

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO NEW PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider proposed amendments to California's greenhouse gas emission standards that the Board approved in September, 2004 pursuant to Assembly Bill 1493 (Pavley) (Chap. 200, Stats. 2002). These standards apply on a fleetwide basis to large-volume manufacturers of 2009 through 2016 model year new passenger motor vehicles certified for sale in California. The proposed amendments would provide affected manufacturers with the ability to demonstrate compliance based on their fleet average of vehicles produced and delivered for sale in California and all other U.S. States that have adopted and can enforce California's greenhouse gas emissions standards pursuant to section 177 of the Clean Air Act. The proposed amendments further provide manufacturers with additional flexibility to use data generated from other federal test procedures for demonstrating compliance with the Pavley standards. At the hearing ARB staff will also discuss potential future amendments for the 2012-2016 model years that would allow manufacturer compliance with planned United States Environmental Protection Agency (U.S. EPA) standards to be deemed as compliance with California's standards.

DATE: September 24, 2009

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

This item will be considered at a two-day hearing of the Board, which will commence at 9:00 a.m., September 24, 2009, and may continue at 8:30 a.m., on September 25, 2009. This item may not be considered until September 25, 2009. Please consult the agenda for the hearing, which will be available at least 10 days before September 24, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT **OVERVIEW**

Sections Affected: Proposed amendments to California Code of Regulations (CCR), title 13, sections 1961 and 1961.1, and to the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” incorporated by reference in CCR, title 13, section 1961(d) (as last amended May 2, 2008).

Background:

Citing compelling and extraordinary air quality and other impacts California faces from global warming, in 2002 the Legislature passed and the Governor signed Assembly Bill (AB) 1493. This bill required ARB to develop and adopt regulations to achieve the maximum feasible and cost-effective reduction of heat-trapping greenhouse gas emissions from passenger motor vehicles, beginning with the 2009 model year. The Board approved those regulations at its September 2004 hearing, and they were adopted in their final form in August 2005.

The AB 1493 regulations set separate greenhouse gas emissions levels for both passenger cars and light-duty trucks (PC/LDT1) and heavier light-duty trucks and medium-duty passenger vehicles (LDT2/MDV). The standards are effective beginning in the 2009 model year and become more stringent each year through 2016. The levels are measured in grams per mile of carbon dioxide-equivalent emissions, targeting carbon dioxide (CO₂) as the main greenhouse pollutant and other greenhouse gases including refrigerants used in automotive air conditioners. Compliance is determined on a fleetwide basis, meaning that while each individual model can be above or below the standard, the average of a manufacturers' fleet must meet the standard or else the manufacturer incurs debits that must be equalized within five model years. Manufacturers can also accrue and trade credits between their PC/LDT1 and LDT2/MDV segments, bank credits from over compliance for use in later model years, and trade credits with other manufacturers. Manufacturers may also obtain additional credit for selling vehicles fueled by other than conventional gasoline or diesel and demonstrating use of that fuel.

The greenhouse gas emission reductions to be achieved by the Pavley regulations are substantial. By 2016, the regulations require a 30% reduction in greenhouse gas emissions compared to 2009 model year vehicles. The AB 1493 regulations provide about 27.7 million metric tons in greenhouse gas reductions, or about 16 % of the 174 million metric ton CO₂-equivalent reductions needed to meet 1990 levels by 2020. They are the single largest emission reduction measure identified in the Scoping Plan adopted by the Board in December 2008 to chart ARB's course toward meeting AB 32, the Global Warming Solutions Act of 2006 (Chap. 488, Stats. 2006).

Since Board approval in 2004, motor vehicle manufacturers and their trade associations have challenged the regulations in numerous federal and State court proceedings and have opposed California's request for an U.S. EPA waiver of preemption under the

federal Clean Air Act to allow California to enforce its adopted standards. On May 19, 2009, challenging parties, individual automakers, California, and the federal government reached agreement on a series of actions that would resolve these current and potential future disputes over the California standards through model year 2016. A summary of those actions is contained in a document published in the Federal Register at 74 Fed. Reg. 24,007 (May 22, 2009) and in commitment letters by California and other parties that are available at www.epa.gov/otaq/climate/regulations.htm. On June 30, 2009, EPA granted California's waiver request for all model years 2009-2016. 74 Fed. Reg. 32744 (July 8, 2009).

In some of the aforementioned court and administrative proceedings, parties opposed to California's standards claimed that an U.S. EPA waiver would raise compliance issues in the other states that have adopted California's standards as their own pursuant to section 177 of the Clean Air Act. While the actual scope and type of claimed compliance issues could not be fully evaluated until additional compliance demonstrations are made in the various opt-in states, the Board committed to providing a compliance option that addresses potential issues for the 2009-2011 model years while preserving the greenhouse gas emission reductions ARB projected in 2004.

The proposed amendments would provide affected manufacturers with the ability to demonstrate compliance based on their fleet average of vehicles produced and delivered for sale in California, the District of Columbia, and in all states that have adopted and can enforce California's greenhouse gas emission standards, pursuant to section 177 of the Clean Air Act. The other states are: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Due to the timing of their respective state's adoption, Maryland and New Mexico sales would not be part of this multi-state compliance averaging option until the 2011 model year. Arizona sales would also be part of the average beginning in the 2012 model year, should any manufacturer choose to continue complying using this proposed multi-state option rather than the planned U.S. EPA 2012-2016 model year standards compliance option that will be the subject of a future ARB rulemaking. The amendments would ensure that for each model year 2009 through 2011, under any combination of manufacturers exercising the new compliance option, the California new motor vehicle fleet would achieve equivalent or greater greenhouse gas emission reductions than under the existing regulations.

The May 2009 commitment letters also express California's commitment to review 2009 through 2011 model year certification requirements to either confirm that manufacturers may use data generated by federal Corporate Average Fuel Economy Program (CAFE) test procedures, vehicle selection, and other testing protocols – including substitution of federal data for data previously submitted to ARB – or to revise our regulations as necessary. The proposed amendments address these flexibilities.

Finally, the proposed amendments make minor changes not directly tied to the May 2009 commitment letters by updating the incorporated federal test procedure sections referenced in the light-duty test procedures.

COMPARABLE FEDERAL REGULATIONS

There are currently no federal greenhouse gas emission standards for the subject new motor vehicles. In response to *Massachusetts v. EPA*, 549 U.S. 497 (2007) (holding greenhouse gases are pollutants subject to regulation under the Clean Air Act), on April 24, 2009 U.S. EPA took a necessary first step toward setting such a standard by issuing its Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act. 74 Fed. Reg. 18886 (April 24, 2009). There the U.S. EPA Administrator proposed finding that current and projected atmospheric levels of six key greenhouse gases endanger the public health and welfare of current and future generations (p.18898), and that emissions of four of these gases by individual and collective section 202(a) (i.e., on-road vehicular) source categories cause or contribute to that atmospheric pollution. Pp.18906-09. U.S. EPA would need to finalize an endangerment finding before or concurrent with finalizing greenhouse gas emission standards.

As part of the May 2009 announcement U.S. EPA and the federal Department of Transportation issued a Notice of Intent to conduct a joint rulemaking (Joint NOI) to propose a coordinated federal greenhouse gas and fuel economy program for light-duty vehicles, referred to as the National Program. 74 Fed. Reg. 24007 (May 22, 2009). U.S. EPA is considering proposing greenhouse gas standards, conditioned on a finalized endangerment finding, that would achieve on average 250 grams/mile of CO₂ in model year 2016 across the light duty fleet. ARB's preliminary view is that this fleet average would provide roughly equivalent greenhouse gas reductions in the 2016 model year from the California fleet currently subject to the AB 1493 (Pavley) regulations.

At the hearing ARB Staff will discuss the Joint NOI and its import for the Pavley regulations. Should U.S. EPA provide more detail on the proposed federal greenhouse gas emission standards by issuing a Notice of Proposed Rulemaking (NPRM) during the comment period on this regulatory item, staff will also update the Board on the federal NPRM. While California has committed to revise its standards for the 2012 through 2016 model years provided the federal standards are substantially as described in the Joint NOI, that revision will be the subject of separately proposed amendments in the near future.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO NEW PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public

Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on September 24, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Paul Hughes, Manager, Low-Emission Vehicle Implementation Section, at (626) 575-6977, or Ms. Sarah Carter, Staff Air Pollution Specialist, at (626) 575-6845,.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at www.arb.ca.gov/regact/2009/ghgqv09/ghgqv09.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The proposal is not expected to affect the cost of compliance for vehicle manufacturers that are subject to the requirements of California's passenger vehicle greenhouse gas regulations. These manufacturers are already required to conduct emission testing to measure the CO₂ emissions from their passenger fleet as part of the federal CAFE program. So, allowing a manufacturer to use these data to demonstrate compliance with California's greenhouse gas requirements could reduce the number of emission tests that will need

to be conducted solely for the California program. However, this economic impact, while positive, is expected to be minimal.

The proposed amendments may also impose additional reporting requirements. While manufacturers are currently required to report California sales data that is used to demonstrate compliance with the Pavley regulations, the amendments will require manufacturers to also report sales data from the other states that have adopted the Pavley regulations. The additional cost due to this amendment is not expected to be significant, since in implementing the current regulations other states already require manufacturers to submit sales data for their state. The proposed amendments will simply require these data to also be submitted to the Air Resources Board.

For both the CAFE data and multi-state pooling option amendments proposed, manufacturers retain the option to comply with the regulations as they are currently written (i.e., manufacturers need not use CAFE data to demonstrate compliance with the regulations and they may continue to comply with the fleet average greenhouse gas requirements on a state-by-state basis), in which case these amendments would produce no economic or reporting impacts.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to CCR, title 1, section 4, that the proposed regulatory action would not affect small businesses, because it does not apply to any businesses that fall under the definition of "small business."

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing, and may also be submitted by postal mail or electronic submittal before the hearing. To be considered by the Board, written comments, not physically submitted at the hearing, must be received **no later than 12:00 noon, September 23, 2009**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Sections 39500, 39600, 39601, 43013, 43018, 43101, 43104, and 43105, Health and Safety Code. This action is proposed to implement, interpret and make specific 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, 43205, and 43211, Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least

15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: July 28, 2009

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.