

The Administrator signed the following notice on February 6, 2009, and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the notice, it is not the official version. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL]

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

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice for Public Hearing and Comment

SUMMARY: The Clean Air Act preempts States from adopting emission standards for new motor vehicles and motor vehicle engines but requires EPA to waive this preemption for California unless EPA makes certain findings. Acting at the direction of the California legislature, the California Air Resources Board (CARB) adopted greenhouse gas emission regulations for passenger cars, light-duty trucks and medium-duty passenger vehicles beginning with the 2009 model year. By letter dated December 21, 2005, CARB submitted a request that EPA grant a waiver for these regulations. EPA denied this request on March 6, 2008. EPA believes that there are significant issues regarding the Agency's denial of the waiver. The denial was a substantial departure from EPA's longstanding interpretation of the Clean Air Act's waiver provisions and the history of granting waivers to California for its new motor vehicle emission program. Many different parties – including California, States that have adopted or are interested in adopting California's standards, members of Congress, scientists, and other

stakeholders – have expressed similar concerns about the denial of the waiver. EPA believes there is merit to reconsidering its decision denying California’s waiver. Therefore, this **Federal Register** notice initiates such reconsideration, and announces a public hearing concerning California’s request and a re-opening of the written comment period.

DATES: A public hearing concerning this reconsideration will be held on March 5, 2009, beginning at 9:30 a.m. Any party planning to present oral testimony should notify EPA by March 2, 2009, expressing its interest. Any party may submit written comments by April 6, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0173, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov
- Fax: (202) 566-9744
- 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-2006-0173. 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-2006-0173.

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.

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 below 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.

Parties wishing to present oral testimony at the public hearing should provide notice to the contact person listed below. EPA will hold the public hearing at the EPA Potomac Yard Conference Center, 2777 Crystal Drive, Room S-1204, Arlington, VA 22202

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies 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:

Section 209(a) of the Clean Air Act, as amended (“Act”), 42 U.S.C. 7543(a), generally preempts State standards relating to the control of emissions from new motor vehicles and new motor vehicle engines. As an exception to this general preemption, section 209(b) of the Act requires the Administrator of EPA to waive application of the section 209(a) preemption to California provided certain criteria, as noted below, are met. Other States may adopt

California's standards if they meet certain statutory criteria in doing so. 42 U.S.C. 7507.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to grant a waiver to 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." 42 U.S.C. 7543(b)(1). The Administrator must grant a waiver unless she finds that (1) California's determination regarding the protectiveness of its standards is arbitrary and capricious, (2) California does not need the state standards to meet "compelling and extraordinary conditions," or (3) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. 42 U.S.C. 7543(b)(A)-(C).

The March 6, 2008 waiver denial (73 FR 12156) significantly departed from EPA's longstanding interpretation of the Clean Air Act's waiver provisions and from the Agency's history, after appropriate review, of granting waivers to California for its new motor vehicle emission program. Moreover, since the denial was issued, California, States interested in implementing CA's standards, members of Congress, scientists, and other stakeholders have identified a number of concerns regarding EPA's decision. Most recently, on January 21, 2009, EPA received a letter from CARB outlining several significant issues for the Administrator to review in reconsidering the March 6, 2008 waiver denial. Based on all of the above, EPA believes it is important to fully review and reconsider the decision denying a waiver for California's standards.

Included in CARB's letter is a request that EPA return to its traditional review of California's standards under section 209(b)(1)(B) by considering whether California continues to need its own motor vehicle emission program, rather than evaluating greenhouse gas standards

separately. As part of this review, CARB suggests that EPA should base its decision on whether California continues to need to have its own motor vehicle program to address various factors in California, such as climate, large human and vehicle population, topography and meteorology, and should not apply this test separately to the greenhouse gas emission standards. In addition, CARB requests that EPA reconsider (and reject) the alternative grounds for the denial, namely, EPA's determination that the impacts from climate change in California were not sufficiently different from the nation as a whole. In addition to arguing that this is not an appropriate interpretation of section 209(b)(1), CARB states that EPA improperly weighed the evidence of impacts in California (including evidence that greenhouse gas standard will help reduce smog-related emissions) and that the record supports granting the waiver even under EPA's new interpretation of section 209(b)(1).

Prior to the March 6, 2008 denial, the Agency provided notice and an opportunity to comment on 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. We now seek any new or additional information or comments regarding these criteria. We also seek comment on: (1) whether EPA's interpretation and application of section 209(b)(1) in EPA's March 6, 2008 waiver denial was appropriate, and (2) the effect of the March 6, 2008 denial on whether California's GHG standards are consistent with section 202(a) of the Act, including lead time.

Dated: _____

Lisa P. Jackson
Administrator