ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL ]

California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice of Opportunity for Public Hearing and Comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has developed an Advanced Clean Car program (ACC) which combines the control of smog and soot causing pollutants and greenhouse gas (GHG) emissions into a single coordinated package of requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles (and limited requirements related to heavy-duty vehicles). The ACC program includes revisions to California's Low Emission Vehicle (LEV) program as well as its Zero Emission Vehicle (ZEV) program. By letter dated June 27, 2012, CARB submitted a request that EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for the revisions to the LEV program. CARB also seeks confirmation that the amendments to the ZEV program are within-the-scope of prior waiver decisions issued by EPA, or in the alternative requests a waiver for these revisions. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

**DATES**: EPA has scheduled a public hearing concerning CARB's request on September 19, 2012, beginning at 9:00 a.m. Any party planning to present oral testimony should notify EPA by

September 14, 2012, expressing its interest. EPA will hold the public hearing at EPA's offices at 1310 L Street, NW, Washington, D.C. 20460. Any party may submit written comments by October 19, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0562, by one of the following methods:

• http://www.regulations.gov: Follow the on-line instructions for submitting comments.

• E-mail: dickinson.david@epa.gov

• Fax: (202)343-2804

• Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW, Room B108, Mail Code 6102T, Washington, D.C. 20460, Attention Docket ID No. EPA-HQ-OAR-2012-0562. Please include a total of two copies.

• Hand Delivery: EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA-HQ-OAR-2012-0562.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at http://www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through http://www.regulations.gov or e-mail.

The http://www.regulations.gov website is an ``anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through http://www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Docket: All documents in the docket are listed in the http://www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

EPA will make available for in person inspection, at the Air and Radiation Docket and Information Center, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1743. The reference

number for this docket is EPA-HQ-OAR-2012-0562.

EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (http://www.epa.gov/otaq/). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official *Federal Register* version of the Notice on the day of publication on the primary website: (http://www.epa.gov/docs/fedrgstr/EPA-AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, D.C. 20460. Telephone: (202) 343-9256, Fax: (202) 343-2804, e-mail address: Dickinson.David@EPA.GOV.

**SUPPLEMENTARY INFORMATION:**

## I. CARB's New Waiver Request and Prior Greenhouse Gas Emission Waivers

CARB's June 27, 2012, letter to the Administrator notified EPA that CARB had adopted its ACC regulatory package in January 2012 and that the package contains amendments to its low emission vehicle (LEV) program to address both smog forming pollutants and greenhouse

gases, and amendments to its zero emission vehicle program (ZEV).[1] The amendments to the LEV program are referred to as LEV III. CARB requests that EPA grant a new waiver for its LEV III program. CARB also seeks confirmation that amendments to its ZEV program are within-the-scope of previous waivers issued by EPA. In the alternative, CARB requests that EPA grant a new waiver for its ZEV program.

CARB's waiver request discusses in detail both its ZEV program amendments and its LEV III amendments. CARB's waiver request includes an "analysis setting forth California's basis for the waiver requests. The analysis sets forth a summary of the regulatory actions, a review of the criteria governing EPA's evaluation of a California waiver request, and the legal arguments that support and compel EPA to grant California's request." [2] With respect to the LEV III greenhouse gas standards, CARB notes that it plans to adopt a rule which would allow manufacturers to demonstrate compliance with California's greenhouse gas regulations for the 2017 through 2025 model years by demonstrating compliance with EPA's greenhouse gas requirements for the 2017 through 2025 model years (commonly referred to as the 'deemed to comply' provision), subject to review of the contents of EPA's final rule for these model years.[3]

CARB plans to commence its "deemed to comply" rulemaking shortly after EPA finalizes the light-duty vehicle greenhouse gas emission standards for model years 2017-2025, conditioned on its review of EPA's final GHG rule. As discussed below, EPA invites comment

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[1] The amendments and adoption of regulations can be found at title 13, California Code of Regulations, sections 1961.2 and 1961.3 (adoption) and sections 1900, 1956.8, 1960.1, 1961, 1961.1, 1965, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, 2235, 2317, and Documents incorporated by reference (amendments).

[2] Letter from Mary D. Nichols, CARB, dated June 27, 2012 at p. 2.

[3] "CLEAN AIR ACT § 209(b) WAIVER SUPPORT DOCUMENT SUBMITTED BY THE CALIFORNIA AIR RESOURCES BOARD, May 2012," at p. 9 (accompanying June 27, 2012 letter).

on all aspects of CARB's waiver request, and specifically invites comment on CARB's waiver request in light of CARB's plans concerning adoption of a deemed to comply provision into its LEV III GHG standards. This will allow EPA to consider any deemed to comply provision and comments on it when taking action on CARB's request for a waiver.

EPA previously granted CARB a waiver of preemption for its 2009 and subsequent model year new motor vehicle greenhouse gas emission standards on July 8, 2009 (74 FR 32744). Subsequently, CARB adopted a series of amendments to those regulations, including a deemed to comply rule whereby compliance with EPA's GHG standards for model years 2012 through 2016 would serve as compliance with California's GHG standards for those model years. On June 14, 2011 (76 FR 34693), EPA confirmed that these series of amendments were within-the-scope of the waiver granted on July 8, 2009. EPA has most recently issued waivers and within-the-scope decisions for CARB's ZEV program in 2006 (71 FR 78190) and 2011 (76 FR 61095). EPA's most recent waivers and within-the-scope decisions for CARB's LEV II program were issued in 2003 (77 FR 19811), 2005 (70 FR 22034), and 2010 (75 FR 44948).

**II. Scope of Preemption and Criteria for a Waiver under the Clean Air Act**

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has

adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless she finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[4]

**III. Request for Comment**

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the *Federal Register*. In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA usually publishes a notice of its decision in the *Federal Register* and concurrently invites public comment if an interested party is opposed to EPA's decision. In this case, for the ZEV amendments CARB requests a within-the-scope

[4] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the state and the Federal requirements with the same test vehicle in the course of the same test. See, e.g., 43 FR 32182 (July 25, 1978).

determination, or in the alternative a waiver.

Since CARB has submitted a within-the-scope request for its ZEV amendments as they affect both the 2012-2017 model years (MYs) and 2018 and subsequent MYs, EPA invites comment on the following issues. First, should California's ZEV amendments, as they affect the 2012-2017 MYs and/or the 2018 and later MYs, be considered under the within-the-scope criteria or should they be considered under the full waiver criteria? Second, to the extent part or all of those ZEV amendments should be considered as a within-the-scope request, do such amendments meet the criteria for EPA to confirm that they are within-the-scope of prior waivers? Please also provide comments to address the full waiver analysis (noted below for the remainder of the ACC program), in the event that EPA cannot confirm that some or all of CARB's ZEV amendments are within-the-scope of previous waivers.

We are requesting comment on all aspects of the full waiver analysis with regard to the ACC program (the LEV III criteria pollutant and GHG regulations, and the ZEV amendments to the extent EPA does not consider them under the within-the-scope analysis noted above). This includes consideration of the following three criteria: whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act. As noted above, CARB plans to propose a deemed to comply rule for its GHG standards shortly after EPA finalizes its light-duty vehicle greenhouse gas emission standards, conditioned on its review of EPA's final GHG rule. As such, EPA specifically invites comment on CARB's waiver

request in light of CARB's plans concerning adoption of a deemed to comply provision into its LEV III GHG standards. This will allow EPA to consider any deemed to comply provision and comments on it when taking action on CARB's request for a waiver.

## IV. PROCEDURES FOR PUBLIC PARTICIPATION:

The Agency will make a verbatim record of the proceedings at the hearing. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will keep the record open until October 19, 2012. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that she deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the

extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: AUG 2 8 2012

Gina McCarthy
Assistant Administrator
Office of Air and Radiation