Air Resources Board

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Linda S. Adams
Secretary for
Environmental Protection

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May 18, 2009

The Honorable Lisa P. Jackson, Administrator
United States Environmental Protection Agency

The Honorable Ray LaHood, Secretary
United States Department of Transportation

California recognizes the benefit for the country and California of a National Program to address greenhouse gases (GHGs) and fuel economy and the historic announcement of United States Environmental Protection Agency (EPA) and National Highway Transportation Safety Administration's (NHTSA) intent to jointly propose a rule to set standards for both. California fully supports proposal and adoption of such a National Program, which California understands will be subject to full notice-and comment rulemaking, affording all interested parties including California the right to participate fully, comment, and submit information, the results of which are not pre-determined but depend upon processes set by law. California has had a historic role in advancing the control of air pollution, including greenhouse gases, through its motor vehicle program, and welcomes this opportunity to be a partner in helping to advance a harmonized National Program. California understands that the proposed National Program would not alter California's longstanding authority under the Clean Air Act to have its own motor vehicle emissions program. California also commits to working with EPA and NHTSA, the industry, states, and other stakeholders to help our country address global climate change and the need to reduce oil consumption by developing this kind of strong, coordinated national program for the model years after 2016.

In order to promote the adoption of the National Program, California commits to take the following actions, subject to the understandings described below. California commits to formally initiate the rulemaking to revise its standards within two weeks of EPA's issuance of proposed national GHG standards substantially as described in the May, 2009 Joint Notice of Intent to conduct rulemaking. California also stands ready to enter into any appropriate agreements to effectuate these commitments.

(1) California commits to revise its standards on GHG emissions from new motor vehicles for model-years (MYs) 2009 through 2011, such that the emissions limits do not change but compliance with the standards can be demonstrated based on the GHG emissions from the fleet of vehicles sold in California and the states that adopt and enforce California's GHG emissions standards under section 177 of the Clean Air Act (CAA). This would expand the averaging pool for compliance purposes from the fleet of

vehicles sold in California to the larger fleet of vehicles sold in California and these other states.

(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.

(3) California commits to revise as necessary its standards on GHG emissions from new motor vehicles for MYs 2009 through 2011, such that under its standards manufacturers have the right to use data generated by the CAFE test procedures, vehicle selection, and other testing protocols, including substitution of CAFE test data for previously submitted test data, to demonstrate compliance.

California's commitment to take these actions contemplates that the following will occur:

(1) EPA completes its pending reconsideration of California's request for a waiver of preemption under section 209 of the CAA for its GHG emissions standards for motor vehicles, for MYs 2009 through 2016, and if EPA decides to grant California's request for MYs 2009 through 2016.

(2) Manufacturers of motor vehicles, their trade associations, and other parties affiliated with such manufacturers and/or under their control, who are currently engaged in litigation challenging California's regulation of GHG emissions, including litigation over preemption under Energy Policy Conservation Act (EPCA) of California's regulation of GHG emissions or litigation over EPA's denial of a waiver of preemption under the CAA, do not contest any final decision by EPA granting California's request for such a waiver.

(3) EPA proposes national GHG standards substantially as described in the May, 2009 Joint Notice of Intent to conduct rulemaking.

(4) Manufacturers of motor vehicles, their trade associations, and other parties affiliated with such manufacturers and/or under their control have all pending litigation in the various state courts, U.S. District Courts, and the U. S. Circuit Courts of Appeals challenging California's regulation of GHG emissions, including litigation concerning preemption under EPCA of California's and other state's GHG standards stayed upon issuance of the May, 2009 Joint Notice, and dismiss all such litigation upon final adoption by California of the three revisions described above for its GHG emissions standards and do not renew any such litigation for MYs 2009-2016.

(5) EPA adopts national GHG standards substantially the same as those proposed in the Joint Notice, and manufacturers of motor vehicles, their trade associations, and other parties affiliated with such manufacturers and/or under their control, agree to and do not contest these rules.

California confirms that the 45 day condition on a MY 2009 Executive Order means that if a waiver is granted under CAA section 209, then a manufacturer has to be in compliance with all of the data submission or other requirements, related to issuance of the Executive Order, that would have applied on or before that 45 day date if the waiver had been granted previously. This does not accelerate in any way any other requirements under the regulations, for example manufacturers can continue to provide CAFE test data after that date and through the year under the CAFE testing protocols, and do not need to demonstrate compliance with the annual average until after the end of the year.

California believes that the actions discussed in the letter could occur under a timeline as follows:

EPA and Department of Transportation (DOT) issue the Notice of Intent and various Companies stay pending litigation.

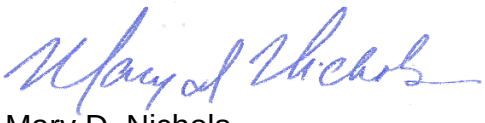
EPA makes a final decision upon reconsideration of California's request for a waiver.

EPA and DOT issue a Notice of Proposed Rulemaking.

California issues a final rule that revises its regulations.

Companies dismiss pending litigation upon final adoption of regulatory changes by California.

EPA and DOT issue a Notice of Final Rulemaking.



Mary D. Nichols
Chairman