

EPA Decision to Grant California's Request for Waiver of Preemption for its Advanced Clean Car Program

EPA has signed a *Federal Register* Notice announcing its decision to grant a California Air Resources Board (CARB) request for a waiver of preemption for its Advanced Clean Car (ACC) regulations. The ACC regulations revise California's Low Emission Vehicle (LEV) program (which includes both criteria pollutant and greenhouse gas (GHG) emission standards) as well as the Zero Emission Vehicle (ZEV) program.

Overview

The regulations apply to light duty vehicles, light duty trucks, and medium duty passenger vehicles. The ZEV amendments add flexibility to California's existing ZEV program for 2017 and earlier model years (MYs), and establish new sales and technology requirements starting with the 2018 MY. The LEV_{III} amendments establish more stringent criteria and GHG emission standards starting with the 2015 and 2017 MYs, respectively.

The ACC program entails four separate regulations that California has packaged together to address what California describes as the interrelated issues of ambient air quality and climate change. The regulations together are designed to encourage coordinated development, introduction, and sales of advanced technologies so as to support investment in infrastructure and reduce technology costs. The updated ZEV, GHG, and LEV_{III} criteria emission standards regulations are covered under the ACC waiver. The fourth regulation establishes requirements for electric and hydrogen infrastructure improvements and is not subject to federal preemption.

The new ZEV standards are designed to commercialize battery-electric, plug-in hybrid, and fuel cell technologies, reaching about 15% of new vehicle sales in California in the 2025 time frame. The changes that CARB added to the 2017 and

earlier model year ZEV program allow manufacturers to earn and save credits in more flexible ways. This in turn is intended to help manufacturers achieve the sales targets that accelerate more steeply beginning with the 2018 model year. The LEV VIII criteria pollutant standards are designed to achieve further reductions by increasing the stringency of vehicle standards and by extending vehicle useful life to 150,000 miles from the current 120,000 miles. The LEV VIII GHG standards would reduce fleet GHG emissions in MY2025 by about 34% over MY2016 levels. The California GHG standards are almost identical in stringency and structure to the federal MY2017-2025 GHG standards. Additionally, on December 6, 2012, California adopted a “deemed to comply” regulation that enables manufacturers to show compliance with California GHG standards by demonstrating compliance with federal GHG standards.

In reaching its waiver decision, EPA determined that the CARB ZEV amendments as they affect 2017 and earlier MYs are within the scope of prior EPA waivers. EPA also determined that the waiver includes the new “deemed to comply” regulation.

Background on EPA Decision Making Process

The Clean Air Act preempts all states from adopting emission standards for new motor vehicles, but establishes specific provisions through which California may obtain a waiver of federal preemption. Section 209(b)(1) of the Act directs EPA to grant a waiver unless EPA finds that:

- California’s determination that its standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

In prior waiver decisions, EPA has determined the third (consistency) criterion to mean that CARB’s regulations either do not provide adequate lead time to implement the new technology, giving appropriate consideration to the cost of compliance within the applicable time frame; or, impose inconsistent certification requirements such that manufacturers would be unable to satisfy both California and federal certification requirements with the same vehicle.

CARB submitted a request to EPA for a waiver of preemption under section 209(b) for its ACC regulations on June 27, 2012. On August 31, 2012, EPA announced an opportunity for public hearing and comment on the California request. A hearing took place on September 19, 2012 in Washington DC and the comment period closed on October 19, 2012.

EPA received comment from organizations representing auto manufacturers and dealers, emission control manufacturers, states, businesses, consumer and environmental organizations, and the general public. The large majority of comments urged EPA to grant the waiver. EPA received two opposing comments; one recommended outright denial and the other recommended denial or deferral of certain components of the ACC program. However, EPA determined that these opponents of the waiver had not demonstrated the burden of proof necessary for EPA to deny a waiver based on the waiver criteria found in section 209(b) of the Clean Air Act. EPA provides a detailed discussion of its decision and rationale in the *Federal Register* Notice.

For More Information

You can access documents on this waiver decision on EPA's Office of Transportation and Air Quality (OTAQ) website at:

www.epa.gov/otaq/cafr.htm

You can also contact the OTAQ library for document information at:

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