March 26, 2010

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Dear Sir or Madam:

Enclosed are comments from the Association of International Automobile Manufacturers, Inc. (AIAM)[1] on the 15-day changes to ARB's light vehicle greenhouse gas emission standards program to allow compliance with the National Program as an option for compliance in California.

If you have any questions on our comments, please feel free to contact John Cabaniss, Director of Environment and Energy for AIAM at jcabaniss@aiam.org or (703-247-2107).

Sincerely yours,

Michael J. Stanton
President and CEO

cc: Mary Nichols, CARB
James Goldstene, CARB
Tom Cackette, CARB
Bob Cross, CARB
Steve Albu, CARB
Paul Hughes, CARB

[1] The Association of International Automobile Manufacturers (AIAM) represents 15 international motor vehicle manufacturers which account for over 50 percent of all light duty motor vehicles sold in California. AIAM's members include Aston Martin Lagonda, Ferrari, Honda, Hyundai, Isuzu, Kia, Mahindra, Maserati, McLaren, Mitsubishi, Nissan, Peugeot, Subaru, Suzuki, and Toyota. AIAM also represents original equipment manufacturers and other automotive-related trade associations. For further information, visit www.aiam.org.

ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC.
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COMMENTS OF THE
ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS (AIAM)

ON 15-DAY CHANGES TO
AMENDMENTS TO ARB'S PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS TO PERMIT COMPLIANCE BASED ON FEDERAL STANDARDS

March 26, 2010

AIAM[1] appreciates the efforts of ARB in implementing amendments to its light vehicle greenhouse gas emission standards program to allow compliance with the National Program as an option for compliance in California. We also appreciate ARB's consideration of our comments on the proposed amendments and the regulatory changes made in response to our comments. We offer the following additional comments regarding the 15-day change version of the rule.

1. Notification of ARB of intent to combine California and section 177 State fleets. 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. Under the California Health and Safety Code, Division 26 (Air Resources), section 39038, the term "model year" is defined as "the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year."[2] Based on this definition, the 2011 model year could begin as early as January 2, 2010. According to information on ARB's website, 14 manufacturers have already been issued 41 Executive Orders for the 2011 model year. See http://www.arb.ca.gov/msprog/onroad/cert/pcldtmdv/2011/2011.php. We are aware that several of these models are already being produced and shipped. For manufacturers with these early introduction vehicles, compliance with the notification provision, even if made the day that the rules are finalized, could be interpreted to occur after the start of that manufacturer's model year. To address this problem we recommend that ARB revise section 1961.1(a)(1)(A)(i)1.b to read as follows:

   b. For the 2011 and later model years, a manufacturer that selects compliance Option 2 must notify the Executive Officer of that

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[2] Section 1900(a) Title 13 of the Code of California Regulations makes this definition applicable to Chapter 1 regulations, which include the Greenhouse Gas Standards under section 1961.1.

selection, in writing, 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. If a manufacturer fails to notify ARB by that date, it must comply with Option 1.

2. Offsetting debits that are carried over from MY 2009-2011. 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."

   First, as discussed in AIAM comments submitted in connection with the September 24, 2009 Board hearing on the earlier amendments to the GHG regulations, 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.

   However, 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. For example, a manufacturer should be able to purchase credits that are generated in model years 2012 and thereafter from another manufacturer that elects to remain in the California program and not comply based on the National program. See 13 CCR 1961.1(b)(3). A manufacturer facing a MY 2011 debit situation should also be allowed to generate offsetting credits after model year 2011 by using an Optional Alternative Compliance Mechanism under 13 CCR 1961.1(a)(1)(B)2.a. We urge ARB to modify the first sentence of section 1961.1(a)(1)(A)(ii)c to reflect all of the options available to manufacturers for offsetting debits under the California program, and not provide that the forfeiture of federal credits is the only means by which California debits may be offset. We recommend re-phrasing this sentence of section 1961.1(a)(1)(A)(ii)c to read as follows:

   > If a manufacturer has outstanding greenhouse gas debits at the end of the 2011 model year, as calculated in accordance with section 1961.1(b) *and including any credits earned or acquired in accordance with section 1961.1 for model years after 2011*, the manufacturer must

submit to the Executive Officer a plan for offsetting all outstanding greenhouse gas debits.

We also 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. As ARB stated in its commitment letter to participate in the National program,

> "(2) California commits to revise its standards on GHG emissions from new motor vehicles for MYs 2012 through 2016, such that compliance with the GHG emissions standards adopted by EPA shall be deemed compliance with the California GHG emissions standards."

ARB's commitment makes no reference to compliance prior to 2012. The 2009-2011 compliance matter and the ability for manufacturers to comply based on the National program in 2012-2016 are separate and independent matters. Moreover, California rules allow manufacturers several years for averaging in determining compliance; therefore, a manufacturer which may have a deficit account balance at the end of the 2011 MY would have several years in which to correct the deficit under California's regulations. We urge ARB to delete the referenced sentence in paragraph c that appears to tie these two matters together. Finally, this sentence is inconsistent with the commitment letters' provision that manufacturers will be "deemed" to be incompliance with the California program if they are in compliance with the federal program.

3. Proof of compliance with Federal GHG standards. 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." Accordingly, Section 1961.1(a)(1)(A)(ii)b should be revised to read as follows:

> b. The manufacturer must submit to ARB a copy of the official Model Year CAFE report that it submitted to EPA as required under 40 CFR

§86-1865-12 (as proposed at 74 Fed. Reg. 49454, 49760 (September 28, 2009)), for demonstrating compliance with the National greenhouse gas program. This report must be submitted no later than May 1 of the calendar year following the close of the model year, for each model year that a manufacturer selects compliance with this option under Section 1961.1(a)(1)(A)(ii). In addition, the manufacturer must submit to ARB a copy of any end-of-model-year reports provided by EPA to the manufacturer, within 30 days of receipt.

We appreciate ARB's consideration of these comments. We reiterate our appreciation for ARB's efforts in working cooperatively with manufacturers, EPA, NHTSA, and other states to develop a practical, effective greenhouse gas regulatory program. We look forward to working with ARB, EPA, and NHTSA in the future to develop a national program for model year 2017 and later standards.