California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment period.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has promulgated regulations related to onboard refueling vapor recovery (ORVR) standards and testing procedures, and amendments to the California evaporative emission test procedures. By letter dated, July 22, 1997, California requested EPA to grant a waiver of Federal preemption for the ORVR regulations and to confirm that the evaporative emission test procedure amendments fall within the scope of a currently pending section 209(b) waiver request, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b).

This notice announces that EPA has tentatively scheduled a public hearing for March 18, 1998, to consider CARB’s request and to hear comments from the general public concerning CARB’s request.

DATES: EPA has tentatively scheduled a public hearing for March 18, 1998 beginning at 1:00 p.m. Any person who wishes to testify on the record at the hearing must notify EPA by March 9, 1998 that it wishes to present oral testimony regarding CARB’s requests. If EPA receives one or more requests to testify on the pending request, a hearing will be held. If no one notifies EPA that they wish to testify, no hearing will be held. By March 11, 1998 any person who plans to attend the hearing should call Mr. David Dickinson of EPA’s Vehicle Programs and Compliance Division at (202) 564-9256 to determine if a hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding CARB’s request and will be accepted through April 16, 1998.

ADDRESSES: If EPA receives a request for a public hearing, EPA will hold the public hearing announced in this notice in the first floor conference room at 501 3rd Street, N.W., Washington, D.C.

Parties wishing to present oral testimony at the public hearing should provide written notice to Mr. Dickinson, Group Manager, Vehicles Programs and Compliance Division, 401 M St., S.W. (6405), Washington, DC 20460.

In addition, written comments regarding
the waiver request should be sent, in
duplicate, to Mr. Dickinson at the
address noted above. Copies of material
relevant to the waiver request (Docket
No. A—97–38) will be available for
public inspection during the working
hours of 8:00 a.m. to 5:30 p.m. Monday
through Friday, at the U.S.
Environmental Protection Agency, Air
and Radiation Docket and Information
Center, Room M1500, First Floor
Waterside Mall, 401 M St., S.W.,
Washington, DC 20460. Telephone:
(202) 260–7548.

FOR FURTHER INFORMATION CONTACT:
Mr. David Dickinson, Group Manager,
Vehicles Programs and Compliance
Division, U.S. Environmental Protection
Agency, 401 M St., S.W. (6405J),
Washington, DC 20460. Telephone:
(202) 564–9256. E-mail address:
Dickinson.David@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended,
42 U.S.C. 7543(a), provides in part: "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 * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

The State of California may be exempted from the prohibitions of section 209(a) of the Act. Section 209(b) of the Act provides in part that the Administrator shall, after notice and opportunity for public hearing, waive application of the prohibitions of section 209(a) for California "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. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act."

As previous decisions granting wavers of federal preemption have explained, State standards are inconsistent with section 202(a) if there is a time frame to permit the development of the necessary technology given the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements. With regard to enforcement procedures accompanying standards, I must grant the requested waiver unless I find that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 202(a), or unless the California and Federal certification test procedures are inconsistent.

Once California has been granted a waiver of the application of the prohibitions of section 209(a) for its standards and accompanying enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving further waiver of Federal preemption.

By letter dated July 22, 1997, CARB submitted to EPA a request for waiver of Federal preemption for its regulations that set forth onboard refueling vapor recovery (ORVR) standards and test procedures. In addition, CARB requested EPA to confirm that amendments to CARB’s evaporative emission test procedures fall within the scope of a pending waiver request before EPA.

The ORVR requirements adopted by CARB are nearly identical to the Federal ORVR standards and test procedures. EPA published its final ORVR rule on April 6, 1994, which includes standards and test procedures for determining compliance with the standards. (59 FR 16296.) The federal and CARB ORVR compliance schedule requires that 40 percent of a manufacturer’s 1998 model-year passenger cars be certified to the ORVR standard, followed by 80 percent in the 1999 model year and 100 percent in the 2000 model year. The same three-year implementation schedule applies to light-duty trucks starting with the 2001 model year, and applies to medium-duty vehicles of 6,001–8,500 lbs. GVWR starting with the 2004 model year.

Passenger cars produced by small
volume manufacturers are not subject to the ORVR requirements until the 2000 model year, when 100 percent compliance is required.

CARB’s adopted amendments to the enhanced evaporative emission test procedures fall into two categories. First, in order to facilitate the testing of vehicles with ORVR systems, CARB’s amendments allow for the pre-conditioning of integrated and non-integrated evaporative/refueling canisters. Second, the amendments further align California test procedures with the federal test procedures. California states in its July 22, 1997 letter, that it has determined that its ORVR standards and test procedures are, in the aggregate, at least as protective of public health and welfare as the applicable federal standards. Further, California states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that its amendments are consistent with section 202(a) of the Act. With regard to amendments to its evaporative emission test procedures to which CARB seeks a within the scope determination, California states nothing within its amendments undermines prior protective measures and that its requirements continue to be consistent with section 202(a) of the
II. Procedures for Public Participation

Any party desiring to make an oral statement on the record shall submit ten (10) copies, if feasible, of its proposed testimony and other relevant material to Mr. Dickinson of EPA’s Vehicles Programs and Compliance Division at the address listed above not later than March 11, 1998. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until April 16, 1998. Upon expiration of the comment period, the Administrator will render a decision on CARB’s request based on the record of the public hearing, if any, relevant written submissions and other information which he or 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 waiver decision on CARB’s request based on the record of the public hearing, if any, relevant written submissions and other information which he or she deems pertinent.

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