



## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-9950-45-OAR]

### **California State Motor Vehicle Pollution Control Standards; Amendments to On-Highway Heavy-duty Vehicle In-Use Compliance Program, Amendments to 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles, and Amendments to Truck Requirements; 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 adopted a series of amendments to its on-highway heavy-duty vehicle and engine regulations. The amendments to CARB's in-use compliance program align CARB's program with EPA's program in terms of measurement allowances during on-road testing (In-Use Amendments). The amendments to CARB's 2007 and subsequent model year (MY) regulation (2007 Amendments) are minor technical amendments regarding mathematical expression of emission results and certain compliance flexibilities. The amendments to CARB's truck idling requirements (Truck Idling Amendments) clarify that certain vehicles are exempt from the new vehicle requirements. By letter dated January 27, 2016, CARB submitted a request that EPA grant a full waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for the In-Use Amendments. CARB separately seeks EPA's confirmation that the 2007 Amendments and the Truck Idling Amendments are within the scope of prior EPA waiver decisions. 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 tentatively scheduled a public hearing concerning CARB's request on September 28, 2016, at 10 a.m. EPA will hold a hearing only if any party notifies EPA by September 21, 2016 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5528 at 1200 Pennsylvania Ave, NW, Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until November 1, 2016.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343-9256 on or after September 21, 2016.

**ADDRESSES:** 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-2016-0017.

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 (6405J), U.S.

Environmental Protection Agency, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460.

Telephone: (202) 343-9256, Fax: (202) 343-2804, e-mail address: [Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

**FOR OBTAINING AND SUBMITTING ELECTRONIC COPIES OF COMMENTS**

Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2016-0017, by one of the following methods:

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

- E-mail: [dickinson.david@epa.gov](mailto:dickinson.david@epa.gov)

- Fax: (202)343-2804.

- Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., N.W., Room B108, Mail Code 6102T, Washington, D.C. 20460, Attention Docket ID No. EPA-HQ-OAR-2016-0017. 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-2016-0017.

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.

## **SUPPLEMENTARY INFORMATION:**

### **(A) CARB's Waiver Request and Within-the-Scope Request**

CARB's January 27, 2016, letter to the Administrator presents EPA with CARB's series of amendments related to the control of emissions from California on-road medium- and heavy-duty engines and vehicles. The In-Use Amendments include amendments adopted by CARB in 2011 that allow a measurement allowance of 0.006 grams per brake horsepower-hour (g/bhp-hr) when using portable emission measurement systems (PEMS) for on-road in-use testing of heavy-duty vehicles. The 2007 Amendments are minor technical amendments regarding mathematical expression of emission results and certain compliance flexibilities. These amendments specify the NO<sub>x</sub> emission standards to the correct number of significant digits (e.g. 0.2 g/bhp-hr is now expressed as 0.20 g/bhp-hr for NO<sub>x</sub>). The 2007 Amendments also make corrections to the formaldehyde standards for medium-duty diesel vehicles, harmonize labeling requirements with EPA's requirements, maintain consistency with deterioration factors between CARB and EPA, and provide manufacturers with certain compliance flexibilities for the 2007 through 2009 model years. The Truck Idling Amendments clarify that new engine provisions do not apply to armored cars and workover rigs.<sup>1</sup>

### **(B) 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

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<sup>1</sup> A further description of the CARB amendments can be found in CARB's Waiver Support document in docket EPA-HQ-OAR-2016-0017.

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). EPA must grant a waiver unless the Administrator 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 maintained 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.<sup>2</sup>

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<sup>2</sup> 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).

If California amends regulations that were previously granted a waiver, EPA can confirm that the amended regulations are within the scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA's prior waivers.

**(C) Request for Comment**

First, EPA requests comment on whether the 2007 Amendments and the Truck Idling Amendments, each individually assessed, should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria. Specifically, we request comment on whether the 2007 Amendments and the Truck Idling Amendments (1) undermine California’s previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California’s requirements with section 202(a) of the Act, and (3) raise any other “new issue” affecting EPA’s previous waiver or authorization determinations.

For the In-Use Amendments and to the extent commenters believe the 2007 Amendments or the Truck Idling Amendments should be considered under the full waiver criteria, EPA invites comment under 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.

**PROCEDURES FOR PUBLIC PARTICIPATION:**

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. EPA will keep the record open until November 1, 2016. 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: August 4, 2016.

Christopher Grundler, Director,  
Office of Transportation and Air Quality,  
Office of Air and Radiation.

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