway CO2 data. Moreover, Mailout MSO# 2007-03 states that it "does not require any additional

emissions tests." Thus, we recommend that the MDPVs should show "N/A" for the GHG score until 2011 MY when testing will commence federally for MDPVs.

3. **Recommendations for a Voluntary Labeling Program**: The Alliance recommends that ARB institute an interim voluntary labeling program until the time that labeling is required under the Energy Independence and Security Act of 2007 (EISA), 49 U.S.C. §32908(g). This would provide additional consumer information in the interim, while eliminating concerns about preemption under the federal fuel economy labeling law; obviating the need to bring the regulations back to the Board for their approval; and avoiding the likelihood of conflicting information between California labels the coming federal labels. Moreover, it encourages EPA's cooperation to develop a label that meets ARB's needs. We recommend that ARB use of one of the following methods to calculate the voluntary GHG score:

   a. EPA GHG Score: Use the EPA GHG score rather than a different one developed by ARB. This eliminates unnecessary testing and provides the same relative information to the consumer.

   b. Calculate CO_2e for the Test Group: The method proposed by the subject notice, for manufacturers with complex line-ups, will overstate CO2 emissions on every model by about 8% on average when compared to high sales configurations and some models may be overstated by as much as 18%. Correspondingly, nearly half of the models could be assigned scores 1 to 2 numbers worse than appropriate if each model was averaged with high sales configuration CO2 data for every model. Thus, if unique labels are required, we believe ARB should allow manufacturers the option to calculate the Global Warming Score for each test group through ARB-approved common adjustments to city and highway CO2 test data. The data used to adjust the emission test group score would be based on existing Federal and California CO2 emissions data that is currently available prior to production. This prevents the need for any additional testing for a more representative Global Warming Score. To achieve this, a manufacturer could average the emission test group CO2 data with existing, high sales configuration CO2 data (California or Federal). Alternatively, a manufacturer could also be allowed to optionally label individual models or powertrains, such as unique transmission types, within the emission test group when

more CO2 data for high sales configurations may be available prior to production start.

These options have the following advantages:

a. They would allow the use of a known value that is consistent across the entire industry to provide more consistency for the consumer.

b. They would ensure a representative GHG score. ARB's proposal may cover a number of different models with the same GHG score even though it may be unrepresentative of the vehicle. For example, a 2WD and 4WD could have the same value reported under the MSO #2007-03 CO_2e methods even though they have very different actual CO_2/GHG emissions.

c. They would avoid problems of the same vehicle having different GHG scores based on when the vehicle was certified. If the certification application is updated for a running change, the CO_2e may be updated to reflect these changes. A voluntary label would eliminate the forced changes that could result in different GHG scores.

d. They would prevent disparities between companies that predominantly certify vehicles to 50-state standards and those that do not:
    i. 50-State certified vehicles are allowed to use all valid data points unlike the values reported under MSO #2007-03.
    ii. For CA-certified vehicles, additional testing within the CA test group would be necessary to provide representative GHG scores that are competitive with the data available under 50-State testing. However, this testing duplicates test results available from valid, existing Federal configuration test data, which does not seem reasonable.
        a) Number of prototype vehicles and test facilities available are limited for any additional testing to acquire a more representative and competitive label value.
        b) Additional cost for extra California prototype vehicles for such testing is not considered in the notice nor is it practicable.
        c) Lead time requirements for additional test vehicles are prohibitive.

4. **Air Conditioning Credit Methodology**:

   a. Indirect air conditioning: If ARB moves forward with using the CO2e calculation specified in the 15-Day Notice, there are some additional concerns regarding the A/C–indirect qualifications. Currently, there are no specific methods or procedures to demonstrate achieving lower emissions with "improved" A/C systems as there are with the "low-leak" system (SAE J2727). We understand that credit will be based on the manufacturer's engineering evaluation. However, in addition to an engineering evaluation to demonstrate lower A/C emissions, the Alliance recommends the development of a test procedure through SAE to define an "improved" system. Once adopted, the SAE procedure would be an allowable option to an engineering evaluation. Industry is willing to work with ARB and SAE to develop a procedure and calculation to demonstrate "improved" A/C systems based on realistic applications of various types of compressors.

   b. Direct A/C: While the Direct air conditioning credit procedure allows manufacturers to use a standard procedure to determine the credit, it appears to allow that credit only if manufacturers meet four criteria, namely (see Attachment 1 to the 2nd 15-Day Notice paragraph 3.(a)(2)(B)ii.1. on page A-4): 1) minimizing the number of fitting and joints; 2) limiting the use of single O-rings for pipe and hose connections; 3) using lowest permeability hose for containment of the refrigerant; and 4) minimizing leakage from the compressor shaft seal and housing seals.

      As a first point, no definition of any of the individual criteria is provided. For example, what is the "lowest permeability hose" and how would a manufacturer demonstrate it has "limited use of single O-Rings" or minimized "leakage from compressor shaft seal and housing seals?" However, the proposed regulation appears to require that manufacturers meet all four of these vague criteria, any one or even all of which could vary by manufacturer.

      Be that as it may, there is no reason for any of these criteria because an SAE test procedure is available and required to demonstrate whether the direct emissions have or have not been reduced. Manufacturers should be allowed to use any, all, or none (and use an entirely different method) of the criteria specified to reduce direct air

conditioning emissions, provided it can demonstrate the emission reductions using the SAE test procedure.

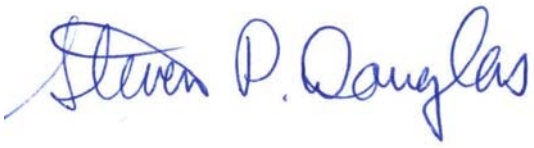
For Direct air conditioning allowances, the Alliance recommends deleting the four criteria and simply the required demonstration using the SAE test procedure to demonstrate that the vehicle's A/C emissions are less than 25 grams per year.

Conclusion

ARB should not proceed with its proposed regulations for mandatory GHG labeling, which would run afoul of both federal law and the Board resolution, and which will only create confusion when federal GHG labeling takes effect. Rather, ARB should pursue an interim, voluntary labeling program using one of the calculation methods suggested above. A voluntary labeling program would be within ARB's authority, would be a constructive effort to provide consumers with more information until federal labeling takes effect, and would give ARB valuable experience and feedback that would enable it to help make the federal labeling program more effective.

We appreciate your consideration and look forward to working with ARB in the future. If you have any questions or need any additional information, please contact me at (916) 266-4532 or by email at sdouglas@autoalliance.org.

Sincerely,



Steven P. Douglas

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