

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FR-5963-2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determination**AGENCY:** Environmental Protection Agency.**ACTION:** Notice regarding waiver of federal preemption and within the scope determination.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), beginning in the 1998 model year to enforce amendments to its motor vehicle pollution control program which set new standards, and certification and test procedures for newly-established categories of "Low-Emission" medium-duty vehicles (MDVs). Additionally, EPA today has determined that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption must be filed by March 9, 1998. Otherwise, at the expiration of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Mr. Robert F. Montgomery, Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available

for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M-1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. All documents submitted in the Low-emission MDV waiver request can be found in Docket A-91-71; all documents submitted in the within the scope request for the warranty amendments can be found in Docket A-91-16. Copies of the Decision Document (which discusses both the waiver and the within the scope determination) can be obtained from EPA's Engine Programs and Compliance Division by contacting Robert M. Doyle, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564-9258, FAX:(202) 565-2057, E-Mail: Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:**I. Obtaining Electronic Copies of Documents**

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home page (<http://www.epa.gov/OMSWWW/>). Users can find these documents by accessing the OMS Home Page and looking at the path entitled "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (<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.

II. Low-Emission MDV Standards Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish three new categories of low-emission MDVs based on levels of exhaust emission standards; "Low-

Emission Vehicle" (LEV), "Ultra Low-Emission Vehicle (ULEV), and "Zero-Emission Vehicle" (ZEV); (2) require manufacturers to certify certain minimum percentages of LEV-MDVs and ULEV-MDVs beginning in the 1998 Model Year, reaching a maximum percentage requirement in Model Year 2003, and (3) establish production credit banking and trading provisions to offer flexibility to manufacturers unable to meet the minimum percentages.¹ A comprehensive description of the California low-emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by parties opposing California's waiver request did not demonstrate that California arbitrarily or capriciously

¹ The waiver request EPA grants today, which pertains to low-emission MDVs, is part of a comprehensive waiver request from California for its LEV program, which includes both light-duty vehicles (LDVs) such as passenger cars and light-duty trucks, and MDVs which are typically large trucks and other vehicles up to 14,000 lbs Gross Vehicle Weight Rating. On January 13, 1993 (58 FR 4166) EPA granted a waiver for the low-emission LDV component of California's program, and deferred action on the MDV component of the program (the subject of today's waiver). EPA chose to defer this action because at the time of the LEV waiver grant, an earlier waiver concerning MDVs (Docket A-91-55) was pending. This earlier request involved amendments to the California program which established new emission standards for MDVs in Model Year 1995 and beyond, and new accompanying certification and compliance test procedures and durability requirements. Because the low-emission MDV standards are amendments to the MDV standards considered in the request of Docket A-91-55, EPA needed to decide the earlier request before action on the low-emission MDV standards could be taken. On September 16, 1994 (announced in 59 FR 48625, September 22, 1994), EPA granted a waiver of Federal preemption to California's 1995 and beyond MDV standards.

reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by parties opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

III. Warranty Amendments Within the Scope Request

I have determined that California's amendments to its warranty statute and regulations as applied in the 1994 model year and beyond are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The substantive amendments to the emission warranty requirements which are applicable under California state law to 1990 and subsequent model year passenger cars, light duty trucks and medium-duty vehicles require manufacturers to provide the following:

(1) *An emission-related "defects warranty" for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within the period of warranty coverage must be repaired or replaced by the manufacturer at no cost to the vehicle owner. Thus it need not be shown that the defect causes the vehicle to exceed the applicable emission standards.

(2) *A seven year or 70,000 mile "extended defects warranty" for emission-related parts costing more than \$300 to replace.* Manufacturers are required to identify those emission-related components on the existing Emissions Warranty Parts List that cost the consumer over \$300 to replace as of the time of certification and to warranty those for a period of seven years/70,000 miles.

(3) *A "performance warranty" for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the SMOG CHECK test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG CHECK retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it could demonstrate that the

failure was directly caused by abuse, neglect or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control system warranty. The manufacturer's detailed warranty statement will follow this specified statement.

(5) *Common Nomenclature.* All emission-related service and certification documents, printed or updated by a manufacturer starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 "Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems".

(6) The emission warranty requirements for vehicles and engines other than 1990 and subsequent model passenger cars, light-duty trucks, and medium-duty vehicles will be continued without substantial change. These requirements cover pre-1990 and subsequent model year motorcycles and heavy-duty vehicles and engines.

In a February 4, 1991 letter to EPA, CARB notified EPA of the above-described amendments to its warranty regulations affecting 1990 model year and later vehicles, and requested that EPA confirm that these amendments to its warranty statute and regulations, and new regulations requiring the use of common nomenclature in certification and in-use documentation are within the scope of existing waivers of Federal preemption.² The Executive Officer stated that "[t]he regulations do not undermine the Board's prior determination that the state standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."³ This statement, however, referred to a finding made by the Board before the passage of the Federal Clean Air Act Amendments of 1990 (CAAA), which required that EPA promulgate new, more stringent Federal tailpipe emission standards for light-duty vehicles and light-duty trucks beginning in the 1994 model year.⁴

² Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated February 4, 1991, at 2 (hereinafter "CARB letter").

³ CARB letter at 5.

⁴ The CAAA were signed into law on November 15, 1990. New certification and new in-use tailpipe emission standards for all light-duty vehicles and light-duty trucks, commonly referred to as Tier 1 standards, were prescribed in section 203 of the

In its February 1991 request, CARB compared the California standards and the Federal standards as they stood prior to the CAAA; the Board did not consider the protectiveness of the California standards as compared to the new standards made applicable by the CAAA. Consequently, California, at the time of its request had not made an initial determination, that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (including Tier 1) which apply in the 1994 and later model years.

On October 4, 1991, California requested a waiver of Federal preemption for its LEV program standards, which under California state law are applicable to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).⁵ In this request, California made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards. For the reasons stated above, CARB acknowledged, in its October 1991 request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments as they apply only through the 1993 model year.⁶

EPA announced, on August 14, 1992, its determination that California's amendments to its warranty program were within the scope of previous

Amendments, which added new sections 202(g) and 202(h) to the Clean Air Act (CAA). On June 5, 1991 EPA published the Final Rule implementing the Tier 1 standards in the **Federal Register** at 56 FR 25724. In addition, section 202(j) of the Act requires promulgation of a Cold CO standard. 58 FR 9468 (July 19, 1993).

In addition, the Federal warranty requirements also changed beginning in the 1995 model year. The CAAA significantly modified the Federal light-duty requirements. Prior to the amendments the period of warranty coverage was generally 5 years/50,000 miles. The CAAA, beginning in the 1995 model year, shortened the basic defects warranty period to 2 years/ 24,000 miles but extend it to eight years/ 80,000 miles in the case of catalytic converters, electronic emissions control units, onboard diagnostic (OBD) devices, and other pollution control devices that meet certain criteria and are designated by the Administrator as a "specified major emission control component." CAA Section 207(i).

⁵ California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

⁶ Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

waivers only through the 1993 model year.⁷ EPA also stated that, provided California was granted a waiver of Federal preemption for its LEV standards, the warranty regulations which were the subject of CARB's request for a within-the-scope determination would continue to be within the scope of existing waivers beyond the 1993 model year so long as they 1) do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards 2) do not affect the consistency of California's requirements with section 202(a) of the Act, and 3) raise no new issues affecting EPA's previous waiver determinations.

On January 7, 1993, EPA granted a waiver of Federal preemption for the low-emission LDV component of California's LEV program.⁸ EPA also has waived Federal preemption for California's standards applicable to 1995 and later model year MDVs.⁹ EPA has waived in today's decision California's MDV standards for 1998 and later model year vehicle and engines which are part of the LEV Program. EPA has previously determined that California's earlier emission warranty regulations were within the scope of previous waivers.¹⁰ Therefore, EPA now has determined that emission warranty regulations, which are the subject of CARB's February 4, 1991 letter, as applied through the 1994 model year and beyond to passenger cars, light-duty trucks and medium-duty vehicles and engines, are within the scope of earlier waivers granted for standards.

With regard to the 1994 and later model years, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

⁷ 57 FR 38502 (August 25, 1992).

⁸ 58 FR 4166 (January 13, 1993).

⁹ 59 FR 48625 (September 22, 1994).

¹⁰ 37 FR 14831 (July 25, 1972); 44 FR 61096 (October 23, 1979); 51 FR 12391 (March 26, 1986); 51 FR 15961 (April 22, 1986).

Because these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of this notice, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final at the expiration of this 30-day period.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

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In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: January 20, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

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