



Comments for Submission

**California State Motor Vehicle Pollution Control Standards;
Greenhouse Gas Regulations;
Reconsideration of Previous Denial of a Waiver of Preemption**

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The National Center for Policy Analysis appreciates the opportunity to comment on the President's request to the EPA to reconsider its previous denial of California's 2005 Waiver of Federal Preemption under Section 209(b) of the Clean Air Act. We would like to take this opportunity to caution EPA Administrator Jackson against reversing the denial of the request made by former EPA Administrator Johnson in 2008. There are serious concerns over the legality, regulatory burden, and inevitable market distortions that granting the California waiver would invite. Furthermore, allowing California to set greenhouse gas (GHG) emission standards for passenger cars will have no net effect on greenhouse gas emissions, effectively undermining their purpose in seeking the waiver.

Legality

In his testimony before Congress, former Associate Deputy Administrator Jason Burnett stated that “[T]he only real way to reduce carbon dioxide emissions is to reduce the amount of carbon being put in the gas tank; greenhouse gas regulations for cars and trucks would force manufacturers to build and sell vehicles with higher fuel economy.”¹ However, the Energy and Policy Conservation Act provides that “. . . a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards. . . .”² Taking these two facts into consideration, it follows that granting California's request would allow the State to set fuel economy standards, thereby violating federal law.

Regulatory Burden

According to the National Automobile Dealers Association (NADA), CARB fuel economy standards will be rendered unnecessary since the National Highway Traffic Safety Administration, as directed by Congress in 2007, is moving to raise fuel economy standards *above* what CARB proposes.³ Fuel economy standards are already regulated at the federal level through CAFE standards. The Energy Independence and Security Act of 2007 increases current CAFE standards by requiring a new fleet-wide combined fuel economy average of at least 35 miles per gallon by 2020, equal to at least 40 percent increase in fuel economy standards.⁴ Granting the waiver request to California would impose a redundant and unnecessary regulatory burden on the already struggling automobile industry.

Reducing Consumer Choice Nationwide

Compliance to CARB standards is based on an automaker delivering for sale a fleet in each CARB state that achieves a certain fleet-wide GHG emissions average. However, granting the California waiver will not just affect CARB states, as automakers will have to alter their entire fleets to comply with CARB regulations, resulting in reduced consumer choice nationwide. Allowing CARB to regulate GHG emissions from passenger cars in California is a backdoor method for setting stringent fuel economy standards for the entire nation, which California has no right to do.

¹ *An Update on the Science of Global Warming and its Implications Before the Senate Environment and Public Works Committee*, 110th Cong., 2nd Sess. (2007) (statement of Jason Burnett, former Associate Deputy Administrator, EPA, at page 11).

² 49 U.S. C. § 32919.

³ “*Patchwork Proven*” National Automobile Dealers Association, January 2009.

⁴ *Id.*, § 102(b)(2)(A)

No Effect on GHG Emissions

California's waiver request is for the purpose of reducing GHG emissions in the state, but humans only contribute to 3.4% of total CO² emissions, which account for at most 3.62% of total greenhouse gases⁵. So, even if all developed countries stopped using energy entirely, there would be little impact on overall greenhouse gas emissions or atmospheric concentrations. Furthermore, fast-growing developing countries are expected to account for 85 percent of emissions growth in the next two decades and beyond. Indeed, China has already passed the United States as the world's largest CO² emitter and its economic growth rate is more than three times greater than ours. More to the point, for the last three straight months, automobile sales in China have exceeded those in the U.S. and the World Bank estimates that with more than 170 million passenger vehicles by 2020, the number of private cars on China's roads will be greater than the U.S. total.⁶ Therefore, any emissions reductions achieved in the United States will be more than offset by increasing emissions in other countries.

Conclusion

Granting the California waiver is of questionable legality, a regulatory burden, and will have no net effect on GHG emissions. EPA Administrator Jackson should carefully consider each of these issues when reconsidering the waiver request. Furthermore, the EPA should consider whether it is even appropriate to regulate CO² through the Clean Air Act. CO² is a ubiquitous and necessary by-product of combustion and regulation of it, if it must be undertaken at all, should be undertaken by Congress through a law directly addressing CO², not through clean air laws that were never intended or written to regulate CO². The regulation of CO² should not be done through bureaucratic bootstrapping current clean air laws to make CO² regulation fit, but rather only after careful consideration and full debate by the peoples elected representatives. This will affect the economy as a whole, and thus should be undertaken by those directly accountable to the voters or the nation as a whole.

⁵ "A Global Warming Primer," National Center for Policy Analysis, 2007

⁶ Antoneta Bezlova, "Environment China: Afflicted by Automobile Addiction," InterPress Service News Agency (10/3/08), <http://ipsnews.net/news.asp?idnews=34972>