

ATTACHMENT 1

ARB Responses to November 9, 2011 Oversight Committee Questions

- 1. Provide a list of all CARB employees who participated in negotiations and the development of the Administration's light-duty vehicle emissions standards for both MY 2012-2016 and MY 2017-2025. Include each employee's title and brief description of his or her role in the negotiations.**

California Air Resources Board (CARB) employees engaged with a large and diverse group of stakeholders (including, but not limited to, domestic and international equipment manufacturers, suppliers, labor organizations, consumer organizations, and environmental groups) to obtain data and information relevant to setting greenhouse gas emission (GHG) standards for light-duty vehicles built in model years (MYs) 2017-2025 in accordance with California law. A list of CARB employees and their titles is provided in response to Question 3; the role of all but the attorneys listed was to evaluate potential GHG reduction technologies' feasibility and their costs and resultant emissions levels.

With regard to the MY 2012-2016 standards, CARB's 2004 rulemaking setting MY 2009-2016 greenhouse gas standards had little input from EPA and virtually no input from vehicle manufacturers. The decisions not to participate were made by those organizations, not by CARB.

In working with the Administration to develop their 2012 - 2016 regulation, CARB's involvement was generally limited to technical work developing a phase-in of the fleet average to merge the federal program with California's existing regulations, to arrive at the same endpoint greenhouse gas emissions levels by 2016. EPA essentially did their own analysis by engaging the Ricardo firm to help EPA develop its rule, the results of which arrived at roughly the same costs and emission reduction capability CARB projected back in 2004.

- 2. Provide a list of all CARB employees who participated in negotiations and the development of the Administration's heavy-duty truck emissions standards. Include each employee's title and brief description of his or her role in the negotiations.**

CARB is unaware of any negotiations regarding EPA's heavy-duty truck emissions standards, as contained in "Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles" (76 Fed. Reg. 57,106 (Sept. 15, 2011)). As described below in our response to Question 3 of your letter, CARB staff did provide EPA information related to emissions generated from heavy-duty vehicles and on-board diagnostic system requirements for heavy-duty hybrid engines. Also, CARB provided comments in response to EPA and National Highway Traffic Safety Administration's (NHTSA) notice of proposed rulemaking regarding "Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium-

and Heavy-Duty Engines and Vehicles”, published in the Federal Register on November 30, 2010 (75 Fed. Reg. 74152), but CARB does not know to what extent, if any, EPA utilized that information in its rulemaking actions to promulgate its final heavy-duty truck greenhouse gas emissions standards. The CARB employees identified in a list within Attachment 2 provided EPA staff information related to heavy-duty truck emissions standards.

- 3. Provide a full and complete explanation of the exact role of the State of California and CARB in each of the negotiations for MY 2012-2016 and MY 2017-2025 light-duty vehicle emissions, as well as heavy-duty truck emissions. Your response should focus on how California and CARB were engaged and how California and CARB participated in the development of the light-duty MY 2012-2016 standards, the light-duty MY 2017-2025 standards, and the heavy-duty truck standards. In particular, your response should include a detailed description of CARB’s involvement in each meeting, discussion, or negotiation on these three standards, and a detailed explanation of CARB’s influence in shaping the final versions of each standard. Please also include a thorough chronology of CARB’s engagement on each of these three federal fuel economy/greenhouse gas emission standards.**

The chronology and list of CARB employees in Attachment 3 summarizes CARB’s meetings, in-person and by phone, with federal regulators and stakeholders in the development of the light-duty greenhouse gas regulations.

As discussed in the cover letter, CARB’s role in developing the MY 2012-2016 light-duty vehicle standards and the proposed MY 2017-2025 standards has been: a) collaboration in developing and sharing technical information regarding emission control and reduction technologies; and b) cooperation regarding the consistency of the regulatory regimes and work toward harmonizing state and federal emissions programs.

CARB’s role in EPA/NHTSA’s heavy-duty truck standards has been more limited. As in the light-duty rulemakings, CARB provided comments to the federal agencies’ proposed rule and participated in public hearings. CARB staff also shared technical information and expert advice on heavy-duty trucks with the federal agencies’ staff; see list discussed and provided in response to Question 2. However, to date, we have neither collaborated on technical comparisons of our rules nor sought harmonization to the same extent that we have done for the light-duty vehicle standards.

- 4. The New York Times quoted you [Ms. Nichols] as stating that the negotiations on MY 2012-2016 standards featured a deliberate vow of silence, and great care was taken to “put nothing in writing, ever.” Please**

explain what you meant by these statements. Do you have personal knowledge of the following facts referenced in the Times article:

- a. An Administration official “quietly orchestrating private discussions” on MY 2012-2016 standards? Please provide details sufficient to support your answer.**
- b. An Administration official telling participants in the discussion to refrain from putting anything in writing? Please provide details sufficient to support your answer.**
- c. An Administration official deciding not to hold group meetings and “taking care to not leak updates to the press”? Please provide details sufficient to support your answer.**

My statements to the New York Times were intended to acknowledge the extremely important and successful role the Administration played in coordinating and facilitating discussions with key stakeholders, including federal agencies, auto manufacturers, and California in the effort to develop a harmonized national program for MY 2012-2016 vehicle standards. To answer your specific questions:

- a. To my knowledge the Administration facilitated a number of important discussions on MY 2012-2016 standards with federal agencies (US EPA, NHTSA), auto manufacturers, and California officials. I have personal knowledge of this fact because I participated in some of these discussions with the Administration.
- b. To my knowledge there were no written documents produced as a result of any of the discussions, however I am not aware that there was any direction from the Administration to avoid written communication as part of these discussions.
- c. I participated in discussions with Administration officials and was aware that similar discussions between Administration officials and other stakeholders were taking place. I did not respond to inquiries from the press or otherwise make available to the press the content of the discussions in which I participated.

5. Do you believe that a closed and secretive process is the best approach for regulating an industry that affects nearly every American? If no, explain in detail why CARB agreed to participate in such a process.

CARB’s process for regulating vehicle pollution, as governed by the California Administrative Procedures Act, is a thorough, transparent, and open process. The joint EPA/NHTSA rulemaking process, governed by the federal Administrative Procedures Act, is similarly transparent and thorough.

CARB similarly believes that the forthcoming rulemakings by CARB and the joint federal agencies will provide an open public process for our respective regulations affecting 2017-2025 model year passenger vehicles.

CARB also notes that it is standard practice to confer with agencies of overlapping jurisdiction and with stakeholder groups, including potentially regulated parties, before launching a formal rulemaking process. We regard such consultation as good government.

6. California is said to be leading the nation in implementing fuel economy standards. Under what express statutory authority is California setting fuel economy standards, a task delegated exclusively to NHTSA?

California has not set, and is not setting fuel economy standards.

CARB has set greenhouse gas emission standards for vehicles in MY 2009-16 that will materially reduce serious negative public health impacts on Americans, under the authority of California's AB 1493 (Chap. 200, Stats. 2002), and its Global Warming Solutions Act of 2006 (Chap. 488, Stats. 2006), and with a waiver of preemption issued pursuant to federal Clean Air Act Section 202. This action is in the context of CARB's long-standing effort to address pollution from motor vehicles.

7. Do you believe that when Congress enacted Section 209 of the Clean Air Act, Congress intended California regulators to establish fuel economy standards for the national fleet, despite express language contained in EPCA, which declares that states "may not adopt or enforce a law or regulation related to fuel economy standards"? If yes, please clearly articulate the basis for such a reading of the statute.

California has not set, and is not setting fuel economy standards.

Congress intended to permit California to continue regulating vehicular air pollutants, such as greenhouse gases, as discussed in *Central Valley Chrysler-Jeep, et al v. Goldstene*, 529 F.Supp.2d 1151 (E.Dist. CA (Fresno) 2008) (*Central Valley*) and *Green Mountain Chrysler Plymouth Dodge Jeep, et al. v. Crombie*, 508 F.Supp.2d 295 (D.Vt. 2007) (*Green Mountain*).

Considering that Clean Air Act (CAA) Section 209 predates the Energy Policy and Conservation Act of 1975 (EPCA) by nearly a decade, Congress certainly intended that California be authorized to regulate vehicle emissions, even when these regulations have an effect on fuel economy. Further, Congress re-affirmed this desire and significantly expanded it, after EPCA was passed, by adding Section 177 to the CAA allowing other states to adopt California's emissions regulations – even

though it was widely recognized that emission regulations have effects on fuel economy.

Within the text of EPCA itself, Congress provided that fuel economy not preempt emission standards by requiring that NHTSA take account of such standards when setting fuel economy¹. Finally, Congress recently re-affirmed this intent within the past five years by expressly providing that fuel economy standard increases under EPCA, as amended by the Energy Independence and Security Act do not preempt state pollution emission standards, such as California's Clean Cars law.²

8. The relationship between fuel economy and greenhouse gas emissions is so close that compliance tests for fuel economy standards are done by measuring CO2 emissions. "Related" is defined as "[b]eing connected; associated." Do you believe that greenhouse gas regulation is "related to" fuel economy standards? Please provide a factual basis for your answer.

No, and two courts rejected this argument; see *Central Valley* at pp. 1174-1179 and *Green Mountain* at pp. 350-355, and 398-399. Though factual bases are discussed in those decisions, we note that the question is a legal one definitively answered to the contrary in those decisions.

The argument that the phrase "related to" should be read so broadly as to include anything associated with another thing is not only contradicted by the courts, it is absurd in application. For instance, if the argument were true, states could not regulate speed limits because such are clearly closely "related to" fuel economy. Therefore, the reading of "related to" is properly read, with common sense, to be narrow and concerned with regulating the same subject matter as the prohibition, i.e. fuel economy.

9. CARB now regulates heavy-duty truck emissions. Under what statutory authority is CARB regulating heavy-duty truck emissions? Does the California Waiver extend to heavy-duty truck emissions?

California has regulated heavy-duty truck emissions for decades, and does so now (including as cited in your footnote 27) under the authority of numerous California Health and Safety Code sections, including 38510, 38560, 38560.5, 39600, 39601, 39650, 39658, 39659, 39667, 39674, 39675, 42400, 42400.11, 42400.2, 42410, 43013, 43016, 43018, 43023, 43100, 43101, 43102, 43104, 43105, and 43806. Assuming that the "California Waiver" reference in this question refers to EPA's action on June 30, 2009 (published 74 Fed.Reg. 32773 (July 8, 2009)), that waiver

¹ 49 U.S.C. § 32902(f).

² Letter from Senator Dianne Feinstein to Hon. Mary Peters, Secretary of Transportation, April 23, 2008.

does not extend to heavy-duty truck emissions, as it only pertains to passenger cars, light-duty trucks, and medium-duty passenger vehicles for model years 2009-2016.

10. Because fuel economy standards are measured on a weighted fleet-wide basis, an automaker complying with the California standard may still be out of compliance in another state if consumers there do not buy vehicles in the same proportion as Californians. Is CARB concerned about the “patchwork” of regulations that could result its regulation of emissions, even if other states adhere to the California standard?

No, because there is no “patchwork.” In order to give automakers a choice on how to comply with the California rules, CARB amended its 2009-11 greenhouse gas emissions regulations to allow manufacturers to demonstrate compliance via pooled sales among California and the Section 177 states. For the period between 2012-16 automakers can also demonstrate compliance in California by showing compliance with U.S. EPA’s greenhouse gas emissions standards. California’s proposed 2017-2025 greenhouse gas emission standards would offer these same flexibilities.

11. As you know, NHTSA examines the safety consequences of fuel economy standards before determining what standards are appropriate for the industry. Please describe in detail CARB’s expertise in regulating automobile safety standards.

CARB does not regulate automobile safety standards.

In developing CARB’s greenhouse gas emission standards for MY 2009-2016, we determined that the standards’ stringency would not require weight reduction, thus, there are no safety concerns. Also, CARB maintained vehicle performance metrics and therefore consumer choice in terms of the breadth and availability of various sizes and classes of passenger vehicles available and their attributes. Therefore, our standards did not affect safety from the technologies we projected for the fleet, and to date, no credible information has been presented to show a negative safety impact of California standards.

In addition, while CARB does not claim to have expertise in regulating automobile safety standards, we do evaluate comments concerning safety impacts from our emissions standards. And we do have expertise regarding the claimed levels of safety-impacting technologies (e.g. mass reduction) needed to meet certain emission standards such as our forthcoming greenhouse gas emission standards. From working with EPA and NHTSA over the last couple of years we also have confidence in their respective statements projecting essentially no safety impacts from the proposed 2017-2025 greenhouse gas emission standards.

12. In setting “greenhouse gas emission regulations”/fuel economy standards under the waiver, does CARB take into account environmental, safety, or consumer factors on a nationwide basis?

This question contains an inaccurate assumption, because CARB sets standards under state law, not under “the waiver.” Moreover, CARB does not set fuel economy standards. However, the results from many of the analyses used for our state rulemaking – such as joint evaluation of technologies and costs, and effect on California consumers (i.e., the ability to maintain consumer choice and save them money) may apply both to other states that adopt our standards and to the national market.

When CARB develops greenhouse gas and other pollution emission standards, we certainly take into account environmental, safety, and consumer factors, on a California-wide basis and to some extent on a national level. See *Central Valley* at 1178. For example, when the federal government proposed aligning its greenhouse gas standards for 2016 with California’s, we evaluated the potential emissions impacts for California and concluded that doing so would net equivalent or greater reductions for California. Our statutory mandate under state law, and as permitted under federal law, is to reduce dangerous air pollution to protect public health and welfare. CARB must also consider net consumer financial benefit and preserve consumer choice in that process.

13. Provide all technical assessments used or relied on by CARB in agreeing to the Administration’s fuel economy proposals.

CARB did not agree to accept NHTSA’s fuel economy standards; rather, CARB did agree to accept compliance with EPA’s greenhouse gas emissions regulations for the 2012-2016 model years as compliance with California’s greenhouse gas requirements for those model years. The fact that EPA/NHTSA conducted a joint rulemaking in 2010 is not relevant, since CARB accepted the EPA regulations as compliance for the California 2012-2016 emissions standards. Similarly, CARB proposes to do the same for the 2017-2025 model years. If the Committee seeks technical assessments relating or referring to EPA’s proposed 2017-2025 greenhouse gas emission standards, those are provided in our response to Question 16.

CARB developed its MY 2009-2016 greenhouse gas pollution emission standards based on technical analyses contained or referenced in the 2004 Initial Statement of Reasons.³ These analyses are provided in Attachment 4.

³ AB 1493 (Pavley) ISOR August, 2004, as supplemented.

CARB made the decision to accept compliance with the federal joint GHG/fuel economy standard as alternative compliance with California's standards for MY 2012-2016 based on analysis prepared by CARB in its staff report to the board supporting this decision that compared the projected emissions reductions achieved by the federal standards with our existing regulations.⁴ This analysis was in turn based on the technical analyses contained or referenced in the 2010 federal proposed rule.

CARB has not yet formally proposed or agreed to accept alternative compliance for MY 2017-2025. When this decision is considered, CARB expects that it will be similarly based on CARB's analyses presented in a staff report to the Board comparing the regulations. This staff report will be based on the analyses contained and referenced in the federal rulemaking, and additional CARB analysis.

14. Provide all consumer cost-benefit analyses used or relied on by CARB in agreeing to the Administration's fuel economy proposals.

CARB did not agree to accept NHTSA's fuel economy standards; rather, CARB did agree to accept compliance with EPA's greenhouse gas emissions regulations for the 2012-2016 model years as compliance with California's greenhouse gas requirements for those model years. The fact that EPA/NHTSA conducted a joint rulemaking in 2010 is not relevant, since CARB accepted the EPA regulations as compliance for the California 2012-2016 emissions standards. Similarly, CARB proposes to do the same for the 2017-2025 model years. If the Committee seeks technical assessments relating or referring to EPA's proposed 2017-2025 greenhouse gas emission standards, those are provided in our response to Question 16.

Consumer net benefit is an integral part of California's statutory mandate and has been an essential part of analysis conducted to support our regulation. Similarly, the federal agencies have included consumer benefit studies in their rulemaking process.

These analyses can be found in each of the rulemaking packages identified above, specifically the 2004 ISOR, 2010 NPRM, and forthcoming 2011 ISOR and NPRM. Also of note is the 2010 Joint Technical Assessment report, containing both technical information and consumer cost-benefit analyses for potential standards through MY 2025.

These analyses show substantial consumer benefits from the MY 2012-2016 rules, and for the prospective MY 2017-2025 standards. In 2016, the existing rules are

⁴ See <http://www.arb.ca.gov/regact/2010/ghgpv10/ghgpvisor.pdf>, provided in Attachment 4.

expected to save the average consumer almost \$5,000 over the lifetime of a vehicle purchased in that year. In 2025, consumers would save an additional \$4,000 as a result of the changes being proposed. For the majority of consumers who finance their vehicle purchase, these savings begin to accrue immediately, so that the average consumer is “cash-flow positive” from day one.

These substantial, direct cash savings to consumers have important, positive economic benefits. More money in consumers’ pockets is more money available to be spent in local businesses, increasing economic activity and generating jobs. Moreover, these savings are less dollars flowing abroad to purchase oil from unstable or unfriendly foreign powers, improving our national balance of trade and strengthening American national security.

15. Provide all documents and communications relating or referring to CARB’s involvement in negotiating the “Historical Agreement” for MY 2012-2016 fuel economy standards, including but not limited to:

- a. All documents and communications between CARB and any automobile manufacturer; and**
- b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.**

CARB has no documents or communications responsive to this request because CARB was not involved in negotiating an agreement for MY 2012-2016 fuel economy standards since corporate average fuel economy (CAFE) standards are the responsibility of the US Department of Transportation, National Highway Transportation Safety Administration. However, if the Committee seeks documents and communications regarding light duty vehicle greenhouse gas standards for MY 2012-2016, CARB is providing documents with this submission on a CD as part of Attachment 4.

16. Provide all documents and communications relating or referring to CARB’s involvement in negotiating the agreement for MY 2017-2025 fuel economy standards, including but not limited to:

- a. All documents and communications between CARB and any automobile manufacturer; and**
- b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.**

CARB has no documents or communications responsive to this request because CARB was not involved in negotiating an agreement for MY 2017-2025 fuel economy standards since corporate average fuel economy (CAFE) standards are the responsibility of the US Department of Transportation, National Highway Transportation Safety Administration. However, if the Committee is interested in

documents and communications regarding the MY 2017-2025 light-duty vehicle greenhouse gas standards, CARB responds as follows.

Any request for all documents between CARB, federal agencies, and automobile manufacturers is unduly broad and overly burdensome, excessively costly and time consuming. Moreover, CARB declines to produce manufacturers' confidential business information or other privileged information. Nonetheless, and particularly in light of the Committee's short deadlines, CARB is providing extensive responsive documents on disc (Attachment 4), and the chronology provided in response to Question 3.

17. Provide all documents and communications relating or referring to CARB's involvement in negotiating the agreement for heavy-duty truck fuel economy standards, including but not limited to:

- a. All documents and communications between CARB and any automobile manufacturer; and**
- b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.**

As explained above, in our response to Question 3, CARB staff has provided EPA information related to emissions generated from heavy-duty vehicles, but CARB does not know to what extent, if any, EPA utilized that information in its rulemaking actions to promulgate its final heavy-duty truck greenhouse gas emissions standards. CARB is unaware of any agreement or negotiations relating to any agreement involving EPA's heavy-duty truck emissions standards, as contained in "Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles" (76 Fed. Reg. 57,106 (Sept. 15, 2011)), and therefore cannot identify or provide any documents or communications in response to this request.

18. Provide all documents and communications relating or referring to CARB's involvement in negotiating the California Waiver, including but not limited to:

- a. All documents and communications between CARB and any automobile manufacturer; and**
- b. All documents and communications between CARB and EPA, NHTSA, or any other federal entity.**

Assuming "California Waiver" in this question refers to EPA's action on June 30, 2009 (published 74 Fed.Reg. 32773 (July 8, 2009)), CARB has no documents responsive to this request because this waiver was an EPA decision that, to ARB's knowledge, was not the result of negotiating but rather of EPA's standard waiver review process. As background, this waiver process is described at <http://www.epa.gov/otaq/climate/ca-waiver.htm>, and, as described and linked

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therein, documents regarding EPA's waiver decision are available at Docket EPA-HQ-OAR-2006-0173.